2/2/09 PRESENTATION: ISER COST OF CRIME

RESEARCH SUMMARY
Institute of Social and Economic Research
University of Alaska Anchorage • January 2009
R.S. No. 71

The Cost of Crime: Could The State Reduce Future Crime and Save Money by Expanding Education and Treatment Programs?

By Stephanie Martin and Steve Colt

Alaska's prison population is among the fastest-growing in the U.S., with five times more inmates in 2007 than in 1981. Spending for the state justice system has nearly doubled since 1981—but the crime rate has dropped only about 30%.

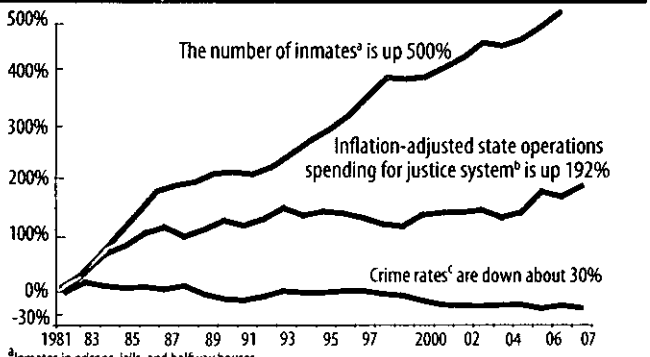
Here's the dilemma for the state, given the pattern shown in Figure 1: what can it do to hold down the number of inmates and stem the rising costs—while at the same time keeping the public safe and using tax dollars effectively?

Senator Hollis French asked ISER to project growth in the number of Alaska inmates and the associated costs—and then evaluate whether the state could reduce that growth by expanding intervention and prevention programs for people already in prison or at risk of ending up there. Alaska currently spends about $17 million a year for such programs, but they aren't available to many of those who might benefit from them.

There are a wide range of such programs. But it is programs for adults who are already in prison or jail that have the most potential to save money and reduce crime in the next 20 years. That's because they can reach the most people.

We know that without any intervention, about two-thirds of those who serve their sentences and are released commit new crimes. Stopping at least some of them from committing more crimes would not only help improve public safety but also reduce growth in both the number of inmates and in spending.

Figure 1. Percentage Changes in Alaska Crime Rate, Spending for Justice System, and Number of Inmates, 1981-2007

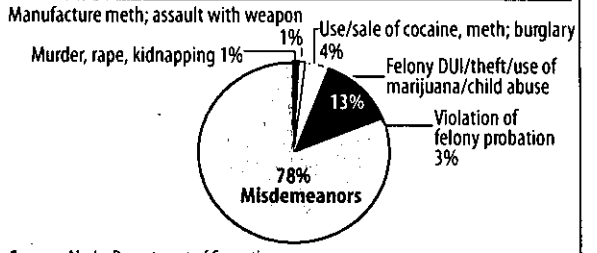


[a]Inmates in prisons, jails, and halfway houses
[b]Spending for Departments of Corrections, Public Safety, and Law; court system; Division of Juvenile Justice; Public Defender Agency; and Office of Public Advocacy. Does not include capital spending or payment on debt.
[c]Rates per 100,000 for murder, rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft.
Sources: U.S. Department of Justice; state budget documents; Alaska Department of Corrections

Also, most of those released committed misdemeanors (Figure 2). Those who commit the most serious crimes serve long sentences and make up a small share of those released in any given year.

To analyze which programs have the most potential to reduce crime *and* save the state money, we worked with the Alaska Criminal Justice Working Group and the Washington State Institute of Public Policy. That institute did a similar analysis for Washington state and provided us with data it collected from program evaluations nationwide (see back page). What did our study show?

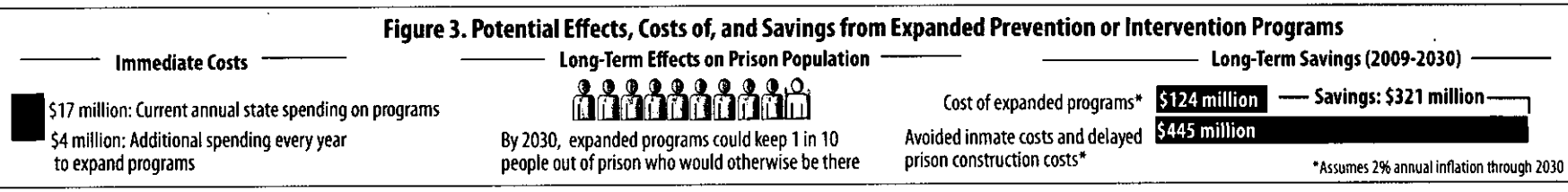
Figure 2. Who Gets out of Jail or Prison in Alaska?
(Total Releases, 2002-2007: 82,339)



Source: Alaska Department of Corrections

- *With no change in policies, the number of Alaska inmates is likely to double by 2030,* from 5,300 to 10,500.
- *If the state spent an additional $4 million a year to expand programs it already has, the prison population in 2030 might be 10% smaller* than projected—about 1,050 fewer inmates.
- *The state would spend about $124 million for expanded programs through 2030 but would avoid $445 million in costs—a savings of $321 million.* It would save money by incarcerating fewer people and by delaying prison construction costs. (Figures 3 and 8).
- *Education and substance-abuse treatment programs—in prison, after prison, and instead of prison—save the state two to five times* what they cost and reach the most people. Programs for teenagers are also very effective at reducing crime and saving money, but they reach fewer people.

Figure 3. Potential Effects, Costs of, and Savings from Expanded Prevention or Intervention Programs



Why Consider Expanding Programs?

In 1980, 2 in 1,000 Alaskans were behind bars; today that share is approaching 10 in 1,000. The sharp increase started in the 1980s, when the state government began collecting large oil revenues. The state used some of that money to expand police agencies, courts, and other parts of the criminal justice system statewide. Also in the 1980s, it made sentencing for the most serious felonies more uniform and stiffened sentences.

The crime rate in Alaska has declined since the 1980s. But the number of Alaskans in prisons, jails, and halfway houses has increased much faster, as have costs for the state justice system. Alaska's prisons are full, and the 1,500-bed prison scheduled to open in 2012 is projected to be full soon after it opens.

Locking people up is expensive, whether their crimes are major or less serious. Alaska spends on average $44,000 a year per inmate in prisons, jails, and halfway houses. Adjusted for inflation, that's actually less than in the 1980s—but it's still a lot (Figure 4).

Studies in other states have shown that some intervention and prevention programs can help cut both costs and crime, either by keeping people who have served their sentences from committing new crimes after they're released, or preventing some people from going to prison in the first place.

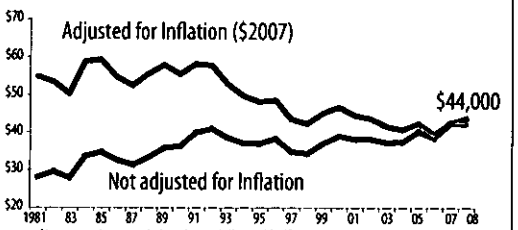
What Programs Did We Analyze?

The Alaska Criminal Justice Working Group gave us a list of programs to analyze. We looked for programs with the biggest potential payoff for the state—those that could reduce growth in both numbers of inmates and in spending for corrections, at a reasonable cost for the state.

Alaska already has a number of programs in place, and we found that expanding some of those would be most cost-effective. Table 1 lists the programs in our final analysis. As a guideline for what was a "reasonable" expansion, we used 10% to 20% of the eligible people not already served—except for very small programs that can't easily be expanded that much.

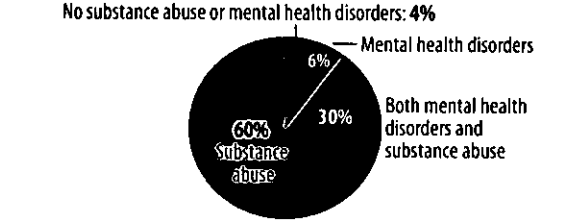
These programs would serve inmates, at-risk juveniles, and young children. They are all intended to reduce future crime in some way. Programs that treat substance-abuse or mental heath disorders have been shown to reduce recidivism—and as Figure 5 shows, almost all current inmates have those disorders.

Figure 4. Annual State Costs Per Inmate,* 1981-2008
(In Thousands of Dollars)



*Average cost of incarcerating people in prisons, jails, and halfway houses.
Source: Alaska Department of Corrections

Figure 5. How Many Alaska Inmates Have Substance Abuse or Mental Health Disorders?



Sources: Alaska Department of Corrections; Alaska Mental Health Trust

Table 1. Current Size and Potential Expansion of Intervention and Prevention Programs[a]

Programs	Currently serve	Reasonable expansion	Potentially eligible (2008)
Prison-based programs			
Education (adult basic; vocational)	More than 1,000	500	Almost all inmates (4,500)
Substance-Abuse (residential; intensive outpatient)	Close to 500	500	90% of inmates (approximately 4,000)
Sex-offender treatment[b]	0	50	10% of 500 eligible inmates
Transition from prison			
Transition for inmates with mental health disorders (Institutional Discharge Project)	70	100	36% of inmates (1,600)
Alternatives to Incarceration	500	500	Approximately 5,000[c]
Mental health, drug, alcohol courts; electronic monitoring; residential substance-abuse treatment			
Juvenile offenders	Approximately 500	1,000	Approximately 3,000
Aggression replacement training; family therapy; residential treatment; institutional transition			
Prevention	3,025	450	Approximately 8,000[e]
Head Start for 3- and 4-year olds from low-income families[d]			

[a]Programs included in our final analysis are those for which we found evidence that expansion would have significant pay-offs for the state at a reasonable cost. We evaluated additional programs not included here, either because there wasn't sufficient evidence to assess their effectiveness or because they weren't feasible to implement in Alaska at this time.
[b]To effectively reduce crime, sex offender treatment programs need to be offered in both prison and the community. Treatment is currently available only in the community, so the number served in prison is currently zero—but there are proposals to add treatment in prison.
[c]People facing low-level charges and with substance-abuse problems.
[d]Head Start is a federal program, but the state supplements federal money and Governor Sarah Palin has proposed additional state funding.
[e]We assume all children from families with up to double the poverty-level income would be eligible.

We looked at but excluded other programs from our final analysis. The criminal justice working group decided that a few programs, while effective elsewhere, wouldn't be feasible to implement in Alaska at this time. For other programs, there wasn't enough available evidence to judge how effective they were in saving money or reducing crime, or the available evidence showed them to be largely ineffective.

How Do the Programs Compare?

As Figure 3 (front page) shows, expanding programs to serve more of the eligible people would save the state about $321 million and reduce the projected number of inmates 10% by 2030. Figures 6 and 7 show how the various programs contribute to costs, savings, and reductions in the number of Alaskans behind bars.

- *Education and substance-abuse treatment programs for inmates save two to four times what they cost*, reduce recidivism by about four percentage points, and can reach the most people.

- *Intervention programs for juveniles who have committed crimes are very effective* at saving money and reducing recidivism, but they serve a much smaller number of people.

- *Programs that set up transition services for inmates with mental-health disorders* coming out of prison are among the most effective—but they can't readily be expanded to serve the many people who could benefit from them.

- *Alternatives to prison for some people charged with lesser offenses save the state money right away, and almost all reduce recidivism.* The exception is electronic monitoring, which is inexpensive but hasn't been shown to reduce future crime.

- *Treatment programs for sex offenders do reduce crime*, but they are very expensive and so don't save the state money.

- *Programs that prevent future crime by helping very young at-risk children are the most effective.* But the effects of spending for those programs aren't apparent until many years later.

Figure 6. How Effective Are Various Programs at Saving Money and Reducing Crime?

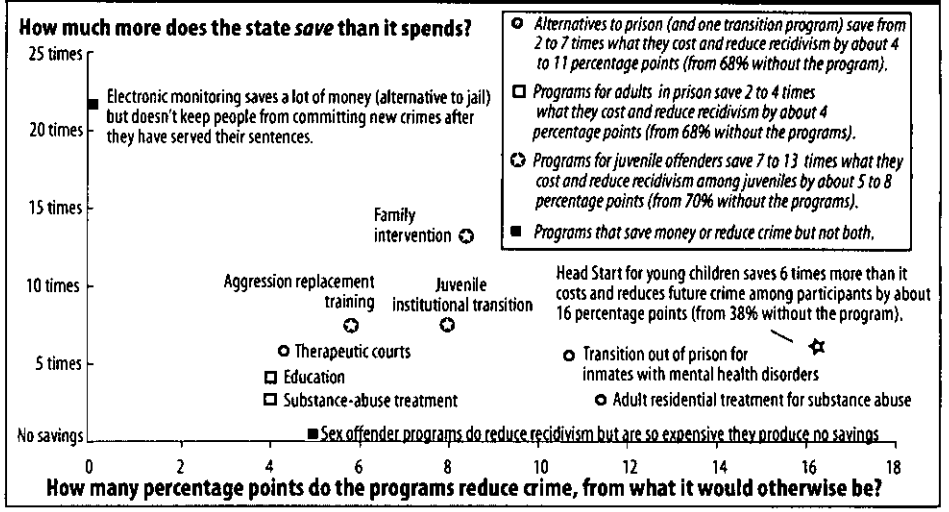
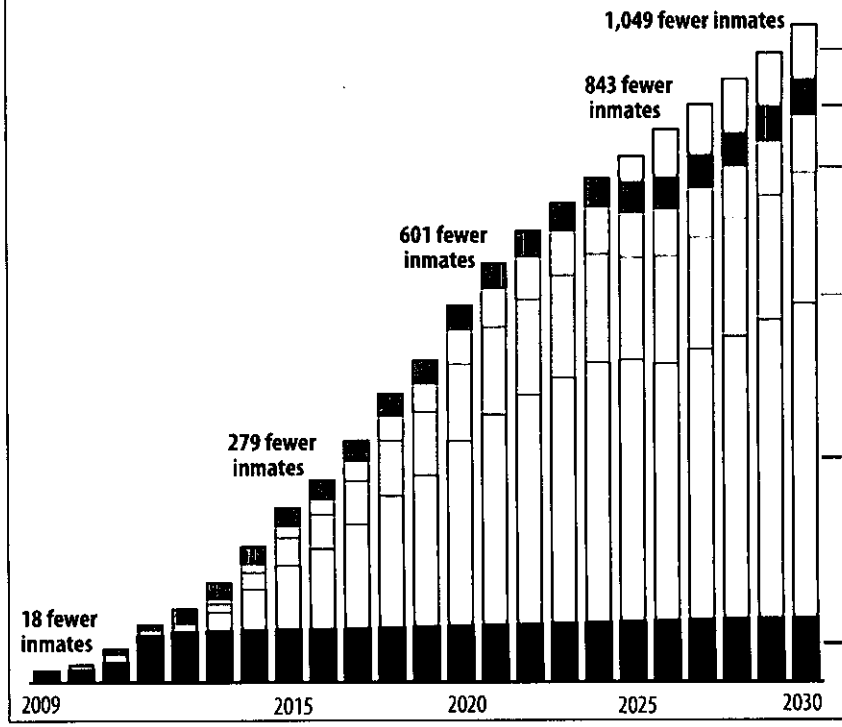


Figure 7. How Would Expanding Specific Programs Contribute to Reducing Growth in Numbers of Inmates?



Pre-school programs for at-risk children cost about $1,000 per child but save many times that much, by reducing future crime. The effects of the spending aren't apparent for years, until the children grow up.

Programs for juveniles offenders cost an average of about $2,500 per person, but save almost 10 times that much by keeping kids out of prison. They serve only a subset of the population of 12- to-17-year-olds.

Transition programs for people with mental health disorders are extremely effective, add about $2,000 per person to inmate costs, and save about four times that much. But the programs currently serve very few people and can't readily be expanded to serve large numbers.

Programs that treat inmates for substance abuse add about $2,000 a person to inmate costs, but over time save about twice as much. They are effective, but can't readily be expanded to reach all the people who need them.

Education and job training programs in prison add about $1,000 to inmate costs, but they reach the most people and save about four times more than they cost. Because they are offered in every facility, they can easily be expanded and can reach more people. (Reductions in the number of inmates as a result of the sex-offender treatment program are also included here, but are only one or two people a year.)

Programs that keep people out of prison save the state money right away, because they cost much less than the $44,000 per person the state spends to lock people up. They include therapeutic courts for substance abuse and mental health disorders, electronic monitoring, and residential substance-abuse treatment.

Conclusion

In conclusion, Figure 8 shows how Alaska's corrections system got where it is and where it's likely to go—if intervention and prevention program are kept at their current levels, and if the most effective programs are expanded to serve more of the eligible people.

We found that the state could both reduce the number of Alaskans in prison or jail and save considerable money over the next 20 years, by adding about $4 million a year to the $17 million it currently spends to keep people from returning to prison— or prevent them from ever going there at all.

Spending more for these programs even as oil prices and state revenues are falling may not seem like a good idea. But Alaska also needs to look to the future—and over time the benefits of strategically expanding those programs that reduce crime and keep more Alaskans out of prison far outweigh the costs.

Method of Analysis

Our job was to assess whether specific programs could reduce long-term state spending for corrections by reducing growth in the number of inmates. As a starting point, we needed evaluations of how effective various programs are at reducing future crime.

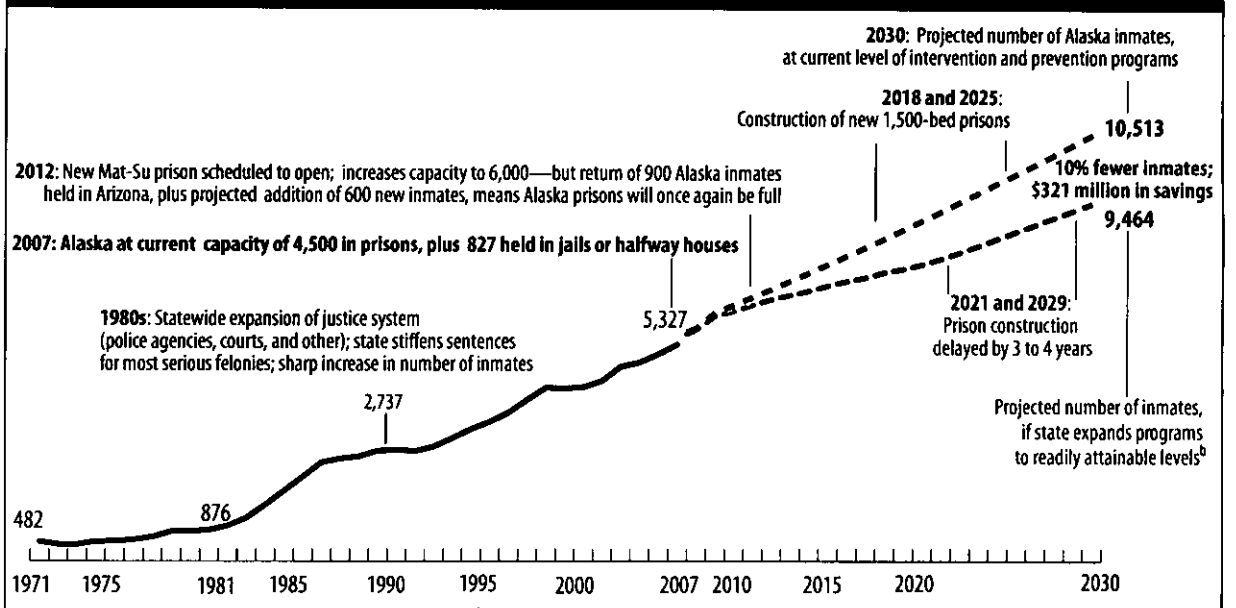
But except for some of the therapeutic court programs, most programs in Alaska have not been rigorously evaluated. Therefore, we used results of a Washington state assessment that systematically reviewed 571 program evaluations from around the country.

To be included, evaluations had to have carefully designed control groups, replicable results in multiple settings, and long-lasting effects. This method is evidence-based public policy, which merges research and practice. It is similar to clinical trials in medicine. Keep in mind that this is a new field, and only about 10% of programs in place nationwide have been evaluated at this standard.

With data from rigorous evaluations, the Washington State Institute of Public Policy created a model that estimated the effects of programs on recidivism—and then combined those results with a cost-benefit analysis to estimate the long-term effects on state spending and inmate populations.

We combined the institute's estimates of recidivism with Alaska data on program costs, eligible groups, and state population to estimate long-term effects on crime and state spending.

Figure 8. Average Number of Alaska Inmates,[a] 1971-2007, and Projected Number, 2008-2030



[a]Average daily number of people in prisons, jails, and halfway houses. [b]The number of people who could be readily added to program rolls varies considerably by program; see Table 1.

Sources: Alaska Department of Corrections; ISER projections of number of prisoners, based on Alaska Department of Labor projections of Alaska population 18-64 and assuming no change in current use of rehabilitation programs as well as expanded use; Washington State Institute of Public Policy

The authors thank the members of the Alaska Criminal Justice Working Group for their help in identifying programs to evaluate and for comments on drafts of this publication. The Alaska Legislature funded this group in 2007 and authorized the Alaska Judicial Council to act as its staff.

The group is chaired by a justice of the Alaska Supreme Court and Alaska's lieutenant governor. Other members include top policymakers from the departments of Corrections, Public Safety, Health and Social Services, and Law, as well as the Alaska Mental Health Trust Authority; the heads of the Alaska Public Defender Agency and the Office of Public Advocacy; the administrative and deputy directors for the Alaska Court System; the executive director of the Judicial Council, the U.S. attorney, and Anchorage's police chief.

This group meets monthly to talk about long-term justice issues, as well as to resolve any inter-branch issues that come up among the many agencies and organizations that deal with aspects of Alaska's justice system.

The authors also thank Elizabeth Drake and Steve Aos of the Washington State Institute of Public Policy for developing the methods and models we used and for helping us apply them to Alaska. For more information go to www.wsipp.wa.gov.

This research summary and many other publications on a wide range of topics are available on ISER's Web site:

www.iser.uaa.alaska.edu

Editor: Linda Leask Graphics: Clemencia Merrill

Criminal Justice Working Group

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Co-Chairs
Lt. Governor Sean Parnell
Justice Walter Carpeneti

January 30, 2009

Senator Hollis French
Senate Judiciary Committee Chairman
Room 417
State Capitol
Juneau, Alaska 99801-1182

Representative Jay Ramras
House Judiciary Committee Chairman
Room 118
State Capitol
Juneau, Alaska 99801-1182

Dear Mr. Chairmen:

As you know, the Criminal Justice Working Group is an interagency, inter-branch group that collaborates to improve Alaska's criminal justice system. For the past year, the group has been meeting monthly to resolve day-to-day operational issues, and to focus on longer term improvements. This letter summarizes the group's work in the past year.

Following the models of similar groups over the past thirty years, the present CJWG includes the commissioners of the state departments of Corrections, Health and Social Services, Public Safety, and Law; the Administrative Director of the Alaska Court System and the Deputy Court Directors; the Judicial Council Executive Director; the Director of the Mental Health Trust Authority; the heads of the Public Defender and Office of Public Advocacy agencies; and the Chief of the Anchorage Police Department. The group includes the Directors of the Divisions of Juvenile Justice and Behavioral Health. For the first time, the group is co-chaired by the Lieutenant Governor and a Justice of the Alaska Supreme Court.

The legislature provided funding to the Alaska Judicial Council to staff the CJWG, providing meeting coordination, doing research, and developing materials for use by the committees. The group adopted as its mission statement the constitutional directive (Article 1, Section 12) that "Criminal administration shall be based upon . . . the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation."

The CJWG's two committees – Efficiencies in the Criminal Justice Process, and Prevention and Recidivism – started by establishing baseline arrest rates and recidivism for both the adult and juvenile systems. The work broke new ground by relying on extensive cooperation among agencies to make use of their combined data, and by analyzing existing data for the juvenile system in ways similar to those commonly used in the adult system. The committees then undertook separate projects focused on issues of concern to their members:

Efficiencies Committee: The committee's members have done extensive work to identify and address the causes of delay in the criminal justice process. At the group's direction, the Judicial Council examined the need for a system to electronically exchange discovery materials. Council staff interviewed prosecutors, defense attorneys, judges, and police officers in Anchorage and Fairbanks. The Council published its report at the end of 2008. Based on the report, the committee agreed to pursue the project. The legislature provided funding to the MAJIC group that will be used to retain technical assistance in designing and implementing a system that will enable electronic exchange of discovery. The committee also asked the Council to examine possible delay associated with presentence reports, by analyzing data from the Alaska Court System and the Department of Corrections, and by interviewing judges about their reasons for ordering presentence reports.

Prevention and Recidivism Committee: This committee's goal is to identify ways to reduce criminal activity and recidivism. The committee began its work by identifying existing or proposed programs for adults and juveniles that could be shown, on the basis of evidence, to reduce recidivism. The Prevention and Recidivism subcommittee has assisted the Institute for Social and Economic Research in completing its report on cost-effective approaches to crime. A copy of ISER's report is enclosed.

ISER found a number of approaches that effectively reduce crime and recidivism. Each is already in place in Alaska. Based on ISER's findings, the Criminal Justice Working Group recommends that the legislature consider the following policy approaches:

Early Childhood Education: Maximum cost effectiveness occurs when future possible crimes are prevented. Early childhood education programs are among the best ways to reduce crime in the long run, despite the fact that the payoff occurs ten to twenty years after the children are served. Studies suggest that pre-kindergarten education for 3 and 4-year-olds lowers crime by about 16%, and saves the state six times in future expenditures compared to the amounts spent for the programs. The governor has proposed new funding for early childhood education in her FY 10 budget.

Intervention for At-Risk Youth: Intervention programs for at-risk youth and for juvenile offenders also carry high cost/benefit ratios. A 1999 report from the Office of Juvenile Justice and Delinquency Prevention in the U.S. Department of Justice stated that "Allowing one youth to leave high school for a life of crime and drug abuse costs society $1.7 – 2.3 million." Aggression replacement training, family therapy and institutional transition programs all have been shown to reduce recidivism by 8% to 9%, while saving the state about ten times in future expenses what they cost to operate. More importantly, Alaska must do more to keep our youth in school and off the streets, BEFORE criminal activity occurs. In this regard, school resource officers in Anchorage have

been shown to reduce crime. We must encourage cooperation between schools, neighborhoods and community-based organizations to expand mentoring, tutoring and community building opportunities for our youth who need them.

Prisoner Transition: For the 5,300 incarcerated offenders in Alaska's institutions, and the 6,000 felony offenders on probation and parole, reducing recidivism means providing them with the tools to make the transition to a law-abiding productive life. Proven programs to help in prisoners' re-entry into society and success on probation and parole include substance abuse treatment while offenders are incarcerated and afterwards, education, therapeutic courts, vocational training and job placement. These programs can reduce recidivism by 4% to 5%, while saving the state two to four times in future expenses what they cost to operate. In addition, monitoring of offenders also reduces recidivism by keeping offender problems in check and by helping offenders recognize that they will be held accountable for their behavior.

The committee work we've described represents our long-term projects. However, the group also sets aside time at each meeting to work out immediate problems between the agencies and branches of government. These have included providing access for defense counsel to offenders at institutions, improvements to courthouse security, better access to committing magistrates for bail and warrant decisions, and addressing delays in recording judgments in APSIN. Many such issues have been resolved after discussion at the meetings.

The Criminal Justice Working Group members plan to focus their efforts in the coming year on a more in-depth look at these emerging issues, and at aligning more private sector effort with public policy initiatives. The Working Group will also pay special attention to programs that can help reduce the numbers of chronic inebriates, whose disproportionate use of resources reduces the state's ability to serve others.

We are happy to report on the Criminal Justice Working Group's accomplishments and we look forward to continued collaboration.

Sincerely,

Sean Parnell

Sean Parnell
Lieutenant Governor

Walter L. Carpeneti

Justice Walter Carpeneti
Alaska Supreme Court

cc: Legislators

Alaska State Legislature

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Committee Members:
Senator Bill Wielechowski
Senator Kim Elton
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

MEMORANDUM

February 3, 2009

TO: All Legislators

FROM: Senator Hollis French

RE: ISER Research Summary: "Cost of Crime: Could the State Reduce Future Crime and Save Money by Expanding Education and Treatment Programs?"

Attached is a Research Summary recently released by ISER. This study was funded by the legislature and the Mental Health Trust Authority last year to take an evidence-based look at which rehabilitation programs offered by the Department of Corrections actually work to reduce recidivism. As you may know, over 65 percent of Alaskan inmates return to prison within 3 years of their release. Even small changes in the numbers of prisoners who do not reoffend make a substantial difference over time to Alaskans, both in terms of prison costs and, more importantly, in terms of public safety.

This study is not meant to be an exhaustive list of programs that work. In cooperation with the administration's Criminal Justice Working Group, the study focused on programs that currently exist within the Department of Corrections to determine the cost-effectiveness of each program as measured by reductions in recidivism. In other words, ISER looked at national studies to see if the programs actually affected behavior once the inmate was released.

I hope you will find the study of interest. ISER staff presented this information in a hearing on February 2, and can be contacted for further information.

The Cost of Crime:
Alternatives to Incarceration to Lower Costs and Keep Crime Rates Going Down

Research Proposal

submitted to:

Office of Senator Hollis French
Alaska State Senate

submitted by:

Institute of Social and Economic Research
University of Alaska Anchorage

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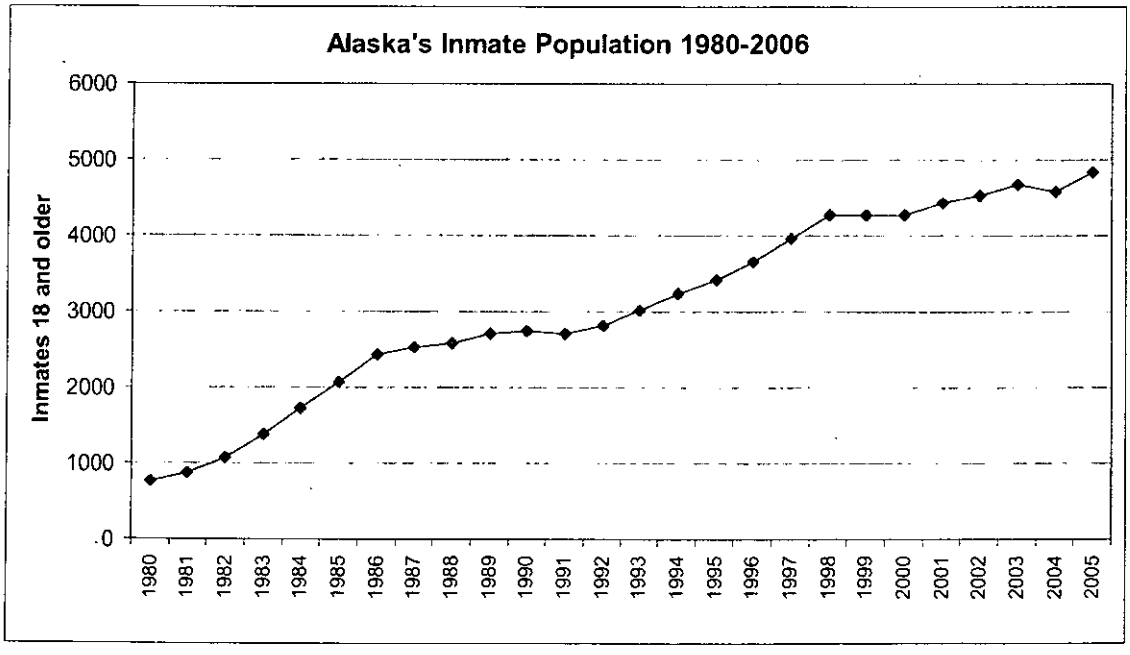
4 March 2008

Abstract

Alaska's prison population continues to grow. Although an effective measure for reducing crime, incarceration is expensive. Other states are considering expanding prevention and intervention programs as a means to curb the growth in prison populations while continuing to lower crime rates. Would similar measures work in Alaska? Could we reduce the future need to build new prisons and save money, while continuing to lower crime rates? The Institute of Social and Economic research proposes to forecast growth in Alaska's prison population and prison expenditures, and to evaluate the potential for expanding prevention and intervention programs in Alaska in a way that saves money, curbs prison growth, and continues to reduce crime.

Problem statement

According to Alaska Department of Corrections, the state's inmate population[1] has risen by over 600% over the past 26 years, increasing from fewer than 800 in 1980 to almost 5,000 in 2006. Currently, one out of every 100 Alaskan adults is incarcerated[2]. Researchers estimate that by 2011 Alaska can expect 1 new inmate for every three currently in the system[3].

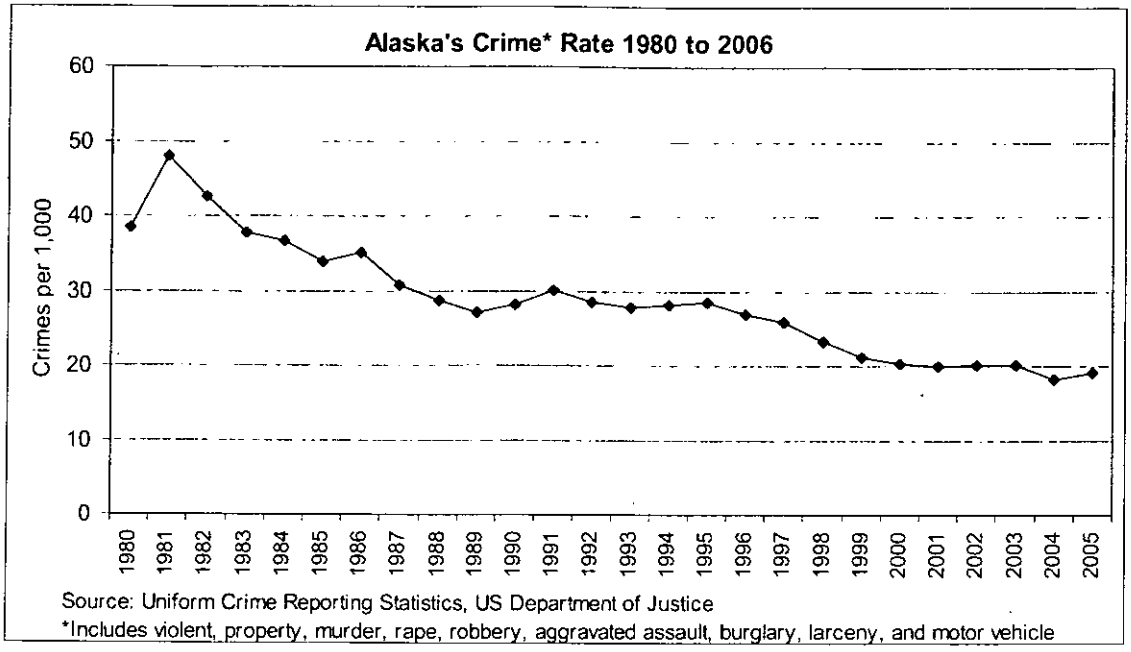


[1] Source: Alaska Department of Corrections

[2] Alaska's incarceration rate equals the number of people in state facilities (including Correctional Centers and Community Residential Centers) on any given day divided by the population age 18 and older.

[3] Public Safety Performance Project, 2007, *Public Safety, Public Spending: Forecasting America's Prison Population*. Pew Charitable Trusts

As incarceration rates have gone up, crime rates have gone down. Other studies estimate[4] that increasing incarceration rates by 10 percent reduces crime rates by 2 to 4 percent. Results vary by state. Incarceration is more effective for reducing certain types of crime.



Reducing crime by increasing incarceration comes at a cost. Alaska's justice operating expenses[5] increased from $101 million in 1981 to almost $479 million in 2006.[6] After adjusting for inflation, expenses nearly tripled during this period. These do not include capital expenditures. In 2001, Alaska's cost per inmate was $36,730[7]. The estimated cost to build a new prison in the Mat-Su borough is $330 million dollars.[8] In addition, the crime-reducing effect of incarceration can logically be expected to run into diminishing returns as more and more criminals are locked up.

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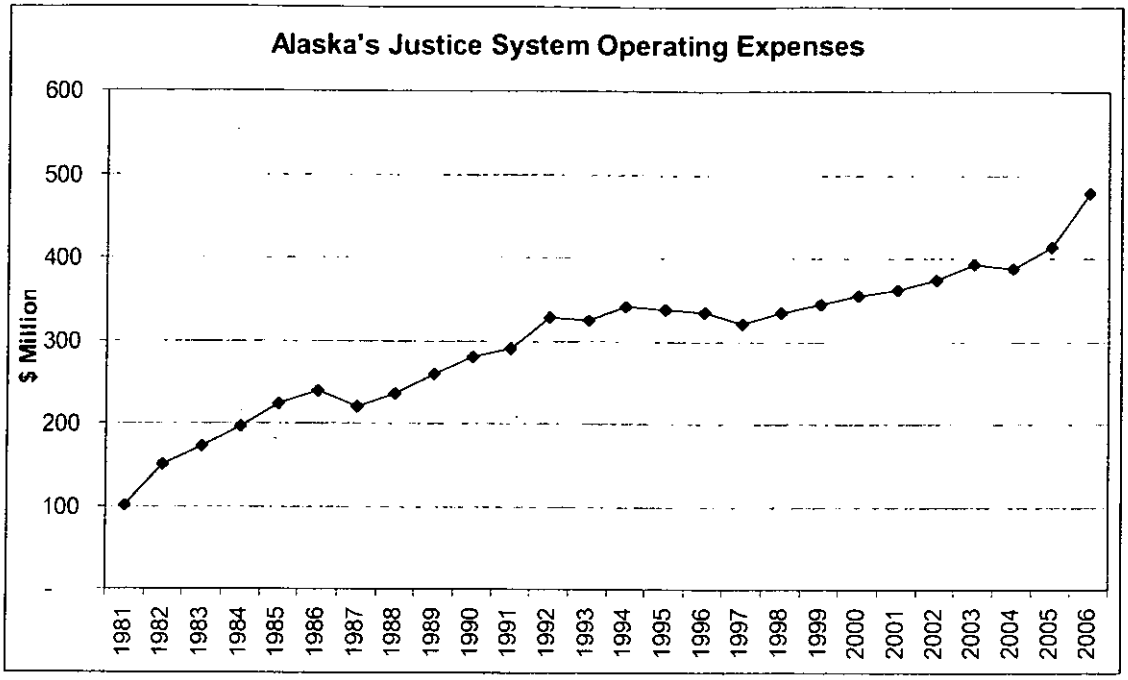
[4] Aos, Steve, Marna Miller and Elizabeth Drake. 2006. *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates.* Olympia: Washington State Institute for Public Policy;
Aos, Steven. 2003. *The Criminal Justice System in Washington State: Incarceration Rates, Taxpayer Costs, Crime Rates and Prison Economics.* Olympia: Washington State Institute for Public Policy.

[5] Justice system operating expenses include operating budgets from the Dept. of Corrections, Dept. of Public Safety, Dept. of Law, Alaska Court System, Public Defender Agency and Office of Public Advocacy. These figures do not include capital expenditures or local costs.

[6] Alaska Justice Forum. 2007. *Justice System Operating Expenses.* University of Alaska, Anchorage. 23:4. State of Alaska Budget 1981-2005.

[7] *Overview of Alaska's Correctional System.* National Institute of Corrections. http://www.nationalinstituteofcorrections.gov/Features/StateStats/?State=AK accessed 2/28/2008.

[8] The initial cost to be paid by Mat-Su Borough revenue bonds but the facility will be transferred to the state through a lease/buy agreement.



In a recent study, the Washington State Institute for Public Policy estimated that by expanding crime prevention and intervention programs, the State of Washington could save as much as $1 billion over the next 25 years and avoid building two new prisons. These savings could occur without increasing the crime rate. Could Alaska benefit in a similar way by expanding crime prevention and intervention programs? A recent evaluation of Alaska's therapeutic court programs showed that graduates of the programs had lower recidivism rates than comparison groups who did not attend programs.[9] The report recommends extending the analysis to understand the costs and benefits of Alaska therapeutic courts.

We propose an analysis for Alaska, similar to that done in Washington State[10]. Results could provide Alaska legislators and policy makers with new options for lowering or stabilizing criminal justice costs while maintaining or further reducing crime rates.

Research Questions

- How fast is Alaska's incarcerated population expected to grow?
- At what point(s) in the future will Alaska need to build new prisons?
- By how much does incarceration reduce crime in Alaska?
- How does this vary by type of crime?
- What programs have been shown to work to reduce crime rates?
- How do these compare to similar programs in place in Alaska?
- How many people would be eligible for prevention and/or intervention programs?

[9] Alaska Judicial Council. 2007. Recidivism in Alaska's Therapeutic Courts.
[10] Aos, Steve, et al. 2006.

- Could Alaska save money and reduce crime by expanding existing programs and implementing new ones?

Research tasks

- Forecast Alaska's prison population.
- Determine capacity of current correctional facilities.
- Estimate the cost of housing additional inmates.
- Estimate the relationship between incarceration and crime in Alaska and for different types of crime.
- Compare programs shown to be effective with those in place in Alaska.
- Estimate the share of the population who could benefit from such programs.
- Estimate the cost savings to Alaska of implementing additional crime prevention and invention programs.

Research Team

Dr. Steve Colt (Ph.D., Economics) will serve as Principal Investigator. Dr. Stephanie Martin (Ph.D., Political Economy) will serve as Co-PI. Rosyland Frazier (M.P.H.) will serve as principal research analyst. ISER Editor Linda Leask will prepare an executive summary for policymakers and general public distribution.

Timetable

Assuming a start date of approximately 15 July, we propose to complete a draft report by about 15 October and a final report two weeks after receiving comments on the draft.

Budget

The total proposed budget for the project is $50,000. The travel item is for ISER researchers to consult with Steve Aos at the Washington Institute for Public Policy.

The following table shows budget details:

Salaries & Wages	**Rate**	**Hours**	**Amount**	
Colt	62.08	100	$6,208	
Martin	41.01	200	$8,202	
Frazier	30.33	240	$7,279	
Leask	29.74	65	$1,933	
Leave Allowance	**Rate**	**Base**	**Amount**	
Colt	17.50%	$6,208	$1,086	
Martin	1.40%	$8,202	$115	
Frazier	21.40%	$7,279	$1,558	
Leask	20.70%	$1,933	$400	
Total Salaries & Wages				**$26,781**
Staff Benefits	**Rate**	**Base**	**Amount**	
Colt	33.10%	6,208	$2,055	
Martin	36.50%	8,202	$2,994	
Frazier	48.70%	$7,279	$3,545	
Leask	48.70%	1,933	$941	
Total Staff Benefits				**$9,535**
Total Personnel				**$36,316**
Travel				
Anch-Olympia				
	People	**Days**	**Rate**	
Airfare	2		$800	$1,600
Hotel	2	2	$120	$480
Per diem	2	3	49	$294
Car rental	1 Trip	3	105	$315
Total Travel				**$2,689**
Contractual				
Phone			$200	
Printing			$500	
Postage			$200	
Duplication			$95	
Total Contractual				**$995**
Total Direct Cost				**$40,000**
Facilities and Admin @ State of AK 25% rate				$10,000
Total Project				**$50,000**

Evidence-Based Policy Options

To Reduce Prison Construction, Criminal Justice Costs, and Crime Rates

Senate Judiciary Committee
Juneau, Alaska
January 16, 2008

Steve Aos
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Institute Publications: www.wsipp.wa.gov

Washington State Institute For Public Policy

Created by the 1983 Washington Legislature

Mission: carry out non–partisan research on projects assigned by the legislature or the Institute's Board of Directors

Topics

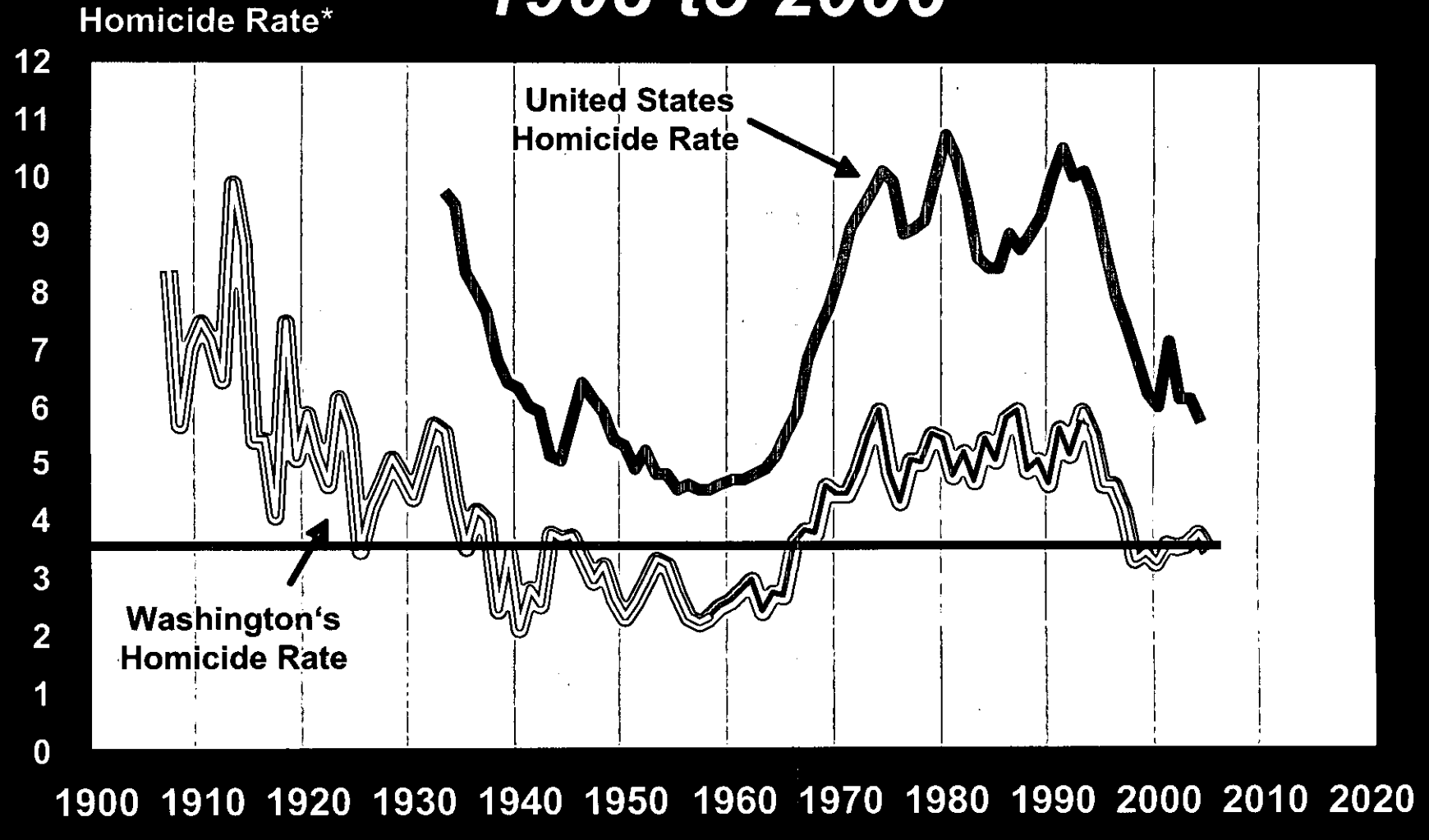
1. **What Works? What's Economic?**
2. **Results from Our 2006 Study & 2007 Washington Legislative Action**

The "Take Home" Message?

The "Magic" of Compound Interest!

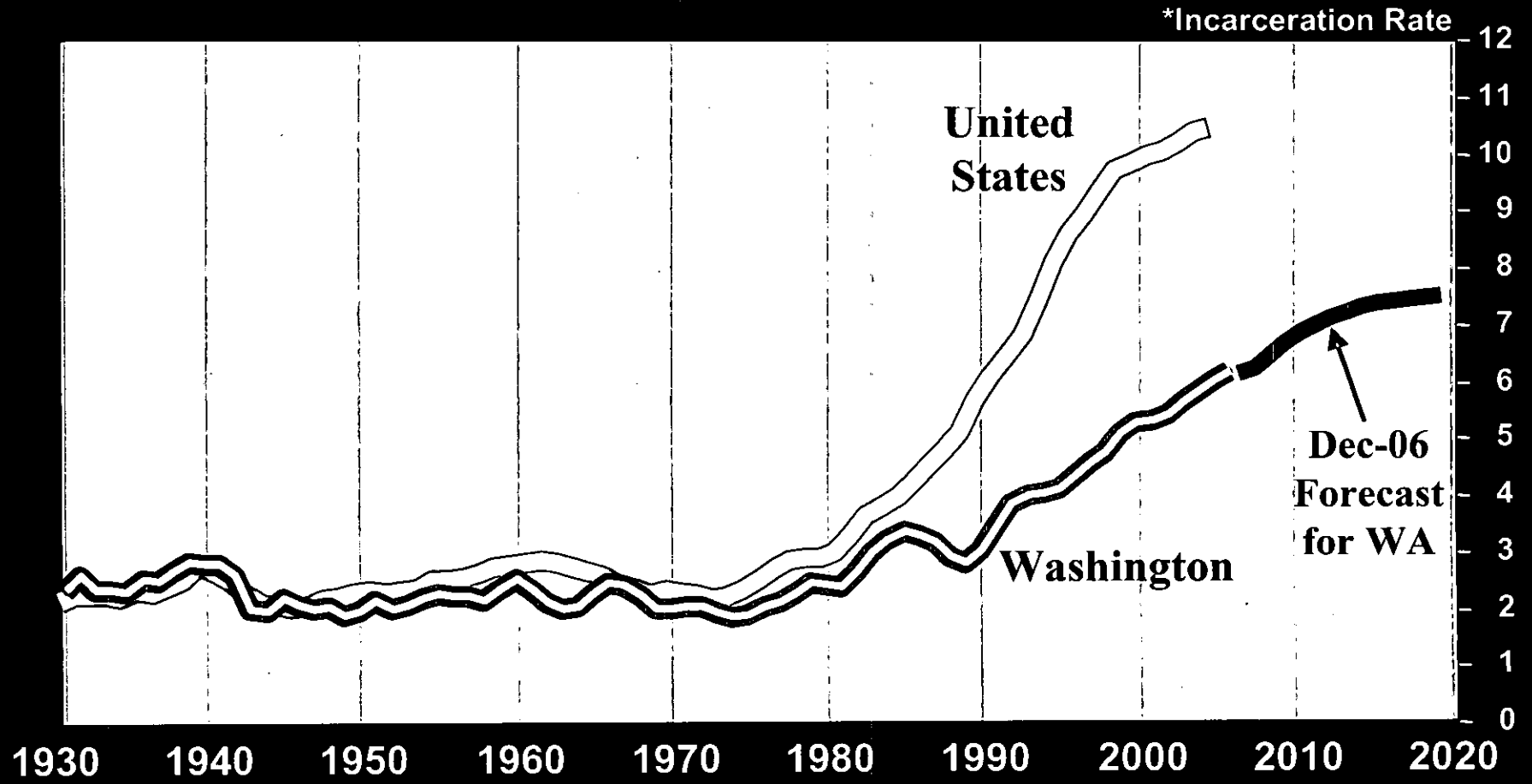
(Small gains, over time, matter a lot)

Homicide Rates: 1908 to 2006



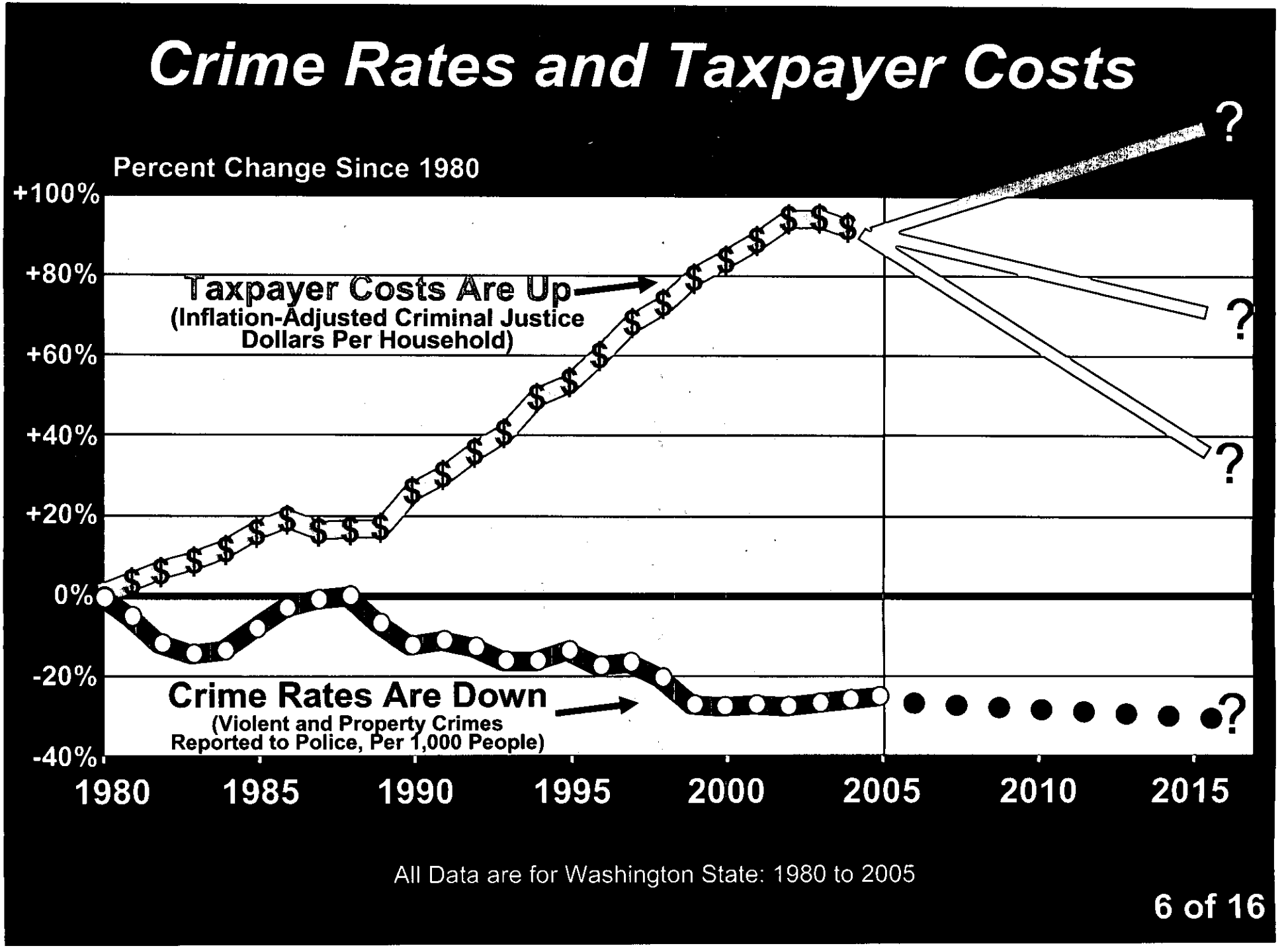
*Homicide rate defined as the number of deaths (classified as homicides by coroners) per 100,000 population.

Adult Prison Incarceration Rates: 1930 to 2005



*The incarceration rate is defined as the number of inmates in state prisons per 1,000 18- to 49-year-olds in Washington or the United States.

Crime Rates and Taxpayer Costs



All Data are for Washington State: 1980 to 2005

2005 Legislative Direction (ESSB 6094):

- ✓ *"Study options to stabilize future prison populations."*
- ✓ *"Study the net short-run and long-run fiscal savings to state and local governments of implementing…*
  - *<u>evidence-based</u> treatment human service and corrections programs and policies, including prevention and intervention programs,*
  - *sentencing alternatives,*
  - *and the use of risk factors in sentencing."*
- ✓ *"Project total fiscal impacts under alternative implementation scenarios."*

We published our report in October, 2006

Our Research Approach
3 Steps

1. What works & what doesn't?

- ✓ We located 571 rigorous (comparison group), real world evaluations of adult and juvenile corrections programs, & prevention

2. What are the economics of each option?

- ✓ We estimated the taxpayer and crime victim benefits and costs to people in Washington

3. How would alternative "portfolios" affect future prison demand, spending, & crime?

- ✓ We assessed market potential & developed Current Level, "Moderate" & "Aggressive" portfolios

W2

"Evidence-Based" Public Policy Levers to Affect Crime

✓ Prisons/Jails

✓ Police

✓ Programs

All three cost money (no free lunch)

All three can be effective (or ineffective)

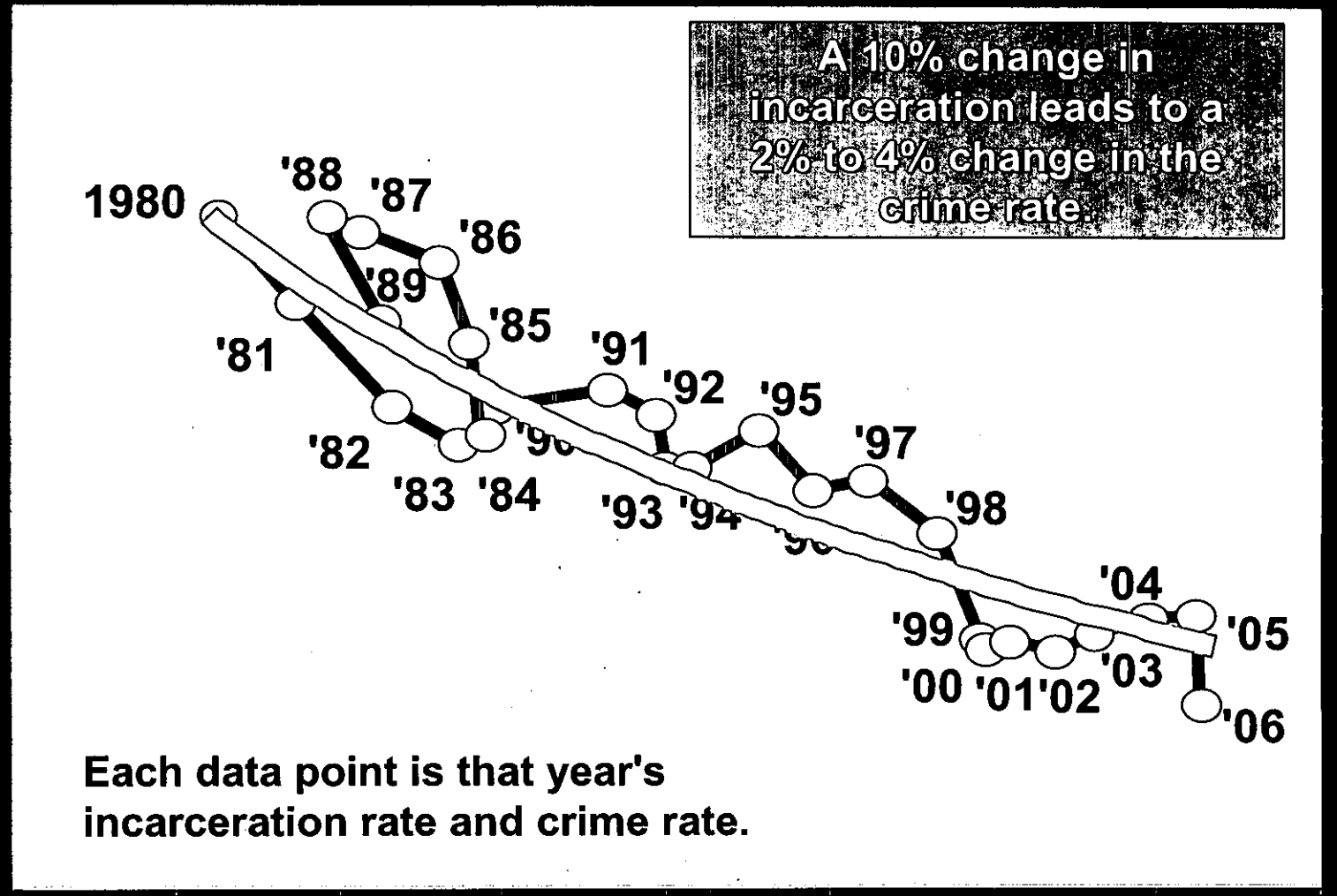
Therefore, → Portfolio

Slide 9

W2 demand for eb, market developing to meet it.
WSIPP, 5/23/2005

Prison Economics 101:

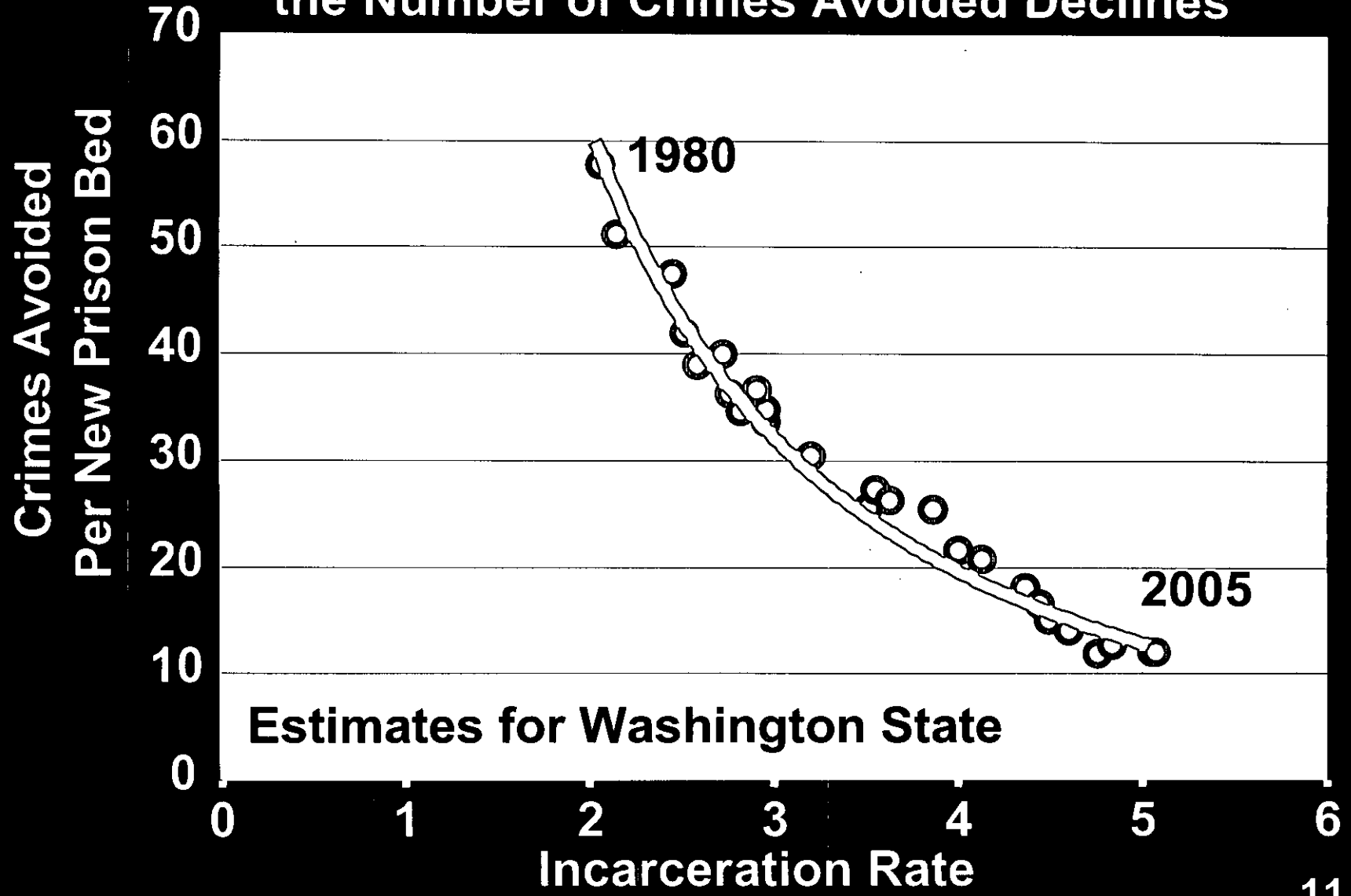
Does Prison Affect the Crime Rate?



S8

Prison Econ. 102: Diminishing Returns:

As Incarceration Rates are Raised, the Number of Crimes Avoided Declines



Slide 11

s8 talking generally about bc, but specifically following our recipe
saos, 5/13/2005

Our "Consumer Reports" List

1. What Works?
2. What Doesn't?
3. What Are the Benefits & Costs?

Exhibit 4

Reducing Crime With Evidence-Based Options: What Works, and Benefits & Costs

Washington State Institute for Public Policy
Estimates as of October, 2006

Notes:
"n/a" means not estimated at this time.
Prevention program costs are partial program costs, pro-rated to match crime outcomes.

	Effect on Crime Outcomes	Benefits and Costs (Per Participant, Net Present Value, 2006 Dollars)			
	Percent change in crime outcomes, & the number of evidence-based studies on which the estimate is based (in parentheses)	Benefits to Crime Victims (at the reduction in crime)	Benefits to Taxpayers (at the reduction in crime)	Costs (marginal program cost, compared to the cost of alternative)	Benefits (total) Minus Costs (per participant)
	(1)	(2)	(3)	(4)	(5)
Programs for People in the Adult Offender System					
Vocational education in prison	-9.0% (4)	$8,114	$6,606	$1,182	$13,738
Intensive supervision: treatment-oriented programs	-16.7% (11)	$9,318	$9,369	$7,124	$11,563
General education in prison (basic education or post-secondary)	-7.0% (17)	$8,325	$5,306	$962	$10,669
Cognitive-behavioral therapy in prison or community	-6.3% (25)	$5,658	$4,746	$105	$10,299
Drug treatment in community	-9.3% (6)	$5,133	$5,495	$574	$10,054
Correctional industries in prison	-5.9% (4)	$5,360	$4,496	$417	$9,439
Drug treatment in prison (therapeutic communities or outpatient)	-5.7% (20)	$5,133	$4,306	$1,604	$7,835
Adult drug courts	-8.0% (57)	$4,395	$4,705	$4,333	$4,767
Employment and job training in the community	-4.3% (16)	$2,373	$2,386	$400	$4,359
Electronic monitoring to offset jail time	0% (9)	$0	$0	-$870	$870
Sex offender treatment in prison with aftercare	-7.0% (6)	$8,442	$2,885	$12,585	-$3,258
Intensive supervision: surveillance-oriented programs	0% (23)	$0	$0	$3,747	-$3,747
Washington's Dangerously Mentally Ill Offender program	-20.0% (1)	$18,020	$15,116	n/e	n/e
Drug treatment in jail	-4.5% (9)	$2,481	$2,656	n/e	n/e
Adult boot camps	0% (22)	$0	$0	n/e	n/e
Domestic violence education/cognitive-behavioral treatment	0% (9)	$0	$0	n/e	n/e
Jail diversion for mentally ill offenders	0% (11)	$0	$0	n/e	n/e
Life Skills education programs for adults	0% (4)	$0	$0	n/e	n/e
Programs for Youth in the Juvenile Offender System					
Multidimensional Treatment Foster Care (v. regular group care)	-22.0% (3)	$51,828	$32,915	$6,945	$77,798
Adolescent Diversion Project (for lower risk offenders)	-19.9% (6)	$24,328	$18,208	$1,913	$40,623
Family Integrated Transitions	-13.0% (1)	$30,708	$19,502	$9,665	$40,545
Functional Family Therapy on probation	-15.9% (7)	$19,529	$14,617	$2,325	$31,821
Multisystemic Therapy	-10.5% (10)	$12,855	$9,622	$4,264	$18,213
Aggression Replacement Training	-7.3% (4)	$8,897	$6,659	$897	$14,660
Teen courts	-11.1% (5)	$5,907	$4,238	$936	$9,208
Juvenile boot camp to offset institution time	0% (14)	$0	$0	-$8,077	$8,077
Sex offender cognitive-behavioral treatment	-10.2% (5)	$32,515	$8,377	$33,064	$7,829
Restorative justice for low-risk offenders	-6.7% (21)	$4,628	$3,320	$880	$7,067
Interagency coordination programs	-2.5% (15)	$3,084	$2,308	$205	$5,186
Juvenile drug courts	-3.5% (15)	$4,232	$3,167	$2,777	$4,622
Regular surveillance-oriented parole (v. no parole supervision)	0% (2)	$0	$0	$1,201	-$1,201
Juvenile intensive probation supervision programs	0% (3)	$0	$0	$1,598	-$1,598
Juvenile wilderness challenge	0% (9)	$0	$0	$3,085	-$3,085
Juvenile intensive parole supervision	0% (10)	$0	$0	$6,460	-$6,460
Scared Straight	+6.8% (10)	-$8,355	-$6,253	$58	-$14,667
Counseling/psychotherapy for juvenile offenders	-18.9% (6)	$23,126	$17,309	n/e	n/e
Juvenile education programs	-17.5% (3)	$41,181	$26,153	n/e	n/e
Other family-based therapy programs	-12.2% (12)	$15,006	$11,231	n/e	n/e
Team Child	-10.9% (2)	$5,759	$4,131	n/e	n/e
Juvenile behavior modification	-8.2% (4)	$19,271	$12,238	n/e	n/e
Life skills education programs for juvenile offenders	-2.7% (3)	$6,441	$4,091	n/e	n/e
Diversion progs. with services (v. regular juvenile court)	-2.7% (20)	$1,441	$1,034	n/e	n/e
Juvenile cognitive-behavioral treatment	-2.5% (8)	$3,123	$2,337	n/e	n/e
Court supervision vs. simple release without services	0% (8)	$0	$0	n/e	n/e
Diversion programs with services (v. simple release)	0% (7)	$0	$0	n/e	n/e
Juvenile intensive probation (as alternative to incarceration)	0% (5)	$0	$0	n/e	n/e
Guided Group Interaction	0% (4)	$0	$0	n/e	n/e
Prevention Programs (crime reduction effects only)					
Nurse Family Partnership-Mothers	-56.2% (1)	$11,531	$8,161	$5,409	$14,283
Nurse Family Partnership-Children	-16.4% (1)	$8,632	$4,922	$733	$12,822
Pre-K education for low income 3 & 4 year olds	-14.2% (8)	$8,145	$4,644	$593	$12,196
Seattle Social Development Project	-18.6% (1)	$1,605	$4,341	n/e	n/e
High school graduation	-10.4% (1)	$1,738	$2,851	n/e	n/e
Guiding Good Choices	-9.1% (1)	$570	$2,092	n/e	n/e
Parent-Child Interaction Therapy	-3.7% (1)	$268	$784	n/e	n/e

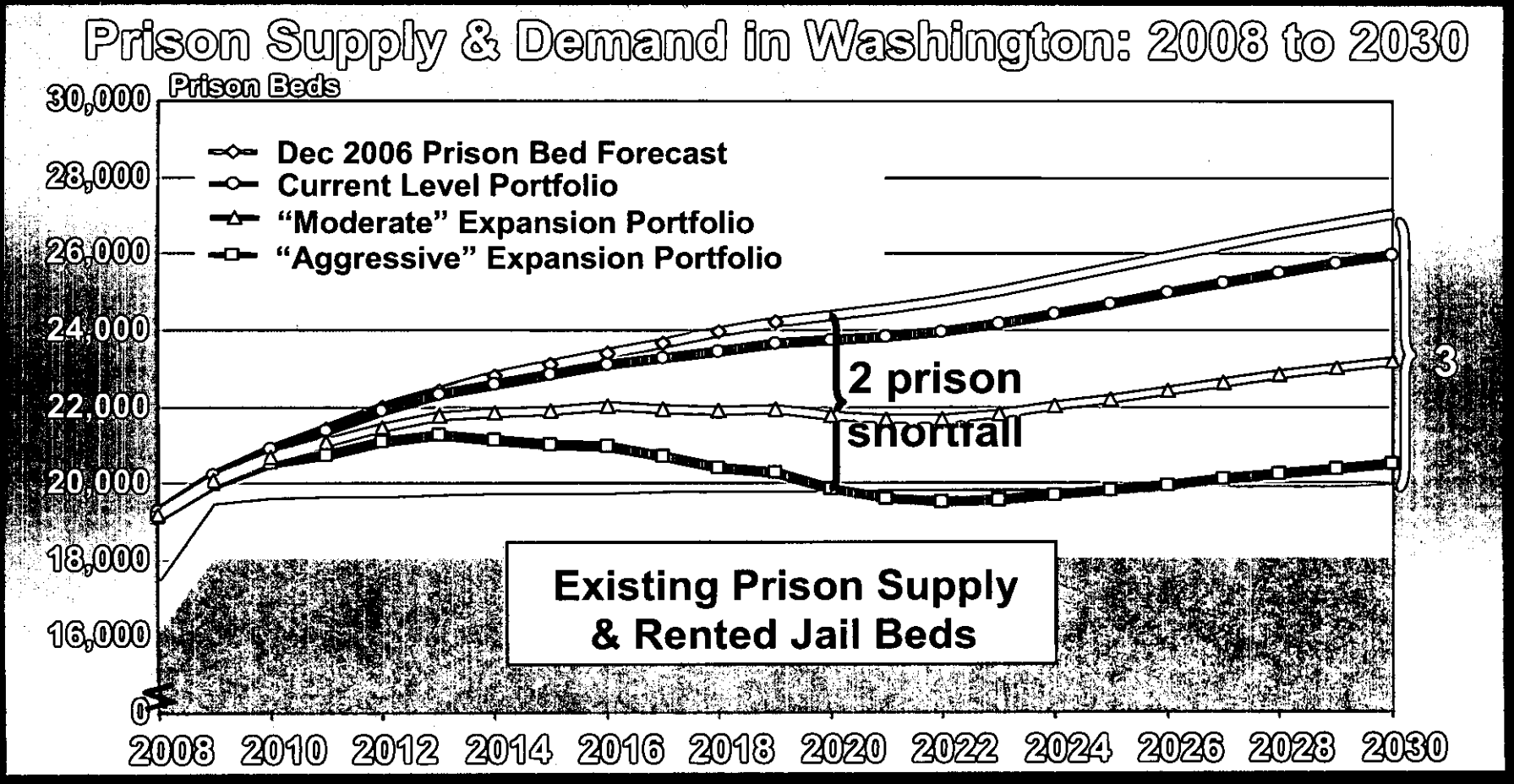
Program types in need of additional research & development before we can conclude they do or do not reduce crime outcomes:

		Comment
Programs needing more research for people in the adult offender system		
Case management in the community for drug offenders	0% (13)	Findings are mixed for this broad grouping of programs.
COSA (Faith-based supervision of sex offenders)	-22.3% (1)	Too few evaluations to date.
Day fines (compared to standard probation)	0% (1)	Too few evaluations to date.
Domestic violence courts	0% (2)	Too few evaluations to date.
Faith-based programs	0% (5)	Too few evaluations to date.
Intensive supervision of sex offenders in the community	0% (4)	Findings are mixed for this broad grouping of programs.
Medical treatment of sex offenders	-21.4% (1)	Too few evaluations to date.
Mixed treatment of sex offenders in the community	0% (2)	Too few evaluations to date.
Regular parole supervision vs. no parole supervision	0% (1)	Too few evaluations to date.
Restorative justice programs for lower risk adult offenders	0% (6)	Findings are mixed for this broad grouping of programs.
Therapeutic community programs for mentally ill offenders	-20.8% (2)	Too few evaluations to date.
Work release programs (from prison)	-4.3% (4)	Too few recent evaluations.
Programs needing more research for youth in the juvenile offender system		
Dialectical Behavior Therapy	0% (1)	Too few evaluations to date.
Increased drug testing (on parole) vs. minimal drug testing	0% (1)	Too few evaluations to date.
Juvenile curfews	0% (1)	Too few evaluations to date.
Juvenile day reporting	0% (2)	Too few evaluations to date.
Juvenile jobs programs	0% (3)	Too few recent evaluations.
Juvenile therapeutic communities	0% (1)	Too few evaluations to date.
Mentoring in juvenile justice	0% (1)	Too few evaluations to date.

Evidence-Based Programs: Selected Results

	Change In Crime (# of EB Studies)	Benefits Minus Costs (per-person, life cycle)
Adult Offenders		
Adult Drug Courts	-8.0% (57)	$4,767
Education Prgs., Prison	-7.0% (17)	$10,669
Drug Tx in Prison (TC or out-patient)	-5.7% (20)	$7,835
Cog-Behavioral Treatment	-6.3% (25)	$10,299
ISP: surveillance	-0.0% (23)	-$3,747
ISP: treatment	-17.1% (11)	$11,563
Electronic Monitoring	-0.0% (9)	$870
Juvenile Offenders		
Functional Family Thpy.	-15.9% (7)	$31,821
Family Int. Transitions	-13.0% (1)	$40,545
Aggression Repl. Trng.	-7.3% (4)	$14,660
MDT Foster Care	-22.0% (3)	$77,798
Prevention		
Pre-School* (low income)	-14.2% (8)	$12,196
Nurse Family Partnership*	-36.3% (2)	$27,105

Results for Three Example Portfolios of Evidence-Based Options



Taxpayer Summary Statistics	Current Level	Moderate	Aggressive
Annual cost of portfolio	$41 million	$63 million	$85 million
Long-run net taxpayer benefits	$1.1 billion	$1.7 billion	$2.4 billion
Benefit-to-cost ratio	$2.45	$2.55	$2.60
Return on investment	24%	27%	28%
Crime Rate in 2020 (2005 rate = 52)	48	48	49

Reducing Crime and Taxpayer Costs

- ✓ **COMPHENSIVE & LONG-TERM …**
  ***Adult* offender programs and *juvenile* offender and *prevention* programs need to be in the portfolio. Compound Interest: Small gains, over time, matter a lot.**
- ✓ **ASSESSMENT …Use formal assessment tools to align the right criminal justice resource with the right offender.**
- ✓ **STATE & LOCAL EFFORTS …Fiscal and policy coordination is vital for many adult, juvenile, and prevention options.**
- ✓ **PROGRAM ACCOUNTABILITY …It's critical to implement programs with quality control *("Starbucks")***
- ✓ **EXPERIMENT …Try some non "evidence-based" approaches as well; evaluate the results rigorously**

Institute Publications: *www.wsipp.wa.gov*

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October 2006

Evidence-Based Public Policy Options To Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates‡

Current long-term forecasts indicate that Washington will need two new prisons by 2020 and possibly another prison by 2030. Since a typical new prison costs about $250 million to build and $45 million a year to operate, the Washington State Legislature expressed an interest in identifying alternative "evidence-based" options that can: a) reduce the future need for prison beds, b) save money for state and local taxpayers, and c) contribute to lower crime rates.

The 2005 Legislature directed the Washington State Institute for Public Policy (Institute) to report, by October 2006, whether evidence-based and cost-beneficial policy options exist.

If economically sound options are available, then the Legislature also directed the Institute to project the total impact of alternative implementation scenarios.[1]

This report describes our results to date. We begin by providing background information on historic and projected incarceration rates in Washington, as well as a history of crime rates and fiscal costs of the criminal justice system. We then describe the process we use to determine if evidence-based and economically sound options exist and we present our findings. This is followed by our projections of the impact of alternative implementation scenarios. We conclude by discussing some implications of the findings and next steps. For technical readers, appendices begin on page 18 and describe our research methods and results in greater detail.

‡Suggested citation: Steve Aos, Marna Miller, and Elizabeth Drake. (2006). *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*. Olympia: Washington State Institute for Public Policy.

Summary

Under current long-term forecasts, Washington State faces the need to construct several new prisons in the next two decades. Since new prisons are costly, the 2005 Washington Legislature directed the Washington State Institute for Public Policy to project whether there are "evidence-based" options that can:

a) reduce the future need for prison beds,
b) save money for state and local taxpayers,
c) contribute to lower crime rates.

We conducted a systematic review of all research evidence we could locate to identify what works, if anything, to reduce crime. We found and analyzed 529 rigorous comparison-group evaluations of adult corrections, juvenile corrections, and prevention programs, most of which were conducted in the United States. We then estimated the costs and benefits of many of these evidence-based options. Finally, we projected the degree to which alternative "portfolios" of these programs could affect future prison construction needs, criminal justice costs, and crime rates in Washington.

We find that some evidence-based programs can reduce crime, but others cannot. Per dollar of spending, several of the successful programs produce favorable returns on investment. Public policies incorporating these options can yield positive outcomes for Washington.

We project the long-run effects of three example portfolios of evidence-based options: a "current level" option as well as "moderate" and "aggressive" implementation portfolios.

We find that if Washington successfully implements a moderate-to-aggressive portfolio of evidence-based options, a significant level of future prison construction can be avoided, taxpayers can save money, and crime rates can be reduced.

3/23/09 PRESENTATION: AK INTERNET CRIMES AGAINST CHILDREN

- Sergeant Derek DeGraaf
- Alaska State Troopers
- Alaska Bureau of Investigation (ABI)
- Computer and Financial Crime Unit (CFCU)
- Anchorage

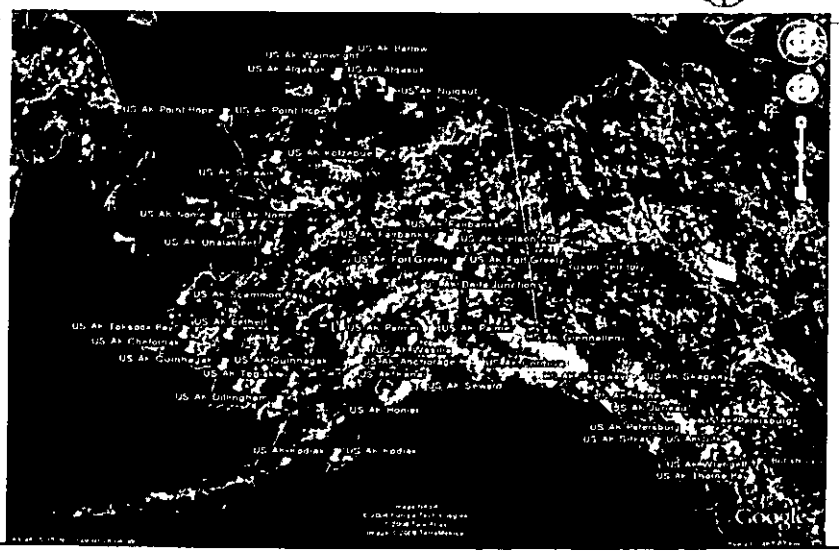
Alaska State Troopers

- Current Status of Alaska Internet Crimes Against Children (ICAC) Task Force participation
- Specifically, the Computer and Financial Crime Unit (CFCU)

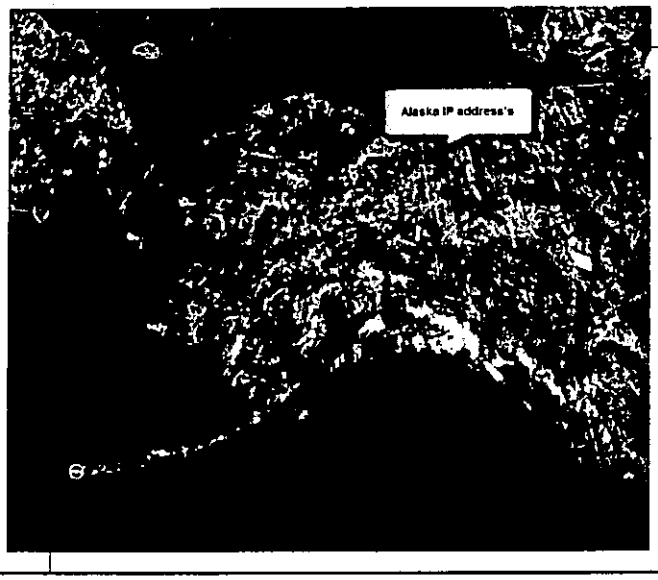
Top Issue for ICAC

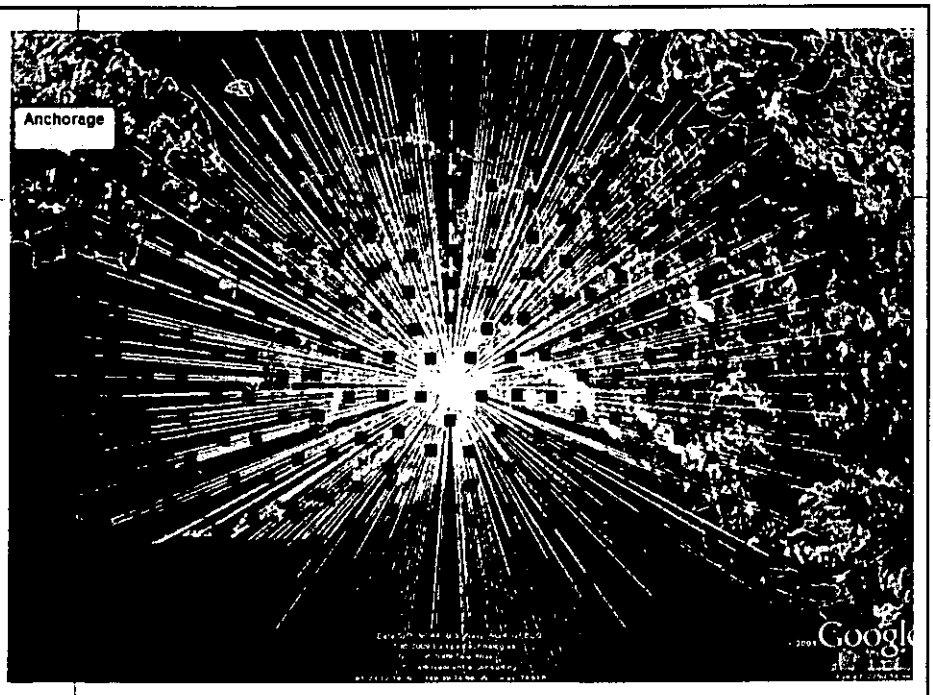
- Alaskan's Accessing and Distributing Child Pornography with File Sharing Software (Peer to Peer Network)
- Limewire, Bearshare, Phex

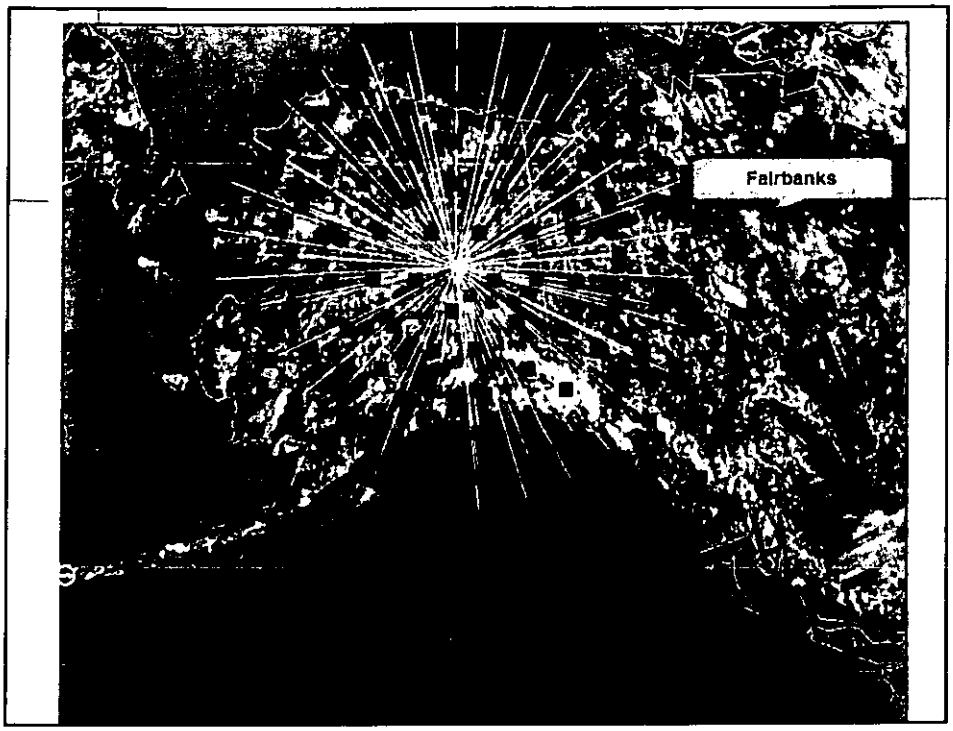
Candidates File Sharing Child Pornography in Alaska

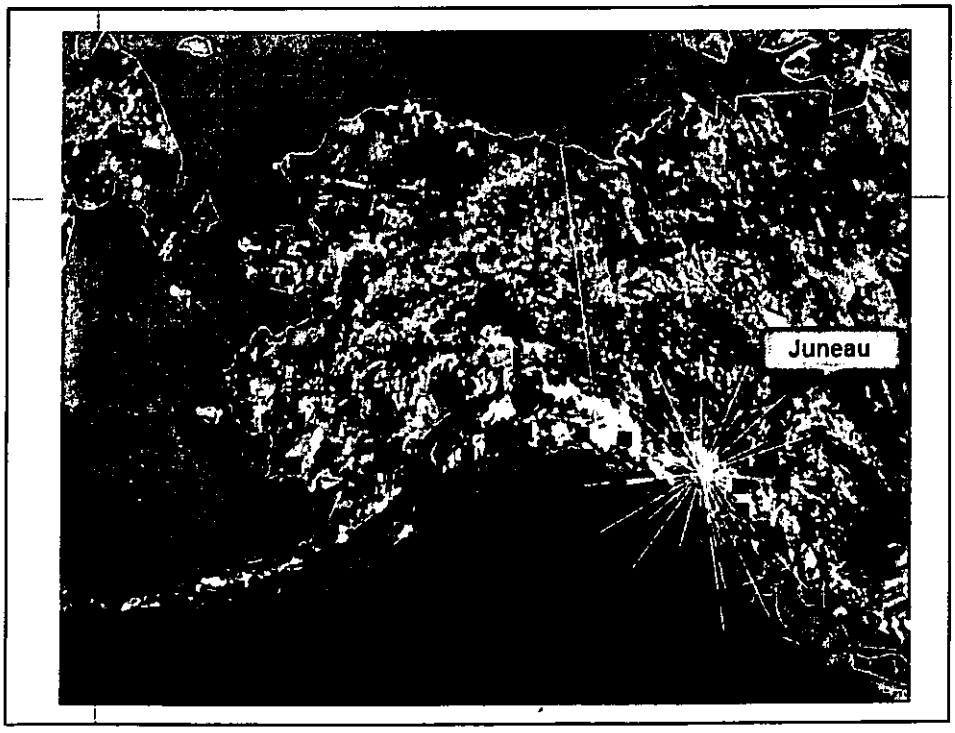


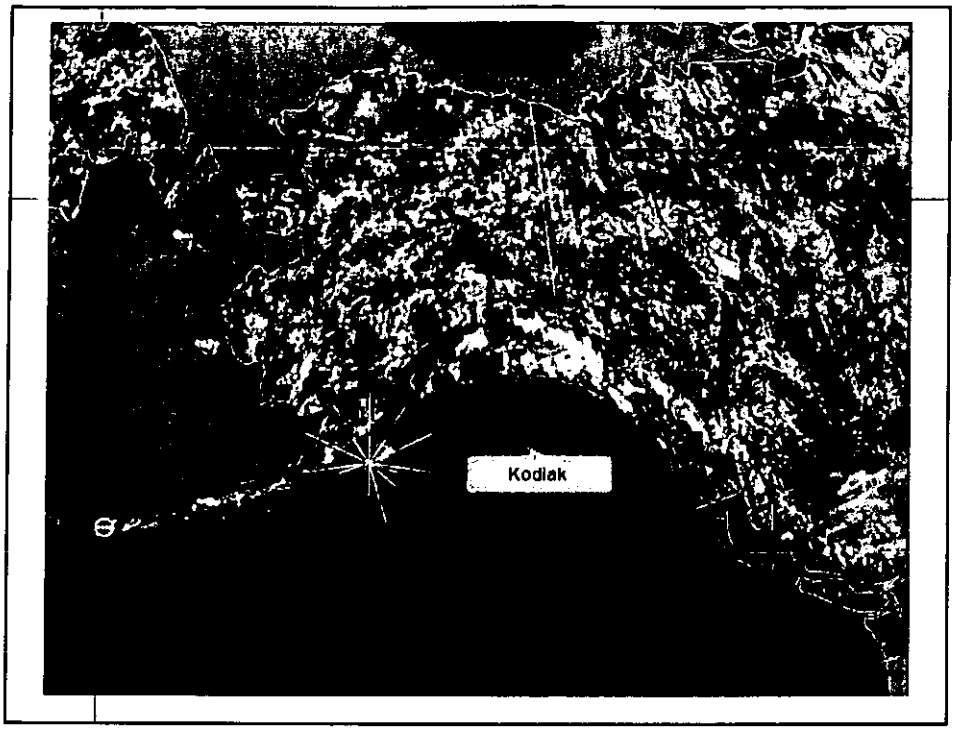
Statewide Problem






Fairbanks


Juneau


Kodiak

Barrow

- Thousands of leads available to LE
- NCMEC Leads
- Small Police Departments

Computer and Financial Crime Unit Issues

Two different Missions

- 1. Computer Crime
- 2. Financial Crime

One Sergeant (Trooper)

Two Investigators (Trooper)

Two Long Term Non-Perm positions (recently funded by Legislature)

- CFCU expected to cover the entire State of Alaska and investigate all Financial Crime and Technology related offenses
- Expected to provide assistance to smaller Police Agencies
- Expected to Provide training and support
- Few "white collar" or "corruption" cases are actually being worked due to case load

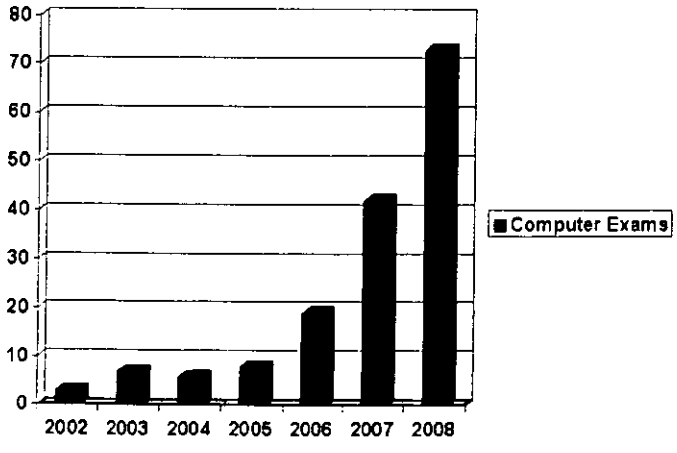
AST Response to ICAC Task Force

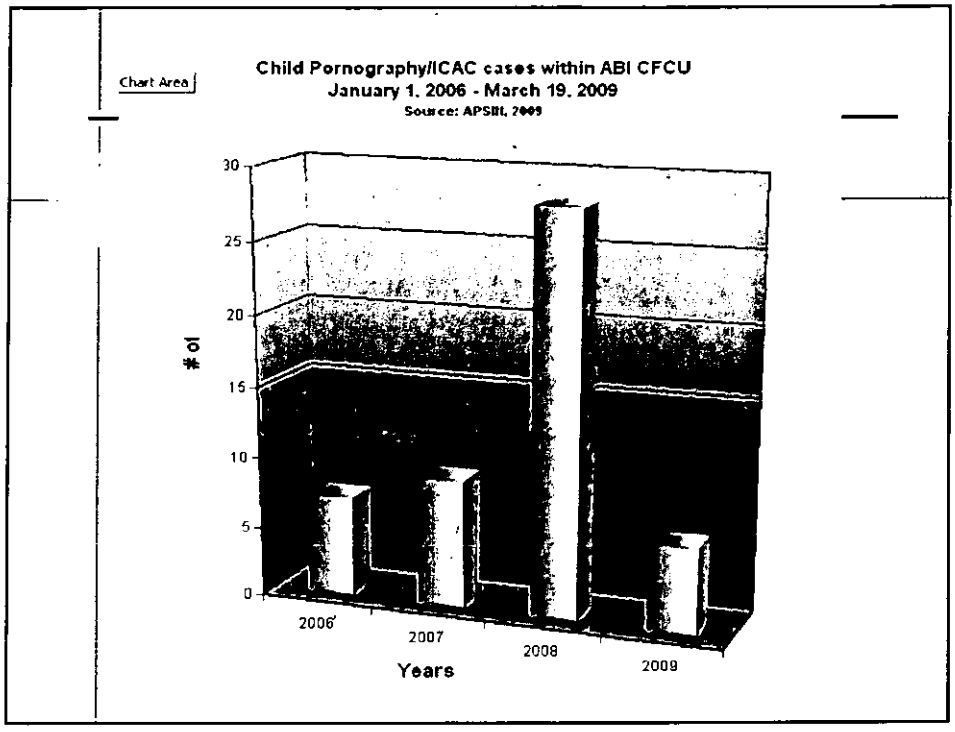
- Joined Internet Crimes Against Children Task Force last year
- Co-Located with Federal Agents, to include ICE, soon with FBI & USPIC
- Investigators trained in Peer to Peer Investigations, Forensics
- Recently hired one new investigator and one criminal justice tech II because of Legislature funding

- Invested heavily in Computer Forensic training to increase competency
- Invested heavily in equipment, to include software, forensic computers, cell phone analysis tools, server storage of evidence
- Conducted multi-agency search warrants
- Public Education, presentations
- Partnered with small police departments to provide assistance and training

Results

CFCU Computer Examinations





- 400% increase in Child Exploitation Cases being investigated between 2006-2008
- We found the tip of the iceberg
- Problem is growing exponentially

Successes

- NCMEC tip received by ABI for Palmer resident
- Defendant was arrested for distributing and possessing child pornography images
- Investigators found defendant was taking pictures with telephoto lens of neighbor children
- Recently sentenced to 12/4 years (8 years)

- Talkeetna man, a registered sex offender was found to be chatting on-line through game with 13 Y.O. in CA
- He was grooming victim
- He was previously arrested by APD for Child Pornography possession
- ABI found more Child Pornography, continued behavior

- Soldotna man, was arrested for possessing CP images, was found to be actively abusing autistic boy
- What cases are falling through the cracks?

What is needed?

- Additional support for more ABI Investigators, including Forensic Computer Examiners
- Separate Financial Crime and Computer Crimes Units
- More directed response to rural residents of Alaska, they are not being adequately represented by LE

Conclusion

- ICAC is very necessary
- Co-location of agencies is key
- We are headed in the right direction
- We must continue to protect Alaska's children with pro-active investigation
- More Investigators are required
- Disparity of LE response to Rural residents
- We are not there yet...

Questions?

- Derek.DeGraaf@alaska.gov
- 907-271-3220

2008 Alaska ICAC Task Force Frequently Asked Questions

- What undercover tactics are used?
  - We cannot release details of our tactics because investigations are still underway using the same undercover techniques. Those details will probably not be available until they come out at trial.

- Are the search warrant affidavits public records?
  - Affidavits are sealed by the courts because the investigations using these same techniques are continuing.

- Are these investigations into chat rooms and social networking sites?
  - Many avenues of cyberspace, including but not limited to chat rooms and social networking sites were investigated during this year.

- Are these investigations into P2P file sharing?
  - Many avenues of cyberspace, including but not limited to P2P sources were investigated during this year.

- Where on the Internet were the suspects found?
  - We cannot release that information because investigations are still pending using the same undercover tactics. Those details will not be available until trial.

- Was this an organized ring of people working together?
  - At this time the evidence does not indicate that the offenders know of each others activities.

- What training did the investigators have in order to work on these cases?
  - The average investigator assigned to conduct these investigations has received over several hundred hours of specialized training specific to Internet crimes and/or computer forensics coursework.

- Are the images and videos available for viewing pursuant to a public records request?
  - No - Images depicting the sexual exploitation of minors are contraband. Even in a courtroom setting, the prosecutors try to protect the gallery, the media and everyone but the judge, jury, defense and prosecution from seeing the images.

- Can citizens go on-line and volunteer to go undercover like they did on Dateline with Perverted Justice?
  - Citizen cyber-vigilantism is not supported by the agencies involved in this enforcement operation.

- Can the media "ride along" and accompany the cyber crime investigators?
  - Because child pornography is contraband, we do not permit anyone except those investigating or prosecuting the offenses to be exposed to the images.

- Media exposure of our undercover investigative tactics will make our jobs more difficult by making offenders aware of the techniques we use.

- What Internet safety tips can you provide to citizens about unlawful images?
  - Homeowners: Pay attention to what is occurring on your home computer. Take responsibility for the control of your computer.
  - Business owners: Watch what your employees are doing on their work computers. Law enforcement intervention can result in an embarrassing disruption of services to your customers.
  - Parents: Monitor your child's use of cell phone cameras. A troubling number of minors are using cell phone cameras to create felony images depicting the sexual exploitation of themselves and others. The images are then being shared throughout cyberspace and the images will never be retrieved.

- What Internet safety tips can you provide to citizens about luring/enticement?
  - Parents: Closely monitor your child's use of the computer and know who your child is contacting on line. Be aware that some children have multiple on line profiles. They may show one profile to their parents while keeping another secret profile that they use to communicate with friends and strangers.
  - Also, while you are protecting your children at home, be aware that some children go to places where free Internet access is provided to communicate with others. Coffee shops, libraries and colleges offer free Internet service where young people may be communicating with predators.

- Were any "hands on" contact victims discovered as the result of these investigations?
  - **Yes** – We also have encouraged the families and friends of other suspects to call us if they wish to report contact offenses. We know that victims are understandable reluctant to come forward for fear of embarrassment and because they do not wish to relive the abuse by subjecting themselves to the criminal justice system. We know from the scientific research conducted on the subject of unlawful images that a significant number of possessors are also contact offenders. We encourage victims to report abuse so that we can bring offenders to justice. Complicating our investigative endeavors is the fact that it is impossible for some of the victims, who are as young as infants, to notify the police. How can you call 911 when you are not yet old enough to count or to use a telephone?

- Are women ever arrested for Internet crimes against children?
  - Sometimes, but 99% of the offenders in theses cases are men. During this time period, no women were arrested.

- Where can I go on-line for more information?
  - Anchorage Police Department Internet Safety Tips: www.muni.org
  - Enough is Enough: www.enough.org
  - FBI: www.fbi.gov/innocent.htm
  - Get Net Wise: www.getnetwise.org

- ICE: www.ice.gov/pi/childexploitation/index.htm
- ISafe: www.isafe.org
- National Association to Protect Children: www.protect.org
- National Center for Missing and Exploited Children's Netsmartz Program: www.netsmartz.org

- What is the number to call to report Internet crimes against children?
  - Local crimes can be reported through the telephone 911 service.
  - The National Center for Missing and Exploited Children operates the Cybertip line **1-800-843-5678**, where crimes can be reported on-line. The web site is: www.cybertipline.com

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AK ICAC Task Force 2008

Background

Over the past decade, the tremendous proliferation of computers connected to the Internet led to a skyrocketing number of Internet crimes against children. In the year 2008, the Alaska Internet Crimes Against Children (ICAC) Task Force recorded the following:

- 176 investigations involving unlawful images of the sexual exploitation of minors.
- 56 incidents of Internet crimes against children reported from the National Center for Missing and Exploited Children's Cybertip hotline.
- 29 cases of the Internet facilitated luring of minors for sexual exploitation.
- 7 reported incidents of Internet related child prostitution.

Alaska Internet Crimes Against Children

In the twelve months between January 2008 and December 2008, a joint task force of Alaska and Federal investigators conducted a series of proactive Cyber crime enforcement operations targeting Internet criminals committing sex crimes against children; including the trafficking of unlawful images depicting the sexual exploitation of minors. This was done in conjunction with an education effort geared towards Internet crime prevention and awareness.

Law Enforcement Agencies

Investigators and Prosecutors affiliated with 16 law enforcement agencies partnered with the Alaska ICAC Task Force in a cooperative effort during 2008. Agencies participating included (alphabetically):

- Alaska Adult Probations- Sex Offender Unit (Investigations)
- Alaska Bureau Investigations (investigations and training)
- Alaska District Attorney Office (education and training)
- Anchorage PD - (investigation and enforcement)
- Fairbanks PD - (investigation and enforcement)
- F.B.I. - (investigation and enforcement)
- I.C.E. - (investigation and enforcement)
- Juneau PD (investigations)
- Kenai PD - (investigation and enforcement)
- Kodiak PD - (investigation and enforcement)
- Military Investigators (investigations)
- Sitka PD (investigations)
- Soldotna PD - (investigation and enforcement)
- Unalaska PD - (investigation and enforcement)
- U.S. Attorney's Alaska Office - (prosecution)

- U. S. Postal Inspection Service - (investigations)
- UAA PD (facilitation / support)
- UAF PD (investigations)

The Investigators' Work

Trained investigators endured witnessing disturbing cyber images and videos depicting brutal sexual torture of actual children. They use sophisticated computer investigative techniques combined with undercover tactics to identify offenders. They conducted surveillance operations, requested subpoenas, and wrote and executed dozens of search warrants. They seized thousands of items of computer evidence. Detectives and special agents conducted computer forensics examinations to identify contraband images. They interrogated offenders and interviewed witnesses. They conducted exhaustive searches of dwellings and wrote voluminous reports on their activities.

The proactive investigators agreed to participate in this undercover operation in addition to their regular duties that involve responding to citizens' complaints of Internet crimes. Through their proactive efforts investigators and special agents sought justice for thousands of children who could not call 911. Their fine efforts are greatly appreciated. They will work closely with prosecutors to prepare for trials.

Cases pursued by local agencies under Alaska State Law have been submitted to the local Alaska District Attorney's Office. Cases pursued by federal agencies under the US Code have been submitted to US Attorney's Office for the Alaska District. The justice system considers all suspects innocent until proven guilty in court.

Penalties

Unlawful images depicting the Sexual Exploitation of minors are described under Alaska State law in AS 11.41.455. Possession of these images is a class C felony under Alaska State law AS 11.61.127.

The luring and enticement of minors for sexual exploitation is described under Alaska State law in AS 11.41.452. It is a class C felony.

Training and Education

During the 2008 calendar year, members of the Alaska ICAC Task Force have attended training, funded in large part by the Alaska ICAC Grant.

Examples of the training classes attended during 2008:

- ICAC Training & Technical Assistance Program (ICAC T&TA) – Investigative techniques course
- ICAC T&TA- Undercover Chat Investigations Program
- ICAC T&TA- Unit Supervisor Training Program
- ICAC T&TA- Project Safe Childhood(PSC) Team Training

- PSC and ICAC National Conference- several training seminars
- Safety Net Prosecutor Team training
- Access Data Forensic Tool Kit training
- Encase basic and advance software training
- National White Collar Crime Conference-(NWC3)
- BK Forensics- Cell Phone Forensic course.
- Access Data Windows registry training

In January 2009, several AK ICAC Members attended the International Consumer Electronic Show, the premier showcase of all the new digital media products that are being developed and marketed.

On March 3-6, 2009, APD Cyber Crimes Unit conducted Peer 2 Peer training for ABI Investigators. This training allows ABI investigators the ability to go on-line proactively to target individuals who are collecting and trading electronic images depicting Child Sexual Exploitation. Alaska ICAC members also conduct public safety presentations bringing the message of Internet safety to children and adults.

Organizations that can provide more information about Internet crime prevention:

- Anchorage Police Department- Internet Safety: www.muni.org
- Enough is Enough: www.enough.org
- FBI: www.fbi.gov/innocent.htm
- Get Net Wise: www.getnetwise.org
- ICE: www.ice.gov/pi/childexploitation/index.htm
- ISafe: www.isafe.org
- National Association to Protect Children: www.protect.org
- National Center for Missing and Exploited Children's Netsmartz Program: www.netsmartz.org

More Information

Alaska ICAC Task Force

The Alaska Internet Crimes Against Children (ICAC) Task Force efforts are partially funded by grants from the US Department of Justice, Office of Juvenile Justice and Delinquency Prevention. The ICAC program is a nationwide network of 59 state task forces representing 1,800 local and regionally affiliated agencies engaged in investigations, forensics examinations, prosecutions and community education. We are pleased to know that the recently announced Federal stimulus package provides a much needed $50 million dollar nationwide boost to the program. We hope to see some of those funds in Alaska.

Within Alaska, the ICAC Task Force is affiliated or partnered with 16 law enforcement and prosecutorial agencies statewide. Since 2008, Alaska detectives and special agents have conducted over 176 investigations resulting in the incarceration of 28 offenders.

Unlawful Images

Images depicting the sexual exploitation of minors are commonly called child pornography. The images and videos are contraband. The images that investigators found were not of babies in bathtubs. Some of the unlawful videos included acts of bestiality between minors and animals including the horrible audio sounds of human suffering. Detailed descriptions of the images will not be fully provided here.

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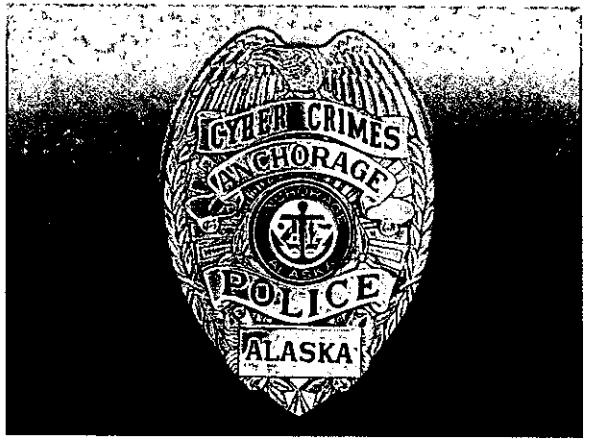
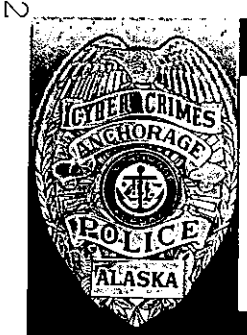
Alaska Internet Crimes Against Children Task Force 2008



Det. Sgt. Ron Tidler
APD Cyber Crimes Unit



Det. Sgt. Tidler Bio

- 1991- Reserve Police Officer Anchorage Police Dept.
- 1993- Patrol Officer- APD
- Mt. View CAP Team; FTO; Gang Task Force; Level One Commercial Motor Vehicle Inspector; FBI Certified Bomb Technician
- 2003- Promoted Patrol Sgt.
- 2004- Transferred to Detectives. Supervised Crime Investigation Unit- which later became VICE Unit; Supervised Burglary Unit.
- 2006- assisted with formation of Cyber Crimes Unit
- 2007- Cyber Crimes Unit officially created- assigned as Supervisor.

APD Cyber Crimes Unit

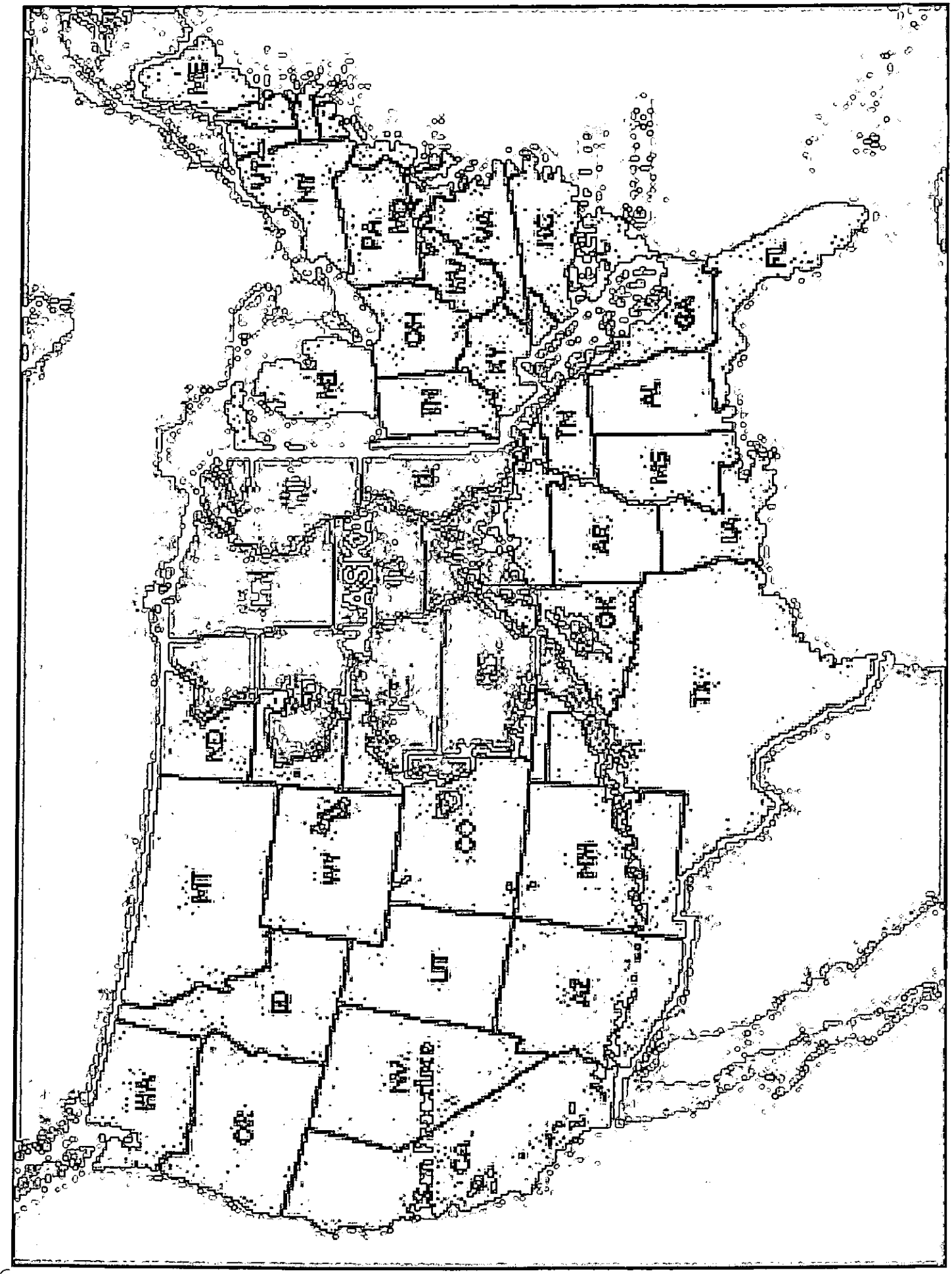
- 2002-2005- several Detectives working with the Financial Crimes Unit and Crimes Against Children Unit receive training in Computer Forensics and On-line Peer to Peer training.
- 2006-2007- 5 Detectives are relocated to one small office- 3 forensic examiners; two online investigators.
- 2007- Cyber Crimes Unit officially created with a Supervisor assigned. Larger office space.
- Current staffing: 6 team members:
  - 1 Supervisor
  - 1 dedicated forensic examiner;
  - 1 on-line / cell phone examiner;
  - 1 on-line investigator;
  - 1 on-line / forensic examiner;
  - 1 forensic examiner- On military deployment since 12/07

Rise of the ICAC

- 1998 Office of Juvenile Justice Department (OJJDP) initiates Internet Crimes Against Children Taskforce (ICAC)- 16 Task Forces created.
- Assists law enforcement in developing effective response to online sexual victimization of children.
- 2004- Alaska is an affiliate of the Seattle ICAC.
- 2005- Alaska Investigators trained on P2P.
- 2006- $50,000 is designated for Alaska Affiliates.
- 2007- APD awarded $300K 18 month Grant-
- 2008- Alaska ICAC TF created.

OJJDP's Internet Crimes Against Children Task Forces

OJJDP
Office of Juvenile Justice and Delinquency Prevention



North America at Night

Alaska ICAC Federal Partners

- USAAK- Administrates PSC Program in Alaska; hosts TF Meetings; training; advice; Victim coordinator program.
- I.C.E. – resident agents; provides area for ICE and ABI to work together; pooling resources; joint investigations; foreign country investigation facilitation.
- FBI- Investigates; facilitates training / equipment; victim coordinator.
- US Postal Inspectors
- Military Investigators – AF OSI; Army CID; USN; & Coastguard

Alaska State Affiliates

- Alaska Bureau Investigations- Anchorage and Fairbanks based Investigators
- Dept. Of Corrections- Adult Probations Office- Sex Offender Unit- Several P.O.'s trained
- District Attorney's Offices- several prosecutors from various offices.
- University Of Alaska- Anchorage PD- facilitates training and meetings.
- University Of Alaska- Fairbanks PD- trained investigator

Local Affiliates

- Fairbanks Police Department- 1 investigator
- Kodiak Police Department- 1 investigator
- Sitka Police Department- 1 investigator
- Kenai Police Department- 1 investigator
- Soldotna Police Department- 1 investigator
- Unalaska Police Department- 1 investigator
- Juneau Police Department- 1 investigator

2008 Reported Statistics

Enter Name/Task Force:	Please submit stats form via e-mail by the 6th of each month.	Year: 2008	Page 1
ALASKA			

Monthly Measures			Jan	Feb	March	April	May	June	SA1	July	Aug	Sept	Oct	Nov	Dec	SA2	YTD
Documented Complaints	Traveler	Proactive	1						1								1
		Reactive			1		1	3	5	1				1		2	7
	Enticement	Proactive	4		1		1		6	3						3	9
		Reactive		1	1		1		3	1	3		1	1	3	9	12
	Obscenity Directed to Minors	Proactive	3		2				5	2	2					4	9
		Reactive					1	1	2	1	2				1	4	6
	Child Prostitution	Proactive						1	1	1				2		3	4
		Reactive											1	1	1	3	3
	Child Pornography — Manufacture	Proactive															
		Reactive											1			1	1
	Child Pornography — Distribution	Proactive	5	5		2		1	13					1		1	14
		Reactive	5	3	4	1		2	15	2	4	1	1	1	1	10	25
	Child Pornography — Possession	Proactive	4	1	1	4	3	4	17	1		1	1	2		5	22
		Reactive	7	9	8	4	4	2	34	6	4	6	3	2	8	29	63

Enter Name/Task Force: ALASKA	Please submit stats form via e-mail by the 6th of each month.	Year: 2008	Page 2

	Monthly Measures		Jan	Feb	March	April	May	June	SA1	July	Aug	Sept	Oct	Nov	Dec	SA2	YTD
Case Information	Arrests		7	2	2	2	4	1	**18**	1	2	3		1	3	**10**	**28**
	Case Dispositions	Unfounded	1	2		1	3	1	**8**	1	2		2	3	2	**10**	**18**
		Suspended	2	2		4	3		**11**	2	6	2	1	2		**13**	**24**
		Plea	1		2			2	**5**		1		1		1	**3**	**8**
		Trial					1		**1**		1				1	**2**	**3**
	Case Referrals	Federal				2	1		**3**		2					**2**	**5**
		State	8	4	4	2	2	3	**23**	1			1	1	2	**5**	**28**
		Local								3	2				2	**7**	**7**
	Submitted for Federal Prosecution				3			1	**4**			1				**1**	**5**
	Accepted for Federal Prosecution				3				**3**								**3**
	Submitted for State Prosecution		5	4	2	2	3	1	**17**	3	2	2	1		3	**11**	**28**
	Accepted for State Prosecution		5	4	2	2	3	1	**17**	3			1		3	**7**	**24**
Goals	Cybertips Received*		8	5	2	1	4	1	**21**	17	4	2	2	4	6	**35**	**56**
	CVIP Submissions (Cases)*		2	1	5			3	**11**	2	1		2			**5**	**16**
	Affiliated Agencies Added*		2		6	3	1	3	**15**					1		**1**	**16**
	Child Victims Identified	CVIP												1	1	**2**	**2**
		Cases*												1	1	**2**	**2**
Court Actions	Subpoenas or Court Orders	Federal			1	4		4	**9**	3	2	1	2	5		**13**	**22**
		State/Local										1				**1**	**1**
	Search Warrants	Federal		2		1		1	**4**		2	1				**3**	**7**
		State/Local	17	7	16	7	13	9	**69**	8	6	5	3	2	11	**35**	**104**

Enter Name/Task Force: ALASKA	Please submit stats form via e-mail by the 6th of each month.	Year: 2008	Page 3

	Monthly Measures	Jan	Feb	March	April	May	June	SA1	July	Aug	Sept	Oct	Nov	Dec	SA2	YTD
Technical Assists	Technical Support	7	3	7	3	1	1	**22**	2	3	4	6	3	13	**31**	**53**
	Forensic Exams	27	8	21	9	11	8	**84**	5	20	12	15	17	24	**93**	**177**
Training	Training Sessions Provided	1		6		1	4	**12**		5		2	8	1	**16**	**28**
	Law Enforcement Trained	1	7	301	3	22	42	**376**		115		1	6		**122**	**498**
	Prosecutors Trained									6	1	241			**248**	**248**
	Other Professions Trained						15	**15**	1	85			302	20	**408**	**423**
	# Sent to ICAC T&TA Trng		1					**1**	1	1	13		1	1	**17**	**18**
	# Sent to Other Training				5		1	**6**	1	4	2		9		**16**	**22**
Community Outreach	**Presentations**	17	8	20	10	14	6	**75**	3	5	3	4	13	5	**33**	**108**
	Number of Attendees	880	566	746	289	393	80	**2954**	150	407	120	268	1107	665	**2717**	**5671**
	Public Events	1		3	2			**6**	1		1				**2**	**8**
	Number of Attendees	100		15	396			**511**	6						**6**	**517**
	Public Awareness	1		1	1			**3**	4	4					**8**	**11**
TF	**Sex Off. Home Visits**	10	5	6	7	10	12	**50**	38	36	28	20		51	**173**	**223**
	Sex Off. Comp Searches	3	1			1	4	**9**	4	1	3	2		7	**17**	**26**
	Cyber Bullying									2					**2**	**2**

Adult Probations

- Sex Offender Home Visits
- Probations Officers trained in capturing data from computers, via a thumb drive installed software.
- For 2008- 223 Home visits conducted
- For 2008- 26 computers searched

Internet Undercover Investigations Training

- Jan 2005 Seattle WA
- Classroom Experiences
- Webcams
- Internet has made our world much smaller.....
- No laws in AK...until 11-28-2005

Legislative Response

- SB 140 signed into law 8/30/2005 effective date 11-28-2005
- AS 11.41.452 Online Enticement of Minor
- AS 11.61.128 Electronic Distribution of Indecent Material to Minors

AK ICAC TF Training

- American Prosecutors Research Institute conducts SAFETY NET training at Microsoft Headquarters in Redmond, WA.
- Team based training class combining Investigator; Examiner; and Prosecutor.
- AK ICAC Team comprised of APD Cyber Crime Examiner; A.B.I. Investigator; and Asst. D.A. for Prosecutor.
- Part of the training included mock courtroom settings with participants having to present evidence and instruct juries on such topics as Internet Chatting and File Sharing.

Training Results

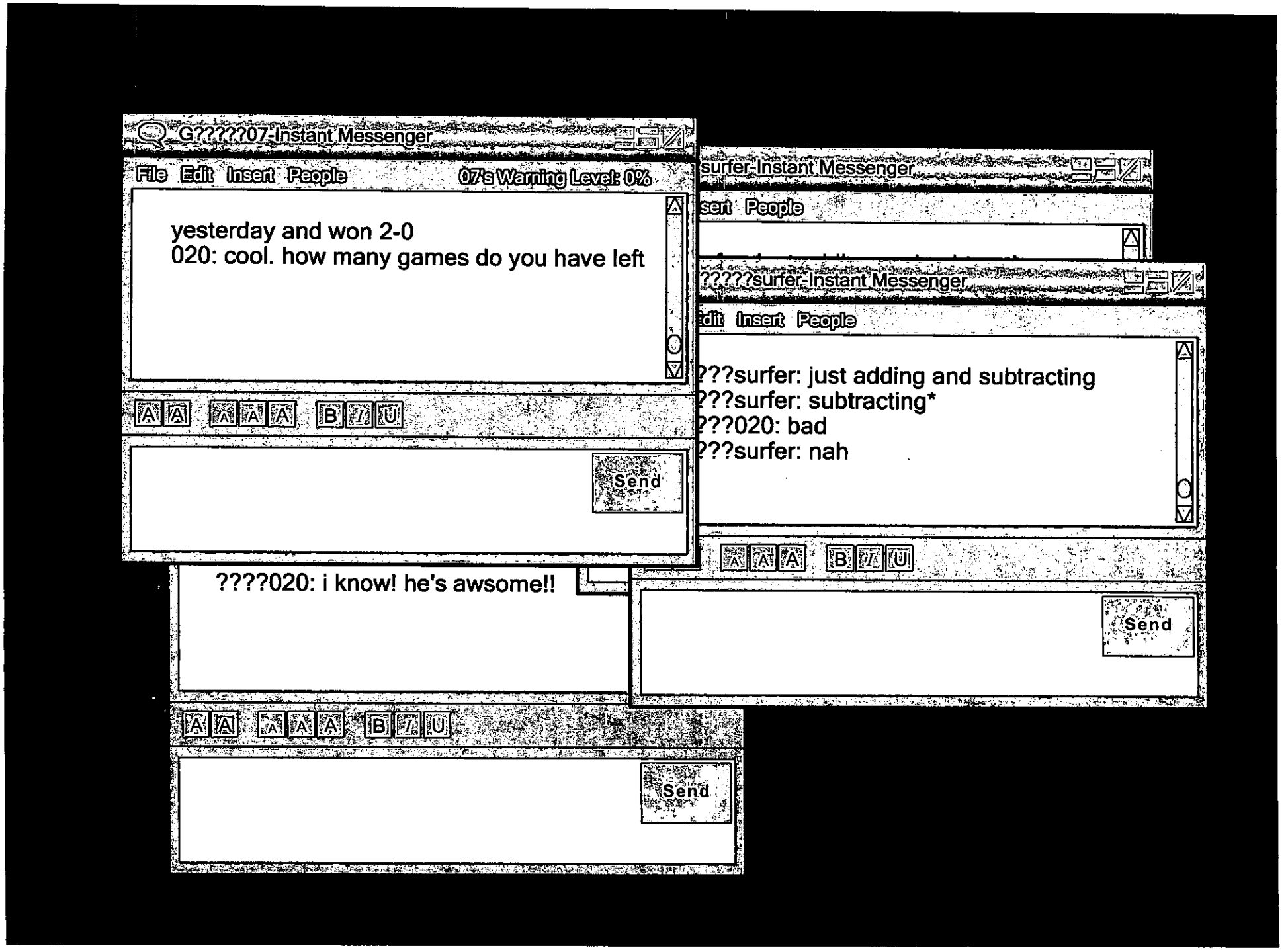
- **First conviction by a jury under Alaska's On-line Enticement Statute.**
- **Suspect had solicited minors- under the age of 16- for sex, and had electronically transmitted Indecent Images to the minors. The minors were actually undercover APD Investigators.**
- **12/8/08- James Clifton Moore-age 42- was convicted by an Anchorage Jury - Moore was found guilty on two counts of Online Enticement of a Minor and one count of the Electronic Distribution of Indecent Material to a Minor.**
- **ADA Prosecutor Aaron Sperbeck and the lead investigator had attended recent training in Redmond, WA, for courtroom presentations.**
- **Significant fact discussed during the proceedings: Investigators were following National ICAC Guidelines designed to catch online predators.**

Where Did This Sexual Solicitation Occur?

- Computer Location
  - 70% at home
  - 22% at someone else's home
  - 4% at school
  - 3% at library
- Internet
  - 65% in chatrooms
  - 24% in Instant Messages

Messengers

- AOL® Instant Messenger™ Service, ICQ Instant Messenger, Yahoo!® Messenger, MSN Messenger
- Online Internet "buddy" locators
- Allow file transfer, chat, and messaging
- Voice and video chat


G????07-Instant Messenger
File Edit Insert People
07's Warning Level: 0%
yesterday and won 2-0
020: cool. how many games do you have left
Send
????020: i know! he's awsome!!
Send
surfer-Instant Messenger
sert People
?????surfer-Instant Messenger
dit Insert People
???surfer: just adding and subtracting
???surfer: subtracting*
???020: bad
???surfer: nah
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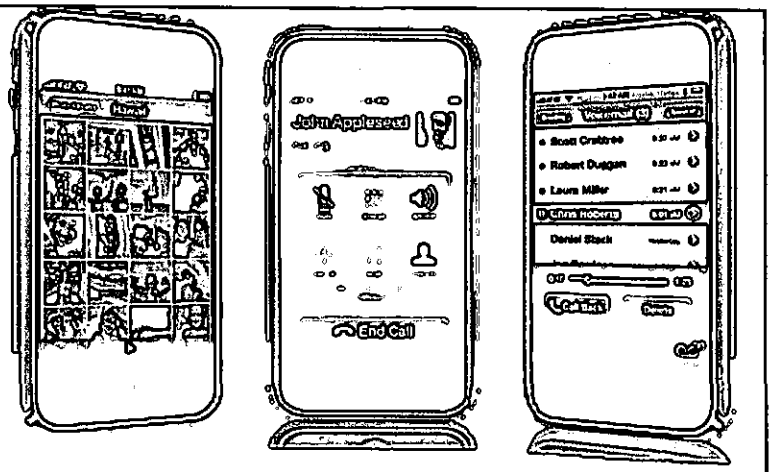
Send

Cellular Telephones



- Easy Access to the Internet
- Share and post digital photographs
- Send and receive text messages

Dynamics of a Peer 2 Peer Investigation

- Investigator goes online with proper training and equipment.
- Identifies Alaska based suspect who is actively sharing suspected Child Sexual Exploitation images.
- Records and downloads the images.
- Obtains Search warrant for identifying suspect from ISP.
- Conducts surveillance / field work on suspect.
- Obtain search warrant for suspect residence / work / interview.
- Plan / prepare / execute search warrant- seize evidence.
- Conduct forensic examination of digital media- sometimes this is done in field, at suspect's location.
- Analyze data- submit to NCMEC CVIP program.
- Consult with DA / AUSA for appropriate charges.
- Arrest and prosecute Suspect.

Peacock Case Study
APD #08-26835

- **6/13/08-** Anchorage Investigator generated a new Peer To Peer case involving an Alaskan suspect actively sharing child pornography on the internet.
- **6/20/08-** Anchorage Investigator continues to work up the Peer-to-Peer file sharing case, with the suspect, **JESS PEACOCK, Age 24,** identified in Barrow. **PEACOCK** works on the Slope at Kuparak Oil Field. Working directly with Conoco Phillips, transportation is secured from Anchorage to Kuparak for a search warrant. North Slope Police Department is contacted for assistance conducting the Barrow residential Search warrant.
- **6/27/08-** Two Anchorage Investigators travel to Kuparak Oil Field Camp on the North Slope, courtesy of Conoco Philips transportation. Suspect is contacted, and after some initial denials, when confronted with his documented online activity, he provides a detailed confession. PEACOCK'S laptop computer was discovered in his sleeping quarters, turned on and actively downloading and sharing Child Pornography titled internet files, while he worked his shift. North Slope Borough PD served a search warrant at PEACOCK'S home in Barrow, resulting in over 75 items of evidence being seized, and shipped to Anchorage. Conoco Phillip's has expressed that they were impressed with the professionalism displayed by the Investigators.

Peacock Case Study Continued…

- **08/08/08**- Investigators conduct computer forensics on the seized evidence.
- **08/22/08**- Forensic component is completed. Investigators now coordinate with ADA Rural Prosecutor.
- **09/05/08- Charging documents filed on Peacock.**
- **12/5/08-** JESS PEACOCK- accepts Plea Deal 6 years 4 suspended- one count Possession of CP.
- **3/4/09**- Peacock sentenced.

Traveler Case

Danny M. Harvey- 47yo

California man faces 55 years in prison

- The Associated Press
- November 23rd, 2008 12:13 AM
  A federal jury has convicted a California man who faced several child exploitation charges.
- Federal prosecutors say Danny Michael Harvey, of Lancaster, Calif., was convicted of: attempted aggravated sexual abuse, which carries a mandatory minimum 30 years in prison; attempted manufacture of child pornography, carrying a maximum term of 15 years in prison; and possession of child pornography, carrying an additional maximum term of 10 years in prison.
- Prosecutors say Harvey came to Alaska intending to sexually abuse a 5-year-old girl.
- The girl was the fictitious granddaughter of a federal agent posing as a grandfather with sole custody.

2009 Considerations

- Mobile Internet Devices
- Sexting
- Public Safety Administration in several Local agencies currently are limiting availability of personnel to attend training, and also conduct proactive investigations, based on personnel shortages.

Alaska ICAC Task Force monthly meetings

- Hosted by the Assistant US Attorney's Office in Anchorage.
- Monthly meetings where ICAC members can also attend telephonically.
- Case review; educational opportunities; industry trends; and requests for assistance are conducted.
- Pooling limited resources to target challenges faced by investigators and prosecutors.

Do we have child porn collectors/traders in Alaska?

Challenges

- A study conducted by APD Cyber Crimes Detectives showed that in January of 2008, there were over 5,000 Internet Protocol (IP) addresses in Alaska, that had suspected known images of Child Pornography.
- In January of 2009, the number has increased to over 11,000 IP addresses unique to Alaska.
- A recent study documented by the Federal Government (Hernandez Study) of convicted sex offenders showed that over 80% of persons arrested for possession of Child Pornography had already committed an undisclosed contact Child Sexual Abuse. The nature of the investigations alone demand attention by Law Enforcement.

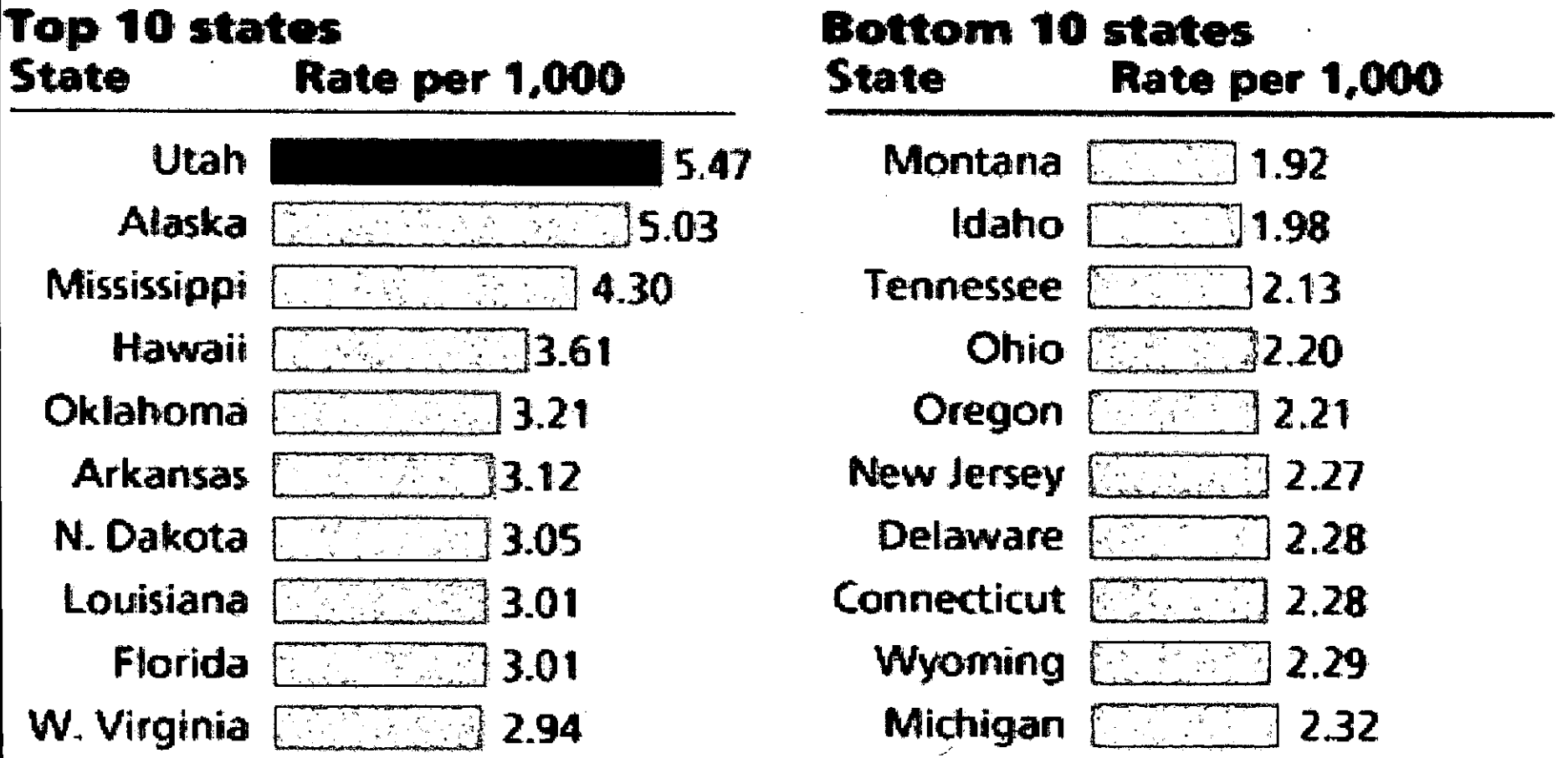
Alaska has highest per-capita usage of Internet

State	Internet	PC
Alaska	68.5%	73.4%
Utah	62.6%	74.1%
N.H.	65.5%	71.7%
WA	62.3%	71.4%
CO	63.4%	70.3%

Source: US Census Bureau

Utah tops nation in Web porn-site subscribers

At more than five broadband users per thousand population, Utah leads the nation in subscriptions to internet adult entertainment sites. Montana is lowest at 1.92 per thousand.



Source: Harvard Business School

The Salt Lake Tribune

Children that establish close Online Relationships

- 69% live in small town/rural or suburbs vs 29% in big cities/towns
- Children age 10-17 considered in study mean age 14.78

- Source: Crimes Against Children Research Center UNH 2003

Teens increasingly active online…

- 71% of teens have online profiles on social networking websites
- 69% of teens receive online messages from strangers
- 64% post photos or videos of themselves
- 58% post info about where they live

Source: Cox/NECMEC survey

Cont….

- Females far more likely to post personal photos or videos of themselves
- Nearly one in ten have posted their cell phone number online
- 20% of teens report being bullied online, this figure is on the rise.

Source: Cox/NECMEC survey 03/2007

What we know about children's use of the Internet

- On average children/teens use the Internet about 5 hrs per week
  - Homework 80%
  - E-Mail 70%
  - Games 69%
  - Music 50%
  - Chatting IM 42%

Nielsen/NetRatings

Online Victimization

- 1 in 3 are exposed to unwanted sexual material
- 1 in 7 received a sexual solicitation
- 45 million children ages 10 to 17 use the Internet
- 60% have received an E-mail or IM from someone they didn't know

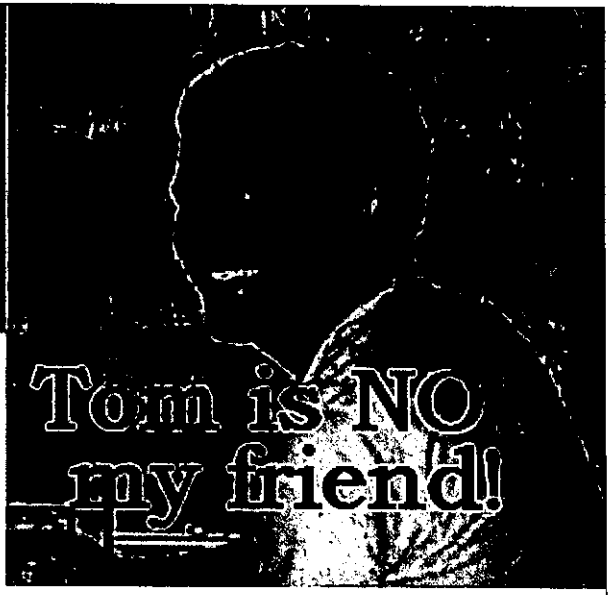
- Source: Crimes Against Children Research Center UNH

Parental Involvement (What kids say)

20% Parents do not supervise
52% Parents moderately supervise
71% Parents stop after age 14
72% Internet related missing children are above age 15
62% Teens say parents know little or nothing about Internet/Computers

Source U.S. Attorney Generals Cyber Crimes Unit

myspace
a place for friends



- WWW.MYSPACE.COM est. Jan 2004
- Over 200 Million Registered Users Worldwide
- 350,000 new registrants daily
- 61% of kids 13-17 have MySpace page
- It splits 50.2% male, 49.8% female

MySpace is a social networking website offering an interactive network of photos, blogs, user profiles, groups, and an internal e-mail system. As of February 2006 it is the world's fifth most popular English language website (according to Alexa Internet[1]). MySpace has outstripped competitors such as Friendster and LiveJournal to become the most popular English language social networking website with higher traffic and over 59 million users. It is representative of both internet culture and teenage culture.

Alaskan MySpace Pages

- Random Sample from Anchorage, Mat Su Valley & Bethel
- Several presentations audience members knew children in photos…
- Items posted online are potentially there forever….With no expectation of privacy…

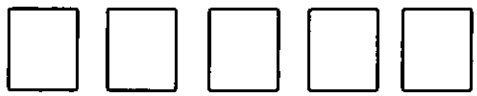
Other Websites Popular with Alaskan Kids

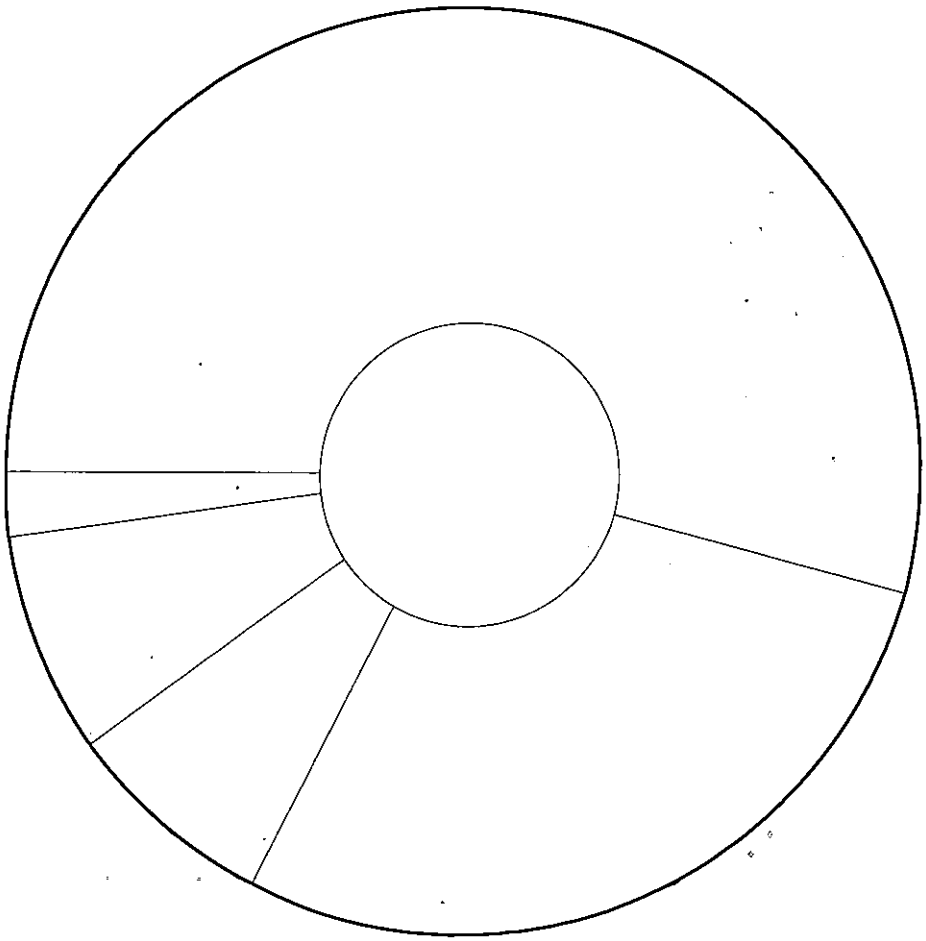
- www.wouldyouhitthis.com
- Over 2000 teenage girls registered in the Anch/Valley area
- Profiles/private pics/IM/Search capability
- www.ratemypic.com
- www.hotornot.com
- www.bebo.com

April 16, 2007

Child pornography on the Internet is becoming more brutal and graphic, and the number of images depicting violent abuse has risen fourfold since 2003

British-based Internet Watch Foundation





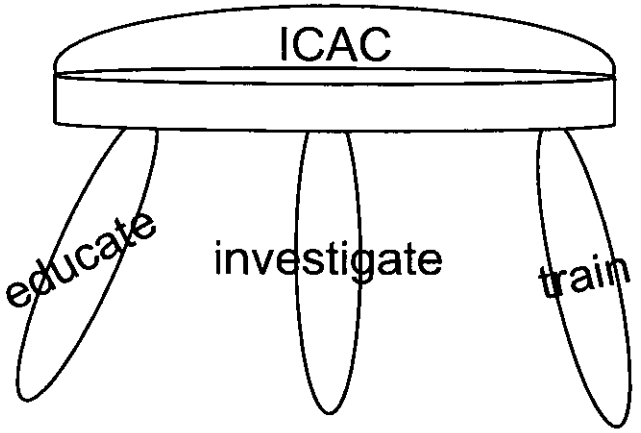
Internet Safety Resources

- www.netsmartz411.org
- www.webwisekids.com
- www.ikeepsafe.org
- www.wiredsafety.org
- www.fbi.gov (search Internet Safety)
- www.childsafenet.org
- www.muni.org/apd (Internet Safety)

How Do We Fight This?

- NATIONAL ICAC MODEL
- "Three leg stool"

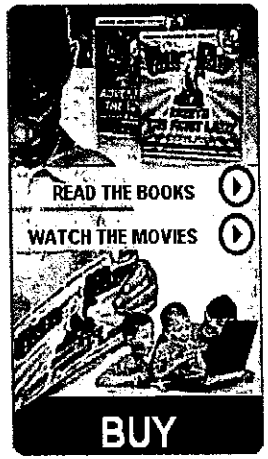
- Education
- Investigation
- Training



What Do We Need?

- Support- These investigations should be at a top priority for agencies involved.
- We need to continue to focus our efforts; pool resources; dedicate personnel; equipment; and funds to this effort.
- Current funding and staffing dedicated to this effort in Alaska is inadequate- realistically, we are targeting less than 1% of the estimated offenders. We will not arrest ourselves out of this problem- education- parental involvement- awareness is the long term solution.

PARENT RESOURCE CENTER
FOR KIDS
FOR EDUCATORS
YOUR STATE
From the First Lady
Choose Your State
NEW! VIDEO ADS ON INTERNET SAFETY
OUR PARTNERS
ABOUT IKEEPSAFE
IKEEPSAFE ESTORE



A MESSAGE FROM YOUR STATE

To the parents in Alaska:

The Internet is a powerful tool. As with any tool, we must instruct our children on how to use it safely. A recent study by the University of New Hampshire showed that one in five young people using the Internet received an online sexual solicitation in a one-year period. In an alarming 15% of those cases, the solicitor attempted to meet the child in person.

With the growing risk that the Internet poses to our children, I hope that this site will aid you as you teach your children to protect themselves from Internet predators.

To report a problem anytime, call 1-800-843-5678. This will connect you to the National Center for Missing and Exploited Children. Or you can visit the Center's website at www.missingkids.com.

Thank you for your commitment to our shared priority of protecting children.

Sincerely,

Governor

Sarah Palin

State of Alaska
Governor Sarah Palin

YOUR STATE MESSAGE

STATE LINKS

- Governor Sarah Palin

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Alaska ICAC Task Force 2009

In a three day training period from 3/3-5/09, APD Cyber Crimes Investigators conducted Peer 2 Peer training for 3 Alaska State Trooper / ABI investigators.

During this training, Proactive investigations were initiated with potential suspects located in Fairbanks; Kotzebue; Bethel; and Anchorage.

Summary

- It is evident, based on our experience, that Alaska's interest in safeguarding the physical and psychological well-being of a minor is compelling.
- The victimization of a child continues when that act is memorialized in an image. The materials produced are a permanent record of the children's participation and the harm to the child is exacerbated by their circulation. Unfortunately, the victimization of the children involved does not end when the pornographer's camera is put away.
- Research has shown that the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child.
- The possession of child pornography drives that industry and…the production of child pornography will decrease if those who possess the product are punished equally with those who produce it.
- The law will decrease the production of child pornography if it penalizes those who possess and view the product, thereby decreasing demand.
- The possession of child pornography inflames the desires of child molesters, pedophiles and child pornographers. Alaska has more than a passing interest in forestalling the damage caused by child pornography: preventing harm to children is one of its most important interests.

3/25/09 PRESENTATION: UAA RESEARCH VIOLENCE AGAINST WOMEN

UAA Research on Violence Against Women

Presentation to Senate Judiciary Committee
March 25, 2009

André B. Rosay, Ph.D.
Interim Director, UAA Justice Center

UAA UNIVERSITY of ALASKA ANCHORAGE

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UAA Research on Violence Against Women

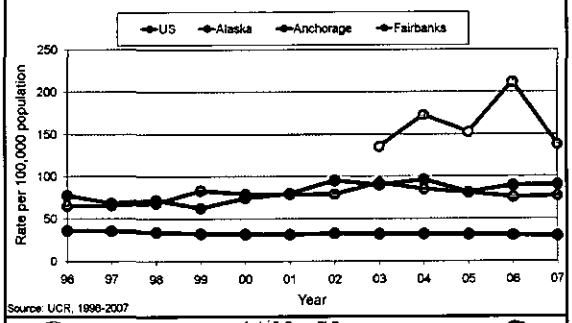
- **Data Overview:**
  - Uniform Crime Reports, Violent Death Reporting Systems, Victimization Surveys, State & Local Data
- **Key Results from UAA JC Research:**
  - SANE, AST, APD, DOL Studies
- **Key Implications from UAA JC Research**

Grant Funding

- **Council on Domestic Violence and Sexual Assault:**
  - *2003-WF-BX-0201, 2004-WF-AX-0033*
- **U.S. Department of Justice:**
  - *2000-RH-CX-K039, 2004-WG-BX-0003, 2005-WG-BX-0011, 2007-WG-R-007*
- **University of Alaska Anchorage:**
  - *UAA Faculty Development Grant*

Points of view in this presentation are those of the author and do not necessarily represent the official position or policies of the Council on Domestic Violence and Sexual Assault, the U.S. Department of Justice, or the University of Alaska Anchorage.

Forcible Rape Statistics from UCR



Source: UCR, 1996-2007

Forcible Rape Statistics from UCR

	2003-2007 Average	Factor Difference
U.S.	31.5	
Alaska	82.4	x 2.62
Anchorage	89.4	x 2.84
Fairbanks	162.0	x 5.14

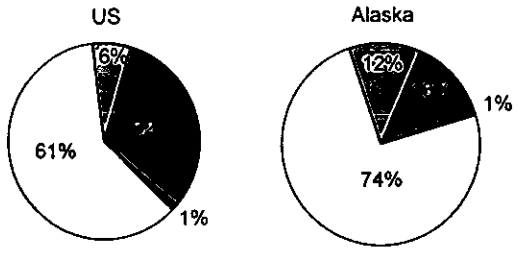
Source: UCR, 2003-2007

Crime Clock: Forcible Rape

- **A forcible rape is reported to law enforcement every:**
  - 5.8 minutes in the US (*N=90,427*),
  - 16.6 hours in Alaska (*N=529*),
  - 8.5 days in Fairbanks (*N=43*), and
  - 1.4 days in Anchorage (*N=257*).

Source: UCR, 2007

Composition of Violent Crime Rate



Source: UCR, 2007

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Rate Rankings

	Highest Rate per 100,000 Women		To Be Below Highest Rate, Decrease # of Forcible Rapes	
Year	State	Rate	From → To	By
2002	AK	164.6	511 → 327	184 (36%)
2003	AK	190.6	600 → 334	266 (44%)
2004	AK	175.4	558 → 346	212 (38%)
2005	AK	167.6	538 → 344	194 (36%)
2006	AK	157.3	509 → 356	153 (30%)
2007	AK	161.0	529 → 335	194 (32%)
Average		**169.4**	**541 → 340**	**201 (36%)**

Source: UCR & US Census, 2002-2007

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Standard UCR Cautions

- **UCR Statistics exclude:**
  - Rapes not reported to law enforcement,
  - Statutory rapes,
  - Incapacitated rapes,
  - Rapes with male victims,
  - Other sex offenses,
  - Rapes with more serious offenses (homicide).
- **Rankings are invalid assessments (ignore variables that affect crime).**

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Violent Death Reporting System

- **117 Homicides in Alaska (2003-2005):**
  - 19% of all violent deaths
  - 22% of homicides were related to intimate partner violence (IPV):
    - 37.5% of IPV homicide victims were male
    - 62.5% of IPV homicide victims were female
  - Among victims who tested positive for alcohol, 78% tested above legal limit (0.08 mg/dL)

Source: Alaska Violent Death Reporting System, 2003-2005

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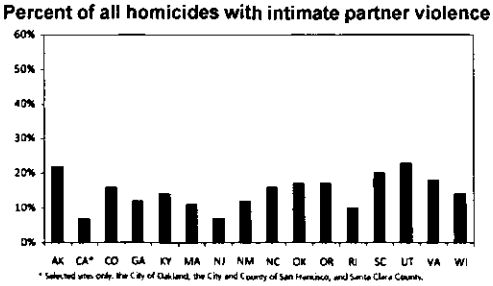
Violent Death Reporting System

Percent of all homicides with intimate partner violence



* Selected sites only, the City of Oakland, the City and County of San Francisco, and Santa Clara County.

Source: Sanford & Hedegaard (Eds.). Deaths from Violence: A Look at 17 States. Data from the NVDRS (12/08).

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Victimization Surveys

- **Survey of Alaska Native Women in the Copper River Delta:**
  - 64% reported physical assault by an intimate partner (versus 22% nationally)
  - Lifetime victimization rate was 2.9 times higher than national rate
  - 78% of perpetrators used alcohol and 60% of victims used alcohol

Source: Magen and Wood, 2006

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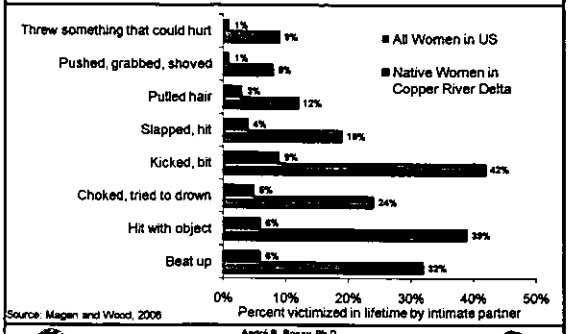
Victimization Surveys



Source: Magan and Wood, 2006

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State / Local Data

- **Alaska SANE Study**
- **Alaska State Trooper Studies**
- **Anchorage Police Department Studies**
- **Alaska Department of Law Studies**

http://justice.uaa.alaska.edu/vaw

Studies only include offenses reported to law enforcement.

(BJS 2003: 52% of sexual assaults are not reported to police)

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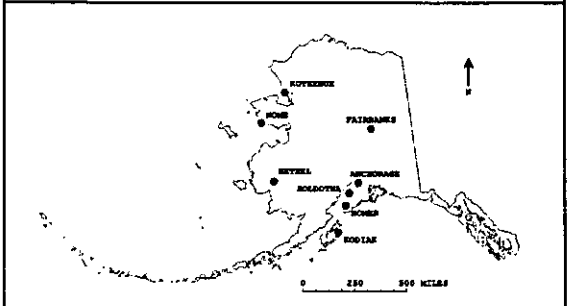
Alaska SANE Study



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Alaska SANE Study

- **Collected 1,699 SANE records:**
  - 1,383 from Anchorage (1996-2004)
  - 105 from Bethel (2005-2006)
  - 144 from Fairbanks (2005-2006)
  - 9 from Homer (2005)
  - 4 from Kodiak (2005)
  - 21 from Kotzebue (2005)
  - 19 from Nome (2005)
  - 14 from Soldotna (2005)

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Alaska State Trooper Studies

- Sexual Assault Study
  - 989 reports (2003-2004)
- Stalking Study
  - 210 reports (1994-2005)
- Domestic Violence Study
  - 1,281 reports (2004)

Note: these studies do NOT include offenses reported to local or municipal departments

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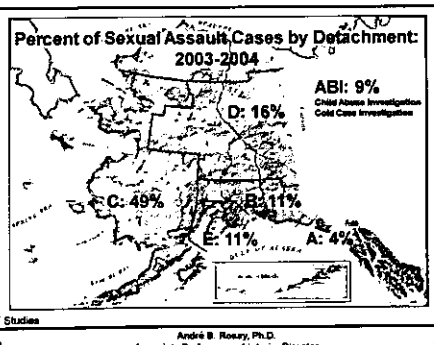
AST Sexual Assault Cases



Source: AST Studies

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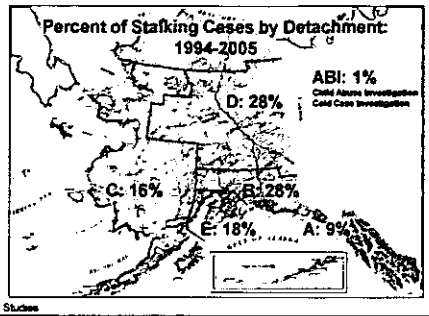
AST Stalking Cases



Source: AST Studies

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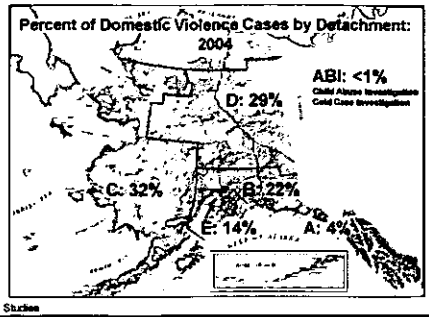
AST Domestic Violence Cases



Source: AST Studies

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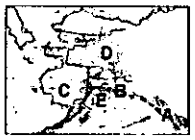
AST Cases by Detachment



Detachment	Sexual Assault	Stalking	Domestic Violence
A	4%	9%	4%
B	11%	28%	22%
C	49%	16%	32%
D	16%	28%	29%
E	11%	18%	14%
ABI	9%	1%	<1%

Note: Only Child Abuse and Cold Case Investigation Units are included in ABI totals. All other ABI cases were coded by geographical unit.

Source: AST Studies

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Anchorage PD Studies

- Sexual Assault Study I
  - –2000 & 2001 reports
- Sexual Assault Study II
  - –2002 & 2003 reports
- Sexual Assault Study III
  - –2004 & 2005 reports

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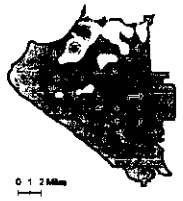
Anchorage PD Studies

Number of Initial Contacts Per Square Mile



Number of Assaults Per Square Mile

Source: APD Studies (2000-2003)

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Alaska Department of Law Studies

Case is Reported to Law Enforcement → Case is Referred for Prosecution → Case is Accepted for Prosecution → Case Results in a Conviction

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Key Results

- **Victim and Suspect Characteristics:**
  - Gender
  - Race
  - Age
  - Alcohol Use
  - Relationship
- **Legal Resolutions:**
  - Referral
  - Acceptance
  - Conviction

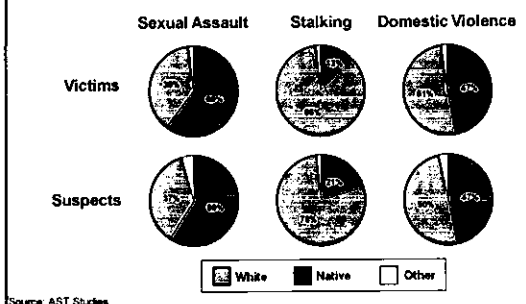
Gender of Victims

- **APD SA Studies:**
  - Every year, at least 94% of victims are female.
- **Alaska SANE Study:**
  - In every site, at least 97% of patients are female.
- **AST Studies:**
  - 89% of sexual assault victims are female.
  - 89% of stalking victims are female.
  - 70% of domestic violence victims are female.

Gender of Suspects

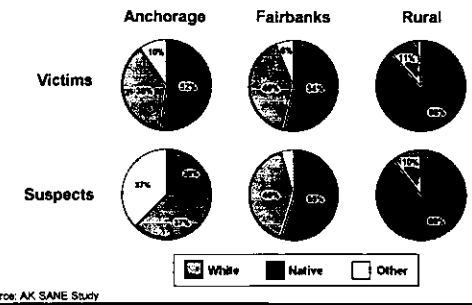
- **APD SA Studies:**
  - Every year, at least 99% of suspects are male.
- **Alaska SANE Study:**
  - In every site, at least 98% of suspects are male.
- **AST Studies:**
  - 97% of sexual assault suspects are male.
  - 91% of stalking suspects are male.
  - 76% of domestic violence suspects are male.

Race of AST Victims and Suspects



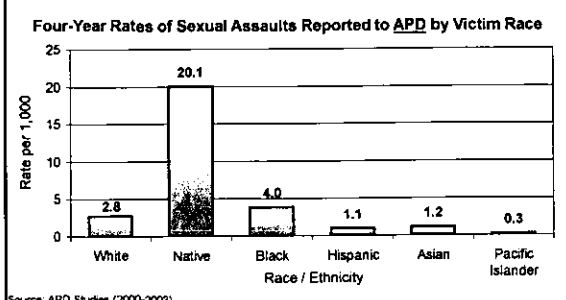
Source: AST Studies

Race of SANE Victims and Suspects



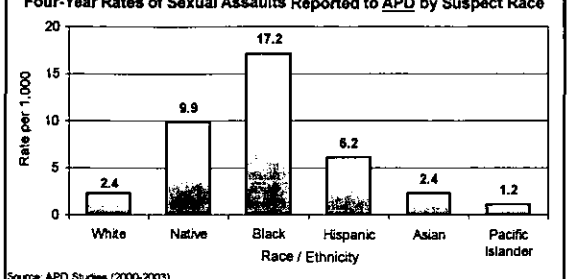
Source: AK SANE Study

Race of Sexual Assault Victims



Source: APD Studies (2000-2003)

Race of Sexual Assault Suspects



Source: APD Studies (2000-2003)

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Percent of Intra-Racial Sexual Assaults

	% of Suspects Who Assault Someone of Their Same Race			
	All Suspects	White Suspects	Native Suspects	Other Suspects
APD SA Study	52%	66%	79%	15%
SANE Study	53%	53%	88%	15%
AST SA Study	87%	86%	94%	7%
AST DV Study	86%	87%	89%	21%
AST Stalking	87%	96%	50%	100%

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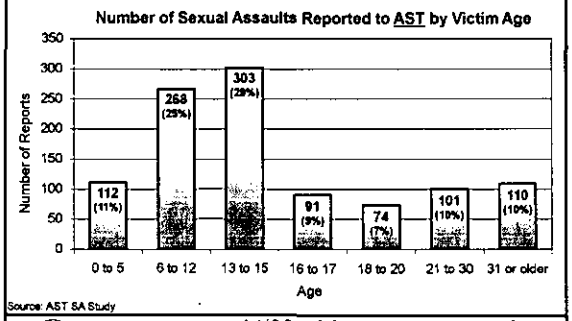
Age of Sexual Assault Victims



Source: AST SA Study

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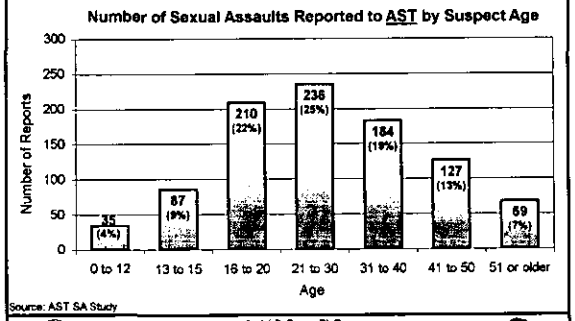
Age of Sexual Assault Suspects



Source: AST SA Study

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Suspect / Victim Age Comparisons

Five Most Common Age Combinations in AST Sexual Assault Cases (48%):

1. Victims 0-12 years old, suspects 31+ years old
2. Victims 13-15 years old, suspects 16-20 years old
3. Victims 13-15 years old, suspects 21-30 years old
4. Victims 13-15 years old, suspects 31+ years old
5. Victims 31+ years old, suspects 31+ years old

Source: AST SA Study

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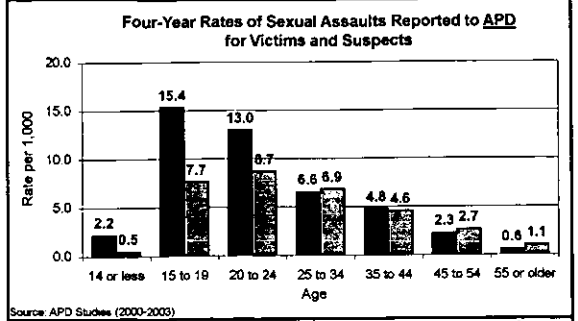
Age of APD SA Suspects & Victims



Source: APD Studies (2000-2003)

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2007 AK Youth Risk Behavior Survey

- **Among students in AK public high schools:**
  - 45% have had sexual intercourse
  - 31% had sexual intercourse in past three months
    - Among those, 22% drank alcohol or used drugs before last sexual intercourse
  - 9% have been physically forced to have sexual intercourse when they did not want to
  - 12% were hit, slapped, or physically hurt on purpose by boyfriend or girlfriend in past 12 months

Source: http://www.hss.state.ak.us/dph/chronic/school/YRBS.htm

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Alcohol Use by Victims

- **APD Studies:**
  - Every year, over 60% of victims use alcohol.
- **AK SANE Studies:**
  - Over 65% of patients used alcohol, except in Homer and Soldotna.
- **AST Study:**
  - 27% of sexual assault victims used alcohol.
  - 2% of stalking victims used alcohol.
  - 32% of domestic violence victims used alcohol.

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Alcohol Use by Suspects

- **APD Studies:**
  - Every year, over 70% of suspects use alcohol.
- **AK SANE Studies:**
  - In every site, over 75% of suspects used alcohol.
- **AST Study:**
  - 43% of sexual assault suspects used alcohol.
  - 20% of stalking suspects used alcohol.
  - 57% of domestic violence suspects used alcohol.

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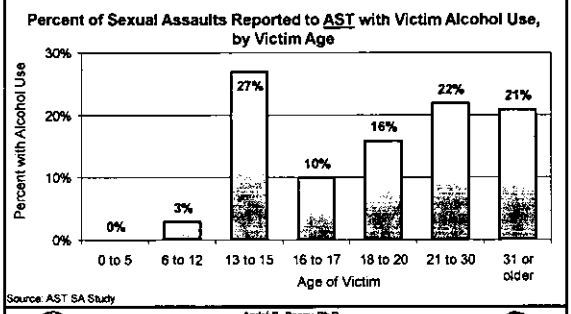
Alcohol Use by Age of Victim



Source: AST SA Study

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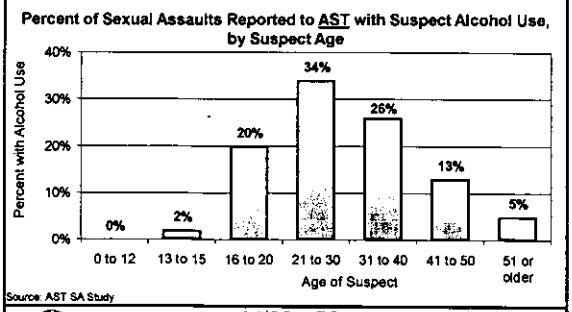
Alcohol Use by Age of Suspect



Source: AST SA Study

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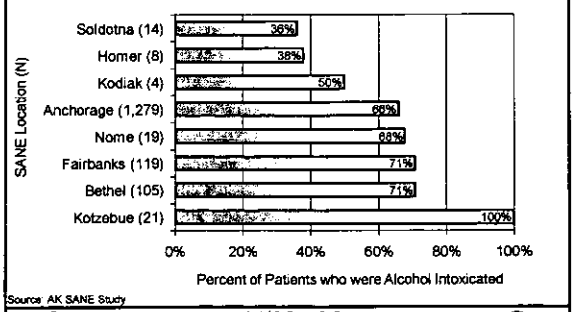
Alcohol Use by SANE Location



Source: AK SANE Study

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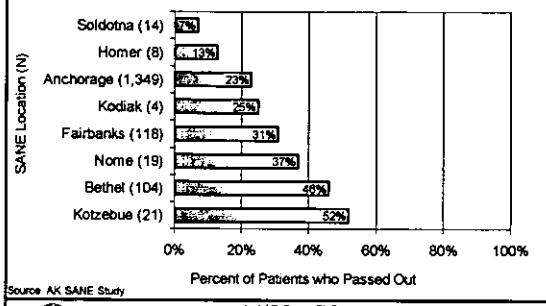
Incapacitation by SANE Location



Source: AK SANE Study

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Victim / Suspect Relationships

	% Assaulted by	
	Stranger	Non-Stranger
APD Sexual Assault Study	38%	62%
SANE Study	16%	84%
AST Sexual Assault Study	2%	98%
AST Stalking Study	8%	92%

- In all studies above, most common relationship is friend or acquaintance.
- For sexual assaults reported in NIBRS (91-96): 14% assaulted by strangers.

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Department of Law Studies

Sexual Assault Case is Reported to Law Enforcement

→ 18 to 46% are Referred

↓ 60 to 69% are Accepted

↓ 78 to 87% Result in a Conviction

Source: AK SANE Study, APD Studies, AST SA Study

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Department of Law Studies

	% Referred	% Accepted	% Convicted
APD Study (00-03)	18%	12%	11%
SANE Study (99-05)	29%	20%	16%
AST SA Study (03-04)	46%	28%	22%
AST DV Study (04)	80%	68%	54%
AST Stalking (99-04)	75%	55%	40%

Note: All percentages based on number of reported cases. Cases are not equivalent across studies. Differences across studies should not be interpreted as differences in success. Rates of referral and conviction in AST DV Study are far greater than national averages (Garner and Maxwell, 2009).

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Legal Resolutions by Victim Race

	All Sexual Violence		Rape / Sexual Assault		Sexual Abuse of a Minor	
	Native	Non-Native	Native	Non-Native	Native	Non-Native
Founded	82%	82%	87%	79%	78%	84%
Referred	68%	57%	70%	56%	65%	57%
Accepted	64%	54%	69%	45%	59%	60%
Convicted	81%	79%	76%	72%	86%	82%

Source: AST SA Study; significant differences in red

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Legal Resolutions by Bush Stratum

	All Sexual Violence		Rape / Sexual Assault		Sexual Abuse of a Minor	
	Bush	Non-Bush	Bush	Non-Bush	Bush	Non-Bush
Founded	76%	76%	82%	75%	71%	77%
Referred	66%	66%	70%	66%	62%	66%
Accepted	69%	50%	74%	44%	64%	55%
Convicted	81%	78%	76%	74%	89%	80%

Source: AST SA Study; significant differences in red

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Legal Resolutions by Isolation

	All Sexual Violence		Rape / Sexual Assault		Sexual Abuse of a Minor	
	Isolated	Not Isolated	Isolated	Not Isolated	Isolated	Not Isolated
Founded	76%	76%	82%	75%	71%	77%
Referred	67%	55%	71%	54%	62%	56%
Accepted	68%	51%	71%	47%	65%	54%
Convicted	80%	81%	75%	78%	86%	83%

Source: AST SA Study; significant differences in red

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Effective Strategies

- **Enhancing local paraprofessional police presence (VPSO, VPO, TPO):**

3/13/09 graduation, photo courtesy Alaska State Troopers

- Reduces rates of serious injury caused by assault by 40%
- Increases likelihood of prosecution in sexual assault cases by 2.5 times

- ***Need greater focus on hiring, training, and retention***

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Effective Strategies

- **Strengthening local alcohol prohibitions**

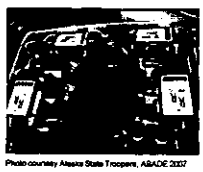

Photo courtesy Alaska State Troopers, ABADE 2007

- Rates of serious injury from assault are 36% lower in dry villages
- Prosecution of sexual assault cases hindered by alcohol use
- Lifetime victimization increases with alcohol use

- ***Need greater focus on prevention, treatment, control, and interdiction***

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Effective Strategies

- **Enhancing investigation capacity**

Photo courtesy Jim Wolfe, Journal of Forensic Identification, 2009, 59(4), p. 468. Bullet cement cast.

- Locating and interviewing witnesses
- Gaining victim cooperation
- Having time to investigate and close cases

- ***Need greater focus on specialized and thorough investigations***

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Effective Strategies

- **Promoting access to sexual assault nurse examiners**

Fairbanks Memorial Hospital
Photo courtesy Angie Ellis & Tara Henry

- Medical-forensic exams more than double the likelihood of accepting cases for prosecution
- Documentation of physical injury is particularly important
- Offers the best standard of care

- ***Need greater focus sustainability***

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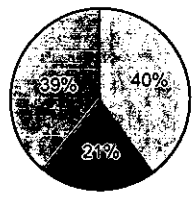
Effect on Recidivism

- **Examined offenders released from Alaska Department of Corrections in 2001, tracked recidivism for three years:**



No difference between sex and non-sex offenders

No difference in re-arrest for sex crimes

Source: McKelvie (2008)

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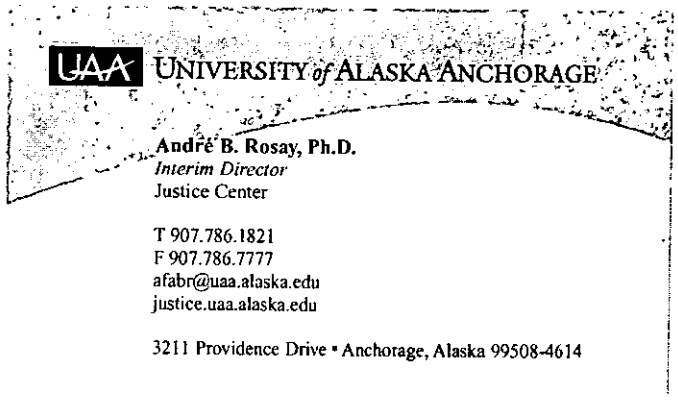

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8/3

STUD — HF, BW, DE, GT, LMGT & ~~[illegible]~~

Davis, Fairclough, Dyson

HF opening statement.

Andre Rosay - presentation. stats. higher than nation.

1. Fairclough → electronic reporting? (no answer) (DPS)

A Rosay [reported = higher
arrests = same] ←

2. [→ no independent surveys. on victimization to compare to reported rapes]

3. Is there a model that can be used - victimization vs. assault. (Rosay thinks we can do it.)

HF. child → % . stunning

4. Comparison w/ national on CSA? MCEntire (Rosay)

differences between APD / AST victimization

5. attrition statistics
   18 - 46% referred

[fm all reported cases - 11-22% convicted
   any conviction on any charge.

6. any VPSO presence - 3.5 X accepted.

7. alcohol inquiry -> less likely (why)?

8. investigative capacity -

9. SANE 2X acceptance. documentation of injury. standard of care.

10. residences -> (issues w/ data -)

---

1. Statewide victimization survey.

2. statewide surveillance system ->

Tara Henry -

general presentation ~~get~~ (Copys of slides emailed)

15 / 3 closed
3 never func.

4 fully function. Anchorage
Fairbanks
Soldotna
Iceni.

~~Ganadaca~~ Kodiak, Sitka, Palmer, Closed
Barrow, Juneau, Ktn. NF
Bethel, Nome, Kotzebue, Ellent. trained no trained
Dillingham down to 1 @ mass

(Factors)

room, funding, ID & support nurses.

Lack What is issue? staffing or funding?
2005 SANES discussed. standardize paperwork. Same protocols. train contracting. still looking at this, plus telemedicine.

A. SANE support → funds or....
+ Child advocacy centers

there are basic issues of organization & competency that will make this hard to maintain in small communities.

in PBKS - $250K. years. only forensic reimbursed. No funding stream to hospitals.
↳ measure suggests → affiliate w/state?

B. Mass has line item for SANE programs.

"mandatory reporting of statistics"

Avon cases · Anch. Fai · Kenai · (municipal)

pregnancy stats. (BW) Illinois

SGT.
APD Aken McCoy → "front line" perspective

as of June 30th. 394 sex crimes cases - YTD
142 more than last year.
✓ alcohol. he estimates alcohol is 80-90%.

this Summer. chronic inebriates in homeless community on rise. / drinking to pt of black out.

majority - mid 60%s know assailant
stranger cases are less common -

challenges. not enough investigators 7 detectives and # double. need 2-3 more easily. not adequate staffing. ? number of homeless going up? don't know, but assaults are up. more rural people? don't know - APD is looking into it.

#1 Lab

cases hinges on DNA type evidence - crime lab resources aren't there. 2002 → DNA result just now. Lab is backlogged. last Oct. 100 sexual kits to 2004 yet to be processed yet. Stalls them out.

February → "rush" case still have not got it.

Now new committee involved screening. Law then decides priority. Not charged-?

not a priority.

Cases are now being tought because of longer sentences — DNA is increasingly important. due to sentences; jury expectations.

→ private labs use — and they do it, but unable to get state lab results. does mmi contribute $$ - ?.

preventive of violence → need to be taught to resist; to prevent.

Vicki [(7 detectives for kids too) —]

→ what are trends for young people — assailants known/family members suspects use alcohol —

as of June 30 558 cases., including abuse & neglect. 534 cases last year. APP has been increasing SA in last 3 years.

more education component → victimized repeatedly alcohol, history of victimization as adult —

Richard Krause - VPSO.

Atka, Akutan, Nelson Lagoon, False Pass
St George. Cold Bay hope for
Nikolski – 38 (village) –

Example, ongoing. Jan 3rd. Call to do welfare check 16 year old. drinking. threatened suicide, reported rape –
took her home → no alcohol. next morning contacts OCS/AST. victim. February still waiting. OCS worker goes out. 4 year old discloses. 16 year old still w/ VPSO. "
" to Alaska Cares → trooper went out. lawyered up. exam was held → no idea. where it is.
MTH Feb. OCS arranged shelter & inpatient now back in St George → all girl children vaginal children. stories but older kid I want no part to it.

2 interv. by OCS
2 by troopers

1. faster responses

2. VPSO → some are trained, some aren't not really their bailiwick.

18-20 a year in API A region.

1. more OCS workers — 1 worker in Unalaska others by 1 out of King Salmon.

2. ~~child~~ adult victims. more timely response — more troopers, troopers who work w/ VPSOs. specialize in that. out in village more, more chance to get to know →

DPS (Masters) → overview.
" (Holloway) → UCR
"studies"

What is size of crime lab DNA backlog?

52 VPSOs. 8 applicants. Turn unprofessional 9 in background —

✓ Judges training AF

$290,000 statewide victimization accrual cost is $400-600K.

3000 ♂ ♀ . UAA . at least 3000 to get regionalized data —

Law

Rule 502(b) — committee of 3 people

DNA priorities. Duane McConnell / rural
John Novak / DPS counsel
prosecutor
Pat Gallagher / cold case

DA's offices to prioritize cases.

yes private labs but for mitochondrial or Y chrome DNA.

---

case forward or not?

- lack of witness statements
- physical evidence
- timely assistance
- medical / forensic exam
- documented injuries, non genital.
- VPSO → feet on ground —

A. Bail statutes need revision: more of "a federal model"

B. avg felony 662 days to get to trial.
Issue of continuances –

Effective Criminal Justice Responses Identified by UAA Justice Center

Enhancing local paraprofessional police presence (VPSO, VPO, TPO)

- Villages with a local paraprofessional police presence had rates of serious injury caused by assault that were 40% less than those villages without a local paraprofessional police presence (Wood and Gruenwald, 2006).
- Sexual assault cases with adult victims that were originally reported to police paraprofessionals were 3.5 times more likely to be prosecuted than sexual assault cases originally reported directly to State Troopers (Wood, Rosay, Postle, and TePas, 2007).

Strengthening local alcohol prohibitions

- Alaska Native villages that were dry from 1991 to 2000 had serious assault injury rates that were 36% less than rates of villages that did not prohibit alcohol at all during that time frame (Wood and Gruenwald, 2006).
- Drinking significantly increased the risk of assault victimization in a sample of Alaska Native women in the Copper River Basin (Magen and Wood, 2006).
- AST sexual assault cases with a victim who had used drugs or alcohol were less likely to be referred for prosecution (Wood, et al., 2007; Postle, Rosay, Wood, and TePas, 2007).
- AST sexual assault cases with a victim who had used drugs or alcohol were less likely to be accepted by prosecutors (Postle, et al., 2007).
- Alaska SANE patients were less likely to have their cases accepted for prosecution if they were intoxicated at the time of the assault (Rosay and Henry, 2007).

Enhancing investigation capacity

- AST sexual assault cases where witnesses had been located and interviewed were over three times more likely to be referred for prosecution (Wood, et al., 2007).
- AST sexual assault cases where troopers had time and resources to gain victim cooperation were 3.5 times more likely to be referred for prosecution (Wood, et al., 2007).
- AST sexual assault cases that were closed within 16 days of the report were over three times more likely to be accepted for prosecution than AST sexual assault cases that were not (Postle, et al., 2007).

Promoting access to Sexual Assault Nurse Examiners

- AST sexual assault cases with a forensic exam were over two times more likely to be accepted for prosecution than AST sexual assault cases without a forensic exam (Postle, et al., 2007).
- The documentation of physical injury in Alaska SANE cases increased the likelihood of referring cases for prosecution (Snodgrass and Rosay, 2007; Rosay and Henry, 2007).
- The documentation of physical injury in Alaska SANE cases increased the likelihood of accepting cases for prosecution (Rosay and Henry, 2007).
- The documentation of physical injury in Alaska SANE cases increased the likelihood of obtaining a conviction (Rosay and Henry, 2007).
- Sexual assault cases are more likely to be referred to prosecution if the victim can report to a SANE within 48 hours of the assault (Rosay and Henry, 2007).
- The documentation of spermatozoa significantly increased the likelihood that SANE cases in Alaska would be referred for prosecution (Snodgrass and Rosay, 2007).

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ALASKA JUSTICE FORUM
REPRINTS

February 2009 | JUSTICE CENTER ♦ UNIVERSITY of ALASKA ANCHORAGE | No. 2

Sexual Assaults Reported to Alaska State Troopers

André B. Rosay, Greg Postle, Darryl S. Wood, and Katherine TePas

Originally published in the *Alaska Justice Forum* 25(1–2): 1, 6–9 (Spring-Summer 2008).
http://justice.uaa.alaska.edu/forum/25/1-2springsummer2008/d_ast.html

For other articles and publications related to sexual violence and violence against women, see:
http://justice.uaa.alaska.edu/vaw/

Abstract: *This study examined 989 cases with a sexual assault or sexual abuse of a minor charge reported to Alaska State Troopers in 2003 and 2004, and excluded any sexual assault cases reported to local or municipal departments.*

- *Forty-eight percent of reports came from C Detachment (Western Alaska - Kodiak to Kotzebue), and 58% were reported from communities off the road system.*
- *In 69% of cases, the identity of at least one suspect was known. While most suspects (87%) were adults, most victims (73%) were juveniles. Sixty-one percent of victims were Alaska Native and 38% were White. Intra-racial victimizations were much more prevalent than inter-racial victimizations. The most common suspect was a friend or acquaintance of the victim, followed by a relative. Forty-three percent of suspects and 27% of victims had used alcohol.*
- *Sexual penetration occurred in 60% of assaults. Weapons were very rarely used. Most assaults occurred inside private residences. Nineteen percent of victims experienced general physical pain and 10% suffered bruising or swelling. Most victimizations were reported quickly to Troopers and Troopers were quick to respond. Ninety-six percent of victims were interviewed, with 48% interviewed on the day of the report and 80% interviewed within one week of the report.*
- *Forty-six per cent of reported cases were referred for prosecution, 60% of referred cases were accepted for prosecution, and 80% of accepted cases resulted in a conviction. Overall, however, only 22% of reported cases resulted in a conviction. In some cases, the conviction may be for a non-sexual offense. The highest level of attrition occurred from report to referral.*

The final sample in this study included 989 cases with a sexual assault or sexual abuse of a minor charge, reported to Troopers in 2003 and 2004, and closed by the time of the study. It is important to note that this study did not include any sexual assault cases reported to local or municipal departments. In addition, this study did not include cases specific to child pornography or online enticement of minors.

Report Characteristics

Almost half of the reports included in the study (48%) came from C Detachment, which covers western Alaska, from Kotzebue to Kodiak (Table 1). The C Detachment headquarters is in Anchorage, with the remaining posts in Aniak, Bethel, Dillingham, Emmonak, King Salmon, Kodiak, Kotzebue, Nome, and St. Mary's. The Bethel post handled 17 percent of all sexual assault and sexual abuse of minor cases reported to Troopers in 2003 and 2004. Thirty percent of the reports came from the Alaska Bureau of Investigation (ABI), whose Major Crime Unit is responsible for investigating sexual assaults and other person offenses statewide. The Alaska Bureau of Investigation has posts in Anchorage, Palmer, Fairbanks, and Soldotna. ABI posts in Palmer and Fairbanks handled 16 percent of all sexual assault and sexual abuse of minor cases reported to Troopers in 2003 and 2004. Together, C Detachment and ABI handled 78 percent of all reports. Forty-two percent of the reported cases originated in communities connected to the State of Alaska highway system, and 58 percent were reported from communities off the road system.

Most reports (86%) were made directly to troopers. The remaining 14 percent were reported to Village Police Officers, Village Public Safety Officers, or Tribal Police Officers. Few of the initial complaints (21%) were made by the victims themselves. Most initial reports to law enforcement (79%) were made by a third party. In over two-thirds of the cases (69%), the identity of at least one suspect was known.

The 989 cases in this study included a total of 1,645 sexual assault charges and 258 non-sexual assault charges (Table 2). The most common sexual assault charges were second degree sexual abuse of a minor, first degree sexual assault, second degree sexual assault, and first degree sexual abuse of a minor—all felonious assaults (Unclassified or Class B). Together, these four offenses accounted for 81 percent of all sexual assault charges. The most common non-sexual assault charges included assaults (in the

Table 1. Total Number of Reports by Detachment

Column percentages.

Detachment	Reports N	Reports %
C	476	48.1 %
ABI	299	30.2
D	79	8.0
E	54	5.5
A	39	3.9
B	24	2.4
ABWE	18	1.8
Total	**989**	

Source of data: *AST data (2003–2004)*

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Table 2. All Sexual Assault Charges

Column percentages.

Charge	Number N	%
Sexual abuse of a minor 2nd degree	481	29.2 %
Sexual assault 1st degree	366	22.2
Sexual assault 2nd degree	292	17.8
Sexual abuse of a minor 1st degree	193	11.7
Sexual assault 3rd degree	130	7.9
Sexual abuse of a minor 3rd degree	99	6.0
Sexual abuse of a minor 4th degree	78	4.7
Sexual assault 4th degree	6	0.4
Total	**1,645**	

Source of data: *AST data (2003–2004)*

second, third, or fourth degree), burglary (in the first or second degree) and kidnapping. Together, these three offenses accounted for 50 percent of all non-sexual assault charges.

Despite the geographical distance that is often present between victims and Troopers, most victimizations were reported quickly to Troopers, and Troopers were quick to respond. Sixty-two percent of cases were reported within 72 hours, which, at the time of the study, was the benchmark for initiating a call to the Sexual Assault Response Team (SART) and collecting evidence with a sexual assault evidence kit. Seventy-seven percent of suspects were interviewed by Troopers (recall that the identity of the suspect was known in 69% of cases). Fifty-seven percent of suspect interviews occurred within one week of the report. Ninety-six percent of victims were interviewed, with 48 percent interviewed on the day of the report and 80 percent interviewed within one week of the report. Ninety-one percent of victim interviews were conducted in-person. On average, cases were closed 18 weeks after they were reported (Table 3). More specifically, 30 percent of cases were closed within three weeks, 50 percent were closed within eight weeks, and 75 percent were closed within 24 weeks.

Table 3. Case Closure Codes

Column percentages.

Closure code		Reports N	%
CA	Closed by arrest	316	32.0 %
CR	Closed, referred	255	25.7
CI	Closed by investigation	232	23.5
CU	Closed, unfounded	150	15.2
CD	Closed, declined	29	2.9
CE	Closed, exception	7	0.7
	Total	**989**	

Source of data: *AST data (2003–2004)*

A majority of cases (61%) were closed and referred for prosecution. These included cases closed by arrest (32%), closed and referred (26%), and closed but declined (3%). The remaining cases were closed after investigation (23%), closed as unfounded (15%), or closed by exception (1%). These latter groups of cases (excluding those closed by exception) were all closed without a suspect being arrested and in some cases without a suspect being identified. Cases that were closed as unfounded were more likely to be reported by third parties who were concerned that a sexual assault may have occurred.

Suspect and Victim Characteristics

From the 989 reports included in this study, we gathered information on 1,050 suspects and 1,082 victims. Most suspects (97%) were male and most (87%) were adults. Conversely, most victims (89%) were female and most (73%) were juveniles. The average age of suspects—29.2—was 13 years greater than the average age of victims—16.2 (Table 4).

Figure 1 displays the number of victim-suspect combinations on the horizontal axis, by victim age on the vertical axis, for five different suspect age groups, in horizontal bars. The top five age group combinations were (1) suspects 31 years old or older and victims 0 to 12 years old (N=137); (2) 16 to 20-year-old suspects and 13 to 15-year-old victims (N=113); (3) 21 to 30-year-old suspects and 13 to 15-year-old victims (N=89); (4) suspects 31 years old or older and victims 31 years old or older (N=76); and (5) suspects 31 years old or older and 13 to 15-year-old victims (N=75). Together, these five age group combinations accounted for 48 percent of the assaults for which both the age of the suspect and victim were known.

Table 4. Demographic Characteristics of Suspects and Victims

Column percentages.

	Suspects N	%	Victims N	%
Age group				
0 to 12	35	3.7 %	380	35.9 %
13 to 15	87	9.2	303	28.6
16 to 20	210	22.2	165	15.6
21 to 30	236	24.9	101	9.5
31 or older	380	40.1	110	10.4
Total	**948**		**1,059**	
Race				
Native	566	59.1 %	638	60.5 %
White	349	36.5	400	37.9
Black	35	3.7	13	1.2
Other	7	0.7	4	0.4
Total	**957**		**1,055**	

Source of data: *AST data (2003–2004)*

Most suspects were Native (59%) or White (37%) and most victims were also Native (61%) or White (38%) (Table 4). Intra-racial victimizations were much more prevalent than inter-racial victimizations, with 91 percent of Native victims assaulted by Native suspects and 84 percent of White victims assaulted by White suspects. Slightly less than half (43%) of the suspects had used alcohol; few (7%) had used drugs. Substance use was most frequent among suspects age 21 to 30, followed by suspects age 31 to 40 and suspects age 16 to 20. Among victims, 27 percent had used alcohol and 5

Figure 1. Victim-Suspect Age Combinations

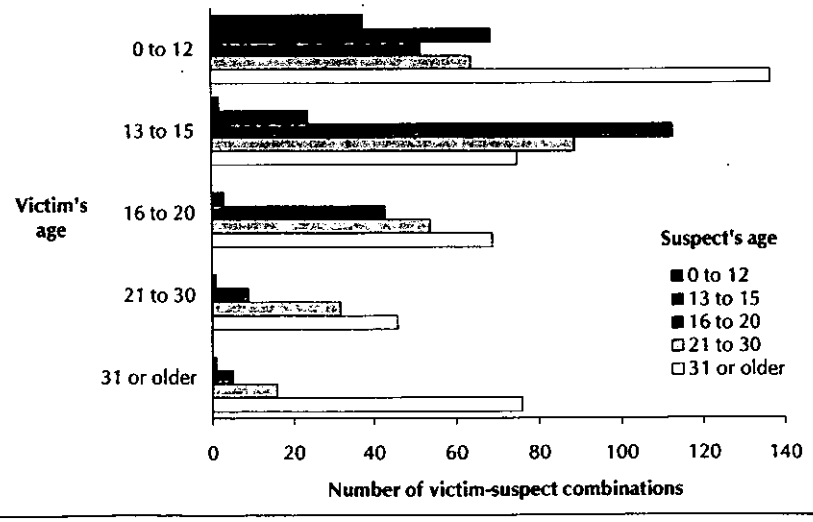

Table 5. Nature of Victim and Suspect Relationship

Column percentages.

	All victims		Minor victims		Adult victims	
Relationships	N	%	N	%	N	%
Friends or acquaintances	477	46.4 %	328	43.3 %	152	57.1 %
Relatives	360	35.1	308	40.6	45	16.9
Current or former partners	124	12.1	80	10.6	44	16.5
Authority figure (to victim)	44	4.3	36	4.7	17	6.4
Strangers	22	2.1	6	0.8	8	3.0
Total	**1,027**		**758**		**266**	

* The "relatives" category in this table includes in-laws, immediate, and extended family members. However, married couples were excluded from the "relatives" category.

Source of data: *AST data (2003–2004)*

percent had used drugs. Substance use was most frequent among victims age 13 to 15, followed by victims age 21 to 30 and victims age 31 or older.

Most victims (all but one) were not homeless, nor were most suspects (99%). Most victims (71%) were not living with the suspect at the time of the assault, but overwhelmingly, the victims reported knowing the suspect in some fashion (98%) (Table 5). Only 2 percent of all victim-suspect relationships involved complete strangers. Nearly half (46%) involved friends or acquaintances, 35 percent involved relatives, 12 percent involved current or past intimate partners (including married couples), and 4 percent involved suspects that were in a position of authority over their victims. Together, friends, relatives, and intimate partners accounted for 94 percent of the victim-suspect relationships in the study sample.

The nature of the victim-suspect relationship varied substantially by the age of the victim. In particular, minor victims were substantially more likely be assaulted by relatives than adult victims. While 17 percent of adult victims were assaulted by relatives, 41 percent of minor victims were assaulted by relatives. Minor victims were slightly less likely to be assaulted by friends or acquaintances (43%) than adult victims (57%) and slightly less likely to be assaulted by current or former partners (10%) than adult victims (17%).

Assault Characteristics

The five most common ways that victims and suspects came into contact with each other prior to the assault were by living together (32%); the suspect inviting the victim somewhere (20%); the suspect attacking the victim indoors (15%); the victim inviting the suspect somewhere (10%); and the victim and suspect meeting up with each other at a party (9%). Together, these five pickup methods were used in 86 percent of the assaults (Table 6).

The five most common pickup and assault locations were identical, differing only in terms of rank. These locations included mutually shared residences (25% of pickups and 25% of assaults), the suspect's residence (25% of pickups and 30% of assaults), the victim's residence (20% of pickups and 17% of assaults), someone else's residence (14% of pickups and 14% of assaults), and outdoors (10% of pickups and 7% of assaults). Private residences accounted for 84 percent of pickup locations and 87 percent of assault locations (Table 7).

The reported use of weapons by suspects was very rare in this sample of sexual assault cases. The one major exception, however, was suspects' use of their hands and/or arms to restrain or strike their victims during the assaults. In slightly less than one-third of the incidents, suspects used their hand and/or arms to restrict victims' movement or to assault victims physically beyond the sexual assault. Other weapons such as knives, guns, drugs, or blunt objects were reported to have been used in less than 1 percent of the incidents.

Sexual penetration, as defined by Alaska law, was documented in 60 percent of the assaults. On average, suspects engaged in just over two sexual acts (2.16) per assault (Table 8).

As a result of the assault, 19 percent of victims experienced general physical pain. In addition, 10 percent suffered bruising or swelling. Lacerations, bite marks, and bone fractures were rarely reported or documented (less than 3% of victims). Overall, very few victims received any type of emergency medical treatment for injuries suffered as a result of the sexual assault. Only 4 percent of victims received emergency medical care for genital injuries; 2 percent received emergency medical care for non-genital injuries; and less than 1 percent received emergency medical care for alcohol or drug intoxication.

Evidence Collection

Detailed information was gathered on the availability and collection of several types

Table 6. Method of Pickup

Column percentages.

	Incidents	
Method	N	%
Lived together	234	32.4 %
Suspect invited victim	146	20.2
Attacked indoors	109	15.1
Victim invited suspect	71	9.8
Met at a party	63	8.7
Suspect performing service	33	4.6
Jumped outdoors	23	3.2
Entered suspect's vehicle	20	2.8
Met elsewhere	13	1.8
Met in a bar	10	1.4
Total	**722**	

Source of data: *AST data (2003–2004)*

Table 7. Location of Pickup and Assault

Column percentages.

	Pickup		Assault	
Location	N	%	N	%
Suspect's house	221	25.1 %	271	29.7 %
Victim and suspect's house	221	25.1	232	25.4
Victim's house	175	19.9	159	17.4
Other's house	122	13.8	130	14.2
Outdoors	89	10.1	61	6.7
Bar	17	1.9	3	0.3
Vehicle (victim or suspect's)	16	1.8	38	4.2
Work (victim or suspect's)	12	1.4	8	0.9
Hotel	8	0.9	11	1.2
Total	**881**		**913**	

Source of data: *AST data (2003–2004)*

Table 8. Sexual Acts

Row percentages.

Sexual acts	No N	No %	Yes N	Yes %	Total
Touching of the external female genitalia	365	47.7 %	400	52.3 %	**765**
Penile penetration of victim's vagina	582	60.1	387	39.9	**969**
Touching of victim's breasts	483	65.0	260	35.0	**743**
Kissing	563	70.9	231	29.1	**794**
Digital penetration of victim's vagina	597	75.3	196	24.7	**793**
Touching of penis (suspect's or victim's)	714	85.6	120	14.4	**834**
Touching of victim's anus	626	86.1	101	13.9	**727**
Victim performed oral sex on suspect	759	86.9	114	13.1	**873**
Suspect performed oral sex on victim	736	88.0	100	12.0	**836**
Penile penetration of victim's anus	786	91.7	71	8.3	**857**
Digital penetration of victim's anus	816	97.4	22	2.6	**838**

Source of data: *AST data (2003–2004)*

Table 9. Collection of Evidence and Forensic Exams

Row percentages.

Evidence	No N	No %	Yes N	Yes %	Total
Physical evidence from victim	720	78.2 %	201	21.8 %	**921**
Victim sexual assault evidence collection kit	733	79.9	184	20.1	**917**
Physical evidence from scene	796	84.1	150	15.9	**946**
Physical evidence from suspect	820	87.0	122	13.0	**942**
Photographs of scene	797	87.3	116	12.7	**913**
Suspect sexual assault evidence collection kit	874	92.9	67	7.1	**941**
DNA forensic exams	827	85.6	139	14.4	**966**
Trace/latent forensic exams	944	97.7	22	2.3	**966**
Computer forensic exams	942	97.5	24	2.5	**966**

Source of data: *AST data (2003–2004)*

of evidence, including physical evidence, electronic data, and photographic documentation.

Physical evidence from the victim (e.g., clothing) and victim sexual assault evidence collection kits were the most commonly collected types of evidence, gathered in 22 percent and 20 percent of cases respectively (Table 9). Suspect sexual assault kits were collected in only 7 percent of cases, and physical evidence from the suspect was gathered in only 13 percent of cases. In the majority of cases, there was no physical evidence recovered from the scene (84% of cases) and in 87 percent of cases, the scene was not photographed. Search warrants were obtained in 36 percent of cases. The most common warrants were for the victims' medical records (26% of cases) and glass warrants (13% of cases). Forensic exams of evidence were requested in only 16 percent of cases, with forensic DNA exams the most commonly requested (14% of cases).

Photographs of suspect injuries and the recovery of a weapon were the least common types of evidence collected (also the least available) during investigations.

Overall, evidence collection appeared to be somewhat low, although the statistics represent only what was included in the reports (Table 10). This is an important limitation with this study because evidence was counted as collected only if it was included in the report. This is particularly problematic with photographs. In some cases, photographs were taken, but were kept separately from the report (i.e., stored electronically but not printed to include with the report). In these cases, we counted the evidence as not collected because it was not found within the report. The statistics reported here therefore underestimate how frequently evidence was collected by Troopers.

Future analyses will be necessary to determine how these types of evidence impact legal resolutions. Two main factors determine the applicability and availability of evidence: one, the nature, or severity, of the reported incident; two, the timeliness of the report. Both factors impact what evidence is applicable and what evidence is available to be collected.

Legal Resolutions

We examined data from the Alaska Department of Law (DOL) to determine the legal resolution for cases in the study which were referred to DOL. We did not examine referrals to other agencies, such as the Division of Juvenile Justice. From the sample of 989 reported cases, 46 percent (N = 452) were referred to DOL for prosecution. Sixty percent of the cases referred to DOL (N = 273) had at least one charge accepted and filed with the court for prosecution (Table 11). Of those cases with at least one charge accepted by DOL, 80 percent resulted in a conviction. The highest level of attrition occurred from report to referral. Once cases were referred, the likelihood of at least one charge being accepted and resulting in a finding of guilt was quite high.

Additional analyses showed that attrition was less likely in cases with one or more

Table 10. Applicability and Collection of Evidence

Row percentages.

	Applicable?					Collected, if applicable?				
	No		Yes			No		Yes		
Evidence	N	%	N	%	Total	N	%	N	%	Total
SART exam photos	692	77.1 %	206	22.9 %	**898**	45	21.8 %	161	78.2 %	**206**
Electronic data	898	94.0	57	6.0	**955**	15	26.3	42	73.7	**57**
Victim injury photos	680	75.7	218	24.3	**898**	99	45.4	119	54.6	**218**
Weapon	929	97.5	24	2.5	**953**	18	75.0	6	25.0	**24**
Trace/latent	827	88.5	97	10.4	**934**	77	79.4	20	20.6	**97**
Suspect injury photos	864	90.9	86	9.1	**950**	69	80.2	17	19.8	**86**

Source of data: *AST data (2003–2004)*

Table 11. Number of Cases by Stage

Stage	N	% of reported	% of referred	% of accepted
Reported	989	100.0 %	—	—
Referred	452	45.7	100.0 %	—
Accepted	273	27.6	60.4	100.0 %
Convicted	219	22.1	48.5	80.2

Source of data: Alaska Department of Law

witnesses than in cases without witnesses and was less likely among rural cases than among urban cases (rural cases were defined as those emerging from locations not connected to the State of Alaska highway system). (See "Case Attrition of Sexual Violence Offenses: Empirical Findings" in this issue.)

From the 989 reports, a total of 1,171 charges were referred to DOL. Sixty-six percent of these charges were accepted by DOL. Thirty-one percent were declined with a required dismissal and 3 percent were declined without a required dismissal. The most frequently cited reasons for not accepting charges as referred were evidentiary reasons, with the two most common evidentiary reasons being inadequate corroboration and insufficient evidence.

Because evidentiary reasons were the most common reasons for not accepting charges that were referred and because evidence collection was somewhat low, it is imperative that we improve the capacity to collect evidence, when it is available. In "Sexual Assault Nurse Examinations in Alaska," also in this issue of the *Forum*, the importance of documenting non-genital injuries is discussed. In this study, victim injury photos were taken in only 55 percent of applicable cases. Again, this estimate may be low because some victim injury photos are kept separately from the reports. Nonetheless, there is room for improving evidence collection and resources should be provided for these improvements.

The findings presented here constitute a first look at the problem of sexual assault in smaller communities across the state—those served predominately by the Troopers. Further research will undoubtedly provide a more detailed picture.

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Case Attrition of Sexual Violence Offenses: Empirical Findings

Darryl S. Wood and André B. Rosay

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Abstract: *This report examined the legal resolutions for 1,184 contact sexual violence cases reported to Alaska State Troopers in 2003 and 2004, and excluded results from other law enforcement agencies. We determined whether cases were founded with an identifiable suspect, were referred to the Alaska Department of Law for prosecution, were accepted for prosecution, and if the case resulted in a conviction. We only examined whether any conviction on any charge was obtained. In some cases, the conviction may be for a non-sexual offense.*

- *Seventy-five percent of cases were founded with at least one identifiable suspect, 51% of founded cases were referred to the Alaska Department of Law for prosecution, 60% of referred cases were accepted for prosecution, and 80% of accepted cases resulted in a conviction on at least one charge. The greatest point of attrition was from the founding to the referral decision.*
- *For the most part, cases of Alaska Native victims were as likely, or even more likely, to be processed by the criminal justice system relative to the cases of non-Native victims.*
- *Cases of sexual violence in the most rural portions of Alaska had an equal or greater chance of being subject to legal sanction when compared with cases from Alaska's less rural areas, and were as likely or more likely to receive full enforcement and prosecution. Unfortunately, the percentage of founded cases that resulted in a conviction never exceeded 30%.*

The State of Alaska's response to violence in Alaska Native villages has faced increased scrutiny over the past decade, with criticism coming from a number of sources, including the Alaska Advisory Committee to the U.S. Commission on Civil Rights, the Alaska Inter-Tribal Council (in *AITC v. Alaska*, 110 P.3d 947, 2005), and, most recently, Amnesty International. In general, allegations have been made that the state discriminates on a geographic and racial basis in the provision of criminal justice services to Alaska Native villages that are isolated from the main road system. For example, in *AITC v. Alaska* (2005), plaintiffs argued that their equal protection rights were violated by the state's deployment of police resources in a discriminatory fashion that favored those living along the main highway system. Similarly, in a 2007 report on police and court responses to violence against American Indian and Alaska Native women (*Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA*), Amnesty International singled out Alaska for what it considers to be a discriminatory, two-tiered deployment of police into the isolated areas of the state, said to be indicative of the state's "failing to exercise due diligence when it comes to sexual violence against . . . Alaska Native women." Amnesty International argued that with this two-tiered deployment of police resources, villages without a trooper post receive less effective police response than villages with a trooper post.

The evidence put forth in the many critical reports is based primarily upon the written and oral testimony of criminal justice agency personnel as well as Alaska Native crime victims, political leaders, and legal advocates. Although compelling, the case made against the state is largely anecdotal, failing to demonstrate a *systematic* lack of criminal justice system response to sexual violence against Alaska Natives. In this article we consider information gathered from the case files of the Alaska State Troopers (AST) and the Alaska Department of Law (DOL) to determine if there is an empirical basis for claims of unequal enforcement of sexual violence statutes. Specifically, we consider multiple decision-making points within the criminal justice process to compare the outcomes of cases involving Alaska Native victims with cases of non-Native victims.

The results presented below allow for an examination of case attrition of instances of sexual violence reported to AST and prosecuted by DOL. *Case attrition* is a term used to describe the process by which only a portion of offenses reported to the police are eventually dealt with through criminal prosecution. At each specific decision-making point the number of cases deemed worthy of official attention is reduced, with some cases carried forward for additional processing while others are no longer subject to prosecution.

The attrition of sexual violence cases reported to AST in 2003 and 2004 is shown in Figure 1. Overall, there were 1,379 reports of sexual offenses made to AST during those two years. Of those original reports, 1,184 were contact sexual violence cases involving forcible rape, sexual assault, or sexual abuse of a minor. Among the other 195 cases were offenses that occurred outside of AST's geographic area of responsibility, offenses that occurred before 2003, offenses committed by children too young to form criminal intent, and non-contact sexual offenses such as indecent exposure or possession of child pornography.

In the next step in the process the police decide if the reported offense is *founded* (i.e., that it actually occurred) and if there is a suspect responsible for the offense to be subject to prosecution. Roughly three-fourths (74.7%) of the 1,184 reported contact sexual violence cases were deemed by AST to have occurred and to have at least one identifiable suspect.

After the police decide that an offense has indeed occurred and also identify a suspect, the next decision is whether to refer the case for prosecution in criminal court. Half (50.8%) of the 884 founded cases with identified suspects were referred to DOL for prosecution in adult criminal court. The

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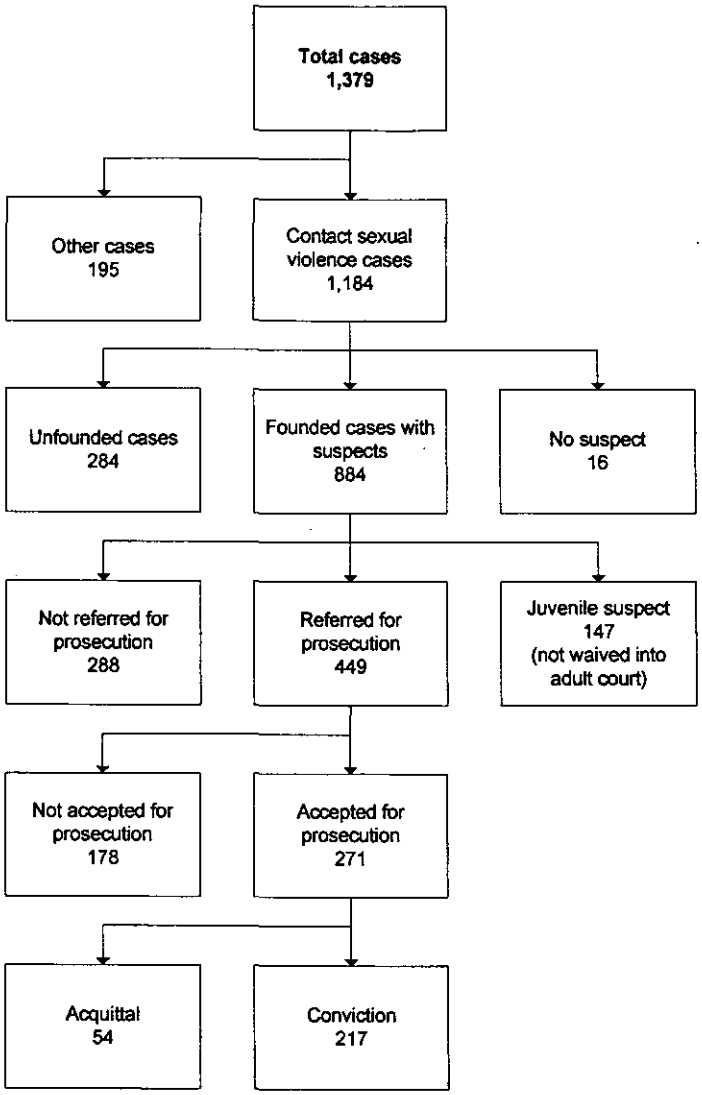
Figure 1. Processing of Sexual Violence Cases Reported to the Alaska State Troopers, 2003–2004



cases excluded from the analysis at that point included those juvenile cases that were not waived into adult court (a sixth—16.6%—of founded cases with suspects) and those that were not referred for reasons such as a lack of evidence or uncooperative victims (a third—32.6%—of founded cases with suspects).

Once referred by the police, prosecutors decide which cases to prosecute; three-fifths (60.4%) of contact sexual violence cases referred by AST to DOL were accepted for prosecution. Cases that are prosecuted eventually result either in a conviction or an acquittal. Of the cases of sexual violence accepted for prosecution by DOL, most (80.1%) resulted in a conviction. Ultimately, only 18 percent of reported cases, 25 percent of founded cases with suspects, and 48 percent of cases referred by AST to prosecution resulted in a conviction—i.e., guilty plea or conviction at trial.

Apart from this general consideration of the winnowing of reported sexual violence offenses as they proceed through the system, it is also possible to examine relative case attrition of offenses involving Alaska Natives versus those of non-Natives. Doing so allows for a determination of the extent to which there is systematic under-enforcement of laws against contact sexual violence in cases with Alaska Native victims. Greater degrees of attrition of Alaska Native victims' cases when compared to that for non-Native victims would lend credence to the anecdotal evidence used in reports critical of the state's provision of policing and prosecution to Alaska Native communities.

Comparisons of attrition of cases of sexual violence are made on a number of levels. First, case attrition for offenses involving Alaska Native victims is compared with attrition of non-Native victims' cases. Next, case attrition in communities located in the rural regions of Alaska is compared with case attrition in communities located outside of the state's rural regions. Finally, the attrition of cases that occurred in isolated villages is compared with the attrition of cases that occurred in less-isolated locations. At each of these levels comparisons are made on the basis of the total of all contact sexual violence offenses, and for rape/sexual assault and sexual abuse of a minor (SAM) separately. Four different decisions are considered: the Troopers' decision on whether reported cases are founded; the Troopers' decision to refer founded cases for prosecution; the prosecutors' decision

Table 1. Attrition of Sexual Violence Cases Reported to Alaska State Troopers, Alaska Native vs. Non-Native Victims, 2003-2004

	Total sexual violence					Rape/sexual assault					Sexual abuse of a minor				
	Alaska Native		Non-Native			Alaska Native		Non-Native			Alaska Native		Non-Native		
Decision	**N**	**%**	**N**	**%**		**N**	**%**	**N**	**%**		**N**	**%**	**N**	**%**	
Founded	512	82.4 %	351	82.0 %		268	87.3 %	148	78.7 %	*	244	77.7 %	203	84.6 %	*
Referred†	289	67.7	159	56.8	*	153	69.9	65	56.0	*	136	65.4	94	57.3	
Accepted	185	64.0	85	53.5	*	105	68.6	29	44.6	*	80	58.8	56	59.6	
Convicted	149	80.5	67	78.8		80	76.2	21	72.4		69	86.3	46	82.1	

†Percentages based on founded cases with adult suspects.

*Difference between Alaska Native and non-Native victims is statistically significant at the $p < .05$ level.

Table 2. Attrition of Sexual Violence Cases Reported to Alaska State Troopers, Bush Stratum vs. Non-Bush Stratum, 2003-2004

	Total sexual violence					Rape/sexual assault					Sexual abuse of a minor				
	Bush		Non-Bush			Bush		Non-Bush			Bush		Non-Bush		
Decision	N	%	N	%		N	%	N	%		N	%	N	%	
Founded	447	76.1 %	453	75.9 %		233	81.5 %	197	75.2 %		214	71.1 %	256	76.6 %	
Referred†	242	65.9	207	55.9	*	129	69.7	89	56.0	*	113	62.1	118	55.9	
Accepted	167	69.0	104	50.2	*	95	73.6	39	43.8	*	72	63.7	65	55.1	
Convicted	136	81.4	81	77.9		72	75.8	29	74.4		64	88.9	52	80.0	

†Percentages based on founded cases with adult suspects.

*Difference between bush and non-bush regions is statistically significant at the $p < .05$ level.

to accept referred cases for prosecution; and the final court decision in cases accepted for prosecution—i.e., whether a conviction was obtained. These results are presented as a comparison between Alaska Native and non-Native victims in terms of the number and percentage of cases that were chosen to be carried forward in the criminal justice process. The results of chi-square tests of statistical significance—a test which measures the likelihood that differences in the percentage of cases carried forward are the result of chance alone and not indicative of an underlying association—are also provided.

Differences in the processing of cases involving Alaska Native and non-Native victims are shown in Table 1. For the most part, these results indicate that the cases of Alaska Native victims are as likely, or are even more likely, to be processed by the criminal justice system relative to the cases of non-Native victims. For the total of all sexual violence offenses, cases involving Alaska Native victims were just as likely as cases with non-Native victims to be founded or to result in a conviction and they were more likely to be referred by AST to prosecutors and to be accepted by DOL for prosecution. Considering only cases involving the offenses of rape and sexual assault, there were statistically significant differences between Alaska Native and non-Native victims at the founding decision and at the decisions to refer cases and accept cases for prosecution; at each of these decision-making points the cases of Alaska Native victims *were more likely* to be carried forward. In terms of SAM cases, those cases involving Alaska Native victims were less likely to be founded. Otherwise, none of the differences in the processing rates of Alaska Native and non-Native victims' SAM cases were statistically significant.

A second set of analyses was conducted to consider the processing of cases occurring in the largely Alaska Native communities of the most rural areas of the state. The dichotomy for these analyses was drawn between cases occurring either inside or outside of what the Department of Health and Social Services in its Alaska Behavioral Risk Factor Surveillance System has termed the "Bush Stratum"—comprising the boroughs and census areas north and west of the Railbelt. Comparisons of case processing from these bush communities with cases from non-bush communities are reported in Table 2. These results indicate that cases of sexual violence that occur in the most rural portions of Alaska have, depending upon the decision, an equal or greater chance of being subject to legal sanction when compared with cases from Alaska's less rural areas. Similar to what was found when comparing attrition in Alaska Native victims' cases versus non-Native victims' cases, victims from bush communities of sexual violence in general and of rape/sexual assault *were more likely* to have their cases referred to prosecutors by AST and to have DOL accept those cases for prosecution.

The final set of analyses considers attrition of cases coming from the most isolated villages compared to places that are less isolated. For these analyses a village was considered isolated if it lacked a local AST post or if Troopers were unable to reach the village by automobile. The premise of this dichotomy is that travel to villages that cannot be reached by highway is more difficult and, because of that hindrance, it could be expected that conducting investigations would be more difficult—thus increasing case attrition. From the perspective behind the allegations against the state, it is in these disconnected villages that lack a locally-posted police agency certified by the Alaska Police Standards Council where the greatest disparities in the enforcement and prosecution of cases of sexual violence would be expected to occur.

The results comparing attrition of cases occurring in villages defined as isolated with cases occurring in places more easily reached are presented in Table 3. As with the previously discussed comparisons of cases, case attrition in isolated villages is no more prevalent than in places that are better connected to AST posts. The results presented in Table 3 indicate that cases from isolated villages are instead *actually more*

Table 3. Attrition of Sexual Violence Cases Reported to Alaska State Troopers, Isolated vs. Non-Isolated Communities, 2003-2004

	Total sexual violence					Rape/sexual assault					Sexual abuse of a minor				
	Isolated		Non-Isolated			Isolated		Non-Isolated			Isolated		Non-Isolated		
Decision	N	%	N	%		N	%	N	%		N	%	N	%	
Founded	437	76.4 %	463	75.7 %		230	81.9 %	200	74.9 %	*	207	71.1 %	263	76.5 %	
Referred†	243	66.8	206	55.2	*	132	71.0	86	54.4	*	111	62.4	120	55.8	
Accepted	166	68.3	105	51.0	*	94	71.2	40	46.5	*	72	64.9	65	54.2	
Convicted	132	79.5	85	81.0		70	74.5	31	77.5		62	86.1	54	83.1	

†Percentages based on founded cases with adult suspects.

*Difference between isolated and non-isolated regions is statistically significant at the $p < .05$ level.

likely to receive full enforcement. Cases of rape/sexual assault in isolated villages *were more likely to be founded, more likely to be referred for prosecution by AST, and more likely to be accepted for prosecution by DOL.* Likewise, across the total of all sexual violence offenses, cases from isolated villages were referred and accepted for prosecution at a rate *greater than* cases from non-isolated locations. No differences were found in the attrition of SAM cases.

Overall, the results presented in this article provide little empirical support for allegations of discrimination in the processing of sexual violence cases by AST or DOL on a racial or geographic basis. With the exception of SAM cases against Alaska Native victims being less likely to be founded, *cases of sexual violence against Alaska Native victims were just as likely or actually more likely to receive full enforcement and prosecution when compared with cases against non-Native victims.* On the basis of geography, cases occurring in locations with predominately Alaska Native populations believed to be underserved by AST were actually more likely to be dealt with by AST or DOL when compared with cases from outside those geographic areas. Our results indicate that the anecdotal evidence found in reports critical of the state's response to sexual violence against Alaska Natives does not accurately reflect the actual processing of cases of rape, sexual assault, and SAM reported to AST and prosecuted by DOL. Ultimately, these results do not support claims of unequal enforcement by the state in response to the victimization of the Alaska Native population. However, Alaska continues to experience high rates of forcible rape, and the prosecution of sexual violence continues to be difficult: the percentage of AST-founded cases that resulted in a conviction never exceeded 30 percent.

Darryl Wood is an Assistant Professor at Washington State University Vancouver. André B. Rosay is an Associate Professor and the Interim Director of the Justice Center. *This project was supported by the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice (Grant No. 2005-WGB-GX-0011). Points of view in this article are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.*

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Recidivism of Alaska Sex Offenders

Alan R. McKelvie

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http://justice.uaa.alaska.edu/forum/25/1-2springsummer2008/g_recidivism.html

For other articles and publications related to sex offenders and violence against women, see:
http://justice.uaa.alaska.edu/vaw/index.html

Abstract: *This report compared the rates of recidivism for 232 male sex offenders to 232 randomly selected male non-sex offenders. All were released from the Alaska Department of Corrections in 2001 and their recidivism was tracked for three years.*

- *Overall, 70% of all offenders were remanded, 61% were rearrested, and 40% were convicted on some charge.*
- *Sex offenders were less likely to be rearrested than non-sex offenders. There was no significant difference between sex offenders and non-sex offenders for remands or convictions. In addition, there was no significant difference between sex offenders and non-sex offenders in rearrests for sex crimes.*
- *Those originally incarcerated for sexual abuse of a minor were less likely to be remanded than other sex offenders, less likely to be rearrested, and less likely to be reconvicted.*

A recent study of sexual offenders released from incarceration in Alaska shows that for the three years after the offenders left prison in 2001, the rates of recidivism for sexual offenders were, by most measures, no higher than for offenders in general. The study, which was done by the Alaska Justice Statistical Analysis Center, a subdivision of the Justice Center, compared recidivism for sexual offenders released from prison in 2001 with a random sample of non-sex offenders also released in 2001. The analysis used the three measures most commonly used to determine recidivism: incidents of remand to custody, rearrest, and reconviction on any new offense. The results are similar to those found in an earlier study done by the Alaska Judicial Council. (See *Alaska Felony Process: 1999*, Alaska Judicial Council, 2004.)

The following analysis is based on data from the Departments of Corrections and Public Safety and the Alaska Court System. The Alaska Department of Corrections released 232 male sex offenders in 2001. This analysis focuses on offender recidivism over the three-year period following release. Recidivism is calculated for *remand*—reentry to prison as a result of probation/parole/technical violations, *rearrest*, or *reconviction* for *any* type of crime. Overall recidivism rates and frequencies for all sex offenders and for a randomly sampled cohort of other types of offenders also released in 2001 are presented. Also given are rates according to the types of sexual offense involved in the original conviction: *sexual assault* or *sexual abuse of a minor*.

Overall, during the three-year period, 70 percent of *all* offenders were remanded (68% of sex offenders and 72% of non-sex offenders), 61 percent were rearrested (54% of sex offenders and 68% of non-sex offenders), and 40 percent were convicted on some charge (39% of sex offenders and 35% of non-sex offenders).

For the categories of sex offense, 63 percent of those convicted of sexual abuse of a minor were remanded, 50 percent were rearrested and 36 percent were convicted of another offense—although not necessarily a sexual offense. For offenders convicted of sexual assault, the rates were 79 percent, 63 percent, and 45 percent respectively.

In the case of rearrest for a new sex offense, there was a slight but statistically insignificant difference between the sex offender group—3.4 percent—and the non-sex offender group—1.3 percent.

Methodology

The Alaska Department of Corrections

Table 1. Sex Offenders and Randomized Sample of Other Offenders Released in 2001, by Race

	Sex offenders									
	Sexual assault		Sexual abuse of a minor		Total sex offenders		Non-sex offenders		Total for all offenders	
	N	%	N	%	N	%	N	%	N	%
Alaska Native	40	56.3 %	73	45.3 %	**113**	**48.7 %**	101	43.5 %	**214**	**46.1 %**
White	15	21.1	59	36.6	**74**	**31.9**	106	45.7	**180**	**38.8**
Indian	6	8.5	15	9.3	**21**	**9.1**	3	1.3	**24**	**5.2**
Black	6	8.5	4	2.5	**10**	**4.3**	18	7.8	**28**	**6.0**
Hispanic	0	0.0	2	1.2	**2**	**0.9**	3	1.3	**5**	**1.1**
Other	4	5.6	8	5.0	**12**	**5.2**	1	0.4	**13**	**2.8**
Total	**71**		**161**		**232**		**232**		**464**	

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Table 2. Age and Priors for Sex Offenders and Randomized Sample of Other Offenders Released in 2001

	Sex offenders									
	Sexual assault		Sexual abuse of a minor		Total for sex offenders		Non-sex offenders		Total for all offenders	
	N	Mean	N	Mean	N	Mean	N	Mean	N	Mean
Age	71	33.9	161	34.9	**232**	**34.6**	232	40.9	**464**	**37.7**
Prior arrests	71	10.7	159	8.7	**230**	**9.3**	232	21.6	**462**	**15.5**
Prior convictions	69	7.4	155	5.9	**224**	**6.4**	232	14.9	**456**	**10.7**
Prior sex arrests	64	1.6	157	1.7	**221**	**1.7**	63	1.3	**284**	**1.6**
Prior sex convictions	48	1.6	116	1.5	**164**	**1.5**	47	1.3	**211**	**1.5**
Total	**323**		**748**		**1,071**		**806**		**1,877**	

(DOC) provided the Alaska Justice Statistical Analysis Center (SAC) with a data set of all releases from DOC facilities in 2001. SAC personnel filtered the set for state statutes that identify a sexual offense and require registration on the state's sex offender registry. Once the sex offenders were identified, an equivalent number of offenders from the remaining pool were randomly sampled to provide a comparison group. Current and past information on status, movements, court cases, etc. involving the offender was also obtained from DOC.

The Alaska Department of Public Safety (DPS) provided the SAC with criminal histories for the sampled offenders and the Alaska Court System provided record access to court records through the web-based interface, Court View (CV).

For this report, only first release cases were used—that is, if an offender was initially released some time prior to 2001 and returned for some reason, such as a probation violation, and then released again in 2001, that case was excluded. Also, some offenders were released more than once during 2001. The first release constituted the base measure; a subsequent release was an indication of a new arrest event.

In the rare instances of discrepancy, the date of the first event was used in the analysis. For instance, DOC and CV might have had the same date for an arrest/filing that did not appear in the criminal history. This situation generally indicated a remand to custody that did not get reported as a new court case and resulted in incarceration under the original court case—such as for parole, probation, and technical violations.

Demographics

Table 1 shows racial categories for the groups of offenders. Alaska Natives constituted 49 percent of the sex offender group and 46 percent of offenders overall. Whites were 32 percent of sex offenders and 39 percent of the overall offender pool. Table

Table 3. Remands, Arrests, and Convictions for Sex Offenders and Randomized Sample of Other Offenders Released in 2001

	Sex offenders									
	Sexual assault N=71		Sexual abuse of a minor N=161		Total for sex offenders N=232		Non-sex offenders N=232		Total for all offenders N=464	
	N	%	N	%	N	%	N	%	N	%
Remands										
Remanded	56	78.9 %	102	63.4 %	**158**	**68.1 %**	166	71.6 %	**324**	**69.8 %**
Not remanded	15	21.1	59	36.6	**74**	**31.9**	66	28.4	**140**	**30.2**
Arrests										
Arrested	45	63.4 %	80	49.7 %	**125**	**53.9 %**	157	67.7 %	**282**	**60.8 %**
Not arrested	26	36.6	81	50.3	**107**	**46.1**	75	32.3	**182**	**39.2**
Convictions										
Convicted	32	45.1 %	58	36.0 %	**90**	**38.8 %**	81	34.9 %	**171**	**36.9 %**
Not convicted	39	54.9	103	64.0	**142**	**61.2**	151	65.1	**293**	**63.1**

Table 4. Rearrest for Sex Crimes of Sex Offenders and Randomized Sample of Other Offenders Released in 2001

	Sex offenders									
	Sexual assault		Sexual abuse of a minor		Total for sex offenders		Non-sex offenders		Total for all offenders	
	N	%	N	%	N	%	N	%	N	%
Arrests										
Arrested	4	5.6 %	4	2.5 %	**8**	**3.4 %**	3	1.3 %	**11**	**2.4 %**
Not arrested	67	94.4	157	97.5	**224**	**96.6**	229	98.7	**453**	**97.6**
Total	**71**		**161**		**232**		**232**		**464**	

1 also presents the breakdown for the two sex offense categories.

Table 2 shows a comparison of age and number of prior arrests and convictions for the groups of offenders. The average age of the sex offenders was significantly lower than that of the non-sex offenders. For the two sex offender categories, however, there was no significant difference in age.

An analysis of prior convictions shows a significant difference between sex offenders and non-sex offenders for any prior conviction but not for sex offense convictions. The non-sex offenders had significantly more prior convictions than the sex offenders.

Rearrests for Any Crime

Table 3 shows recidivism rates for remands, rearrests, and reconvictions for the sex offenders and non-sex offenders. Non-sex offenders were more likely to be rearrested than sex offenders but for remands and convictions there was no significant difference between sex offenders and non-sex offenders.

Table 3 also shows the recidivism rates for the two sex offender categories. Those originally incarcerated for sexual abuse of a minor were less likely to be remanded than other sex offenders, less likely to be rearrested, and less likely to be reconvicted.

Rearrests for a Sex Crime

Table 4 shows the recidivism rates for the sex offenders and non-sex offenders for new sex crimes. While there is a slight difference in rearrests—3.4 percent for the sex offender group vs. 1.3 percent for the non-sex offender group—this difference is not statistically significant.

Table 4 also shows the equivalent analysis for the sex crime category grouping. Again, there is a slight but non-significant difference between the two groups.

Alan McKelvie is the director of the Alaska Justice Statistical Analysis Center.

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Revisiting Alaska's Sex Offender Registration and Public Notification Statute

Deborah Periman

In Alaska and throughout the country sex offender registration requirements have become more inclusive. Almost all convicted sex offenders now must register for very extended periods; the registry is available over the Internet; and more details on the current status of the offender are available to the public. The intent of the registries is to protect the public from convicted offenders, but it can be argued that the increasingly stringent demands placed on offenders may, in fact, be counterproductive. The severity of the registration requirements may prohibit the rehabilitation of offenders and their reintegration into the community, and the increasing burden on law enforcement to monitor and maintain very broad registries may prevent police from focusing on the more serious sexual predators.

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For other articles and publications related to sex offenders and violence against women, see:
http://justice.uaa.alaska.edu/vaw/

Abstract: *This article examines the background and judicial interpretation of Alaska's sex offender registration and public notification statute, the new federal requirements for state sex offender registries and public notice under the Adam Walsh Child Protection and Safety Act, and weaknesses in both Alaska's existing system and the enhanced requirements of the new federal legislation. These weaknesses include:*

- *Absence of incentives for offenders to seek therapy or treatment;*
- *Failure to provide for individualized risk assessment that would differentiate between those offenders who pose a negligible or very low risk of re-offending from those who pose a continuing public risk – a failure that causes unwarranted marginalization of low risk offenders and diminishes the overall effectiveness of the public notification system;*
- *Public notice provisions so broad as to substantially impede offenders' reintegration into their families, their community, and the workforce, and potentially chilling family reporting;*
- *Internet posting requirements associated with severe stigmatization and public harassment, and concomitant emotional destabilization and isolation of offenders – factors that may actually increase the risk of recidivism and community harm.*

Because the Walsh Act conditions state receipt of Byrne Grant funds on compliance with its enhanced registration and notice requirements, there is little Alaska can do to remedy the above weaknesses and still remain eligible for Byrne funds. However, the article concludes with a recommendation for limited changes to our statute that would minimize, to the extent possible, its adverse effect on offenders' ability to find employment; omit the lowest risk offenders from internet posting requirements; and provide those incentives for treatment permissible under the Walsh Act.

Background

The Alaska Sex Offender Registration Act, which was enacted in the wake of extensive publicity over the tragic rape and murder of Megan Kanka in New Jersey, rests on specific legislative findings that (1) "sex offenders pose a high risk of reoffending after release from custody" and (2) release of information about sex offenders to the public "will assist in protecting public safety" (1994 Alaska Sess. Laws 41, § 1).

The state legislature's findings were premised on testimony reflecting the commonly held belief that sex offenders as a class are different from other offenders—that they will inevitably reoffend and that they are not receptive to treatment. In light of this testimony, the legislature did not attempt to distinguish among types of offenders or to evaluate which offenders were most likely to recidivate. Instead, it simply divided all offenders into two groups, aggravated and nonaggravated offenders, based on the severity of the offense. These two categories cover offenders ranging from the 18-year-old who has consensual sex with a 14-year-old to the perpetrator of a violent rape and murder.

The registration statute that emerged was, at the time of its enactment, one of the most stringent in the country. In a 2003 case closely watched by state and federal lawmakers, the U.S. Supreme Court upheld its terms against an *ex post facto* challenge. Justice John Paul Stevens, dissenting, summarized the statute's effect:

> In Alaska, an offender who has served his sentence for a single, nonaggravated crime must provide local law enforcement authorities with extensive personal information—including his address, his place of employment, the address of his employer, the license plate number and make and model

Author's Note

This is an extremely abbreviated look at a complex federal initiative and at how specified aspects of the initiative relate to weaknesses in Alaska's sex offender registry. Issues of federalism and due process are not addressed, nor does this piece attempt to identify how the statutory elements of sex and kidnapping offenses under Alaska's code fit within the Walsh Act offender tiers. Finally, the reader should draw no inferences regarding Alaska's overall level of compliance with the Walsh Act requirements. A longer version of this piece, with complete legal citations, is available on the Justice Center website at http://justice.uaa.alaska.edu/workingpapers/.

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of any car to which he has access, a current photo, identifying features, and medical treatment—at least once a year for 15 years. If one has been convicted of an aggravated offense or more than one offense, he must report this same information at least quarterly for life. Moreover, if he moves, he has *one* working day to provide updated information. Registrants may not shave their beards, color their hair, change their employer, or borrow a car without reporting those events to the authorities. Much of this registration information is placed on the Internet. In Alaska, the registrant's face appears on a webpage under the label "Registered Sex Offender." His physical description, street address, employer address, and conviction information are also displayed on this page. (*Smith v. Doe,* 538 U.S. 84, 111 (2003))

At the time of its passage, Alaska's statute far exceeded the minimum requirements imposed on the states by the federal Jacob Wetterling Act. This legislation, adopted in 1994, required every state to enact a sex offender registration program meeting certain minimum guidelines or face a reduction in federal grant funding for law enforcement (42 U.S.C.A. § 14071 (West 2008)).

Unlike Alaska, many states attempted to tailor the reach of their registration statutes to the actual risk posed by individual offenders. The Connecticut legislature, for example, adopted a system using individualized clinical assessment to determine which offenders would be subject to registration requirements. Offenders were required to register only if such assessment demonstrated that they were found to pose a high risk of recidivism. This type of classification system has come to be known as an *offender-based* system, reflecting the emphasis on the individual. Alaska's system, in contrast, is *offense-based,* with classification resting solely on the conviction and no individual risk assessment undertaken.

Alaska was one of the relatively few states to require Internet dissemination of registration information for all offenders. Other states attempted to strike a balance between the stigmatization and collateral consequences of public notification and the risk of recidivism. New Jersey, for example, classified its offenders by risk and required no public disclosure for those who posed the least risk of reoffending, a percentage estimated at 45 percent of the entire sex offender class. Widespread disclosure was required only for those at the highest risk of reoffending (approximately five percent) of the whole.

Some of the flexibility afforded states under the original Wetterling Act was reduced through subsequent amendment; the flexibility to utilize individualized risk assessments will disappear almost completely as the provisions of the Adam Walsh Child Protection and Safety Act, PL 109-248, become binding on the states. This act represents an extensive revision and expansion of federal sex offender legislation. One of its many purposes is to standardize and increase minimum registration requirements nationwide. It imposes on the states highly detailed requirements for sex offender registration and public notification—requirements the states must in general implement by July 27, 2009. A state's failure to meet the implementation deadline will trigger a mandatory ten percent reduction in Byrne Justice Assistance Grant funding.

Key provisions of the Walsh Act include broadening the classes of sex offenses for which registration is required and extending it to cover juvenile offenses; requiring covered offenders to consistently remain registered in any jurisdiction in which they live, work, or attend school; expanding the scope of registration information required; imposing a national requirement for periodic in-person appearances by registrants; standardizing the required duration of registration; and widening the availability of information concerning registrants available to the public through required Internet posting. The act adopts an offense-based, three-tiered classification for offenders. It does not authorize the states to implement an offender-based classification using individualized risk assessment, nor, with limited exceptions, does it authorize the states to implement ameliorative programs that would allow offenders to avoid or shorten registration based on treatment and rehabilitation. The net effect of the new federal legislation will be to bring all cooperating states closer to Alaska's registration and publication requirements.

Alaska's Statute and its Federal Counterpart Rest on Disproved Assumptions

The myth of the incorrigible sex offender, all but guaranteed to reoffend, has been largely refuted. A study by the Alaska Justice Statistical Analysis Center of sex offenders released from Alaska corrections facilities in 2001 found that non-sex offenders were more likely to be rearrested than sex offenders. (See "Recidivism of Alaska Sex Offenders Released from Corrections Facilities in 2001" in this issue of the *Forum.*) With respect to sex crimes specifically, the study found no statistically significant difference between the rates at which sex offenders were rearrested for a new sex crime and the rates at which non-sex offenders were arrested for a first sex crime. These patterns are consistent with the results of studies elsewhere finding that sex offenders as a class are somewhat less likely than other categories of offenders to re-offend.

Moreover, recent studies conclude that treatment programs are, in fact, effective in reducing the overall rate of recidivism for many offenders. A Canadian study published in late 2007, for example, found that high-risk sex offenders who participated in a community-based treatment project had lower rates of reoffending of any type than did offenders who did not participate (Wilson, et al., 2007). Although sex offender treatment remains a controversial issue, these results are consistent with the general findings of studies conducted over the last decade or so—studies that refute the earlier belief that sex offenders are impervious to treatment.

The foregoing is particularly true with respect to juvenile offenders. Although offenders as young as 14 are subject to registration and public notification requirements under the Walsh Act, research establishes that recidivism rates for juvenile sex offenders are substantially lower than the rates for other types of juvenile offenders. Juvenile offenders have, in addition, proven highly amenable to treatment.

Problems with the Existing System

The Walsh Act and its antecedents rest on the premise that state registration and notification systems advance public safety, but empirical evidence disproves this premise. Studies show that after more than ten years of national registration and public notice, sex offender registries have made no discernable difference in sex offender recidivism rates (Tewksbury & Lees, 2007). (Although the registries have not curbed the commission of sex offenses, it should be noted that law enforcement officials in Alaska do view the offender database as a useful investigatory tool after an offense occurs.)

The weaknesses of Alaska's registration and notice system are well documented. Supreme Court Justice Ruth Bader Ginsberg, in a dissenting opinion in *Smith v. Doe,* 538 U.S. 84, 116–117 (2003), put it simply—the statute is excessive in relation to its purpose:

> The Act applies to all convicted sex offenders, without regard to their future dangerousness. And the duration of the reporting requirement is keyed

not to any determination of a particular offender's risk of reoffending, but to whether the offense of conviction qualified as aggravated." Moreover, "the Act makes no provision whatever for the possibility of rehabilitation: offenders cannot shorten their registration or notification period, even on the clearest demonstration of rehabilitation or conclusive proof of physical incapacitation. However plain it may be that a former sex offender currently poses no threat of recidivism he will remain subject to long-term monitoring and inescapable humiliation.

Of course, no matter how excessive the reach of the statute in relation to its goals, many would argue that the disabilities imposed on low-risk or rehabilitated offenders are warranted if the system serves to protect even one child. The difficulty, however, is that Alaska's registration and notification system, and others like it, do not demonstrably make the public safer. To the contrary, they are likely to trigger a host of consequences antithetical to the public interest.

Unemployment, Instability and Enhanced Risk of Recidivism

After ten-plus years of national experimentation with sex offender registries, the destabilizing effects of being listed on a sex offender registry are well understood. They include profound humiliation and social isolation, loss of employment and housing, and destruction of family ties. Registrants and their families have experienced vigilantism in the form of harassment, threats of violence, physical attacks and arson.

In *Doe v. State*, 92 P.3d 398, 410 (Alaska 2004), the Alaska Supreme Court made note of the severity of these consequences. Citing examples of Alaska registrants who had lost their jobs, been forced to move their residences, and received threats of violence, the Court observed that "the potentially destructive practical consequences that flow from registration and widespread governmental distribution of disclosed information" are grave. "[O]utside Alaska, there have been incidents of suicide by, and vigilantism against, offenders on state registries, and offenders listed on registries often have unique difficulties locating places to reside and work. Offenders are sometimes subjected to protests and group actions designed to force them out of their jobs and homes." Registrants have suffered neighborhood rallies staged to protest their presence, bricks thrown through windows, and harassing calls to employers.

Of these negative consequences, employment difficulties are perhaps most significant. The Ninth Circuit Court of Appeals concluded that Alaska's system of putting offenders' employment information on the Internet is likely to make registrants "completely unemployable" (*Doe v. Otte*, 259 F.3d 979, 988 (9th Cir. 2001), *rev'd*, *Smith v. Doe*, 538 U.S. 84 (2003)). The system "creates a substantial probability that registrants will not be able to find work, because employers will not want to risk loss of business when the public learns that they have hired sex offenders." The court cited the experience of one Alaska business owner who suffered community hostility and damage to his business after print ads from the Alaska sex offender registry web site were publicly distributed and posted on a bulletin board.

It may be tempting to dismiss these adverse consequences as the just result of the offender's own conduct, but these consequences also disserve the community in several important ways. First, study after study has identified stress as one of the antecedents to sex offender relapse. Chronic torment and hostility from the public, fractured social relationships, lack of stable housing, and unemployment are likely to cause the registered offender heightened stress, anxiety and resentment, all of which may erode an offender's self-restraint (Cohen & Jeglic, 2007). Lack of social support, in particular, and the accompanying stress on the offender has been identified as a key trigger in sex offense recidivism (Levensen & Cotter, 2005).

These problems are particularly acute for juvenile offenders. Young persons subject to registration have been harassed at school; some have dropped out. The stigma associated with the public notice system causes a loss of social networks, which in turn increases the risk of anti-social behaviors.

The extreme length of the registration period may exacerbate these problems. Under the Walsh Act, states must require a minimum of 25 years registration for mid-level offenses and lifetime registration for the most serious offenses. Studies show, however, that offenders who view punishment as too severe or inescapable may be more likely to reoffend and that many offenders subject to the lifetime registration requirement feel states have opened the door to endless harassment and stigmatization.

The majority of offenders surveyed report that they have experienced first-hand social or psychological effects resulting from the public registries. The consequent shame, isolation, fear, and hopelessness all interfere with an offender's reintegration and recovery.

Lifetime Registration as a Disincentive to Therapy or Recovery

In Alaska, a sex offender "cannot escape the [registration] Act's grasp no matter how clearly he may demonstrate that he poses no future risk to anyone, and no matter how final the judicial determination that he has been successfully rehabilitated..." (*Otte*, 259 F.3d at 994). Alaska's failure to provide any avenue for relief from or mitigation of the registration requirement is one of its statute's failings.

In a recent sampling of individual sex offender perceptions, several offenders observed that the ability to have a risk evaluation completed while on the registry would provide an incentive and motivation "to pursue treatment, to avoid problematic situations, and . . . [maintain] a crime free lifestyle" (Tewksbury & Lee, 2007, p. 400). Another study looking at the social and psychological effects of registration on sex offenders found many experiencing feelings of despair and hopelessness in the absence of individualized assessment. One respondent stated, "no one believes I can change, so why even try?" (Levensen & Cotter, 2005, p. 52).

As written, the statute fails to recognize the possibility of rehabilitation and provides offenders considering treatment no hope that their efforts might eventually reduce the stigma associated with the registry's public notification system.

Mandatory Internet Publication and Chilled Reporting

The inability to avoid publication of an offender's personal information on the internet and the ensuing social obloquy may also discourage family members of some offenders from reporting offenses. The spouse of an offender, particularly of an offender who may be the family's primary source of economic support, faces a terrible dilemma in reporting: While the report may protect the spouse herself or himself, or a child, the report may consign the entire family to a lifetime of poverty, to loss of the family home if the offender is evicted, and to shared shame and harassment once the offender's personal information is placed on the Internet. Studies suggest that reporting may be equally difficult for the parent or sibling of an offender. Thus, to the extent that mandatory Internet publication acts as a disincentive to reporting intra-family offenses, Alaska's notification statute ill-serves Alaska's abused children and spouses.

Obfuscation of More Dangerous Offenders

The extraordinarily broad reach of

Alaska's publication requirement has ramifications beyond its collateral consequences to the offender and his or her family. Indiscriminate posting of information on all offenders tends to obscure from the public pertinent information relating to very dangerous sexual predators. Including low-risk offenders also places an unnecessary administrative burden on state officials responsible for establishing and maintaining the posting, with a concomitant increase in public expense. In addition, the greater the number of postings, the more difficult and expensive it is for the state to ensure accuracy and respond to noncompliant offenders.

Possible Changes

During the 2008 session, the Alaska legislature passed and the governor signed into law CSSB 185, which extends the reach of existing sex offender registration requirements. The new law adds the requirement that offenders provide the Department of Corrections with every email or instant messaging address or other Internet communication identifier they use—information mandated by the Walsh Act. This type of legislative fine-tuning, however, will not solve the most fundamental problems with the statute—overbreadth and the absence of treatment incentives.

Recent data show that those states whose legislation is most narrowly drawn to focus on the highest-risk offenders are most likely to achieve their legislative goals. A sex offender registration system is most effective where it uses actuarial risk-assessment measures to ascertain which sex offenders are at the highest risk of reoffending, distinguishes among offenders based on risk, and imposes the disabilities of registration and publication only on those most likely to recidivate. This type of registration and publication system allows the public to readily identify the most dangerous individuals and allows law enforcement to focus its resources on the most likely threats to the community (Cohen & Jeglic, 2007).

Unfortunately, the Walsh Act, with its offense-based tier structure, has foreclosed to a significant extent the states' ability to implement a true risk assessment scheme and retain eligibility for full Byrne Grant funding. There are, however, a few windows left open for small improvements to Alaska's statute.

Minimize the impact on employment. For reasons stated above, Internet publication of an employer name and address is one of the consequences of registration most likely to de-stabilize an offender socially and psychologically. The risk of consigning an offender to a lifetime of unemployment may also be a factor in deterring some family reporting.

The public interest associated with making employment available to released offenders is implicitly recognized under the new federal guidelines. The Walsh Act authorizes the states to exclude from their websites the name (though not the address) of a sex offender's employer. To facilitate offender reintegration and to protect the economic welfare of offenders' families, Alaska could avail itself of this option. While it is argued that knowing the name of an offender's employer enhances public safety, there is no empirical evidence to support this claim.

Omit the lowest risk offenders from internet publication. Another option granted the states under the new federal guidelines pertains to offenders classified under the statute as "Tier I Sex Offenders." Tier I offenders include those whose registration offense is not punishable by imprisonment for more than one year, whose offense is receipt or possession of child pornography, or whose offense is a sexual assault against an adult that involves sexual contact only.

The Walsh Act provides the states discretion to omit offenders in this category (other than those convicted of specified offenses against a minor) from placement on the state sex offender web site. With respect to this grant of discretion, Alaska legislators should do one of two things: Either adopt an individualized risk assessment program for offenders within this category and exclude from web publication those deemed to pose a low community risk or simply exclude these offenders as a class. The first approach would strike the optimal balance between the competing goals of providing adequate public notice and promoting offender reintegration and rehabilitation. It would also be much more expensive to administer, leaving the second approach a reasonable alternative with respect to these low-level offenders.

Include the limited treatment incentives authorized under the Walsh Act. The new federal requirements also offer states some latitude to include treatment incentives in their registration statutes. The Walsh Act generally requires the states to register Tier I offenders for 15 years, Tier II offenders for 25 years, and Tier III offenders for life. However, Section 115(b) provides that Tier I offenders' registration periods may be reduced by five years if they maintain a clean record within the statutory definition of that term, which includes successful completion of an approved treatment program. No reduction is authorized for offenders classified as Tier II or Tier III (73 Fed. Reg. at 38068). (Tier III offenders whose conviction stemmed from a delinquency proceeding are eligible for a reduction in term. In Alaska, however, a conviction triggering registration is defined as a conviction of an adult or a juvenile charged as an adult (AS 12.63.100(3).)

This window of opportunity for offering reduction of the registration period as a treatment incentive is very small. Nevertheless, in light of recent data showing that treatment is often effective in deterring future offenses, Alaska should take advantage of this limited opportunity to encourage released offenders to seek treatment.

Conclusion

There are ways to refine the current sex offender registration system to ensure that it better protects the public. The revulsion and anger that most of us feel toward those convicted of sex crimes should not blind us to the safety interest served by affording released offenders treatment incentives and the opportunity to live stable and socially productive lives. Within the confines of the federal funding mandates, Alaska can strike a more effective balance between warning the public of the most dangerous sexual predators and promoting the reintegration and rehabilitation of the larger class of offenders.

Deborah Periman is an assistant professor with the Justice Center.

For Further Reading

Cohen, M. and E. Jeglic. 2007. "Sex Offender Legislation in the United States: What Do We Know?" *International Journal of Offender Therapy and Comparative Criminology* 51(369): 376.

Levensen, J. and L. Cotter. 2005. "The Effect of Megan's Law on Sex Offender Reintegration." *Journal of Contemporary Criminal Justice* 21(49): 62.

Tewksbury, R. and M. Lees. 2007. "Perceptions of Punishment: How Registered Sex Offenders View Registries." *Crime & Delinquency* 53(380): 403.

Wilson, R., J. Picheca, and M. Prinzo. 2007. "Evaluating the Effectiveness of Professionally-Facilitated Volunteerism in the Community-Based Management of High Risk Sexual Offenders: Part Two—A Comparison of Recidivism Rates." *The Howard Journal* 46(4): 327.

ALASKA JUSTICE FORUM
REPRINTS

March 2009 | JUSTICE CENTER ♦ UNIVERSITY of ALASKA ANCHORAGE | No. 7

Sexual Assaults in Anchorage

Originally published in the *Alaska Justice Forum* 22(4): 2-3 (Winter 2006).
http://justice.uaa.alaska.edu/forum/22/4winter2006/b_sxassault.html

For other articles and publications related to sexual assault and violence against women, see:
http://justice.uaa.alaska.edu/vaw/

Abstract: *This study examined the characteristics of all sexual assaults reported to the Anchorage Police Department from 2000 through 2003. Key descriptive findings are summarized.*

- *Victims tended to be young and female, with Native women victims in over 45% of reported sexual assaults.*
- *In a majority of the assaults – over 62% - the assailant was not a stranger to the victim. The most common non-stranger relationships included friends and acquaintances.*
- *A majority of the assaults occurred indoors, with 45% taking place at the residence of one or both of those involved.*
- *Sixty-five percent of victims had used alcohol prior to the assault and 74% of suspects had also.*
- *While assaults occurred all over the Municipality of Anchorage, they happened with more frequency in Spenard, Fairview, and Downtown.*

Information from four years of police files shows that the problem of sexual assault in Anchorage has discernible contours: most assaults take place indoors, between people who are not strangers to each other, with either or both parties having consumed alcohol. The attached tables, figures and map provide an overview of reported sexual assaults in the city from 2000 through 2003. The data come from a recently-completed report by the Justice Center that updates an earlier study released in 2003. The new study was undertaken by the Center in collaboration with the Anchorage Police Department.

The Justice Center study revealed that victims have tended to be young and female, with Native women victims in over 45 percent of reported sexual assaults. In a majority of the assaults—over 62 percent—the assailant was not a stranger to the victim. A majority of the assaults occurred indoors, with 45 percent taking place at the residence of one or both of those involved. Over 65 percent of the victims had used alcohol prior to the assault and close to 74 percent of suspects had also. While assaults occurred all over the city, they happened with more frequency in certain areas of town—particularly in Spenard, Fairview, and Downtown.

The data presented here are already two years old, but figures released by the FBI's Uniform Crime Reporting (UCR) program indicate that the rate of reported forcible rape (a more tightly defined offense than that reflected in the tables presented here) in the Municipality of Anchorage was 96.1 per 100,000 people in 2004. The national rate was only 32.2. These UCR figures are not directly comparable to those presented in the Justice Center study, but they show that the

Table 1. Race of Victims in Sexual Assaults Reported to Anchorage Police, 2000-2003

Race	Percentage of Anchorage population, 2001[1]	Sexual assault victims N	%	Rate per 1,000 population[2]
White	77.6 %	556	45.5 %	2.77
Native	10.6	550	45.0	20.08
Black	7.2	75	6.1	4.04
Hispanic	6.0	17	1.4	1.10
Asian	7.3	22	1.8	1.17
Pacific Islander	1.3	1	0.1	0.30
Total		**1221**		

1 Includes both males and females (95.2% of victims were female), categories are not mutually exclusive
2 Rate is computed as a four-year rate. To obtain average annual rates, divide by four. Population estimates are 2001 estimates and include both males and females.

Source of data: *Anchorage Police Department & U.S. Census Bureau*

Table 2. Race of Suspects in Sexual Assaults Reported to Anchorage Police, 2000-2003

Race	Percentage of Anchorage population, 2001[1]	Sexual assault suspects N	%	Rate per 1,000 population[2]
White	77.6 %	483	39.6 %	2.40
Native	10.6	272	22.3	9.93
Black	7.2	319	26.1	17.18
Hispanic	6.0	95	7.8	6.16
Asian	7.3	46	3.8	2.44
Pacific Islander	1.3	4	0.3	1.20
Total		**1219**		

1 Includes both males and females (99.5% of suspects were male), categories are not mutually exclusive.
2 Rate is computed as a four-year rate. To obtain average annual rates, divide by four. Population estimates are 2001 estimates and include both males and females.

Source of data: *Anchorage Police Department & U.S. Census Bureau*

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sexual assault rate in Anchorage continues to be extremely high. With the problem of sexual assault, it is also important to note that national data show that many assaults are not reported to the police, so it is possible that the figures collected represent only a limited picture of the problem.

André Rosay of the Justice Center was the principal investigator for the study. The complete results from this recent update can be found at http://justice.uaa.alaska.edu/research/2000/0107sxassaultupdate/index.html. The earlier study is available at http://justice.uaa.alaska.edu/ research/2000/0107sxassault/. A lengthier article on the 2003 study, "Forcible Rapes and Sexual Assaults in Anchorage," appeared in the Winter 2004 issue of the *Alaska Justice Forum.*

This project was supported by Grant No. 2004-WG-BX-0003 awarded by the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Table 3. Alcohol Use by Victims of Sexual Assaults Reported to Anchorage Police, by Year: 2001-2003

Row percentages.

	Alcohol use		No alcohol use		
Year	N	%	N	%	Total
2001	167	62.3 %	101	37.7 %	268
2002	171	63.6	98	36.4	269
2003	194	69.8	84	30.2	278
Total	532	65.3 %	283	34.7 %	815

Source of data: Anchorage Police Department

Table 4. Alcohol Use by Suspects of Sexual Assaults Reported to Anchorage Police, by Year: 2001-2003

Row percentages.

	Alcohol use		No alcohol use		
Year	N	%	N	%	Total
2001	157	76.2 %	49	23.8 %	206
2002	152	72.7	57	27.3	209
2003	136	72.0	53	28.0	189
Total	445	73.7 %	159	26.3 %	604

Source of data: Anchorage Police Department

Figure 1. Locations of Sexual Assaults Reported to Anchorage Police, 2000-2003

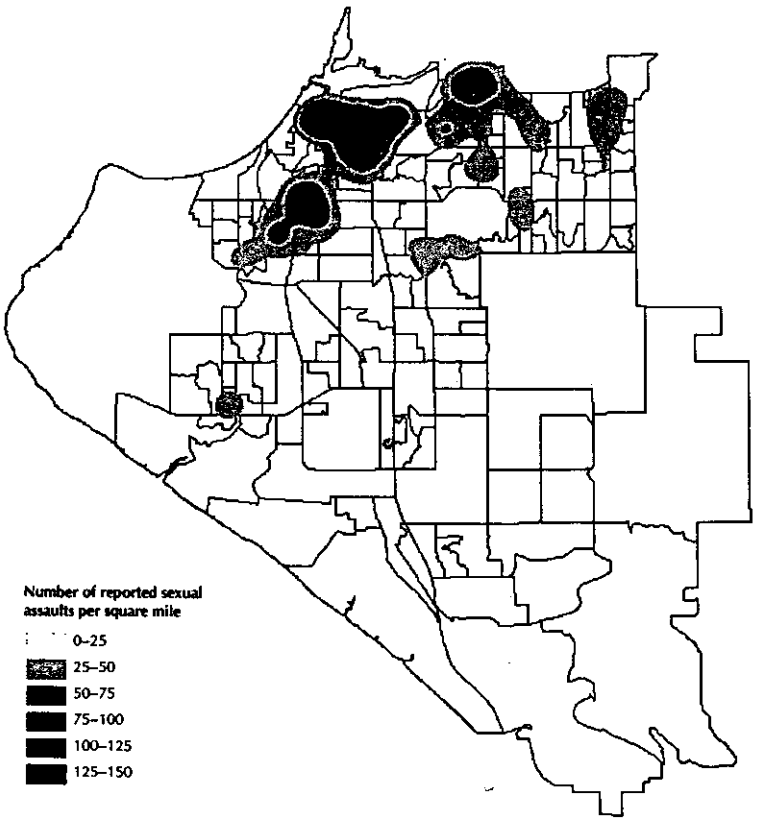


Table 5. Victim-Offender Relationship in Sexual Assaults Reported to Anchorage Police, 2001-2003

Relationship	N	% of total	% of non-stranger
Total non-stranger	645	62.2 %	100.0 %
Acquaintance	330	31.8	51.2
Friend	135	13.0	20.9
Family	83	8.0	12.9
Intimate	97	9.4	15.0
Stranger	392	37.8 %	–.–
Total	1037		

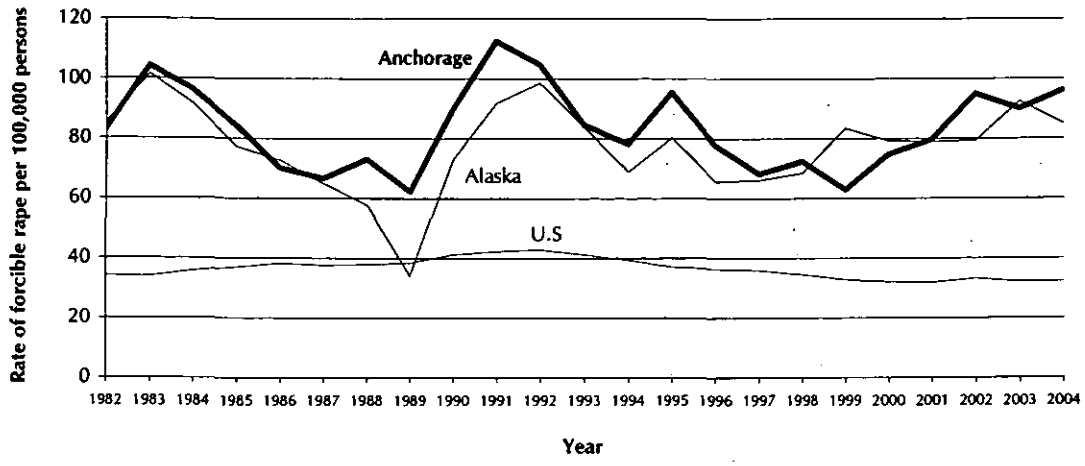
Source of data: Anchorage Police Department

Table 6. Assault Location Type for Sexual Assaults Reported to Anchorage Police, 2000-2003

Location	N	%
Victim's house	250	19.5 %
Suspect's house	256	20.0
Victim and suspect's house	75	5.9
Other's house	141	11.0
Hotel	102	8.0
Bar	13	1.0
Outdoors	250	19.5
Other	111	8.7
Unknown	83	6.5
Total	1281	

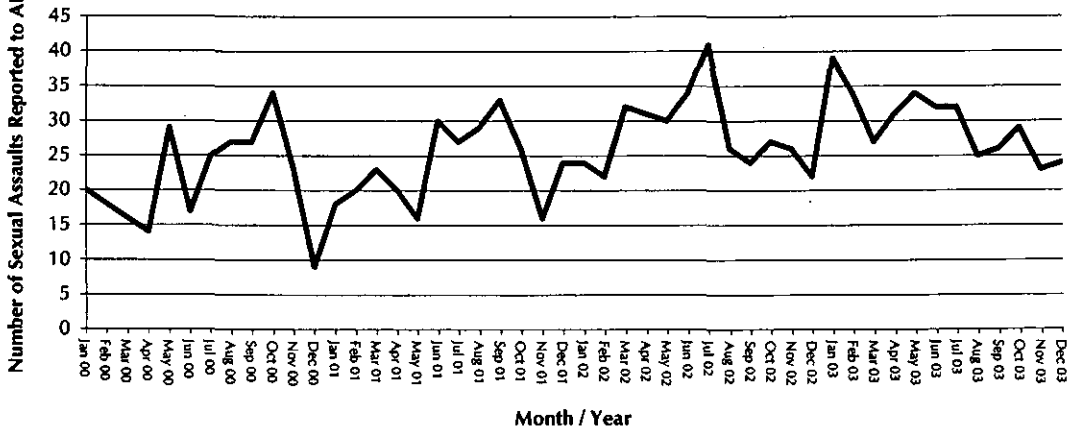
Source of data: Anchorage Police Department

Figure 2. Rates of Forcible Rape in the U.S., Alaska, and Anchorage: 1982 - 2004



Source of data: *Uniform Crime Reports, Federal Bureau of Investigation*

Figure 3. Number of Sexual Assaults Reported to the Anchorage Police Department by Month: January 2000 to December 2003



Source of data: *Anchorage Police Department*

ALASKA JUSTICE FORUM
REPRINTS

March 2009 JUSTICE CENTER ♦ UNIVERSITY of ALASKA ANCHORAGE No. 6

Sexual Assault Case Processing: A Descriptive Model of Attrition and Decision Making

G. Matthew Snodgrass

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http://justice.uaa.alaska.edu/forum/23/1spring2006/a_sxassaultcases.html

For other articles and publications related to sexual assault and violence against women, see:
http://justice.uaa.alaska.edu/vaw/.

Abstract: *This study examined the outcomes of sexual assault cases reported to the Anchorage Police Department between January 2000 and December 2003. The data include 1,052 cases involving one suspect and one victim (85% of all reported sexual assaults). Cases and charges were tracked through the Alaska Department of Law to determine what was referred, accepted, and convicted.*

- *Overall, 18% of cases were referred for prosecution. The most common referred charge was a sexual assault in the first degree. Seventy-nine percent of referred charges were sexual assault charges.*
- *Overall, 12% of cases were accepted for prosecution. The greatest point of attrition was from report to referral. Once referred, 68% of cases were accepted for prosecution. Sixty-eight percent of charges were accepted by the Department of Law as referred. The most common reasons for not accepting a charge as referred were evidentiary reasons. The most common accepted charge was also a sexual assault in the first degree. Seventy-five percent of accepted charges were sexual assault charges.*
- *Overall, 11% of cases resulted in a conviction. Once accepted, 87% of cases resulted in a conviction. Although convictions were common in accepted cases, accepted charges were often dismissed. While 87% of accepted cases resulted in a conviction, 59% of accepted charges were dismissed. Ninety percent of guilty findings were a result of plea bargaining. With plea bargaining, some charges were dismissed but a conviction was still secured. Fifty-six percent of convicted charges were sexual assault charges. The most common convicted charge was for assault, followed by sexual assault in the second degree.*

A recent Justice Center examination of sexual assault case processing shows that close to 60 percent of cases referred by the Anchorage Police Department to the Alaska Department of Law result in a conviction on some charge—although not necessarily the original charge. The number of cases referred, however, is less than 20 percent of those reported.

Anchorage has a very high incidence of reported rape. Between 2000 and 2003, the rate of reported forcible rape in Anchorage was 163 percent higher than in the U.S. as a whole. Over the past twenty years, Anchorage has been consistently at or near the top of U.S. metropolitan statistical areas for rates of reported forcible rape.

The Justice Center examined the outcomes of all sexual assaults involving one suspect and one victim reported to the Anchorage Police Department (APD) between January 2000 and December 2003. In this article we summarize how the Alaska Department of Law disposed of these reported assaults, detail case and charge outcomes and discuss the reasons given by prosecutors for these outcomes.

Overall, 1,235 sexual assaults were reported to APD from January 2000 through December 2003. We sampled all 1,074 sexual assaults committed by one suspect against one victim (87.0% of all sexual assaults reported from January 2000 to December 2003). Data were collected on 1,052 (98%) of these reports. Of these 1,052, 188 (17.9%) were referred for prosecution and had reached final disposition prior to data collection. Offenses in these 1,052 reports included sexual assaults, forcible rapes, attempted sexual assaults, and attempted forcible rapes. As defined by the Federal Bureau of Investigation's Uniform Crime Reports, forcible rape is "the carnal knowledge of a female forcibly and against her will." Sexual assault is a less restrictive state-defined offense that does not consider the gender of the parties involved and does not require carnal knowledge.

For this article, we consider three stages of prosecution: referral, acceptance, and conviction. These stages can be thought of as formal decision points at which prosecutors record what has transpired with the case, and why that outcome resulted. Referral is the forwarding of charges by APD to the DOL. This is the initial stage of prosecution and the first stage at which prosecutors officially become aware of a report. Once a case has been referred to the DOL, it is screened for acceptance. More specifically, prosecutors will screen each charge within each case for acceptance. The prosecutor's initial screening decision for each charge is recorded with a screening disposition code which indicates in what fashion the charge did or did not move forward. At this decision point, in addition to disposition codes, reason codes are given to charges that are not accepted as referred by law enforcement. The reason code indicates the formal reason that prosecutors gave for the disposition of the charge in that manner.

Acceptance can be considered the second stage of prosecution, or the second formal prosecutorial decision point. At this stage prosecutors formally agree to move forward with criminal prosecution. Once a final outcome has been established, a final disposition code and potentially a reason code are attached to each individual accepted charge within a case. The final disposition code indicates the final outcome of an accepted charge. The reason code associated with this final disposition reflects the prosecutor's reason for the final disposition of the charge. A conviction is an accepted charge result-

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Table 1. Number of Cases By Stage

Stage	N	% of reported	% of referred	% of accepted
Reported	1052	100.0 %	—	—
Referred	188	17.9	100.0 %	—
Accepted	127	12.1	67.6	100.0 %
Convicted	111	10.6	59.0	87.4

Source of data: Alaska Department of Law

ing in a finding of guilt. A finding of guilt can occur through plea bargaining or being found guilty beyond a reasonable doubt by either judge or jury.

Table 1 describes the number of cases reported, referred, accepted, and convicted. Of the 1,052 reported cases, 188 (17.9%) were referred to DOL and 127 (67.6%) were accepted. Finally, 111 (87.4%) of these 127 cases resulted in a conviction. Obviously, the point with the greatest attrition is from report to referral.

For the purposes of this article, two separate levels of analysis are used: a case-level analysis and a charge-level analysis. For case-level analysis, a case as a whole is the unit of analysis. With this level of analysis, we are concerned only with the most serious outcome at a particular stage. The second level of analysis, at the charge level, considers individual charges within a case, using the individual charge as the unit of analysis. Using this level of analysis, we are concerned with all charges at each decision point, not simply the single charge that received the most serious outcome. This distinction is important for understanding many of the results of this project.

From referral to acceptance, there is often cross-movement of charges within a case. While it is necessary that at least one charge be referred for any case to be accepted, the number of charges within a case need not be static from referral to acceptance or from acceptance to conviction. Law enforcement may refer many charges to prosecutors, but upon review of the case, prosecutors agree to move forward with prosecution on a subset of the referred charges (i.e., the number of accepted charges is less than the number referred). Similarly, it is possible that when law enforcement refers only a single charge to prosecutors, upon review, prosecutors feel that additional charges are appropriate (i.e., they create an accepted charge that was not referred).

Table 2. Referred Charges

Charge	N	%
Sexual assault 1	180	41.5 %
Sexual assault 2	99	22.8
Sexual assault 3	11	2.5
Sexual abuse of a minor 1	20	4.6
Sexual abuse of a minor 2	28	6.5
Sexual abuse of a minor 3	3	0.7
Sexual abuse of a minor 4	1	0.2
Assault	38	8.8
Kidnapping	17	3.9
Other charge	37	8.5
Total	**434**	

Source of data: Alaska Department of Law

Table 3. Class of Referred Charges

Class	N	%
Unclassified felony	211	48.6 %
Class A felony	12	2.8
Class B felony	135	31.1
Class C felony	36	8.3
Class A misdemeanor	35	8.1
Class B misdemeanor	4	0.9
Non-classified violation	1	0.2
Total	**434**	

Source of data: Alaska Department of Law

Referral

As mentioned earlier, of the 1,052 reported sexual assault cases, 188 (17.9%) resulted in a referral to the DOL. Fewer than half (41.5%) of the referred cases included one charge; 76.5 percent had three or fewer charges. Overall, the 188 referred cases contained 434 referred charges. Table 2 shows the distribution of these 434 referred charges by charge type. One hundred and eighty (41.5%) of the referred charges were sexual assaults in the first degree. Further, 290 (66.8%) of the 434 referred charges were sexual assaults of some degree. Fifty-two (12.0%) of the referred charges were for sexual abuse of a minor; 38 (8.8%) were assault charges; 17 (3.9%) were kidnapping charges; and 37 (8.5%) were other charges. Examples of other charges included contributing to the delinquency of a minor, driving under the influence, and possession of child pornography.

Table 4. Disposition of Referred Charges

Disposition	N	%
Accepted as referred	296	68.2 %
Accepted—same class	7	1.6
Accepted—higher level	19	4.4
Accepted—lesser felony	6	1.4
Accepted—lesser misdemeanor	2	0.5
Prosecution declined—dismissal required	9	2.1
Prosecution declined—no dismissal required	95	21.9
Total	**434**	

Source of data: Alaska Department of Law

Table 3 is a breakdown of referred charges by class. Over 90 percent (n = 394) of the referred charges were felonies. Almost half of the charges (48.6%) were referred as unclassified felonies, that is, the gravest crimes under Alaska statutes, carrying with them the harshest penalties. Under the statutes, sexual assault is taken very seriously. Further, when a report results in a referral, the charges referred for prosecution are at a high level of class severity and carry with them some of the most significant penalties exacted by the justice system.

All charges referred to the DOL receive screening disposition codes. Table 4 indicates the disposition codes that were attached to the 434 referred charges. Prosecutors agreed to prosecute 68.2 percent of charges as referred by law enforcement. "Prosecution declined" disposition codes were attached to 24.0 percent (n=104) of

Table 5. Reason for Not Accepting Charge as Referred

Reason	N	%
Witness reason	24	17.4 %
Evidentiary reason	63	45.7
Discretionary reason	45	32.6
Procedural/other reason	6	4.3
Total	**138**	

Source of data: Alaska Department of Law

Table 6. Charge Progression from Referral to Acceptance

	Accepted		
Referred	Yes	No	Total
Yes	330	104	**434**
No	83	0	**83**
Total	**413**	**104**	**517**

Source of data: Alaska Department of Law

Table 7. Accepted Charges

Charge	N	%
Sexual assault 1	151	36.6 %
Sexual assault 2	79	19.1
Sexual assault 3	13	3.1
Sexual abuse of a minor 1	27	6.5
Sexual abuse of a minor 2	32	7.7
Sexual abuse of a minor 3	7	1.7
Sexual abuse of a minor 4	1	0.2
Assault	38	9.2
Kidnapping	12	2.9
Other charge	53	12.8
Total	**413**	

Source of data: Alaska Department of Law

referred charges. Interestingly, 92.2 percent (n=400) of charges were either accepted as referred by law enforcement or declined.

Here we make claims about charges, not cases. As stated earlier, a majority of cases (58.5%) have more than one charge. It is therefore possible that at least one charge in a case progresses forward, while others are dismissed.

Only charges that were not accepted as referred receive reason codes. Thus, in our sample, the 138 charges not accepted as referred received reason codes. Reasons for not accepting charges as referred are shown in Table 5. What is important to note is the proportion of reasons, by type, given by prosecutors for a charge not being accepted as referred. At this stage, evidentiary reasons were the most typical reasons (45.7%) for not accepting a charge as referred. Discretionary reasons were the second most common reasons for not accepting a charge as referred—32.6 percent.

Transition between Referral and Acceptance

Of the 434 charges that were referred for prosecution, 330 (76.0%) were accepted, either as referred or as a different charge, while the remaining 104 (24.0%) were dropped. Also, 83 new charges were created by prosecutors from referral to acceptance. This means that there were a total of 517 charges at some stage of prosecution within these 188 cases (see Table 6).

We now briefly focus on the 104 charges that were declined for prosecution and the 83 new charges that were added by prosecutors. Half (n=52) of the 104 charges not accepted by the DOL were sexual assaults in the first degree and an additional 21.2 percent (n=22) were sexual assaults in the second degree. Over half of the charges that were not accepted by prosecutors were unclassified felonies and an additional 27.9 percent were class B felonies. Of the 83 charges added by prosecutors, 32 (38.6%) were sexual assault charges, 20 were sexual abuse of a minor charges, 6 were assault charges, 2 were kidnapping charges, and 23 were other charges. New charges added by prosecutors were most commonly class B felonies or unclassified felonies.

Acceptance

We now turn our attention to the 413 charges that moved forward from referral to acceptance. Within the case-level analysis, 127 cases of the original 188 moved forward from referral to acceptance (see Table 1). Stated differently, prosecutors agreed to move forward on 67.6 percent of the cases referred to them. Of the 127 accepted cases, 28.3 percent contained one charge and 70.8 percent contained three or fewer charges. Overall, 413 charges moved forward between referral and acceptance. Table 7 shows the charge type of these 413

Table 8. Referred Charges Versus Accepted Charges, for Charges that were Both Referred and Accepted

		Accepted charge									
Referred charge	Total	Sexual assault 1	Sexual assault 2	Sexual assault 3	Sexual abuse of a minor 1	Sexual abuse of a minor 2	Sexual abuse of a minor 3	Sexual abuse of a minor 4	Assault	Kidnapping	Other charge
Sexual assault 1	**128**	**123**	2	1	–	–	–	–	2	–	–
Sexual assault 2	**77**	12	**62**	2	1	–	–	–	–	–	–
Sexual assault 3	**9**	1	1	**7**	–	–	–	–	–	–	–
Sexual abuse of a minor 1	**19**	–	–	–	**18**	1	–	–	–	–	–
Sexual abuse of a minor 2	**24**	–	–	–	1	**23**	–	–	–	–	–
Sexual abuse of a minor 3	**1**	–	–	–	–	–	**1**	–	–	–	–
Sexual abuse of a minor 4	**1**	–	–	–	–	–	–	**1**	–	–	–
Assault	**31**	–	–	–	–	1	–	–	**30**	–	–
Kidnapping	**10**	–	–	–	–	–	–	–	–	**10**	–
Other charge	**30**	–	–	–	–	–	–	–	–	–	**30**
Total	**330**	**136**	**65**	**10**	**20**	**25**	**1**	**1**	**32**	**10**	**30**

Source of data: Alaska Department of Law

Table 9. Class of Accepted Charges

Class	N	%
Unclassified felony	179	43.3 %
Class A felony	18	4.4
Class B felony	116	28.1
Class C felony	46	11.1
Class A misdemeanor	40	9.7
Class B misdemeanor	6	1.5
Nonclassified misdemeanor	1	0.2
Misdemeanor probation or SIS revocation	7	1.7
Total	**413**	

Source of data: Alaska Department of Law

Table 10. Referred Charge Class Versus Accepted Charge Class for Charges That Were Both Referred and Accepted

		Accepted class					
Referred class	Total	Unclassified felony	Class A felony	Class B felony	Class C felony	Class A misdemeanor	Class B misdemeanor
Unclassified felony	**151**	**144**	1	3	1	2	–
Class A felony	**10**	2	**8**	–	–	–	–
Class B felony	**106**	11	3	**87**	5	–	–
Class C felony	**29**	1	1	3	**24**	–	–
Class A misdemeanor	**30**	–	–	1	1	**28**	–
Class B misdemeanor	**4**	–	–	–	–	–	**4**
Total	**330**	**158**	**13**	**94**	**31**	**30**	**4**

Source of data: Alaska Department of Law

charges. As with referral, the most common accepted charge was sexual assault in the first degree—36.6 percent (n=151) of the accepted charges. Further, 58.8 percent of all accepted charges were sexual assaults in some degree.

Table 8 shows exactly how charges moved from the referral stage to the accepted stage, for the 330 charges which were both referred and accepted. What is interesting here is the remarkable consistency with which charges fall on the table's diagonal: A charge referred and accepted as the same charge type will fall on a diagonal line from the upper-left to lower-right corners. We see that the vast majority of charges (92.4%) fall on this diagonal.

Table 9 provides the charge class frequencies for the 413 charges that were accepted by the DOL. Most charges were accepted as unclassified felonies. Furthermore, 86.9 percent of the charges in our sample were accepted at the felony level. Knowing that the vast majority of charges are accepted as referred, we could reasonably expect charge class to remain relatively constant from referral to acceptance—as Table 10 shows. For charges that were both referred and accepted, there is a great degree of class congruency between referral and acceptance.

Table 11. Disposition of Accepted Charges

Disposition	N	%
Jury trial—guilty as charged	10	2.4 %
Jury trial—not guilty	17	4.1
Pled as charged	52	12.6
Plea—amended charge	72	17.4
Dismissed by prosecutor	243	58.8
Dismissed by court	9	2.2
Probation/SIS revoked	4	1.0
No true bill	3	0.7
Final disposition outstanding	3	0.7
Total	**413**	

Source of data: Alaska Department of Law

Final Disposition

Once a final outcome has been determined for a charge, prosecutors attach a final disposition code. Table 11 shows the final disposition codes that were attached to the 413 accepted charges in our sample. What is immediately apparent is the large of proportion of charges that are dismissed by prosecutors. Of the 413 accepted charges, 243 (58.8%) were dismissed by prosecutors. Taken as a whole, 61.7 percent of accepted charges were later dismissed, including those for which no true bill was returned. Another point becomes clear from Table 11: For 124 of the 138 accepted charges that resulted in a finding of guilt, the conviction was a result of plea bargaining. This means that plea agreements were responsible for 89.9 percent of guilty findings in our sample. To state this differently: Only 10 percent of guilty findings were a result of court action.

Charges that were dismissed by prosecutors or charges for which prosecutors allowed a plea to an amended charge are given a final disposition reason code. These reasons are shown in Table 12. The most striking result in Table 12 is the degree to which discretionary reasons are cited by prosecutors. Of the reasons given by prosecutors for dismissing a charge or allowing a plea to an amended charge, 70.5 percent were discretionary in nature. Among discretionary reasons for charge dismissal can be the choice of another charge as more accurate, the consolidation of charges, or the suspect pleading to the essence of the offense.

Table 12. Reason for Accepted Charges Being Dismissed or Allowing Plea to an Amended Charge

Reason	N	%
Witness reason	53	16.8 %
Evidentiary reason	34	10.8
Discretionary reason	222	70.5
Procedural/other reason	6	1.9
Total	**315**	

Source of data: Alaska Department of Law

Conviction

Of the 127 cases that were accepted by DOL, 16 cases (12.6%) resulted in no conviction. Most cases (87.4%) resulted in a conviction on at least one charge. When examining the charge-level analysis, 138 (33.4%) of the 413 accepted charges resulted in a finding of guilt. Table 13 is a frequency table of convicted charge types. Table 14 presents the changes in the types of charges between acceptance and conviction. We see much more variation about the diagonal than we did in earlier crosstabulations.

Table 13. Convicted Charges

Charge	N	%
Sexual assault 1	12	8.7 %
Sexual assault 2	35	25.4
Sexual assault 3	10	7.2
Sexual abuse of a minor 1	2	1.4
Sexual abuse of a minor 2	14	10.1
Sexual abuse of a minor 3	3	2.2
Sexual abuse of a minor 4	1	0.7
Assault	30	21.7
Kidnapping	2	1.4
Other charge	29	21.0
Total	**138**	

Source of data: Alaska Department of Law

Table 14. Accepted Charges Versus Convicted Charges, for Accepted Charges that Resulted in a Conviction

		Convicted charge									
Accepted charge	Total	Sexual assault 1	Sexual assault 2	Sexual assault 3	Sexual abuse of a minor 1	Sexual abuse of a minor 2	Sexual abuse of a minor 3	Sexual abuse of a minor 4	Assault	Kidnapping	Other charge
Sexual assault 1	41	12	18	1	–	–	–	–	5	–	5
Sexual assault 2	31	–	17	5	–	–	–	–	7	–	2
Sexual assault 3	4	–	–	4	–	–	–	–	–	–	–
Sexual abuse of a minor 1	5	–	–	–	2	2	–	–	–	–	1
Sexual abuse of a minor 2	15	–	–	–	–	12	2	–	–	–	1
Sexual abuse of a minor 3	1	–	–	–	–	–	1	–	–	–	–
Sexual abuse of a minor 4	1	–	–	–	–	–	–	1	–	–	–
Assault	18	–	–	–	–	–	–	–	17	–	1
Kidnapping	3	–	–	–	–	–	–	–	1	2	–
Other charge	19	–	–	–	–	–	–	–	0	–	19
Total	**138**	**12**	**35**	**10**	**2**	**14**	**3**	**1**	**30**	**2**	**29**

Source of data: Alaska Department of Law

Table 15. Class of Convicted Charges

Class	N	%
Unclassified felony	10	7.2 %
Class A felony	7	5.1
Class B felony	36	26.1
Class C felony	34	24.6
Class A misdemeanor	42	30.4
Class B misdemeanor	5	3.6
Misdemeanor probation or SIS revocation	4	2.9
Total	**138**	

Source of data: Alaska Department of Law

Table 16. Accepted Charge Class Against Convicted Charge Class, for Charges that Resulted in a Conviction

		Conviction class						
Accepted class	Total	Unclassified felony	Class A felony	Class B felony	Class C felony	Class A misde-meanor	Class B misde-meanor	Misdemeanor probation or SIS revocation
Unclassified felony	44	10	5	13	10	6	–	–
Class A felony	7	–	2	1	2	1	1	–
Class B felony	47	–	–	22	11	13	1	–
Class C felony	16	–	–	–	11	5	–	–
Class A misdemeanor	18	–	–	–	–	17	1	–
Class B misdemeanor	2	–	–	–	–	–	2	–
Misdemeanor probation or SIS revocation	4	–	–	–	–	–	–	4
Total	**138**	**10**	**7**	**36**	**34**	**42**	**5**	**4**

Source of data: Alaska Department of Law

This is an indication that charge types are shifting between acceptance and conviction. Given that a large proportion of cases are disposed of by plea bargaining, this is not surprising.

There is a shift in charge class similar to the shift in charge type we observed between acceptance and conviction. Table 15 presents the convicted charge class, and Table 16 demonstrates the way charge class shifted between acceptance and conviction.

Sexual assaults in some degree formed 60.8 percent of charges that were accepted but failed to result in a conviction.

Conclusions

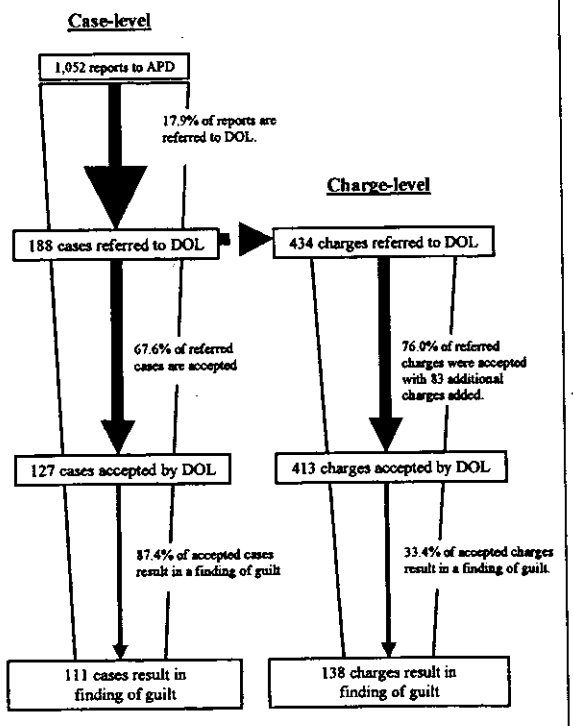
As we have seen, the picture of sexual assault case processing that emerges depends, in large part, on the level of analysis. Conclusions about the prosecution of sexual assaults by the DOL vary substantially depending on which level of analysis we consider. Figure 1 succinctly illustrates the points and rates of attrition for sexual assault cases and charges at the three formal prosecutorial decision points considered in this project. Figure 1 shows that a higher proportion of charges than offenders are being removed from the system at each decision point. Furthermore, results indicate that most offenders whose cases reach prosecutors are being held accountable in some degree; that is, they receive criminal sanctions. Another fact becomes clear when looking at Figure 1: The point of highest attrition is prior to prosecutorial involvement, with 82.5 percent of reported sexual assaults not referred for prosecution. This is by far the largest filtering that occurs at any formal decision point studied in this research. However, determining what precisely is happening between report and referral is beyond the scope of the present project.

In addition to the rates of attrition shown in Figure 1, there is a substantial change in the types of charges that flow through the three decision points examined in this research (Tables 8, 10, 14, and 16). The distribution of charges by type is relatively constant from referral to acceptance, but there is a demonstrable shift in the distribution between acceptance and conviction. The most dramatic shift is observed for the sexual assault in the first degree charges. At referral, charges for sexual assault in the first degree constitute 41.5 percent of all charges. At acceptance, this proportion is relatively unchanged at 36.6 percent. However, sexual assault in the first degree constitutes only 8.7 percent of convicted charges.

Upon first inspection, this result may be startling, but it becomes readily explainable when viewed in light of previous results. We stated earlier that the vast majority (89.9%) of convictions in our sample are a result of plea bargaining, which commonly results in convictions on less serious charges. We could therefore reasonably expect that many charges in our sample would result in convictions on charges that are less severe than those originally referred or accepted.

While the reason codes may not capture all possible reasons for charge dispositions, they offer useful insight into prosecutorial decision making. A comparison of reason codes between those given from referral to acceptance (Table 7) and those given from acceptance to conviction (Table 12) shows that there is a perceptible shift in the reasons attached to case dispositions at the respective decision points. From referral to acceptance, evidentiary reasons account for 47.5 percent of reasons given for a referred charge not being accepted as referred. From acceptance to conviction, this proportion drops substantially to 10.8

Figure 1. Case and Charge Movement Between Decision Points



Source of data: Alaska Department of Law

percent of reasons given by prosecutors. The opposite happens for the proportion of total reasons that are discretionary in nature. Between referral and acceptance, discretionary reasons account for 32.6 percent of the reasons given by prosecutors. This proportion jumps to 70.5 percent of reasons given for a dismissal or plea agreement to an amended charge.

Overall, we began with a total 1,074 sexual assaults reported to the Anchorage Police Department between January 2000 and December 2003 involving one suspect and one victim. Data were collected on 1,052 (98%) of these 1,074 reports. These 1,052 reports to APD resulted in the referral of 188 cases and 434 charges to DOL. These 188 referred cases resulted in the acceptance of 127 cases that included 413 charges. Prosecutors obtained convictions in 111 cases on 138 charges. Thus, the majority of cases resulted in a conviction on at least one charge. For referred cases, a majority of respondents were held accountable for their actions to some degree.

It remains true, however, that a heavy majority of reported sexual assaults are not referred for prosecution. More examination of this point in case processing—between reporting and referral—is urgently needed.

Since the greatest source of case and charge attrition is from report to referral, enhancing offender accountability may depend on increasing the proportion of reported sexual assaults that are referred to the Department of Law.

G. Matthew Snodgrass is a researcher in an ongoing study of sexual assaults in Anchorage. The study is being directed by André Rosay of the Justice Center. *The complete report on which this article is based is available at http://justice.uaa.alaska.edu/research/2000/0611sexassault/0611sxcaseprocess.html.* *This project was supported by Grant No. 2004-WG-BX-0003 awarded by the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.*

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Forcible Rapes and Sexual Assaults in Anchorage

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http://justice.uaa.alaska.edu/forum/20/4winter2004/a_rapes.html

For other articles and publications related to sexual assault and violence against women, see:
http://justice.uaa.alaska.edu/vaw/

Abstract: *This study examined the characteristics of all sexual assaults reported to the Anchorage Police Department from 2000 through 2003. Key descriptive findings are summarized.*

- *Victims tended to be young and female, with Native women victims in over 45% of reported sexual assaults.*
- *In a majority of the assaults — over 62% — the assailant was not a stranger to the victim. The most common non-stranger relationships included friends and acquaintances.*
- *A majority of the assaults occurred indoors, with 45% taking place at the residence of one or both of those involved.*
- *Sixty-five percent of victims had used alcohol prior to the assault and 74% of suspects had also.*

Alaska generally, and Anchorage specifically, have been plagued by a high incidence of forcible rapes and sexual assaults. For the first time, solid data on victim and suspect characteristics, time and location of assaults and other details have been assembled and studied. These data contradict some of the more common assumptions regarding Anchorage's rape problem.

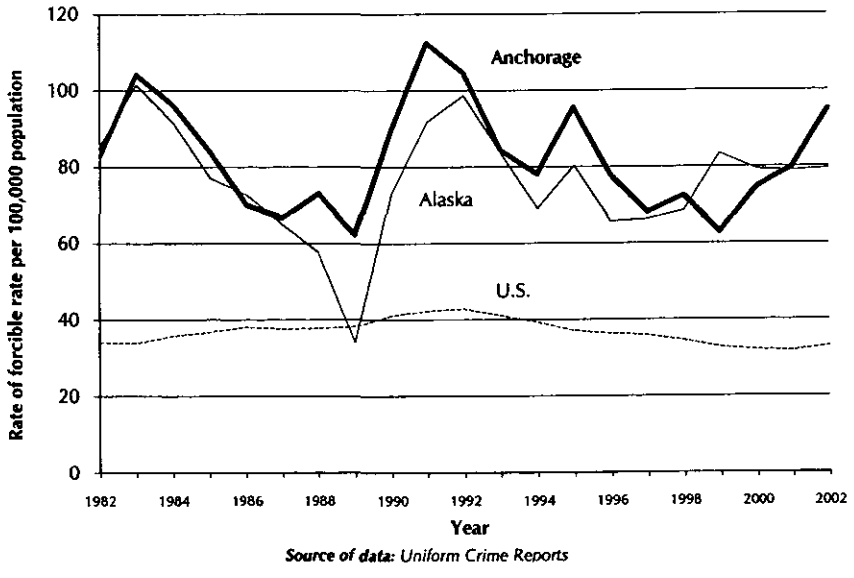
The data are important to designing effective rape prevention efforts. The Anchorage Police Department has recently secured new funding sources directed at reducing the occurrence of forcible rapes and sexual assaults: a $2 million federal grant and a $500,000 municipal grant. The question now is how to best allocate these resources. As discussed in the criminological literature, problem-oriented policing offers a promising approach.

Problem-oriented policing is a strategy in which police (1) define the problems to be solved, (2) diagnose these problems to identify their causes, (3) develop and implement interventions that address these causes, and (4) assess the efficacy of their interventions.

As defined in the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Program, forcible rape is "the carnal knowledge of a female forcibly and against her will." Attempted forcible rapes are also included in the UCR's measure. Figure 1 displays the rates of forcible rape reported to police from 1982 to 2002 for the United States, Alaska, and Anchorage. In 2002, the state of Alaska had the highest rate of reported forcible rape among the 50 states (79.4 per 100,000) and Anchorage had the second highest rate of reported forcible rape among metropolitan statistical areas in the U.S. (95.0 per 100,000). In 2002, the rates of reported forcible rape were 141 percent higher in Alaska and 188 percent higher in Anchorage than in the U.S.

In addition to forcible rapes, Anchorage also has a high rate of reported sexual assaults (although national comparisons are not available). The definition of a sexual assault is less restrictive than that of a forcible rape: sexual contact with another person, male or female, without the consent of that other person. In 2002, there were 254 forcible rapes and 85 sexual assaults reported to the Anchorage Police Department, for a total of 339 forcible rapes and sexual assaults. Furthermore, according to analysis done by Callie Marie Rennison for the Bureau of Justice Statistics, national statistics indicate that only 36 percent of forcible rapes, 34 percent of attempted forcible rapes, and 26

Figure 1. Rates of Forcible Rape in the U.S., Alaska, and Anchorage, 1982-2002



Source of data: *Uniform Crime Reports*

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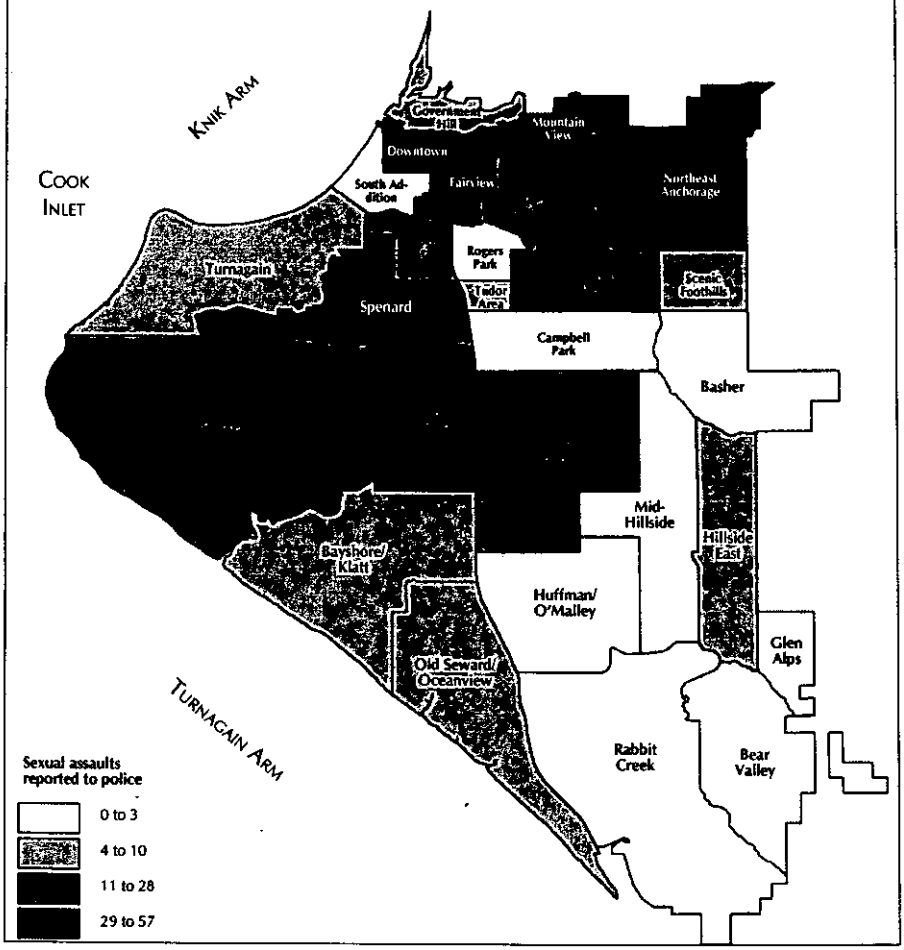
Figure 2. Sexual Assaults Reported to Anchorage Police by Community Council Area, 2000-2001



percent of sexual assaults are reported to the police. In light of this, the forcible rape and sexual assault problem in Anchorage is probably worse than that indicated by police statistics.

A joint project of the UAA Justice Center and the Anchorage Police Department has focused on gaining a better understanding of the parameters of the rape problem in Anchorage. Researchers collected data from all sexual assaults and rapes reported to the Anchorage Police Department in 2000 and 2001. These data contain detailed information on the assaults, victims, and suspects. The findings presented here reflect a quantitative perspective on those assaults that have been reported. It is important to note again that many sexual assaults go unreported.

The key findings from this study suggest that interventions will be successful in Anchorage only insofar as they take into account:

- Geographical and temporal concentration of reported sexual assaults and rapes;
- Demographic characteristics of victims and suspects;
- Types of victim-suspect relationships;
- Locations of assaults; and
- Use of alcohol.

Like all criminal activity, sexual assaults and rapes are neither geographically nor temporally random. In the data studied, reported sexual assaults and rapes were most likely to occur in five community council areas—Downtown, Fairview, Spenard, Mountain View, and, to a lesser extent, Northeast Anchorage (see Figure 2). More specifically, 10.1 percent of the sexual assaults and rapes reported in 2000 and 2001 occurred Downtown, 10.1 percent in Fairview, 13.4 percent in Spenard, 10.1 percent in Mountain View, and 9.0 percent in Northeast. Of the 424 assault locations reported in 2000 and 2001, 52.7 percent were in these five community council areas. Temporally, reported sexual assaults and rapes were most likely to occur on the weekends and from 10 PM to 6 AM. More precisely, 49 percent of sexual assaults and rapes reported in 2000 and 2001 occurred on weekends and 60 percent occurred between 10 PM and 6 AM.

Knowing where and when sexual assaults

Table 1. Race of Victims of Sexual Assaults Reported to Anchorage Police, 2000-2001

Race[1]	Victims[2] N=539 N	%	Percentage of Anchorage population, 2001[3]	Sexual assault rate per 1,000 population[4]
Caucasian	257	47.7 %	77.6 %	1.28
Native	243	45.1	10.6	8.86
Hispanic	8	1.5	6.0	0.52
African-American	27	5.0	7.2	1.45
Asian	8	1.5	7.3	0.42
Pacific Islander	0	0.0	1.3	0.00

[1] Categories are not mutually exclusive.
[2] Detail adds to greater than total N because victims may be of more than one race.
[3] Includes both males and females (95.5% of victims were female).
[4] Base population includes both males and females.
Source of data: 2000 and 2001 data (N=539); U.S. Census Bureau, 2001 Supplementary Survey (Anchorage, AK MSA) <www.census.gov/acs/www/Products/Profiles/Single/2001/SS01/Tabular/380/38000US03801.htm>.

Table 2. Race of Suspects in Incidents of Sexual Assault Reported to Anchorage Police, 2000-2001

Race[1]	Suspects[2] N=567 N	%	Percentage of Anchorage population, 2001[3]	Sexual assault suspects per 1,000 population[4]
Caucasian	231	40.7 %	77.6 %	1.15
Native	126	22.2	10.6	4.60
Hispanic	47	8.3	6.0	3.05
African-American	137	24.2	7.2	7.38
Asian	30	5.3	7.3	1.59
Pacific Islander	4	0.7	1.3	1.20

[1] Categories are not mutually exclusive.
[2] Detail adds to greater than total N because suspects may be of more than one race.
[3] Includes both males and females (99.4% of suspects were male).
[4] Base population includes both males and females.
Source of data: 2000 and 2001 data (N=539); U.S. Census Bureau, 2001 Supplementary Survey (Anchorage, AK MSA) <www.census.gov/acs/www/Products/Profiles/Single/2001/SS01/Tabular/380/38000US03801.htm>.

and rapes occur is an important step in defining the problem to be solved. These results provide reliable evidence of the geographical and temporal concentration of sexual assaults and rape—rather than unreliable evidence based on hunches, experience, or common sense. This evidence suggests that police efforts to combat sexual assaults and rape ought to be concentrated on the weekends from 10 PM to 6 AM in Downtown, Fairview, Spenard, Mountain View, and Northeast.

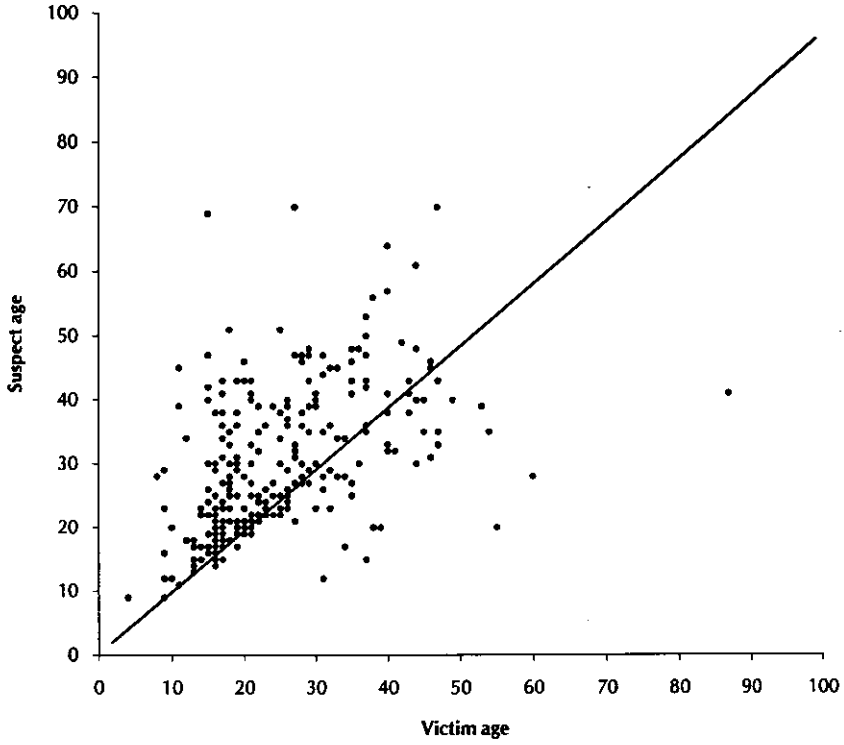
At the same time, police efforts to combat sexual assault and rape need to take into consideration the demographic characteristics of both victims and suspects. The vast majority (95.5%) of victims were female, with most (93.2%) residing in Anchorage. Almost all suspects (99.4%) were male and, again, most (94.3%) resided in Anchorage. Most victims were Caucasian or Native, with Native victims vastly overrepresented (see Table 1). For reported sexual assaults and rapes, Natives were 7.6 times more likely than others to be a victim.

Suspects were more racially diverse than victims (see Table 2). Most suspects were Caucasian, but Native and African-American suspects were overrepresented in proportion to the general population.

The age of victims and suspects is shown in Figure 3. On average, victims were 5 years younger than suspects. For victims, the highest rate of reported sexual assault and rape was for 15-to-19-year-olds (6.76 per 1,000) while for suspects, the highest rate of reported sexual assault and rape was for 20-to-24-year-olds (3.75 per 1,000).

Figure 3. Victim and Suspect Age in Sexual Assault Cases Reported to Anchorage Police, 2000-2001

Analysis includes only those cases with one victim and one suspect (N = 264).



With these demographics characterizing those involved in sexual assaults, interventions should primarily focus on Anchorage residents rather than visitors. Furthermore, it is clear that victim-focused interventions must occur at an earlier age than suspect-focused interventions. The daily routines of 15-to-19-year-olds are substantially different than those of 20-to-24-year-olds. In particular, 15-to-19-year-olds are likely to be in school during the week, making schools an attractive intervention partner for victim-focused interventions. Developing suspect-focused interventions in schools, however, makes little sense as most suspects are beyond school age.

It would also make little sense to develop interventions without considering the relationships between victims and suspects. These relationships are described in greater detail in Table 3. According to the 2002 National Crime Victimization Survey, only 32.5 percent of sexual assaults nationwide and rapes are stranger assaults. In Anchorage, however, stranger assaults are far more common. In 2000 and 2001, 44.3 percent of victims who reported a sexual assault or rape to police did not know the offender beforehand. Among non-stranger assaults, the most common were assaults between casual acquaintances (30.4%) and those between well-known friends (27.1%). Unfortunately, little is known about the differences between stranger and non-stranger assaults. Consequently, the implications of this important finding are still unclear. It is likely, however, that important differences between stranger and non-stranger assaults do exist, requiring separate approaches to reduce occurrence. For example, it is possible that non-stranger assaults are more likely to occur in private places than stranger assaults.

Though we have not yet investigated these differences, our analyses clearly reveal that most sexual assaults reported to police (over 67.7%) occurred indoors (see Table 4). The most common indoor locations included the victim's residence and the suspect's residence. Of the sexual assault locations, 45.3 percent were the victim's residence or suspect's residence (or both), and an additional 9.9 percent took place in some other residence. In comparison, fewer sexual assaults occurred outdoors (22.0%). Common outdoor locations included fields, woods, parks, roads, streets, and parking lots. Few assaults occurred in vacant lots (5.3%), city parks (1.9%), or along park trails (0.5%). Overall, our data show that

Table 3. Victim-Offender Relationship in Incidents of Sexual Assault Reported to Anchorage Police, 2001

Suspect's relationship to victim	N	% of total	% of non-stranger
Total non-stranger	**181**	**55.7 %**	**100.0 %**
Spouse	8	2.5	4.4
Parent	2	0.6	1.1
Sibling	5	1.5	2.8
Grandchild	1	0.3	0.6
Stepparent	3	0.9	1.7
Other family	9	2.8	5.0
Acquaintance	55	16.9	30.4
Friend	49	15.1	27.1
Neighbor	2	0.6	1.1
Babysitter	2	0.6	1.1
Boy/girlfriend	22	6.8	12.2
Ex-spouse	5	1.5	2.8
Employer	1	0.3	0.6
Otherwise known	17	5.2	9.4
Stranger	**144**	**44.3 %**	**--.-**
Total	**325**		

only 4.3 percent of reported sexual assaults *originated* in parks, fields, or woods and that only 7.3 percent *occurred* in these places. Most of these places were vacant lots. Moreover, while only one assault was reported as occurring in a bar, the original pick-up in 54 cases (13.6%) occurred in a bar—a finding that should be seen in relation to the figures on alcohol involvement in sexual assaults.

Consequently, strategies that target outdoor places, particularly ones that target parks or trails, will not appreciably affect the rates of sexual assault and rape in Anchorage. Although the municipality's Trail Watch Program instituted in September 2003 may reduce the fear of crime among trail users (and may reduce other forms of crime), it will probably have negligible effects, if any, on the occurrence of sexual assaults and rapes if these patterns continue. Different strategies must be used to lower the rates of sexual assault and rape in Anchorage, since most rapes occur indoors, in residences.

Finally, interventions must take into account that alcohol use was very frequent among both suspects and victims. During 2000 and 2001, 76.2 percent of suspects and 59.9 percent of victims had used alcohol. Table 5 displays victim and suspect alcohol use for 176 cases (cases with only one victim and one suspect and cases where both victim and suspect alcohol use was known). Both the suspect and the victim had used alcohol in 59.7 percent of these cases. Only the suspect had used alcohol in 13.1 percent of these cases. Only the victim had used alcohol in 1.7 percent of these cases and neither the suspect nor the victim used alcohol in 25.6 percent of these cases. Stated differently, almost 75 percent of these cases involved alcohol—either by the suspect, the victim, or both.

Overall, we have come a long way towards defining the problems to be solved, diagnosing these problems, and identifying their causes. Though the analyses are neither finished nor definitive, we nonetheless now have some reliable information that can be used to enhance the success of community and police rape prevention efforts. We ought to make sure that all interventions take into consideration that:

- Reported sexual assaults and rapes occur mostly on the weekends from 10 PM to 6 AM in Downtown, Fairview, Spenard, Mountain View, and Northeast;
- The highest victimization rates are for 15-to-19-year-olds while the highest offending rates are for 20-to-24-year-olds;
- 44.3 percent of victims are assaulted by strangers;
- 59.6 percent of known assault locations are private residences; and
- Alcohol use is very frequent among both suspects and victims.

It must be understood that police alone cannot solve the sexual assault and rape problem that has plagued Anchorage for well over 20 years. The data suggest that effective solutions to this problem need to be both suspect-focused and victim-focused (as well as event-focused). Many have dismissed the idea of victim-focused interventions for fear that it leads to victim blaming. The reality, however, is that we can educate about sexual assault and rape without blaming victims for sexual assault and rape: we educate homeowners about burglary prevention without blaming them for burglaries and we educate business owners about shoplifting without blaming them for shoplifting.

André Rosay is an assistant professor with the Justice Center. *The Justice Center report on which this article was based,* ***Descriptive Analysis of Sexual Assaults in Anchorage, Alaska****, is available on the Justice Center website, http://www.uaa.alaska.edu/just/. This project was supported by Grant No. 2000-RH-CX-K039 awarded by the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.*

Table 4. Location Type for Pick-Up and Assault of Victims of Sexual Assault Reported to Anchorage Police, 2000-2001

	Pick-up		Assault	
Location type	**N**	**%**	**N**	**%**
Indoors	**389**	**71.9 %**	**397**	**67.7 %**
Victim's residence	110	20.3	129	22.0
Suspect's residence	66	12.2	121	20.6
Victim's and suspect's residence	12	2.2	15	2.6
Other residence	44	8.1	58	9.9
Bar	54	13.6	1	0.2
Hotel	33	6.1	57	9.7
Doctor's office	14	2.6	16	2.7
Other indoors	56	10.4	18	3.1
Outdoors	**104**	**19.2 %**	**129**	**22.0 %**
Road, street	62	11.5	52	8.9
Parking lot	15	2.8	31	5.3
Vacant lot	14	2.6	29	4.9
Park	7	1.3	11	1.9
Trail	2	0.4	3	0.5
Other outdoors	4	0.7	3	0.5
Unknown	**48**	**8.9 %**	**42**	**7.2 %**
Total	**541**		**586**	

Note: Totals differ because there was sometimes more than one assault location for the same pick-up.

Table 5. Victim and Suspect Alcohol Use in Incidents of Sexual Assault Reported to Anchorage Police, 2001

Analysis includes only those cases in which one victim and one suspect were involved.

Alcohol use by suspect	Alcohol use by victim: Yes	No	Total
Yes	**105**	23	**128**
No	3	**45**	**48**
Total	**108**	**68**	**176**

ALASKA JUSTICE FORUM
REPRINTS

March 2009 JUSTICE CENTER ♦ UNIVERSITY of ALASKA ANCHORAGE No. 9

Disposition of Sexual Assault Cases

It is not possible to correlate the figures on reported sexual assaults in Anchorage in 2000-2001 presented in the first article in this issue of the *Alaska Justice Forum* with figures on felony case processing as examined in the Judicial Council felony study, but the Judicial Council felony case study does contain figures specifically related to cases involving sexual offenses that give an idea of how these cases are handled.

According to the Judicial Council study, a sexual offense constituted the most serious charge in 12 percent of the cases studied. Table 1 shows the dispositions for these cases. The data reveal that disposition charges are often lower, sometimes at the misdemeanor level. A majority of all cases, however, resulted in a conviction on a felony charge—and on a sexual offense charge, a disposition that results in placement on the sexual offender registry.

The statistical analysis presented in the Judicial Council study shows that cases involving sexual offenses were handled even-handedly, with no effects associated with ethnicity in charge reduction, pre-disposition incarceration or sentence. Some disparities did appear in association with case location and with type of attorney.

See table on page 2.

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http://justice.uaa.alaska.edu/forum/20/4winter2004/d_rapedisposition.html

For other articles and publications related to sexual assault and violence against women, see:
http://justice.uaa.alaska.edu/vaw/

Abstract: *This article summarizes findings on cases involving sexual offenses from the Alaska Judicial Council study* ***Alaska Felony Process: 1999*** *(February 2004). (The full Judicial Council report is available online at http://www.ajc.state.ak.us/reports/Fel99FullReport.pdf.) The study examined the original single most serious charge and determined its final disposition. Twelve percent of felony cases included a sexual offense as the original single most serious charge. Charges for sexual abuse of a minor were more likely to be convicted as sexual offenses than sexual assault charges (and were less likely to be convicted as misdemeanors).*

- *The most frequent original single most serious charges included sexual abuse of a minor in the second degree (Class B felony), sexual assault in the second degree (Class B felony), sexual assault in the first degree (Unclassified felony), and sexual abuse of a minor in the first degree (Unclassified felony).*
- *Eighty-one percent of charges for sexual abuse of a minor in the second degree were convicted as sexual offense charges. Forty-one percent were convicted as sexual abuse of a minor in the second degree. Thirteen percent were convicted as misdemeanors.*
- *Fifty-five percent of charges for sexual assault in the second degree were convicted as sexual offense charges. Seventeen percent were convicted as sexual assault in the second degree. Thirty-four percent were convicted as misdemeanors.*
- *Fifty percent of charges for sexual assault in the first degree were convicted as sexual offense charges. Nine percent were convicted as sexual assault in the first degree. Twenty-two percent were convicted as misdemeanors.*
- *Eighty-four percent of charges for sexual abuse of a minor in the first degree were convicted as sexual offense charges. Twenty-one percent were convicted as sexual abuse of a minor in the first degree. Five percent were convicted as misdemeanors.*

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Table 1. Charge Changes for Single Most Serious Charge

Original single most serious charge / Final disposition of single most serious charge	N	% of each disposition	Percent convicted of misdemeanor
Sexual abuse minor 1 (unclassified)	**43**	—	**4.7 %**
Sexual abuse minor 1	9	20.9 %	
Attempted sexual abuse minor 1	8	18.6	
Sexual abuse minor 2	15	34.9	
Sexual abuse minor 3	2	4.7	
Sexual assault 1	1	2.3	
Sexual assault 2	1	2.3	
Assault 4 (misd.)	1	2.3	
Contributing to delinquency of minor (misd.)	1	2.3	
Dismissed/acquitted	*5*	*11.6*	
Sexual assault 1 (unclassified)	**46**	—	**21.7 %**
Sexual assault 1	4	8.7 %	
Attempted sexual assault 2	2	4.3	
Attempted sexual assault 1	1	2.2	
Burglary 1	1	2.2	
Perjury	1	2.2	
Sexual assault 2	13	28.3	
Sexual assault 3	2	4.3	
Alcohol to minor (misd.)	1	2.2	
Assault 4 (misd.)	6	13.0	
Attempted sexual assault 3 (misd.)	1	2.2	
Harassment (misd.)	1	2.2	
Criminal mischief 3 (misd.)	1	2.2	
Dismissed/acquitted	*12*	*26.1*	
Attempted sexual abuse minor 1 (Class A)	**1**	—	**0.0 %**
Attempted sexual abuse minor 1	1	100.0 %	
Attempted sexual assault 1 (Class A)	**2**	—	**0.0 %**
Attempted sexual assault 1	1	50.0 %	
Dismissed/acquitted	*1*	*50.0*	
Exploit minor (Class B)	**1**	—	**0.0 %**
Exploit minor	1	100.0 %	
Sexual abuse minor 2 (Class B)	**95**	—	**12.6 %**
Sexual abuse minor 2	39	41.1 %	
Attempted sexual abuse minor 2	20	21.1	
Attempted sexual assault 2	3	3.2	
Coercion	2	2.1	
Probation revocation F	1	1.1	
Sexual assault 3	1	1.1	
Sexual abuse minor 3	8	8.4	
Sexual abuse minor 1	1	1.1	
Sexual assault 2	2	2.1	
Alcohol to minor (misd.)	1	1.1	
Assault 4 (misd.)	3	3.2	
Attempted sexual assault 3 (misd.)	1	1.1	
Attempted sexual abuse minor 3 (misd.)	2	2.1	
Contributing to delinquency of minor (misd.)	4	4.2	
Criminal trespass (misd.)	1	1.1	
Dismissed/acquitted	6	6.3	
Sexual assault 2 (Class B)	**47**	—	**34.0 %**
Sexual assault 2	8	17.0 %	
Attempted sexual assault 2	8	17.0	
Burglary 2	1	2.1	
Sexual assault 3	6	12.8	
Assault 4 (misd.)	6	12.8	
Attempted sexual abuse minor 3 (misd.)	2	4.3	
Criminal trespass (misd.)	1	2.1	
Harassment (misd.)	3	6.4	
Reckless endangerment (misd.)	1	2.1	
Sexual abuse minor 4 (misd.)	1	2.1	
Sexual assault 4 (misd.)	1	2.1	
Violation domestic violence pretective order (misd.)	1	2.1	
Dismissed/acquitted	*8*	*17.0*	
Attempted sexual abuse minor 2 (Class C)	**2**	—	**0.0 %**
Attempted sexual abuse minor 2	2	100.0 %	
Attempted sexual assault 2 (Class C)	**3**	—	**33.3 %**
Attempted sexual assault 2	2	66.7 %	
Harassment (misd.)	1	33.3	
Indecent exposure 1 (Class C)	**3**	—	**33.3 %**
Indecent exposure 1	2	66.7 %	
Indecent exposure 2 (misd.)	1	33.3	
Sexual abuse minor 3 (Class C)	**21**	—	**42.9 %**
Sexual abuse minor 3	8	38.1 %	
Probation revocation F	1	4.8	
Alcohol to minor (misd.)	2	9.5	
Assault 4 (misd.)	2	9.5	
Attempted sexual abuse minor 3 (misd.)	3	14.3	
Contributing to delinquency of minor (misd.)	1	4.8	
Resist arrest (misd.)	1	4.8	
Dismissed/acquitted	*3*	*14.3*	
Sexual assault 3 (Class C)	**6**	—	**16.7 %**
Sexual assault 3	2	33.3 %	
Assault 3	1	16.7	
Attempted sexual assault 2	1	16.7	
Assault 4 (misd.)	1	16.7	
Dismissed/acquitted	*1*	*16.7*	

Source: *Alaska Judicial Council*

ALASKA JUSTICE FORUM
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Assaults in Domestic Violence Incidents Reported to Alaska State Troopers

Marny Rivera, André B. Rosay, Darryl S. Wood, Greg Postle, and Katherine TePas

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http://justice.uaa.alaska.edu/forum/25/3fall2008/a_dvassaults.html

For other articles and publications related to dometic violence and violence against women, see:
http://justice.uaa.alaska.edu/vaw/index.html

Abstract: *This study examined 1,281 cases with an assault charge involving domestic violence reported to Alaska State Troopers in 2004, and excluded any cases reported to local or municipal departments.*

- *Eighty-two percent of reports were handled by three detachment areas: 32% in C – Western Alaska, 29% in D – Interior Alaska, and 22% in B – Southcentral Alaska. Troopers received 80% of the reports, while 20% were received by Village Police Officers, Village Public Safety Officers, or Tribal Police Officers. Eighty-one percent of the assault charges were in the fourth degree. Eighty-four percent of assaults were reported within 24 hours, and 89% of victims and 81% of suspects were interviewed on the day of the report.*
- *Seventy-six percent of suspects were male and 24% were female. On average, suspects were 33 years old and victims were 32 years old. The majority of assaults in domestic violence incidents (86%) were intra-racial. Fifty-seven percent of suspects and 32% of victims used alcohol. Overall, alcohol was involved in 59% of domestic violence incidents reported to Troopers.*
- *Most assaults in domestic violence incidents (75%) occurred between victims and suspects who were staying or living together. The most common forms of violence (disclosed by victims and documented by officers) included pushing, grabbing, or shoving the victim (in 48% of incidents), punching the victim (in 29%), and slapping or hitting the victim (in 28%). Weapons such as knives or guns were rarely used. The most common injuries included bruising (for 38% of victims), lacerations or bite marks (for 27%), bloody nose or lips (for 10%), and black or swollen eyes (for 10%). Forty-three percent of incidents occurred in the presence of children.*
- *Eighty percent of cases were referred to the Alaska Department of Law for prosecution, 68% were accepted for prosecution, and 54% resulted in a conviction. Overall conviction rates were slightly lower for female suspects, but conviction rates were generally not affected by victim gender or victim-suspect relationship.*

Researchers, criminal justice system professionals, victim advocates, and policymakers agree that domestic violence is an undeniable urban and rural problem in Alaska and the nation. Detailed data on domestic violence incidents in the state are sparse, except for ongoing data collection by the Municipality of Anchorage. Now, a recent joint study by the Justice Center, the Alaska State Troopers, and the Alaska Department of Law looks for the first time at reports of assaults in domestic violence incidents made to Troopers for populations outside of Anchorage. Focusing on reports made in 2004 from communities served primarily by the Troopers, the study reviews a final sample of 1,281 cases with an assault charge involving domestic violence. Only reports to the Troopers were included in this study; reports to local or municipal police were not reviewed.

Some preliminary findings mirror national and Anchorage statistics: the majority of domestic violence assault incidents occur between victims and suspects of the same race, and the victim's home is the most common location of the domestic violence incident. On the other hand, both Anchorage data and the data from this study show a much higher use of alcohol by suspects and victims in Alaska than is reported nationally.

Report Characteristics

The majority of reports to Troopers (82%) were handled by three detachment areas: C—Western Alaska (32%), D—Interior Alaska (29%), and B—Southcentral Alaska (22%) (Table 1). While fifty-eight units received at least one report in 2004, over 90 percent of reports came from roughly 18 units or geographic areas (Table 2). Fairbanks Alaska State Trooper (AST) Enforcement and Investigation Units received the highest number of reports (23%) with Palmer AST Enforcement and Investigation Units and Soldotna AST Enforcement and Investigation Units having the second and third highest percentage of reports (19% and 9% respectively). Units in Nome received seven percent of reports while units in Bethel, Aniak, Kotzebue, and Kodiak each received four or five percent of all reports.

Troopers received 80 percent of reports while the remaining 20 percent were received by Village Police Officers, Village Public Safety Officers, or Tribal Police Officers. Reports of assaults in domestic violence incidents were most likely to come from victims (57%), though third parties, including family members, friends, officials, strangers and others, initiated 43 percent of reports.

The 1,281 cases in this study included a total of 1,803 assault charges and 604 other

Table 1. Total Number of Reports by Detachment

Detachment	Reports N	Reports %
C	409	31.9 %
D	367	28.6
B	275	21.5
E	171	13.3
A	49	3.8
ABI	10	0.8
Total	**1,281**	

Source of data: *Alaska State Troopers (2004)*

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Table 2. Total Number of Reports by Unit for Units with at Least One Percent of all Reports

Detachment	Reports N	Reports %
Fairbanks AST Enforcement and Investigation	295	23.0 %
Palmer/Wasilla AST Enforcement and Investigation	237	18.5
Soldotna AST Enforcement and Investigation	117	9.1
Nome AST Enforcement, VPSO. and WAANT	88	6.9
Bethel AST Enforcement and VPSO	60	4.7
Aniak AST Enforcement	58	4.5
Kotzebue AST Enforcement and VPSO	56	4.4
Kodiak AST Enforcement , VPSO and ABWE	55	4.3
St. Marys AST Enforcement	33	2.6
Ketchikan AST Enforcement	28	2.2
Glennallen AST Enforcement	24	1.9
Homer AST Enforcement	23	1.8
Galena AST Enforcement	19	1.5
King Salmon AST Enforcement	17	1.3
Northway AST Enforcement	17	1.3
Tok AST Enforcement	15	1.2
Juneau AST Enforcement	13	1.0
Talkeetna AST Enforcement	13	1.0
Total	**1,168**	**91.2 %**

Source of data: *Alaska State Troopers (2004)*

charges. The most common assault charges (81%) were for fourth degree assaults and fewer charges were leveled for third through first degree felony assaults. Thirty-one percent of cases involved other charges. The most common other charges included interfering with a report of a crime involving domestic violence, criminal mischief, reckless endangerment, misconduct involving a weapon, DUI/reckless driving, resisting arrest, misconduct involving a controlled substance, and criminal trespass.

The time interval between the incident, the report to Troopers, and the Troopers' response was short, even with transportation and distance issues. The majority of reports (84%) were made the day of the domestic violence assault incident and 97 percent of reports were made within one week.

Suspect and Victim Characteristics

From the 1,281 cases included in this study, we gathered information on 1,356 suspects and 1,523 victims, though information was not always available for every suspect or every victim. Over three-quarters of the suspects were male while only 24 percent were female. Victim ages ranged from under one year to eighty-four years old. Most victims were in the following age groups: 21–30 years (26%), 31–40 years (22%), and 41–50 years (19%). Suspect ages ranged from 10 years old to eighty-eight years old. The majority of suspects were adults (94%). Starting with the group of suspects 21 or older, the number of suspects in each age group decreased as age increased. More specifically, 21–30 year olds made up 31 percent of suspects, 31–40 year olds made up 28 percent of suspects, 41–50 year olds made up 19 percent of suspects, and suspects 51 years or older made up 7 percent of suspects. Most suspects were White (50%) or Native (47%) and most victims were also White (51%) or Native (47%) (Table 3).

The average age of suspects (33) was quite similar to the average age of victims (32). Thirty-nine percent of assaults in domestic violence incidents took place between suspects and victims in the same age group while 61 percent took place between suspects and victims in different age groups. The age groups most commonly shared by suspects and victims involved in assaults in domestic violence incidents included 21 to 30 year olds (38%), 31 to 40 year olds (27%) and 41 to 50 year olds (19%).

In contrast to the age groups of suspects and victims, the majority of assaults in domestic violence incidents (86%) were intraracial (occurring between suspects and victims of the same race). Of all intraracial assaults in domestic violence, 51 percent occurred between White suspects and White victims and 48 percent occurred between Native suspects and Native victims.

We examined alcohol and substance use among victims. Over a third of female victims (35%) and 27 percent of male victims used alcohol prior to the assault in domestic violence incident, but only two percent of female victims and less than one percent of male victims used illicit drugs (Table 4). We also examined alcohol and substance use among suspects. Fifty-eight percent of male suspects and 54 percent of female suspects used alcohol prior to the assault. Only three percent of male suspects and two percent of female suspects used an illicit drug prior to the assault. Overall, alcohol was involved in 59 percent of domestic violence incidents reported to Troopers. Nationally, for the period 2001–2005, 42 percent of victims reported the presence of alcohol or drugs during a domestic violence incident, while in Anchorage for the period 1989–2002 there was documented involvement of alcohol in 49 percent of the reported cases.

Many of the suspects (79%) remained at the location of the assault. Specifically, 76 percent of male suspects and 86 percent

Table 3. Demographic Characteristics of Suspects and Victims

Column percentages.

	Suspects N	Suspects %	Victims N	Victims %	Intragroup N	Intragroup %
Age group						
1 to 10	3	0.2 %	54	3.6 %	2	0.3 %
11 to 17	94	6.1	174	11.5	23	3.9
18 to 20	122	8.0	131	8.6	32	5.5
21 to 30	477	31.2	397	26.2	225	38.3
31 to 40	433	28.3	326	21.5	160	27.3
41 to 50	288	18.8	284	18.7	114	19.4
51 or over	113	7.4	151	10.0	31	5.3
Total	**1,530**		**1,517**		**587**	
Race						
Native	722	46.9 %	720	47.3 %	628	48.1 %
White	767	49.8	770	50.6	667	51.1
Black	38	2.5	26	1.7	10	0.8
Other	12	0.8	6	0.4	—	—
Total	**1,539**		**1,522**		**1,305**	

Source of data: *Alaska State Troopers (2004)*

Table 4. Male and Female Victim and Suspect Characteristics

Row percentages.

Characteristic	Female N	Female %	Female Total	Male N	Male %	Male Total
Victims						
Gender	1,047	69.6 %	**1,047**	458	30.4 %	**458**
Used alcohol	347	34.7	**1,001**	118	26.9	**438**
Used drugs	16	1.6	**1,021**	2	0.4	**451**
Present when AST arrived	998	96.9	**1,030**	424	95.1	**446**
Interviewed	985	94.1	**1,047**	416	93.3	**446**
Suspects						
Gender	319	23.6 %	**319**	1,034	76.4 %	**1,353**
Used alcohol	159	53.7	**296**	553	58.0	**953**
Used drugs	7	2.3	**299**	26	2.7	**970**
Present when AST arrived	259	86.0	**301**	775	76.2	**1,017**
Interviewed	269	88.8	**303**	775	75.8	**1,023**

Source of data: *Alaska State Troopers (2004)*

of female suspects were still at the scene of the assault when Troopers arrived. Troopers were able to interview 76 percent of male suspects and 89 percent of female suspects.

Eighty-one percent of suspects were interviewed on the day of report. Ninety-six percent of all suspect interviews occurred within one week of the report. Troopers interviewed 95 percent of the victims, with 89 percent being interviewed on the day of the report, and 98 percent of the interviews being completed within one week.

The total number of charges per suspect (including both assault and other charges), the number of assault charges, and the number of other charges are summarized in Table 5. On average, each suspect received a total of 1.78 charges, including an average of 1.33 assault charges and 0.45 other charges. Of the 1,356 suspects, 200 (15%) had multiple assault charges and 401 (29%) had at least one other charge. As a result, 580 (43%) of the suspects therefore had a total number of charges greater than one. Overall, the 1,356 suspects generated a total of 2,407 charges, including 1,803 assault charges and 604 other charges.

Table 5. Number of Total, Assault, and Other Charges per Suspect

Column percentages.

Number	Total charges N	Total charges %	Assault charges N	Assault charges %	Other charges N	Other charges %
0	0	0.0 %	0	0.0 %	955	70.4 %
1	776	57.2	1,055	77.8	274	20.2
2	344	25.4	216	15.9	82	6.0
3	121	8.9	54	4.0	25	1.8
4	63	4.6	18	1.3	16	1.2
5	26	1.9	7	0.5	3	0.2
6 or more	26	1.9	6	0.4	1	0.1
Total	**1,356**		**1,356**		**1,356**	

Source of data: *Alaska State Troopers (2004)*

Table 6. Suspects with Domestic Violence Protection Orders or who Violated Conditions of Release or Probation

Row percentages.

Characteristic	No N	No %	Yes N	Yes %	Total
DVPO for this victim	1,330	98.7 %	17	1.3 %	**1,347**
Violated conditions of release	1,320	97.9	28	2.1	**1,348**
Violated conditions of probation	1,280	95.6	59	4.4	**1,339**

Source of data: *Alaska State Troopers (2004)*

Despite the number and types of offenses suspects were charged with as a result of the assaults in domestic violence incidents, few suspects (just over 1%) had an existing domestic violence protection order filed against them by the victim at the time of the offense (Table 6). Likewise, few suspects were violating conditions of release or probation. Specifically, two percent of suspects were documented as violating a condition of release with their current charges. Another four percent of suspects violated documented conditions of their probation with the current charges. It is important to note that the percentage of suspects violating conditions of release may be greater than those reported here, because these conditions are not always documented in APSIN (Alaska Public Safety Information Network) and are not readily available to Troopers, or for our analysis.

Incident Characteristics

The presence of children during a domestic violence incident continues to be a serious concern. In this study, the victim's or suspect's children under the age of 18 were witnesses to 43 percent of the incidents (Table 7). In Anchorage during 1999–2002, 42 percent of domestic violence incidents occurred with children under the age of 18 present. Nationwide, in 43 percent of the incidents with female victims during 2001–2005, children under the age of 12 were residing in the household where the incident took place. Studies discussed by John L. Worrall in *Crime Control in America: An Assessment of the Evidence* highlight concern regarding children who are present during domestic violence. Exposure to such violence is associated with both child abuse and later delinquency.

Most assaults in domestic violence incidents (75%) occurred between victims and suspects who were staying or living together at the time of the incident. For the remaining quarter of incidents that occurred between suspects and victims who did not stay or live together, 34 percent occurred between victims and suspects who met in a

Table 7. Presence of Children During Assault

Victim and/or suspect's child present	N	%
No	654	57.0 %
Yes	493	43.0
Total	**1,147**	

Source of data: *Alaska State Troopers (2004)*

public place, and 32 percent resulted from invitation by the suspect or victim. In 25 percent of incidents (where suspects and victims were not living together) the suspect was uninvited or forced entry, and in nine percent of these incidents the suspect entered through an open window or unlocked door.

The use of a traditional weapon such as a knife or a gun was extremely rare; each weapon was used in fewer than four percent of assaults in domestic violence incidents. While still fairly infrequent, suspects were more likely to throw something at the victim (9% of incidents) or hit the victim with an object (10%) rather than use a traditional weapon. Nationwide in 2001–2005, 19 percent of domestic violence incidents with a female victim reported a traditional weapon present, while 31 percent of incidents with a male victim reported a weapon.

We also gathered information about the presence of nine specific violent acts and seven types of threats in the assaults in domestic violence incidents. Only forms of violence that were documented as a result of victim disclosure or officer inquiry, rather than all forms of violence that occurred, were included for analysis. The three most common forms of violence disclosed by victims or documented as a result of officer inquiry included pushing, grabbing or shoving the victim (48%), punching the victim (29%), and slapping or hitting the victim (28%). Documented sexual assault of the victim occurred in only one percent of the cases.

Documented injuries to victims and emergency medical treatment data were also collected and analyzed. The percentage of victims who sustained the most common types of documented injuries included the following: bruising (38%), lacerations or bite marks (27%), bloody nose or lips (10%) and black or swollen eyes (10%). Overall, few victims (12%) received any type of emergency medical treatment for their injuries.

Legal Resolutions

Mandatory arrest in domestic violence cases has been in effect in Alaska since 1996. This law places additional requirements on law enforcement when investigating a domestic violence report and provides criteria for assessing whom to arrest if there are cross complaints "arising from the same incident." (See "Mandatory Arrest in Domestic Violence Cases" accompanying this article.)

Most of the cases (96%) were closed and referred for prosecution including cases that were closed by arrest (79%), and those closed and referred (13%). The remaining cases were closed after investigation (2%) or closed as unfounded (2%) in cases where a suspect was not arrested. On average, it took 6.30 weeks to close a case after it was reported, and 87 percent of cases were closed within 90 days.

An important component of this study involved tracking assaults in domestic

Mandatory Arrest in Domestic Violence Cases

Alaska's mandatory arrest statute was passed as part of the Domestic Violence Prevention and Victim Protection Act of 1996 with the support of prosecutors, law enforcement, and advocates for domestic violence victims in the state. Alaska Statute 18.65.530, "Mandatory arrest for crimes involving domestic violence, violation of protective orders, and violation of conditions of release," sets out conditions for arrest and minimum sentencing requirements. A law enforcement officer is required to make an arrest with or without a warrant:

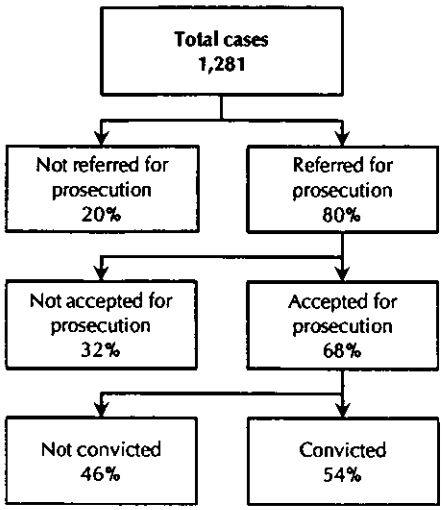
> if the officer has probable cause to believe the person has, either in or outside the presence of the officer, within the previous 12 hours, (1) committed domestic violence, except an offense under AS 11.41.100-11.41.130, whether the crime is a felony or misdemeanor; (2) committed the crime of violating a protective order in violation of AS 11.56.740; (3) violated a condition of release imposed under AS 12.30.025, 12.30.027, 12.30.029....

The statute provides criteria for an officer to use when determining who is the "principal physical aggressor." A "principal physical aggressor" evaluation must be made in domestic violence cases if there are cross complaints "arising from the same incident." In rare circumstances, an officer may determine that no arrest should be made. An "authorization not to arrest" must first be granted by a prosecutor from "the jurisidiction in which the offense under investigation arose," and the officer must later report in writing why an arrest was not made. A prosecuting attorney is on call and available by phone to law enforcement in all parts of the state to provide an officer with an authorization, if needed.

Under Alaska law, there is a 20-day minimum sentence if the defendant is in violation of a domestic violence protection order, a 30-day minimum sentence if the defendant has a prior conviction for assault or domestic violence assault, and a 60-day minimum sentence if the defendant "has been previously convicted two or more times of a crime against a person or a crime involving domestic violence, or a combination of those crimes." Aggravating factors that can increase the length of the normal minimum sentence required by the statute include the presence of a child under the age of 16 during a felony crime involving domestic violence, as well as a domestic violence offense committed at a shelter or facility providing services to domestic violence and sexual assault victims. In addition, recent legislative changes have upgraded certain misdemeanor assaults to a Class C felony and have added a new provision to the animal cruelty statute dealing with "intent to intimidate, threaten or terrorize another person." Some domestic violence convictions also carry federal legal consequences. Under federal law it is "unlawful to sell or dispose of a firearm" to a person convicted of a qualifying domestic violence misdemeanor.

The terms "domestic violence and "crime involving domestic violence" have a broad meaning under AS 18.66.990(3) & (5). "Acts of domestic violence" as defined under the statute go beyond physical assault; acts of domestic violence also include burglary, criminal trespass, arson or criminally negligent burning, criminal mischief, terrorist threatening, violating a protective order, and harassment. In addition, the statute defines domestic violence as an offense committed "by [one] household member against another household member." The definition of household member encompasses more than persons living in the same residence. It includes many people who do not live together: "adults or minors who are current or former spouses, adults or minors...who have lived together, adults or minors who are dating or have dated, adults or minors who are engaged in or who have engaged in a sexual relationship, adults or minors who are related to each other up to the fourth degree of consanguinity..., adults or minors who are related or formerly related by marriage, persons who have a child of [their] relationship, and minor children in a relationship that is described [in the statute]."

Figure 1. Processing of Domestic Violence Cases Reported to Alaska State Troopers, 2004



violence incidents from reports to Troopers through case resolution by the Department of Law. Because we only examined referrals to the Department of Law (and excluded, for example, referrals to the Division of Juvenile Justice), the following statistics are not directly comparable to the ones reported in the previous paragraph.

When examining case processing with Department of Law data, we find that after Troopers close a case, the next decision is whether to refer the case for prosecution. Results show that 80 percent of the 1,281 cases reported to Troopers were referred for prosecution, 68 percent were accepted for prosecution, and 54 percent resulted in a conviction (Figure 1). Once cases were referred for prosecution, they had a high likelihood of being accepted for prosecution. Specifically, 84 percent of referred cases (N=1,030) were accepted for prosecution, and 67 percent resulted in a conviction (Table 8). Cases accepted for prosecution (N=869) had an 80 percent conviction rate.

In addition to examining case resolution rates for all assaults in domestic violence incidents reported to Troopers, we reviewed case resolution rates separately for male and female suspects comparing cases that had at least one male suspect to cases that had at least one female suspect. In our sample of 1,281 cases, 974 cases included at least one male suspect and 259 included at least one female suspect. Cases with at least one female suspect were slightly less likely to be referred for prosecution, to be accepted for prosecution, and to result in a conviction than cases with at least one male suspect. Of the 259 reported cases with at least one female suspect, 75 percent were referred for prosecution (versus 82% with a male suspect), 56 percent were accepted for prosecution (versus 73% with a male suspect), and 44 percent resulted in a conviction (versus 58% with a male suspect) (Figure 2).

Once referred for prosecution, 89 percent of cases with at least one male suspect (N=707) and 76 percent of cases with at least one female suspect (N=146) were accepted for prosecution. Once accepted for prosecution, the likelihood of cases resulting in a conviction did not vary greatly by suspect gender. Upon acceptance for prosecution, 80 percent of cases with at least one male suspect (N=568) and 78 percent of cases with at least one female suspect (N=114) resulted in a conviction (Table 9).

In addition to examining case resolution rates separately for male and female suspects, we examined case resolution rates separately for male and female victims. In our sample of 1,281 cases, 352 cases included at least one male victim and 925 included at least one female victim. Cases with at least one female victim were as likely to be referred for prosecution, as likely to be accepted for prosecution, and as likely to result in a conviction as cases with at least one male victim. Of the 925 reported cases with at least one female victim, 80 percent were referred for prosecution (versus 81% with a male victim), 59 percent were accepted for prosecution (versus 65% with a male victim), and 54 percent resulted in a conviction for both female and male victims (Figure 3 and Table 10). Although cases involving male suspects had higher case processing and conviction rates, case processing rates were quite similar for victims of both genders. No discernable pattern was found in case processing rates for domestic violence victims based on their gender.

Another variable examined in relation to case processing of assaults in domestic violence incidents was the relationship between the victim and the suspect. We examined the relationship between the victim and suspect separately for male and female victims. Most of the assaults in domestic violence incidents occurred between intimate partners. The most likely relationship identified was current or former intimate partner as seen in 67 percent of assaults in domestic violence incidents with female victims and 38 percent with male victims. The next most likely relationship was parents or children comprising 16 percent of the assaults in domestic violence incidents with female victims and 25 percent with male victims. Another 12 percent of assaults in domestic violence incidents with female victims and 22 percent with male victims took place between other

Table 8. Number of Cases by Stage

Column percentages.

Stage	N	% of reported	% of referred	% of accepted
Reported	**1,281**	100.0 %	—	—
Referred	**1,030**	80.4	100.0 %	—
Accepted	**869**	67.8	84.4	100.0 %
Convicted	**692**	54.0	67.2	79.6

Source of data: Alaska Department of Law

Figure 2. Processing of Domestic Violence Cases Reported to Alaska State Troopers, 2004: Male/Female Suspects

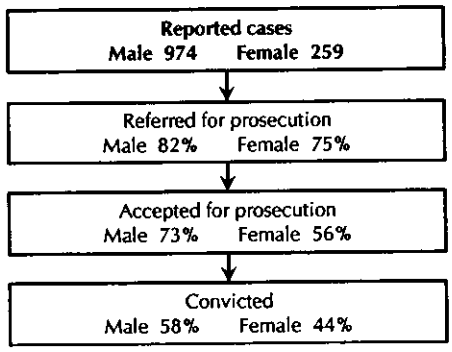


Figure 3. Processing of Domestic Violence Cases Reported to Alaska State Troopers, 2004: Male/Female Victims

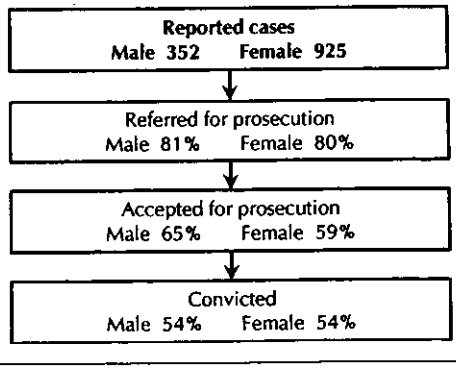


Table 9. Number of Cases by Stage for Cases with Male or Female Suspects

Column percentages.

	N	% of reported	% of referred	% of accepted
Male suspects				
Reported	**974**	100.0 %	—	—
Referred	**798**	81.9	100.0 %	—
Accepted	**707**	72.6	88.6	100.0 %
Convicted	**568**	58.3	71.2	80.3
Female suspects				
Reported	**259**	100.0 %	—	—
Referred	**193**	74.5	100.0 %	—
Accepted	**146**	56.4	75.6	100.0 %
Convicted	**114**	44.0	59.1	78.1

Source of data: *Alaska State Troopers (2004) and Alaska Department of Law*

Table 10. Number of Cases by Stage for Cases with Male or Female Victims

Column percentages.

	N	% of reported	% of referred	% of accepted
Male victims				
Reported	**352**	100.0 %	—	—
Referred	**284**	80.7	100.0 %	—
Accepted	**228**	64.8	80.3	100.0 %
Convicted	**191**	54.3	67.3	83.8
Female victims				
Reported	**925**	100.0 %	—	—
Referred	**743**	80.3	100.0 %	—
Accepted	**639**	59.1	86.0	100.0 %
Convicted	**500**	54.1	67.3	78.2

Source of data: *Alaska State Troopers (2004) and Alaska Department of Law*

family members (including siblings and extended family). Six percent of assaults in domestic violence incidents with female victims and 13 percent with male victims took place between roommates. Overall, most assaults occurred between intimate partners, and this was particularly true for female victims.

An examination of case processing for the different relationship types revealed some differences in the earlier stages of case processing. Regarding referral rates for assaults in domestic violence incidents, 88 percent of cases involving roommates, 86 percent of cases involving intimate partners, 72 percent of cases involving other family members, and 63 percent of cases involving parents or children were referred for prosecution (Table 11). Cases involving victims and suspects who were roommates or intimate partners were more likely to be referred for prosecution than cases involving other family members or parents and children. Of all referred cases, 87 percent of cases involving intimate partners, 82 percent of cases involving parents or children, 81 percent of cases involving other family members, and 74 percent of cases involving roommates were accepted for prosecution. Referred cases involving intimate partners were most likely to be accepted for prosecution, and cases involving roommates were least likely to be accepted for prosecution. Although some differences were found in referral and acceptance rates for different relationship types in assaults in domestic violence incidents, conviction rates for accepted cases were remarkably similar. Eighty-one percent of cases involving intimate partners, 81 percent of cases involving other family members, 80 percent of cases involving parents or children, and 77 percent of cases involving roommates resulted in a conviction, once accepted for prosecution. Despite differences in referral and acceptance rates for assaults in domestic violence incidents involving various relationships between victims and suspects, conviction rates for accepted cases were similar across the different relationship types.

In another examination of assaults in domestic violence incidents, we assessed the combined influence of gender and relationship on case processing. In this examination, cases were classified as intimate partner violence or non-intimate partner violence incidents. Incidents of intimate partner violence were defined as taking place between intimate partners and involving a male suspect and a female victim. Non-intimate partner violence incidents included all other combinations of suspect and victim gender and the various relationship types. (Few cases—1.5%—involved same-sex intimate partner violence. The characteristics of these cases will be included in a future study.) Results showed higher case processing rates for intimate partner violence incidents in the earlier stages of case processing. Specifically, 85 percent of intimate partner violence incidents and 75 percent of non-intimate partner violence incidents were referred for prosecution (Table 12). Once referred, 90 percent of intimate partner violence incidents and 79 percent of non-intimate partner violence incidents were accepted for prosecution. Again, no discernable differences were found in conviction rates for intimate partner and non-intimate partner violence incidents once they were accepted for prosecution. Eighty-one percent of accepted cases involving intimate partner violence incidents resulted in a conviction, and 79 percent of accepted non-intimate partner violence incidents resulted in a conviction. Conviction rates based on the total number of reports to Troopers of intimate partner violence incidents were

Table 11. Nature of Victim and Suspect Relationships and Legal Resolutions

Column percentages.

	N	Intimate partner	Parents or children	Other family	Room-mates
Referred	**1,029**	86.1 %	63.4 %	71.8 %	87.9 %
Accepted	**869**	86.5	81.5	81.1	74.1
Convicted	**692**	80.5	80.0	80.8	76.7

Source of data: *Alaska State Troopers (2004) and Alaska Department of Law*

Table 12. Legal Resolutions for Intimate Partner and Non-Intimate Partner Violence

Column percentages.

		% of reported		% of referred		% of accepted	
	N	Intimate partner	Non-intimate partner	Intimate partner	Non-intimate partner	Intimate partner	Non-intimate partner
Reported	**1,279**	100 %	100 %	—	—	—	—
Referred	**1,028**	85	75	100 %	100 %	—	—
Accepted	**862**	76	59	90	79	100 %	100 %
Convicted	**692**	62	47	72	62	81	79

Source of data: *Alaska SANE data and Alaska Department of Law*

higher (62%) than for all reported cases to Troopers of non-intimate partner violence incidents (47%).

A more detailed examination of legal resolutions explored differences in case processing rates for male and female victims in various relationships with suspects. Just as cases with male suspects tended to have higher case processing rates at each stage of prosecution, male victims tended to experience higher case processing rates across different relationship types. One exception to this trend was higher rates of acceptance for referred cases involving intimate partners with female victims (76%) relative to male victims (67%). Similarly, cases involving intimate partners with female victims had higher conviction rates (61% of accepted cases) than cases with male victims (53% of accepted cases) (Table 13). In sum, cases of assaults in domestic violence incidents investigated by Troopers had relatively high referral, acceptance and conviction rates overall, despite variation in rates by gender of the suspects and victims and relationships between them.

The findings presented in this article provide an initial description of case processing and conviction rates for assaults in domestic violence incidents in smaller communities across the state of Alaska. The full report containing more detailed descriptive analyses is published on the Justice Center website. Future studies may focus on comparisons of the data from the Anchorage analysis, this study, and nationwide reports. An important area to examine in more depth is factors affecting legal resolutions. More complex analyses involving multiple predictor variables are required to understand the many influential factors in case processing and conviction of assaults in domestic violence incidents. A growing body of data about domestic violence incidents will enable policymakers to focus on improving ways to deal with this critical issue.

Table 13. Nature of Victim and Suspect Relationships and Legal Resolutions for Female and Male Victims

Column percentages.

	N	Intimate partner	Parents or children	Other family	Room-mates
Female victim					
Referred	**663**	85.3 %	60.8 %	69.6 %	88.2 %
Accepted	**580**	76.2	44.6	57.6	55.9
Convicted	**454**	60.6	34.6	41.3	35.3
Male victim					
Referred	**229**	89.4 %	67.1 %	74.4 %	87.5 %
Accepted	**177**	66.9	61.0	59.0	75.0
Convicted	**148**	53.1	51.2	53.8	65.6

Source of data: *Alaska State Troopers (2004) and Alaska Department of Law*

Figures for national and Anchorage domestic violence incidents are from the Bureau of Justice Statistics (2007) and the Municipality of Anchorage (2006).

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Stalking in Alaska

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For other articles and publications related to stalking and violence against women, see:
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Abstract: *This study examined 267 cases with a stalking charge reported to Alaska State Troopers from 1994 to 2005, and excluded any cases reported to local or municipal departments. We also examined the legal resolutions for cases that were reported from1999-2004.*

- *Over 50% of reports occurred in B detachment (Southcentral Alaska) and D detachment (Interior Alaska). Three units (Fairbanks AST Enforcement, Palmer AST Enforcement, and Soldotna AST Enforcement) handled 49% of reports. Thirty-five percent of the charges were for stalking in the first degree and 65% were for stalking in the second degree.*
- *Most suspects (91%) were male and most victims (89%) were female. Most suspects (78%) were White and most victims (86%) were also White. On average, suspects were 36 years old while victims were 33 years old. Twenty percent of suspects had used alcohol, but only 2% of victims had used alcohol. Fifty-four percent of suspects were, or had been, in a romantic relationship with the victim. An additional 35% of suspects were friends or acquaintances of the victim.*
- *The most common forms of stalking included standing outside or visiting the victim's home (in 54% of charges), making unsolicited phone calls to victims (in 51% of charges), following the victim (in 39% of charges), threatening to physically assault the victim (in 36% of charges), harassing the victim's family and friends (in 28% of charges), trying to communicate with the victim in other ways (in 27% of charges), standing outside or visiting the victim's work (in 20% of charges), physically assaulting the victim (in 19% of charges), sending the victim unsolicited mail (in 15% of charges), and vandalizing the victim's home (in 13% of charges). Forty-five percent of behaviors occurred primarily at the victim's home, while 27% occurred primarily in cyberspace.*
- *Seventy-five percent of the cases reported between 1999-2004 were referred for prosecution, 55% were accepted for prosecution, and 40% resulted in a conviction on at least one charge. Cases with suspects who violated protective orders were 20% more likely to be referred for prosecution, were 19% more likely to be accepted, and were 41% more likely to result in a conviction.*

Although the available data are limited, a recent Justice Center examination of Alaska State Trooper case files has revealed that the crime of stalking is probably greatly underreported by victims as well as underrecognized by law enforcement and hence not charged often enough in Alaska. A charge of stalking can be applied in a wide range of situations, and its parameters as a crime can be somewhat ambiguous for both victims and law enforcement. The available data show that a stalking charge is often made in conjunction with other charges, particularly when there has been a prior relationship—which is often the case, with stranger stalking fairly rare.

Stalking, by its nature and its legal definition, induces fear. Statistics from the National Violence Against Women Survey showed that even after the stalking ended, 68 percent of victims thought their personal safety had gotten worse, 42 percent were very concerned about their personal safety, 30 percent were very concerned about being stalked, and 45 percent carried something to defend themselves. Psychological counseling was sought by 30 percent of female victims and 20 percent of male victims.

Moreover, other studies have shown links between stalking and intimate partner homicide among female victims. For example, according to an analysis published in *Homicide Studies* in 1999, 76 percent of female intimate partner homicide victims had been stalked by their intimate partner in the past. Furthermore, 89 percent of female intimate partner homicide victims that were physically abused had also been stalked by their intimate partner in the past. Of all female intimate partner homicide victims, 54 percent had previously contacted police to report they were being stalked.

With funding from the National Institute of Justice, the Justice Center is working with the Alaska State Troopers and the Alaska Department of Law to learn more about the characteristics of stalking in Alaska.

In the first quantitative examination of the crime, data from all stalking incidents reported to Alaska State Troopers from 1994 to 2005 were collected to gather descriptive information. The research provides a first overview of a specific crime whose characteristics are not widely known beyond the justice community. The Alaska statutes defining the crime of stalking are presented on page 5.

Methodology

To conduct this study, Justice Center researchers examined the total 267 cases with a stalking charge reported to Alaska State Troopers from 1994 to 2005. (Alaska stalking statutes went into effect in 1993.) The final sample for analysis comprised 210 cases (Table 1) covering a total of 222 stalking charges, 211 suspects, and 216 victims. Case outcome data were gathered directly

Table 1. Case Closure Codes in Alaska Stalking Cases, 1994–2005
Column percentages

	Reports	
Closure code	N	%
Closed by arrest	140	66.7 %
Closed, declined	6	2.9
Closed by investigation	34	16.2
Closed, referred	22	10.5
Closed, unfounded	8	3.8
Total	**210**	

Source of data: *Alaska State Troopers data (1994-2005)*

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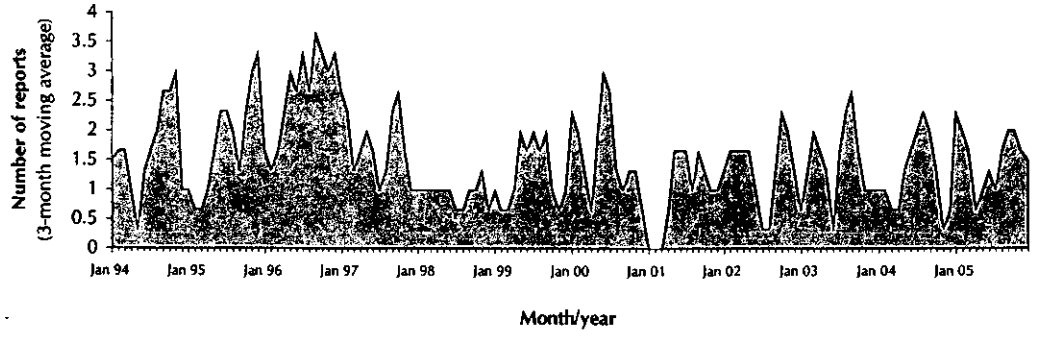
Figure 1. Number of Stalking Reports in Alaska by Month and Year, 1994–2005



Source of data: *Anchorage State Troopers data (1994–2005)*

from the Alaska Department of Law for a sub-sample of the stalking cases—only those reported from 1999 to 2004 ($N = 92$).

Results

For the first four years included in this investigation (1994 to 1997), the number of reports averaged 22 per year. After that, the average number of reports dropped significantly, to 15 per year. Figure 1 displays the trend of reporting over time, from January 1994 to December 2005, using a three-month moving average. Seasonal variations from January to December in the trend of reporting were not quite statistically significant, but 23 percent of the reports were made in the months of June and October.

Over 50 percent of reports occurred in B and D detachments. B detachment includes five Alaska State Trooper posts (Wasilla, Palmer, Glennallen, Big Lake, and Talkeetna) while C detachment includes nine Alaska State Trooper posts (Coldfoot, Galena, Fairbanks, Nenana, Healy, Cantwell, Delta Junction, Tok, and Northway; see Figure 2). The units with the highest number of stalking reports included Fairbanks AST Enforcement (with 19% of reports), Palmer AST Enforcement (with 18% of reports), and Soldotna AST Enforcement (in E Detachment, with 12% of reports). Together, these three units had 49 percent of all stalking reports. Additional details are shown in Table 2.

Most cases (67%) were closed by arrest, meaning that at least one person was criminally charged, by a physical arrest, summons, warrant, or criminal complaint (see Table 1). Other cases (10%) were closed with a referral to the district attorney for a charging decision. Sixteen percent of cases were closed after the investigation because there were no suspects or because evidence was lacking. Only four percent of cases were closed unfounded (because there appeared to be no basis for the complaint). Finally, only three percent of cases were closed because the prosecution declined to pursue the case, even though a suspect was known.

The 210 stalking incidents reported to troopers from 1994 to 2005 included a total of 222 stalking charges. Seventy-seven (35%) of the 222 stalking charges were for stalking in the first degree (AS §11.41.260) and 145 (65%) were for stalking in the second degree (AS §11.41.270). For each stalking charge, thirty different forms of behavior were examined, shown in Table 3. On average, four forms of stalking behaviors were found per charge. The most common forms of stalking behaviors included standing outside or visiting the victim's home (found in 54% of charges), making unsolicited phone calls to victims (found in 51% of charges), following the victim (found in 39% of charges), threatening to physically assault the victim (found in 36% of charges), harassing the victim's family and friends (found in 28% of charges), trying to communicate with the victim in other ways (found in 27% of charges), standing outside or visiting the victim's work (found in 20% of charges), physically assaulting the victim (found in 19% of charges), sending the victim unsolicited mail (found in 15% of charges), and vandalizing the victim's home (found in 13% of charges).

Figure 2. Alaska State Trooper Locations

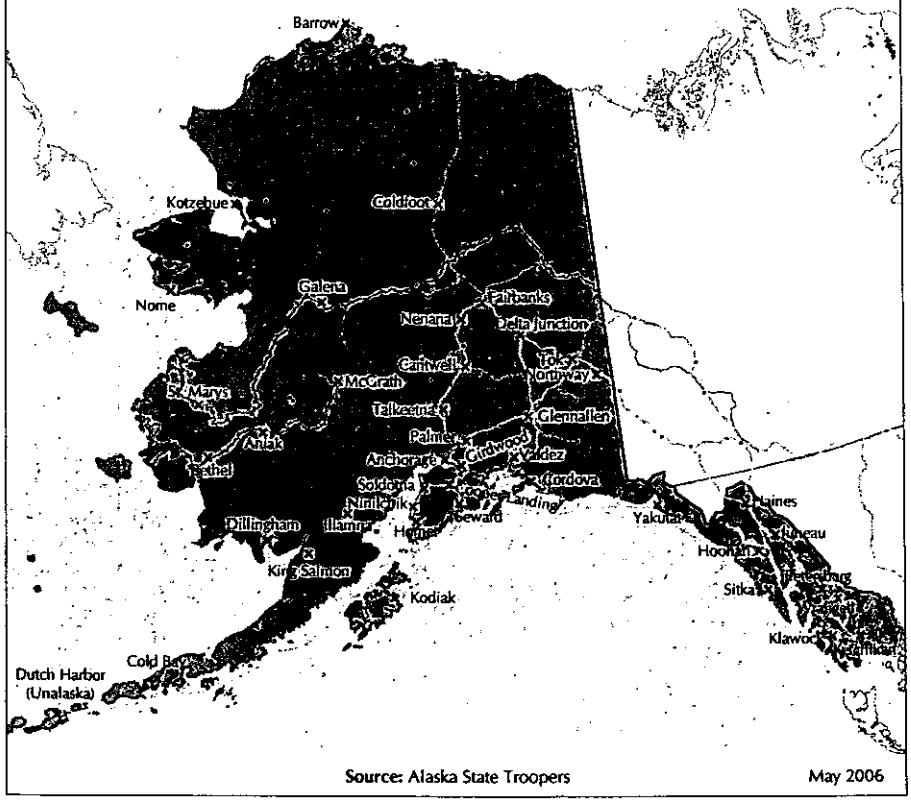


Table 2. Total Number of Stalking Reports in Alaska by Unit, 1994–2005

Column percentages

Unit	N	%	Unit	N	%	Unit	N	%
Anchorage AST Enforcement	7	3.3 %	Girdwood AST Enforcement	3	1.4 %	Northway AST Enforcement	1	0.5 %
Aniak AST Enforcement	1	0.5	Glennallen AST Enforcement	6	2.9	Mat-Su Regional Office	1	0.5
Bethel AST Enforcement	7	3.3	Healy AST Enforcement	1	0.5	Palmer AST Enforcement	37	17.6
Big Lake AST Enforcement	1	0.5	Homer AST Enforcement	7	3.3	Palmer AST Investigations	5	2.4
Cooper Landing AST Enforcement	1	0.5	Juneau AST Enforcement	1	0.5	Seward AST Enforcement	4	1.9
ABI Child Abuse Investigation Unit	1	0.5	Ketchikan AST Enforcement	7	3.3	Soldotna AST Enforcement	25	11.9
Cantwell AST Enforcement	3	1.4	Ketchikan AST Investigations	1	0.5	St. Marys AST Enforcement	2	1.0
ABI Cold Case Investigations	1	0.5	Klawock AST Enforcement	9	4.3	Talkeetna AST Enforcement	3	1.4
Cordova ABWE	1	0.5	Kodiak AST Enforcement	9	4.3	Tok AST Enforcement	1	0.5
Delta Junction AST Enforcement	7	3.3	Kotzebue AST Enforcement	6	2.9	Unalakleet AST Enforcement	1	0.5
Fairbanks AST Enforcement	40	19.0	Ninilchik AST Enforcement	1	0.5			
Fairbanks AST Investigations	4	1.9	Nome AST Enforcement	2	1.0			
Galena AST Enforcement	2	1.0	Nome V.P.S.O.	1	0.5	**Total**	**210**	

Source of data: *Alaska State Troopers data (1994-2005)*

The primary location for stalking behaviors was most often the victim's residence. As shown in Table 4, 45 percent of stalking behaviors occurred primarily at the victim's home. Cyberspace was also a common location for stalking behavior, with 27 percent of charges occurring primarily in cyberspace. An additional 10 percent of charges occurred primarily on public roads and parking lots.

The 210 stalking incidents reported to troopers from 1994 to 2005 included a total of 211 suspects and 216 victims. Most suspects (91%) were male and most victims (89%) were female. As shown in Table 5, most suspects (78%) were white and most victims (86%) were also white. On average, suspects were 36 years old while victims were 33 years old; with 13 percent of suspects and 20 percent of victims under 21, 18 percent of suspects and 22 percent of victims between 21 and 30, 37 percent of suspects and 33 percent of victims between

Table 3. Stalking Behaviors in Alaska Stalking Cases, 1994–2005

Row percentages

Behaviors	Yes N	Yes %	Total
Followed victim	86	39.4 %	**218**
Sent victim unsolicited mail	33	14.9	**222**
Made unsolicited phone calls to victim	112	50.5	**222**
Sent victim unsolicited electronic mail	7	3.2	**222**
Sent victim unsolicited text messages	0	0.0	**222**
Tried to communicate in other ways	60	27.0	**222**
Photographed victim without permission	3	1.4	**219**
Abused victim's pets	3	1.4	**221**
Threatened to harm victim's pets	0	0.0	**222**
Physically assaulted victim	42	18.9	**222**
Threatened to physically assault victim	78	35.8	**218**
Sexually assaulted victim	13	5.9	**222**
Threatened to sexually assault victim	8	3.6	**222**
Harassed victim's children	13	5.9	**221**
Threatened victim's children	13	5.9	**220**
Harassed victim's family and friends	62	27.9	**222**
Vandalized victim's home	28	12.7	**221**
Vandalized victim's car	14	6.4	**220**
Vandalized other property	11	5.0	**222**
Stood outside/visited victim's home	120	54.1	**222**
Stood outside/visited victim's work	44	20.0	**220**
Left unwanted items for victim	3	1.4	**222**
Sent victim presents	20	9.0	**222**
Opened victim's mail	1	0.5	**222**
Filed false police reports against victim	1	0.5	**222**
Contacted victim's employer	4	1.8	**222**
Contacted or filed report with children services	1	0.5	**222**
Installed spyware on victim's computer	2	0.9	**222**
Installed/utilized GPS on victim's car	0	0.0	**221**
Relocated residence to follow victim	10	4.5	**222**

Source of data: *Alaska State Troopers data (1994-2005)*

Table 4. Primary Location for Stalking Behavior in Alaska Stalking Cases, 1994–2005

Column percentages

Location	Charges N	Charges %
Cyberspace	60	27.0 %
Victim's house	99	44.6
Other residence	8	3.6
Work / school	17	7.7
Public places	16	7.2
Roads / parking lots	22	9.9
Total	**222**	

Source of data: *Alaska State Troopers data (1994-2005)*

Table 5. Race of Suspects and Victims in Alaska Stalking Cases, 1994–2005

Column percentages

Race	Suspects N	Suspects %	Victims N	Victims %
White	160	78.0 %	183	85.9 %
Native	42	20.5	27	12.7
Black	3	1.5	2	0.9
Other	0	0.0	1	0.5
Total	**205**		**213**	

Source of data: *Alaska State Troopers data (1994-2005)*

Table 6. Age of Suspects and Victims in Alaska Stalking Cases, 1994–2005

Column percentages

Age	Suspects N	Suspects %	Victims N	Victims %
11 to 20	27	13.2 %	43	20.1 %
21 to 30	38	18.5	47	22.0
31 to 40	75	36.6	70	32.7
41 to 50	47	22.9	41	19.2
51 to 60	13	6.3	6	2.8
61 or over	5	2.4	7	3.3
Total	**205**		**214**	

Source of data: *Alaska State Troopers data (1994-2005)*

31 and 40, and 31 percent of suspects and 25 percent of victims over 40. One in five suspects (20%) had used alcohol, but very few victims (2%) had. Drug use was very infrequent (1% or less) for both suspects and victims.

Table 7. Relationship Between Suspects and Victims in Alaska Stalking Cases, 1994–2005

Column percentages

Relationship to victim	Suspects N	Suspects %	Suspects % of non-stranger
Stranger	15	7.5 %	—
Current spouse	31	15.5	16.8 %
Ex-spouse	13	6.5	7.0
Current boy/girlfriend	5	2.5	2.7
Ex-boy/girfriend	59	29.5	31.9
Other family	7	3.5	3.8
Friends	13	6.5	7.0
Acquaintances	57	28.5	30.8
Total	**200**		

Source of data: *Alaska State Troopers data (1994-2005)*

Table 8. Number of Total, Stalking, and Non-Stalking Charges per Suspect in Alaska Stalking Cases, 1994–2005

Column percentages

	N	%	cumulative %
Total charges			
Zero	0	0.0 %	0.0 %
One	89	42.2	42.2
Two	65	30.8	73.0
Three	32	15.2	88.2
Four	9	4.3	92.4
Five	6	2.8	95.3
Six or more	10	4.7	100.0
Total suspects	**211**		
Stalking charges			
Zero	0	0.0 %	0.0 %
One	202	95.7	95.7
Two	7	3.3	99.1
Three	2	0.9	100.0
Total suspects	**211**		
Non-stalking charges			
Zero	94	44.5 %	44.5 %
One	63	29.9	74.4
Two	29	13.7	88.2
Three	9	4.3	92.4
Four	6	2.8	95.3
Five	4	1.9	97.2
Six or more	6	2.8	100.0
Total suspects	**211**		

Source of data: *Alaska State Troopers data (1994-2005)*

Relationships between suspects and victims are shown in Table 7. Half (54%) of the suspects were, or had been, in a romantic relationship with the victim, as an ex-boyfriend or ex-girlfriend (29%) or current spouse (15%). In addition, 35 percent of suspects were friends or acquaintances of the victim, with acquaintances as the more prominent category. Very few suspects (4%) were currently living with the victim. Slightly over half of the relationships (55%) had ended prior to the stalking, and 58 percent had ended by the time the stalking was reported to law enforcement (these statistics were not calculated for strangers or family members).

Most suspects (55%) were not charged solely with a stalking offense. Stalking charges were often accompanied by other charges (Tables 8 and 9). On average, suspects had a total of 2.32 charges, including an average of 1.05 stalking charges and an average of 1.27 other charges. Overall, the 211 suspects were charged with 489 offenses (i.e., 222 stalking offenses and 267 non-stalking offenses). The most common additional non-stalking charges included assault, violating a protective order, and harassment. In addition to these additional charges, 38 percent of suspects had at least one aggravating factor (Table 10). The most common aggravating factors included violating protective orders and prior arrests for stalking the victim—present for 20 percent and 12 percent of suspects respectively. In addition, 22 percent of suspects had a prior arrest for stalking, assaulting, or harassing the victim. More specifically, 12 percent of suspects had a prior arrest for stalking the victim, 8 percent had a prior arrest for assaulting the victim, and 5 percent had a prior arrest for harassing the victim. Almost three quarters (74%) of the victims had previously contacted law enforcement to report harassing behavior by the suspect (e.g., to seek a protective order).

Overall, 75 percent of the 92 cases reported between 1999 and 2004 were referred; 55 percent were accepted; and 40 percent resulted in a conviction (Table 11). The likelihood of referring, accepting, and convicting varied substantially by legal factors (Table 12)—whether suspects violated protective orders, violated conditions of release, violated conditions of probation, had prior arrests for assaulting the victim, had prior arrests for harassing the victim, had multiple stalking charges, or had additional non-stalking charges. In general, these legal factors enhanced the likelihood of referral, acceptance, and conviction.

In particular, violating protective orders and having additional non-stalking charges were important legal factors. Cases with

Table 9. Additional Non-Stalking Charges in Alaska Stalking Cases, 1994–2005

Column percentages

Charge	Non-stalking charges N	Non-stalking charges %
Assault	60	22.5 %
Violating protective order	56	21.0
Harassment	31	11.6
Criminal trespass	23	8.6
Burglary	15	5.6
Criminal mischief	15	5.6
Violating conditions of release	10	3.7
Sexual assault / abuse	10	3.7
Other public administration offense	10	3.7
Other	7	2.6
Misconduct involving controlled substance	6	2.2
Misconduct involving weapon	5	1.9
Driving offense	5	1.9
Theft	4	1.5
Reckless endangerment	4	1.5
Coercion	4	1.5
Kidnapping	2	0.7
Total	**267**	

Source of data: *Alaska State Troopers data (1994-2005)*

Table 10. Aggravating Factors in Alaska Stalking Cases, 1994–2005

Row percentages

Factors	No N	No %	Yes N	Yes %	Total
Violated protective order	165	80.5 %	40	19.5 %	**205**
Violated conditions of release	188	90.8	19	9.2	**207**
Violated conditions of probation	185	90.7	19	9.3	**204**
Had prior arrest for stalking victim	175	87.9	24	12.1	**199**
Had prior arrest for assaulting victim	181	91.9	16	8.1	**197**
Had prior arrest for harassing victim	190	95.0	10	5.0	**200**

Source of data: *Alaska State Troopers data (1994-2005)*

Table 11. Case Outcomes by Stage in Alaska Stalking Cases, 1999–2004

Column percentages

Stage	N	% of reported	% of referred	% of accepted
Reported	92	100.0 %	—	—
Referred	69	75.0	100.0 %	—
Accepted	51	55.4	73.9	100.0 %
Convicted	37	40.2	53.6	72.5

Source of data: Alaska Department of Law (1999-2004)

suspects who violated protective orders were 20 percent more likely to be referred for prosecution, were 19 percent more likely to be accepted, and were 41 percent more likely to result in a conviction. Cases that included additional non-stalking charges were 27 percent more likely to be referred, were 84 percent more likely to be accepted,

Table 12. Percent Referred, Accepted, and Convicted in Alaska Stalking Cases by Legal Factors, 1994–2005

Cell percentages

Legal factors		N	% referred	% accepted	% convicted
Violated protective order	No	72	73.6 %	54.2 %	37.5 %
	Yes	17	88.2	64.7	52.9
Violated conditions of release	No	82	74.4	52.4	36.6
	Yes	8	100.0	100.0	87.5
Violated conditions of probation	No	83	74.7	54.2	39.8
	Yes	5	100.0	80.0	60.0
Had prior arrest for stalking victim	No	78	73.1	50.0	34.6
	Yes	6	100.0	100.0	100.0
Had prior arrest for assaulting victim	No	76	72.4	50.0	38.2
	Yes	8	100.0	87.5	37.5
Had prior arrest for harassing victim	No	84	75.0	53.6	38.1
	Yes	2	100.0	100.0	100.0
Had multiple stalking charges	No	88	76.1	56.8	40.9
	Yes	4	50.0	25.0	25.0
Had additional non-stalking charges	No	40	65.0	37.5	22.5
	Yes	52	82.7	69.2	53.8

Source of data: Alaska State Troopers data & Alaska Department of Law (1999-2004)

Stalking Cases

The following individual case summaries, drawn from the sample studied in the accompanying article "Stalking in Alaska" illustrate a range of situations and circumstances in which the Alaska State Troopers issued a stalking charge. The details were taken from the AST case file. The initials of those involved have been changed.

B.W. reported receiving phone calls from S.M.; she reported being frightened for herself and for her family. S.M. had previously pled "no contest" to harassment charges and had been ordered to have no contact with her. At the time of the reported phone calls, he was on probation for the previous harassment offense. During the phone calls, S.M. stated that he was in trouble and needed B.W., that he loved her and found her perfect. In response to this report, the troopers charged him with first degree stalking.

***

T.K. reported that she was being stalked and harassed by her boyfriend's ex-wife, M.D. An order forbidding contact between M.D. and her former husband, P.D., was in place, but there was no provision forbidding contact with the girlfriend T.K. The two former spouses were involved in a child custody case.

T.K. reported that M.D. was making threatening phone calls; that she had destroyed T.K.'s personal property—including cutting up clothes—and had followed T.K. and P.D. to a mall and attempted to force her way into their vehicle. On another occasion she had followed the couple on a berry-picking trip.

M.D. was charged with second-degree stalking, criminal mischief involving personal property and misdemeanor assault.

***

N.C. called the troopers to report that P.M., her ex-boyfriend, was in her home yelling and causing a disruption. Another man, who was spending the night, and two of N.C.'s children were present in the house at the time P.M. arrived. She also reported that P.M. had been following her to her workplace and other locations. She had reported to the troopers at least once before. She said she had previously obtained protective orders against P.M. but had let them drop.

N.C.'s employer and a co-worker confirmed that P.M. would regularly appear at the workplace.

N.C. stated that she had made it clear that she no longer wanted a relationship with P.M. He maintained that they still had an active sexual relationship and that he often came to her house late at night. The two have a child together.

P.M. was charged with third degree assault, fourth degree criminal trespass, and second degree stalking.

L.K. reported that her ex-husband S.K. had telephoned her several times that day, leaving threatening messages on her voice mail. He had been served with a protective order two days previously. L.K stated that S.K. could be violent and that he had been trying to obtain a gun.

When contacted by AST, S.K. said he had only been trying to contact his daughter. He was charged with violating a protective order and stalking in the second degree.

***

E.R. called to report that her ex-boyfriend V.L. was pounding on her door and refused to leave. He ran off just before the troopers arrived and was caught shortly afterward.

He had been previously arrested for a crime involving domestic violence against E.R., stalking and criminal trespass. She had had several protective orders against him. She stated that he was violent when drinking and had assaulted her in the past.

The couple had lived together off and on for nine years but not for three years prior to this incident, although they had recently been sexually intimate and he had done work on her property. She stated she had told him she did not want a relationship with him.

For this incident, V.L. was charged with fourth degree assault and second degree stalking.

***

I.W. reported to the VPSO that she was being harassed and threatened by her ex-boyfriend J.T. He had been sending her obsessive letters for some time and was threatening to kill her. (*Copies of some of the letters are in the AST file.*) The two have two children together. They had last lived together three years previously, and she had indicated she no longer wanted a relationship with him.

It appeared that he had followed her from one community to another over a period of time. There had been previous incidents in other towns, including at least one in which the local police were called when J.T. attempted to take one of the children from I.W.

A witness confirmed that J.T. had made threats to kill others if I.W. would not be intimate with him again.

J.T. was charged with second degree stalking.

and were 139 percent more likely to result in a conviction. In other words, cases that included additional non-stalking charges were 2.4 times more likely to result in a conviction than cases that did not include additional non-stalking charges.

It is important not to over-interpret these results because some categories are represented by extremely low sample sizes (e.g., only two suspects had a prior arrest for harassing the victim). Nonetheless, it is interesting to see the variation in the likelihood of cases being referred, accepted, and convicted. For example, although only six cases had suspects who had a prior arrest for stalking the victim, all six were referred for prosecution, all six were accepted, and all six resulted in a conviction. By comparison, only 34.6 percent of other cases resulted in a conviction. When suspects had a prior arrest for stalking the victim, they were 2.9 times more likely to be convicted.

Comparisons with National Data

Few national statistics on stalking are available. The current primary source of information on the offense is the National Violence Against Women Survey (NVAWS). While the numbers are not directly comparable, in looking at the NVAWS statistics and the Alaska figures presented here, we can note several points. First, stalking seems even more underreported and, possibly, underrecognized by law enforcement in Alaska than in the country as a whole. Second, it is likely that this is particularly true among Alaska Natives. Third, it is likely that the prosecution of stalking is more effective in Alaska than nationally.

Based on NVAWS results, an estimated 2.2 percent of men and 8.1 percent of women in the United States have been stalked at some point in the past (for a total of over two million men and over eight million women). Annual stalking estimates (rather than lifetime estimates) are obviously much lower, with 1.0 percent of women and 0.4 percent of men stalked per year. Nationally, this equates to over one million women and over 370,000 men stalked in a given year. Although we must do so with great caution, we can use these statistics to estimate the prevalence of stalking in Alaska.

Using the annual NVAWS statistics that 1.0 percent of women and 0.4 percent of men are stalked (derived from a sample of 8,000 women and 8,000 men), and assuming that annual rates in Alaska would be similar to annual rates in the U.S., we can estimate that around 2,100 adult women and 900 adult men are stalked in Alaska in a given year (see Table 13). Further NVAWS estimates suggest that nationally 55 percent of female stalking victims and 48 percent of male stalking victims report to law enforcement. If similar reporting patterns emerged in Alaska, around 1,100 women and over 530 men in Alaska would report a stalking incident in a given year (see Table 14). Alaska's numbers are much lower than those for the rest of the country, something that may be a factor of underreporting by victims or underrecognition by law enforcement.

More accurate estimates of stalking prevalence and reporting patterns will be available only through additional research; nonetheless, even in the absence of this additional research, it is clear that stalking is greatly underreported in Alaska. In 2005, only 17 stalking incidents were reported to the Alaska State Troopers, and statewide from all jurisdictions only 30 stalking cases were referred to the Alaska Department of Law.

The underreporting may be particularly true among Alaska Natives. NVAWS statistics show that "American Indian/Alaska Native women reveal significantly more stalking victimization than women of other racial and ethnic backgrounds." While 8.2 percent of white women reveal being stalked at some point in their lifetime, 17.0 percent of American Indian/Alaska Native women revealed being stalked at some point in their lifetime. American Indian/Alaska Native women (and men) were the most likely persons to indicate having been stalked at some point in their lifetime—over two times more likely than for whites. This was true for both women and men. (It is important to note that the NVAWS figures do not represent actual reports to law enforcement, but rather self-disclosure of incidents that may or may not have been reported to the police.) By comparison, according to the study, the rates of stalking reported to Alaska State Troopers were 6.6 times higher for white women than for Native women and were 9.1 times higher for White men than for Native men (see Table 15)—rates contradicting national figures. Although these statistical extrapolations are fraught with untested assumptions, it is nonetheless clear that stalking is under-

Table 13. Annual Estimates of Stalking Incidents in Alaska by Gender (With and Without Anchorage)

	Alaska (with Anchorage)			Alaska (without Anchorage)		
Gender	Number of adults	Estimated prevalence	95% confidence interval	Number of adults	Estimated prevalence	95% confidence interval
Women	210,104	2,101	1,681 to 2,521	118,645	1,186	949 to 1,424
Men	226,111	904	678 to 1,130	133,158	533	399 to 666
Total	436,215	3,005	2,359 to 3,651	251,803	1,719	1,348 to 2,090

Source of data: *NVAWS (1998); U.S. Census (2000, SF1)*

Table 14. Annual Estimates of Stalking Reports to Law Enforcement in Alaska by Gender (With and Without Anchorage)

	Alaska (with Anchorage)			Alaska (without Anchorage)		
Gender	Number of victims	Estimated # of reports	95% confidence interval	Number of victims	Estimated # of reports	95% confidence interval
Women	2,101	1,156	1,071 to 1,240	1,186	652	605 to 700
Men	904	434	371 to 497	533	256	218 to 293
Total	3,005	1,590	1,442 to 1,737	1,719	908	823 to 993

Source of data: *NVAWS (1998); U.S. Census (2000, SF1)*

Table 15. Number of Adults and Number of Stalking Reports in Alaska by Gender and Race (Without Anchorage)

	White			Native		
Gender	Number of adults	Number of reports	Rate of reports per 100,000	Number of adults	Number of reports	Rate of reports per 100,000
Women	150,925	165	109.3	150,925	25	16.6
Men	30,554	18	58.9	30,554	2	6.5
Total	**167,513**	**183**	**109.2**	**167,513**	**27**	**16.1**

Source of data: *U.S. Census (2000, SF1); Alaska State Troopers data (1994-2005)*

reported in Alaska, particularly for Alaska Natives.

But, while stalking may be underreported in Alaska, prosecution seems to be somewhat more effective. The Alaska Department of Law secured convictions in the cases accepted more often than occurred nationally: while NVAWS results showed that 54 percent of accepted cases resulted in a conviction, 72 percent of the 51 cases accepted by the Alaska Department of Law between 1999 and 2004 resulted in a conviction.

Reporting and Early Intervention

While we do not have any data on why stalking is so underreported, law enforcement hypothesizes that stalking may be underrecognized by victims. NVAWS statistics show other factors may also come into play. Of the victims that did not report to police, 20 percent believed it was not a police matter, 17 percent believed that police could not help, and 16 percent were afraid of reprisal from the stalker. Of the victims that did report to police, 50 percent were not satisfied with police actions and 46 percent thought that police actions did not improve the situation.

Law enforcement might be trained to capitalize on opportunities for early recognition of stalking patterns. Efforts might also be undertaken to raise public awareness of stalking as a crime and report it as such and to further train law enforcement to recognize the signs of stalking. This will increase the likelihood that suspects who violate stalking statutes are reported to law enforcement and are appropriately charged.

André B. Rosay is an associate professor with the Justice Center. Greg Postle is a researcher with the Justice Center. Katherine TePas is a program coordinator with the Alaska State Troopers. Darryl Wood is an associate professor with the Justice Center. *The project discussed in this article was supported by Grant No. 2005-WG-BX-0011 awarded by the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.*

4/8/09 CONFIRMA-TION HEARING: WAYNE ANTHONY ROSS

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Tensions mount over Palin's pick for attorney general

By Rena Delbridge

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JUNEAU — Legislators are expecting an impassioned argument today as they decide whether to confirm Gov. Sarah Palin's controversial choice for attorney general.

Many Democrats were outspoken already against the pro-gun, anti-abortion Wayne Anthony Ross, but the opposition became bipartisan and more vehement Wednesday morning after learning more about Ross' involvement Palin's pick for an open Senate seat.

Palin's office and Ross confirmed the governor consulted him before sending a list of three candidates to Senate Democrats to fill a vacant seat in that body. But a legal opinion issued Wednesday said that's not complying with state law.

Soon after, Ross told reporters in Juneau that the most important business before lawmakers was to stop worrying about what is and is not within the law and simply appoint a Juneau senator.

"It's conceivable (Ross) may be failing his first big test as an attorney general," said Sen. Hollis French, D-Anchorage. French requested the legal opinion. "In my view, it's damaging to his credentials as an independent attorney general."

The matter isn't as serious to others.

"I'm not going to make my decision based on something somebody said they heard," said Sen. Gene Therriault, R-North Pole. "Certainly, the areas of the statute that deal with this are a little bit murky. They are subject to some interpretation."

Sen. Joe Thomas, D-Fairbanks, said Ross' comments to reporters will influence votes, although he sees deeper issues.

"I did have concerns as we went along about his limited legal experience regarding

constitutional law and petroleum tax laws," Thomas said. "I asked him about that directly, and he said he had none, basically. That verified my concerns."

Thomas said he's inclined to vote against confirmation.

"I strongly believe the governor has the right to pick somebody that's of the same philosophical opinions as she is," he said. "But I also have my concerns for where the state is headed, depending on some of those opinions the attorney general may have."

He and other legislators aren't sure Ross will be confirmed. Sen. Joe Paskvan, D-Fairbanks, said the prospective attorney general's comments on Palin's Senate seat appointees should be "a cause of concern to not just the Democrats, but Republicans, as to whether the appropriate procedure is being followed."

"I expect there to be objection," Therriault said. "It could be a very close vote."

Rep. Jay Ramras, R-Fairbanks, chairs the House Judiciary Committee, which also held confirmation hearings on the Ross appointment.

"The murmurs around the building is that his confirmation is in jeopardy, but at this point, I still intend to be a yes vote for him," Ramras said. "But I think this foretells the larger than life relationship that he is going to have with the governor and with the state. We're in for a colorful, bumpy ride."

Legislators will meet in joint session today to vote on a long list of Gov. Palin's appointments to state boards and commissions.

Some are expected to prove controversial, particularly a nominee to serve on the state's fish board.

Brent Johnson of Clam Gulch doesn't sit well with some people in the Interior, who fear they would be left without regional representation on the board and who would tip the board's balance in favor of commercial, instead of sport fishing, groups.

Therriault said the appointment upsets a traditional, but not required, board balance between regions, which makes the nomination "contentious."

He said he'll make a decision how to vote after the "impassioned arguments" on the floor today.

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Senate vacancy flap entangles AG nominee

ROSS: Nominee's advice on filling seat threatens confirmation.

By SEAN COCKERHAM
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(04/15/09 22:05:13)

JUNEAU -- Gov. Sarah Palin late Wednesday reappointed Tim Grussendorf to the open state Senate seat in spite of Senate Democrats already rejecting him for the job. The ongoing war between lawmakers and Palin over the seat is now spilling into other areas, including her choice for attorney general.

Palin's appointee for Alaska attorney general, Wayne Anthony Ross, is up for a confirmation vote of the Legislature today. Lawmakers said Wednesday that Ross' chances are being jeopardized by his role in the fight over the Senate seat, and that they now expect the vote on his confirmation to be close.

"The conversation (about Ross) in the halls today has changed as a result of the legal advice he supposedly provided Gov. Palin with respect to this Senate vacancy replacement. ... It brings the question back up again as to whether the attorney general ought to be neutral and serve on behalf of Alaskans as opposed to serving at the pleasure of the governor," said Anchorage Republican Sen. Lesil McGuire, who said she will still likely vote in favor of Ross.

The conflict is over a state Senate seat vacant since March 2, when longtime Juneau Democratic Sen. Kim Elton resigned for a job in the Obama administration. The law says Palin needs a majority of the nine Senate Democrats to approve her pick for Elton's replacement. They rejected her first two picks, Grussendorf and Joe Nelson. Palin then re-submitted the names of Grussendorf and Nelson on Tuesday night, along with that of Alan Wilson, a Juneau contractor opposed in part because he just became a Democrat on March 4. The governor said Senate Democrats could choose among them.

But legislative lawyer Pam Finley wrote a memo Wednesday saying "the governor's presenting more than one name at a time to fill a vacancy in the state Legislature does not comply with state law." Ross signed off on Palin submitting multiple names and he raised eyebrows in the Legislature with his reaction to a reporter Wednesday morning when first shown the memo calling it illegal.

"It seems to me the most important thing that can be done by the Senate is not argue with legal or illegal but to appoint somebody to represent Juneau," he said.

Anchorage Democratic Sen. Hollis French gave a speech on the Senate floor calling that a "very troubling suggestion from the attorney general that we ignore the law."

Ross also said Wednesday morning he needed to review the memo that said Palin's submission of multiple names wasn't legal. Then, late Wednesday, Palin sent a new letter to the Senate saying she wanted to "eliminate confusion" and make clear that she meant to forward the names of the three candidates in order of her preference -- not as one batch.

Palin said in her new letter that she was re-appointing Grussendorf. And said that, if the Senate

Democrats reject him again, then she was appointing Nelson. And -- if Nelson is rejected again -- Palin said she was appointing Wilson.

The Legislature's legal opinion said it was unclear if Palin could appoint someone previously rejected, although it said if state law "were interpreted in line with the clear intent that the governor appoint someone who has not already been rejected, a second appointment of Mr. Grussendorf would also be improper."

It was also not clear Wednesday night if Senate Democrats might now vote on Grussendorf -- or if he has any more support than he did when they rejected him in a closed door meeting March 31. Some opposed Grussendorf because he was a registered Republican until just a few weeks ago, although Grussen- dorf says that was a mistake by the Division of Elections and he had meant to be registered as undeclared before switching back to Democrat so that he could qualify for the appointment to the state Senate.

Grussendorf is chief of staff to Bethel Democratic Sen. Lyman Hoffman, one of the most influential senators as a budget writer. Hoffman argues Grussendorf has experience with legislative work and could be ready to step in right away. He gave a little smile when asked if Grussendorf now has enough support.

"I don't know," he said.

There are just four days remaining before the Legislature is to adjourn for the year. The issue today will be whether Ross has majority support in the full Legislature needed to be confirmed as attorney general. Ross conceded his involvement in the flap over the open state Senate seat is going to make it harder.

"I get involved in this kind of donnybrook, I probably won't get any votes from the people that disagree with me. So I may be through tomorrow afternoon, who knows?" Ross said Wednesday morning. "But I'm hoping I'll get a chance to be confirmed."

Ross said a 1987 legal opinion indicates the method of Senate Democrats' rejection of Grussendorf and Nelson wasn't valid. The 22-year-old opinion challenges existing state law on confirmations -- which is the way many currently serving in the Legislature were confirmed, including Palin appointee Rep. Wes Keller.

Palin is not pressing the 1987 legal issue, but Ross said she is giving senators a chance to reconsider the rejections, as well as consider the new name of Wilson.

"One of the things I'd like to do as attorney general is, if confirmed, is to get more dialogue going between the people and quit having barbs thrown at the governor all the time when she's trying to get representation for the people of Juneau," Ross said.

Senate Majority Leader Johnny Ellis said Ross' confirmation is now in question.

"It's an open question in the minds of most people," said Ellis, an Anchorage Democrat. "It had looked like he would have plenty of votes to be confirmed in spite of some of the feelings. But this is Exhibit A against his statement that he would be an independent attorney general and stand up for the law."

There are more Republicans than Democrats in the Legislature, though. Republican Senate President Gary Stevens said he thinks the Republicans will stick with Ross. McGuire said she still believes it is a governor's prerogative to select an attorney general.

To: All Members of the Alaska State Legislature

From: Wayne Anthony Ross

Re: Confirmation for the Position of Attorney General

Date: 15 April 2009

I have been advised that there is now a rumor circulating that I have advocated or implied that the law should be ignored when the Senate takes up the issue of approving the Governor's appointment to fill the vacant Senate seat for Juneau. I am also advised that someone indicated on the floor of the Legislature that I made such a statement. That rumor is totally false.

Since assuming the responsibilities as Attorney General I have been kept quite busy meeting with as many of you as I can before confirmation to answer any questions you may have. I have, unfortunately, been unable to meet with all of you. I am sure you would not vote to confirm an Attorney General nominee who advocated ignoring the law. That is why I have chosen to send you this memo attesting to the fact that I never made any statement that the law should be ignored.

Despite the hectic schedule of the last few weeks, I did read a legislative attorney's opinion on the Governor's submitting names to the Senate as well as the current law, and a 1987 Informal AG's opinion upon which the Governor has relied. The legislative attorney's opinion is interesting and contains some good points. I am not sure I agree with everything therein however.

I can assure you that if and when I am confirmed, this entire area of the law will be thoroughly analyzed and I will issue a report on my findings and opinion. I look forward to the chance to do so and set the issues, raised by the current vacancy in the Alaska Senate, to rest once and for all.

Be assured again, however, that I DID NOT and would not advocate ignoring the law.

I have worked in the field of the law for almost 45 years. I love the law and I love America's and Alaska's legal system. I have vigorously and zealously represented many different clients who have had legal problems large and small. Now Governor Palin has given me the opportunity to represent our great State. I bring to the task integrity, knowledge of the law and the legal system, the desire and ability to work hard for **all** of the people of Alaska, and a real love of this State. One other important attribute I have is a good sense of humor, sometimes a rare commodity these days.

I truly look forward to meeting the challenge Governor Palin has given me. I also look forward to working with you in the future in the best interests of our Alaska.

I ask that you give me the chance to do so by voting for my confirmation.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Kim Elton
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

April 15, 2009

Honorable Wayne Ross
Attorney General
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811

Dear General Ross:

According to the Daily News this morning, Sharon Leighow states that you have "signed off" on the submission by the Governor of three names, two of which have already failed confirmation, as legal under AS 15.40.350.

Is this a correct statement of your legal position on this issue?

Sincerely,

Senator Hollis French

LEGAL SERVICES

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 15, 2009

SUBJECT: Appointment of three people to fill a vacancy in the state senate

TO: Senator Hollis French

FROM: Pam Finley
Revisor of Statutes

You have asked about the legality of the governor's presenting three names to fill a vacancy in the state senate. The short answer is that the governor's presenting more than one name at a time to fill a vacancy in the state legislature does not comply with state law.

AS 15.40.320 requires the governor to appoint "a qualified person" to fill the vacancy. AS 15.40.330 describes the qualifications of "the" appointee. If an appointee is rejected, AS 15.40.350 requires the governor to appoint "another qualified person." None of these statutes authorize the governor to present a list of persons for legislators to select, and all of them use language implying that only one person would be appointed at a time.

However, it is not the use of the singular in the text of AS 15.40.320 -15.40.350 that is important.[1] The problem with the governor's presenting three names is that the process set out in AS 15.40.320 - 15.40.350 is one of appointment by the governor and confirmation by members of the same house and party as the predecessor in office.[2] If the three names are just suggestions, then the governor has not "appointed" anyone. If the governor claims to have "appointed" all three as a unit, then the appointment would violate the state constitution because our constitution authorizes only one senator per senate district. Constitution of the State of Alaska, art. II, sec. 1, and art. VI, sec. 2. Essentially, the governor is using a process whereby she submits a list of names, and the Senate Democrats choose the person, i.e., make the "appointment."[3] This is not the process established by AS 15.40.320 - 15.40.350.

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[1] In fact, in general in the Alaska Statutes, the singular number includes the plural. AS 01.10.050(b).

[2] Strictly speaking, the governor's "appointment" is a "nomination" because the person does not take office until confirmed. AS 15.40.340. However, the terms "appointment" and "nomination" are often used interchangeably.

[3] A similar process---appointment from a list---is provided for in some statutes, except that the appointment is made by a member of the executive branch. See AS 14.40.150(b),

The situation is further complicated by the fact that two of the three names (Mr. Grussendorf and Mr. Nelson) have already been appointed to fill this vacancy and those appointments have been rejected by the Senate Democrats. The appointment of Mr. Nelson---the most recent appointee---is clearly improper because AS 15.40.350 requires the governor to appoint "another" qualified person after one has been rejected, and Mr. Nelson is the same person, not "another." It is not as clear that the same applies to Mr. Grussendorf, but if AS 15.40.350 were interpreted in line with the clear intent that the governor appoint someone who has not already been rejected, a second appointment of Mr Grussendorf would also be improper.[4]

PF:ljw
09-252.ljw

AS 14.42.015(d), AS 15.10.180, AS 15.13.020(b), AS 23.15.550(a)(6), and AS 44.39.030.

[4] If the appointment of a rejected appointee were allowed, the governor could simply alternate appointments between two persons.

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MEMORANDUM April 14, 2009

SUBJECT: Confirmation of persons appointed to serve as head of an executive branch department

TO: Senator Hollis French

FROM: Jack Chenoweth
Assistant Revisor

As a follow-up to my memo of yesterday on filling a legislative vacancy, Kate Herring has asked for a memo that summarizes the legislature's role in the review of the appointment of persons for positions in the executive branch that are subject to legislative confirmation.

*

Constitutionally, the underpinnings of the legislature's role in the confirmation of certain executive branch appointees to hold the office are to be found in two sections of article III of the Alaska Constitution, sections 25 and 26:

> **Department Heads.** The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, ***subject to confirmation by a majority of the members of the legislature in joint session***, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the secretary of state. The heads of all principal departments shall be citizens of the United States.
>
> **Boards and Commissions.** When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, ***subject to confirmation by a majority of the members of the legislature in joint session***, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

(Emphasis added.)

There is substantially more history as to these two sections than is available for the legislative vacancy provision. The constitution reflects what one writer has called "unity in the executive" with responsibility assigned to the governor to ensure faithful execution of the laws. The check on the executive's authority rests with the legislature through its confirmation authority. In a challenge to the scope of the legislature's ability to confirm appointees to subordinate positions, in *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976), the Alaska Supreme Court reached the conclusion that

> . . . the appointment of executive officers is an executive function; for without such a power, the responsibility for executing executive duties would be diffused and the goal of separation of branches of government, avoiding too great a concentration of power in one branch, would be defeated.

and, further that

> . . . under Alaska's constitution confirmation is a specific attribute of the appointive power of the executive. Other courts which have been called upon to resolve this issue have been unanimous in their holdings that ***confirmation is not a distinct legislative power, but rather a part of the executive power of appointment which has in turn been delegated in some specific instances by constitution to the legislative branch of government.***

Bradner, at 6 - 7 (emphasis added; notes omitted).[1] What this has meant, through

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[1] Key provisions of the *Bradner* decision examined executive and legislative authority:

> Appellee [the executive] contends that the appointment of executive officers is an executive function. We find appellee's contention most persuasive. In addition to vesting the executive power of the state in the governor, Section 16 of Article III provides that "the governor shall be responsible for the faithful execution of the laws." In view of the responsibilities imposed by Section 16, and the authority granted by Section 1, the governor is necessarily clothed with the power to appoint subordinate executive officers to aid him in carrying out the laws of Alaska. Thus, we conclude that the appointment of executive officers is an executive function; for without such a power, the responsibility for executing executive duties would be diffused and the goal of separation of branches of government, avoiding too great a concentration of power in one branch, would be defeated.
>
> . . .
>
> Given our conclusion that under Alaska's constitution the appointment of subordinate executive officers by the governor is an

implementing legislation discussed later in this memo, is that the powers of an executive branch office subject to confirmation vest in an executive appointee once the person appointed has been issued a commission of office,[2] has taken the required oath,[3] and, if

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> executive function, it is then necessary to determine the nature of the legislature's confirmation powers. Here ***we are in agreement with appellee's analysis that under Alaska's constitution confirmation is a specific attribute of the appointive power of the executive. Other courts which have been called upon to resolve this issue have been unanimous in their holdings that confirmation is not a distinct legislative power, but rather a part of the executive power of appointment which has in turn been delegated in some specific instances by constitution to the legislative branch of government.***
>
> In light of the nature of the legislature's power of confirmation, the question whether Sections 25 and 26 of Article III describe the outer limits of the legislature's confirmation authority, or whether the legislature may by statute require confirmation of other high-level, policy making officials within the executive branch, admits of but one resolution. As to this issue, we think the provisions of Sections 25 and 26 of Article III are clear and unambiguous. Thus, we conclude that Sections 25 and 26 mark the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government.
>
> The lack of ambiguity in Sections 25 and 26 of Article III of the Alaska Constitution mandate that this court interpret these express provisions as embodying not only the maximum parameters of the delegation of the executive appointive authority through the legislative confirmation function but, further, that they delineate the full extent of the constitution's express grant to the legislative branch of checks on the governor's power to appoint subordinate executive officers. In our view, the separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision.

Bradner, at 6 - 7 (notes and citations omitted; emphasis added).

[2] See AS 39.05.035:

> **Commission of office.** After each appointment of a state officer, the governor shall execute a commission, which states that the person to whom it is issued is appointed and sets out the office to and the term for which the officer is appointed. The attorney general shall prescribe the form of the commission.

applicable, has furnished the required surety bond.[4] At that point, the individual may claim the office and exercise powers assigned to it, subject to the legislature's ability, in joint session, to confirm (i.e. to veto or disapprove) the governor's appointment.[5]

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[3] The requirement of the oath is constitutionally mandated. Under article XII, sec. 5:

> **Oath of Office.** All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as . . . . . to the best of my ability." The legislature may prescribe further oaths or affirmations.

[4] The bond requirement is also statutory. See AS 39.05.050:

> **Surety bonds.** The principal executive officer of each department and subordinate officials shall furnish corporate surety bonds in the instance and amount required by law or determined by the governor upon recommendation of the commissioner of administration. The state shall pay the cost of the bond. The attorney general shall approve the form of the bond.

[5] See, also, *Cook v. Botelho*, 921 P.2d 1126 (Alaska 1996):

> The constitution delegates a part of the appointment power to the legislature. *Bradner*, 553 P.2d at 7. This delegation implies both a power, and a duty, to investigate the status of appointed offices. As stated by the Kansas Supreme Court:
>
> > Under all the circumstances, the Senate cannot shut its eyes to the facts as to whether the respective offices are filled; whether they are functioning under the law, or whether there is a vacancy therein. The Governor's communication sending the appointment to the Senate raises the question: What is the status to which the appointment refers? That question the Senate is obliged to determine for itself, and to make its own investigation in order to discharge its duty. If the investigation reveals the fact that the Governor has already made an appointment of an officer who has qualified, is in possession, is discharging the duties, and is receiving the emoluments of the office, the Senate must determine the course it will pursue in light of that fact. The Senate, which has official knowledge of all of the acts of another state department,

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Procedurally, the legislature's role in confirmation is spelled out almost entirely in AS 39.05.080, the text of which is set out in full below:

> **Procedure for all appointments.** Except as otherwise provided in a law relating to the positions or memberships on a specific board or

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> may not close its eyes to an existing fact merely because the executive has failed to transmit a communication giving it the advice. The fact that the Senate is called upon to consent to or confirm appointments presupposes an investigation upon which to base its judgment as to whether or not it should confirm or reject the named appointee. It is a matter of common knowledge that the Senate of Kansas, likewise the Senate of the United States, may, and frequently does, investigate the character, fitness, and ability of the appointee submitted for its consideration. The Senate must be permitted to investigate on its own initiative, and without communication from the Governor, the status of offices; otherwise the Governor could fill and refill them at his pleasure by simply failing to advise the Senate. No other branch of the government exercises the power of investigation to the same degree as does the legislative branch. . . . We conclude that the Senate did not go beyond its powers in making the investigation concerning the offices held by the defendants, and, having satisfied itself, that it could properly exercise its judgment thereon. While it is the usual and customary courtesy of the executive to transmit such facts to the Senate, we believe it the better view to hold that the Senate may, on its own initiative, if it so desires, ascertain the facts upon which to base its deliberate and final judgment in confirming or rejecting appointees of the Governor.
>
> *Barrett v. Duff*, 114 Kan. 220, 217 P. 918, 925-26 (Kan. 1923). See also [*People v.*] *Shawver*, 222 P. [11] at 25 [(Wyo. 1924)].
>
> We find the reasoning of the Kansas court convincing. The legislature holds broad powers of investigation necessary to its law-making activities. ***The constitutional grant of the confirmation power implies a coincident power and duty to investigate the status of the appointed offices as well as the qualifications of the individuals appointed to those offices.*** . . . .

Cook v. Botelho, 921 P.2d at 1132 (citations and notes omitted; emphasis added).

commission, appointment to a position or membership shall be made in the following manner:

(1) Each governor shall present to the legislature the names of the persons appointed by that governor; each governor may present the name of a person appointed by a previous governor; only presentment that occurs during the time that the legislature is in regular session constitutes presentment under this section. The governor shall, within the first 15 days after the legislature convenes in regular session, present to the legislature for confirmation the names of the following persons: (A) persons appointed to a position or membership who have not previously been confirmed by the legislature, and (B) persons to be appointed to fill a position or membership the term of which will expire on or before March 1 during that session of the legislature. If an appointment is made after the first 15 days after the convening of the regular session but while the legislature is in regular session, the governor shall immediately present to the legislature for confirmation the name of the person appointed.

(2) When appointments are presented to the legislature for confirmation,

(A) the presiding officer of each house shall assign the name of each appointee to a standing committee of that house for a hearing, report, and recommendation; standing committees of the two houses assigned the same person's name for consideration may meet jointly to consider the qualifications of the person appointed and may issue either a separate or a joint report and recommendation concerning that person; then

(B) the legislature shall, before the end of the regular session in which the appointments are presented, in joint session assembled, act on the appointments by confirming or declining to confirm by a majority vote of all of the members the appointments presented.

(3) When the legislature declines to confirm an appointment, the legislature shall notify the governor of its action and a vacancy in the position or membership exists which the governor shall fill by making a new appointment. The governor may not appoint again the same person whose confirmation was refused for the same position or membership during the regular session of the legislature at which confirmation was refused. The person whose name is refused for appointment by the legislature may not thereafter be appointed to the same position or membership during the interim between regular legislative sessions. Failure of the legislature to act to confirm or decline to confirm an appointment during the regular session in which the appointment was presented is tantamount to a declination of confirmation on the day the regular session adjourns.

(4) Pending confirmation or rejection of appointment by the legislature, persons appointed shall exercise the functions, have the powers, and be charged with the duties prescribed by law for the

> appointive positions or membership. However, the duration of an appointment made during the time period between regular sessions of the legislature by a person who is not still the governor on the first day of the next regular session ends on the date during the next regular session that the sitting governor presents for confirmation an appointment to the office. For the purpose of applying laws that limit the number of terms or parts of terms that may be served by a member of a board or commission, the part of the term of office that is served under an interim appointment immediately before the member is reappointed under this paragraph is considered to be merged with the part of the term of office that is served immediately after reappointment so that the two periods of service constitute only one part of a term. The duration of an appointment made during a regular session of the legislature and not presented to the legislature by the governor during that session ends no later than the last day of that session. The duration of an appointment made during an interim by a governor who is not in office at the beginning of the next regular session of the legislature ends no later than the last day of that regular session unless the governor who is in office during that session presents the person's name for confirmation. The same governor may not appoint the same person to the same position or membership if the person's appointment ends because of the governor's failure to present the person's name for confirmation.

In my view, compliance by the legislature with subparagraph (2)(B) of this section is essential. Under that subparagraph, even if a standing or special committee to which an appointment has been referred has failed to make or has withheld making a recommendation regarding confirmation of the person appointed, legislative leadership (i.e. the majority leader assigned to maintain the order of presentation of nominations in the joint session called to confirm these appointments) is duty bound not to be diverted by the committee's failure or neglect of its duty. Instead, under the statute, the majority leader must move confirmation of the nomination so that the joint session may "act on the appointments by confirming or declining to confirm by a majority vote of all the members the appointments presented." In other words, once an appointee's name has been transmitted for confirmation consideration, the legislature is obliged to act; its consideration of a confirmation cannot be defeated by a standing committee's failure to recommend concerning the appointee. The exception would, of course, be if the joint session were, by proper motion, to table consideration or if the joint session were to adjourn before consideration of the nominee's confirmation and no other provision was made before final session adjournment for further consideration of the appointment.

*

I don't know whether it is material to your deliberations, but I have been asked to speak to the role a committee of referral to which an appointee's name is assigned should play, and I'll include those observations.

AS 39.05.100 suggests that the committee -- and, by extension, the legislature collectively in its joint session -- should evaluate the appointee's qualifications. Article III, sections 25 and 26, says only that appointees must be "citizens of the United States." For persons appointed to the State Board of Education and Early Development, a so-called section 26 board in that it is at the head of a principal department or agency, AS 39.05.065(a) additionally requires that "[e]ach member . . . shall . . . have been a resident of Alaska for at least three years."[6]

Individual executive department appointees may have other qualifications specifically required by law. So, for example, AS 16.05.010 directs that the commissioner of fish and game "shall be a qualified executive with knowledge of the requirements for the protection, management, conservation, and restoration of the fish and game resources of the state." Alone among department heads, educational requirements attach to the qualifications of the commissioner of education and early development (not an appointee subject to legislative confirmation), who, under AS 14.07.145(b),

> . . . shall be appointed without regard to political affiliation and shall have at least a master's degree with five years' experience in the field of education since receiving it, with at least three of the five years in an exclusively administrative position.

Under AS 26.05.160(a), the adjutant general, who heads the Department of Military and Veterans' Affairs:

> . . . must be a citizen of the state and must be a federally recognized general-grade officer in the Alaska National Guard or an officer who has the qualifications to gain federal recognition as a general-grade officer either in active status or in retirement status eligible for reappointment as a general-grade officer. . . . .

For the position of attorney general,[7] because that officer has broad power under

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[6] For other regulatory boards and commissions, AS 39.05.100(a) directs in addition that

> (a) A person appointed to a board or commission of the state government shall be and have been before the last general election, (1) a registered voter in the state, if the appointment is made at large or (2) a registered voter from the judicial district, if the appointment is made from a specific judicial district. . . . .

These residency requirements do not apply to commissioners appointed to head the executive branch departments.

[7] The position of attorney general was an elected post in territorial days. A proposal made in the Alaska Constitutional Convention to maintain the tradition of a popularly elected attorney general under Statehood was rejected by the delegates.

AS 44.23 to represent the state in civil actions, to prosecute criminal matters, and to administer state legal services, though it is not explicitly so provided by law, I would submit that the appointee almost surely must have, and at all times maintain in good standing, an active license to practice law in the courts of this state.[8]

Evaluation of compliance with these various formalities aside, state law also contains several references to the following standard, which, if not entirely applicable to appointments to head the executive branch departments, provides some basis for guiding the legislature as it evaluates appointments:

> The governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership. . . . .

AS 39.05.060(b).[9] The specific requirements of "basic interest," "good judgment," and

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[8] See AS 08.08.210(a):

> (a) A person may not engage in the practice of law in the state unless the person is licensed to practice law in Alaska and is an active member of the Alaska Bar. . . . .

and (b):

> (b) The practice of law shall be defined in the Alaska Bar Rules.

and Alaska Bar Rule 63 setting out that referenced definition:

> For purposes of AS 08.08.230 (making unauthorized practice of law a misdemeanor), "practice of law" is defined as
>
> (a) representing oneself by words or conduct to be an attorney, and, if the person is authorized to practice law in another jurisdiction but is not a member of the Alaska Bar Association, representing oneself to be a member of the Alaska Bar Association; and
>
> (b) either (i) representing another before a court or governmental body which is operating in its adjudicative capacity, including the submission of pleadings, or (ii), for compensation, providing advice or preparing documents for another which affect legal rights or duties.

[9] This language appears in AS 39.05.060(b). It may, arguably, apply only to the governor's appointments to multimember boards and commissions (rather than individual

"knowledge and ability in the field of action" surely applies generically as a common standard for evaluation of all appointments.

After that, legislators are left to their own devices.

*

As to reasons for which legislative confirmation has been withheld, because I have generally not been involved in these discussions, either before a committee or in a caucus, I am not the best source of information; incumbent legislators who were present at past joint sessions in which appointments were challenged can better provide detail.

That said, I cannot recall an instance in which an appointee for "the principal executive officer" of a state department was not confirmed. In May 1991, Jack Phelps, one of Governor Hickel's appointees to the then-entitled State Board of Education, a section 26 board "at the head of a principal [executive branch] department," was not confirmed by a vote of 19 yeas to 40 nays. 1991 Senate Journal, pp. 1391 - 1392 (May 16, 1991). I believe that may well be the only individual whose appointment to a section 26

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posts at the head of executive agencies). Substantially the same language appears in AS 16.05.221(a) with respect to appointment of members of the Board of Fisheries:

> (a) . . . there is created the Board of Fisheries composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. ***The governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board, and with a view to providing diversity of interest and points of view in the membership.*** The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence. . . . .

(emphasis added) and AS 16.05.221(b) with respect to appointment of the members of the Board of Game:

> (b) . . . there is created a Board of Game composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. ***The governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board, and with a view to providing diversity of interest and points of view in the membership.*** The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence. . . . .

(emphasis added).

department executive position or a section board position at the head of a state agency was defeated, at least in the recent past.[10] I do recall that the reason voiced about failure to confirm Phelps is that he was closely associated with promotion of home schooling and not particularly supportive of state public education initiatives. There may be some truth to that because the six other persons whose appointments to the State Board submitted by Governor Hickel at the same time were approved without objection.

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Since Kate didn't provide details as to the purpose of the request, I trust this is sufficient for your purposes. If there is specific information you may require not addressed in this memo, please contact me.

JBC:plm
09-277.plm

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[10] In this count, I do not include members appointed to the Board of Fisheries or to the Board of Game, who are not section 25 appointees, nor are they technically section 26 appointees; I do not count appointees for other regulatory or quasi-judicial boards and commissions, although I can recall several instances of fisheries board and game board members whose appointments were rejected.

Finally, I also can very distinctly remember the defeat of the confirmation of Governor Knowles's nominee, David Norton, to a vacancy on the well-remunerated Alaska Oil and Gas Conservation Commission in May 1996 (1996 House Journal, pp. 4574 - 4575) on a 30 - 30 tie vote, principally because, in furtherance to the court's observation in *Cook v. Botelho* that the legislature has a "duty to investigate the status of the appointed offices as well as the qualifications of the individuals appointed to those offices," many legislators questioned Mr. Norton's standing under AS 31.05.009(1) as a "qualified . . . petroleum engineer" as those legislators evaluated and applied Mr. Norton's credentials.

Alaska State Legislature

APR 13 2009

Senator Hollis French, Chair
State Capitol, Room 417
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Committee Members:
Senator Bill Wielechowski
Senator Kim Elton
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

REPORT ON CONFIRMATION OF APPOINTMENTS

April 13, 2009

The Honorable Gary Stevens
President of the Senate
State Capitol
Juneau, Alaska 99801-1182

Dear President Stevens:

In accordance with AS 39.05.080, the Senate Judiciary Committee reviewed the following name with regard to confirmation:

Attorney General
Wayne Anthony Ross

There were no stated objections to the named individual. This does not reflect an intent by any of the members to vote for or against the individual during any further sessions.

Respectfully,

Senator French, Chair

Senator Wielechowski

Senator Therriault

Senator McGuire

Wayne Anthony Ross confirmation hearing

Tell us about yourself

What is your greatest strength going into this job

And your greatest weakness?

Who's your client as AG?

How do you handle a conflict between your duty to the Governor and your duty to the law?

Do you believe that the legislature has the authority to conduct investigations?

Have the authority to issue subpoenas?

You can put 50 lawyers to work on any legal problem .. which would you choose?

What is the number one public safety issue facing Alaska, in your view

What is your plan about that issue

SEX ASSAULT/SAM

Where does sex assault and sex abuse of a minor fit on that list?

You are aware that we have a rate of SA that is about two and a half times the national average?

Your department will be prosecuting both APD and AST cases

Aware that of the 1379 cases reported to AST, we're only producing about 217 convicted sex offenders.

What those number suggest to me is that we must do more than focus on the defendant who is charged and who is convicted. For every one of those there are some four rapes that take place without legal consequences.

What do you plan to do to improve the prosecution rate of SA and SAM cases both in urban areas like Anchorage and rural areas like Bethel and it's surroundings

FAMILY LAW/ DOMESTIC VIOLENCE

You were a divorce lawyer. Which side did you typically represent?

Do you think it's too easy to get a restraining order?

Do you plan to introduce legislation to change that?

How would you describe the cycle of domestic violence

Who's to blame for domestic violence

You will oversee lawyers in the Child Protection System

Think we have too many, too few?

Ever tried a case of child sexual assault

How about child pornography – ever had to defend one of those cases?

Most children are not abused by strangers – agree or disagree?

Do you think that state workers at what we used to call DFYS and now call OCS "work to destroy family unity"?

Think that DFYS workers are "frightening"?

NATIVE ISSUES / SUBSISTENCE/ANILCA

Do you think there are tribes in Alaska?

SB 148 refers to the federally recognized tribes in Alaska :

Should the state work with tribes on child custody matters

SB 96 "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, **the United States Virgin Islands**, or any territory or insular possession subject to the jurisdiction of the United States; the term "state" includes **an Indian tribe and** a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this chapter or under the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act

Junkyard dogs? Is it your intention to "take on the feds and regain control of this state?" The feds have xx percent of Alaska: under what possible legal theory could you hope to take control of that land?

Why do Native people not support you?
Did you consider apologizing after Ted Nugent said during a fundraiser for you, "Can an Alaska Native look at me with a straight face and say he needs 20 caribou to feed dogs on a chain all day? I'd like to smash that SOB in the temple." A D N 8/26/02.

When you applied to be a Supreme Court Justice in 2007, you listed him as an example of the type of people that you can get along with.

While we're on that topic, you've put your name forward to be a judge twice, correct

I have two ratings sheets from those attempts, relating to your bar polls. For those who do not know, a bar poll is a survey conducted of other lawyers about their view of the qualifications of those who are applying to be judges.

The answers come from one to five, with one being Poor, two deficient, three acceptable, four good and five excellent. You were rated overall at 2.9 in one survey and 2.8 in the other. That's below acceptable.

According to the Judicial Councils statistics, 14% of applicants received an overall rating below 3. None were ever appointed to the bench.

LEGISLATIVE SUBPOENAS

You represented an state employee subpoena'd to testify before the Judiciary Committee
Did you file any objection to the subpoena?
File a lawsuit?
And your client did not appear
You simply did nothing
What is your view of a legislative subpoena?

MALPRACTICE AGAINST YOUR FIRM? twice.

Have you ever been sanctioned by a court?
Ever had an order to show cause issued against you?

You've never been publicly reprimanded by the Bar,,,are you willing to sign a waiver to release any bar complaints against you?

What is your view of DFYS (now called OCS) and their handling of child custody and child support order enforcement

Are you planning on hiring some junkyard dogs?

Are you planning on doing any house cleaning in the DOL?

RESOURCE DEVELOPMENT
What will be your role in resource development issues?
Do you have lawsuits in mind?
Changes to current statutes?
What can you tell us about the direction you intend to take the Dept?
You have campaigned in the past over fewer regulations to development –
What about – the BP spill?

FISHING
You've said you oppose IFQ's or any allocations for processors. A D N 4/4/02. Do you still adhere to that view? Will you act on it as AG?

DEATH PENALTY
You are opposed to the death penalty. Your new boss has indicated that she is in favor. How would you reconcile that difference should the death penalty be instituted in Alaska.

GAY RIGHTS

I want to ask about a letter to the Bar Association Newsletter in May of 1993, regarding the passage of a gay rights ordinance: "IT is a shame that you folks don't have some causes you could become involved in that are of benefit to society in general. Instead, you support degenerates." (Someone considered to be of a debased mentality or character)

Are homosexuals 'degenerates' in your view?

The Sup. Ct of Alaska in ACLU v. State held that it was a violation of the equal protection clause of our Constitution to deny the extension of job related benefits to same sex couples. Agree or disagree?

Here's some language from that case: "Irrelevant to our analysis must be personal, moral, or religious beliefs – held deeply by many—about whether persons should enter into intimate same-sex relationships or whether same-sex domestic partners should be permitted to marry. It is the duty of courts to "define the liberty of all, not to mandate their own moral code."

You claimed in a subsequent letter that you weren't calling anyone a name, that you were speaking of conduct.

None of you has done anything publicly (to my knowledge) to attempt to protect the millions of lives of innocent children killed each year through abortion, yet you collectively contribute $5000 to the cause of sexual perversion."

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Kate Herring

From: Larry Cohn [cohnlarry@gmail.com]
Sent: Monday, March 30, 2009 2:19 PM
To: Kate Herring
Cc: lcohn@ajc.state.ak.us
Subject: Fwd: Ross documents
Attachments: Ross2007SupremeApp.pdf; Ross2007SupremeScores.pdf; Ross2008COAScores.pdf

Hi Kate,

Here is Wayne Anthony Ross' application for the supreme court in 2007. He used the same application for the court of appeals in 2008. Also attached are his bar survey scores from 2007 and 2008. Ratings are defined as follows:

1 - poor
2 - deficient
3 - acceptable
4 - good
5 - excellent

The bar survey is one tool among many that Council members use. We also solicit comments in the bar survey. Comments are confidential and are not released publicly. They are typically very helpful. Survey respondents have the option of signing their comments and most do. The Council may not consider unsigned comments unless the comments are substantiated, corroborated, or acknowledged by the applicant. The Council shares each applicant's comments with each applicant after editing the comments to remove any information that might compromise the anonymity of the survey respondents. Applicants are told which comments were signed and which were not signed. Please let me know if you need more info or if you have any questions.

Larry
---------- Forwarded message ----------
From: **Susan McKelvie** <smckelvie@ajc.state.ak.us>
Date: Fri, Mar 27, 2009 at 10:07 AM
Subject: Ross documents
To: Larry Cohn <lcohn@ajc.state.ak.us>

Susan McKelvie

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Table 31
Wayne Anthony Ross: Detailed Information on Responses

Wayne Anthony Ross was evaluated by 368 ABA members on at least one variable, based on their direct professional experience with him. The ratings received by this applicant were as follows: *Professional Competence* (3.2), *Integrity* (3.5), *Fairness* (3.1), *Judicial Temperament* (2.7), *Suitability of Applicant's Experience for this Vacancy* (3.0), and *Overall Rating for this Position* (2.8).

	Professional Competence		Integrity		Fairness		Judicial Temperament		Suitability of Experience		Overall Rating	
	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N
Basis for Evaluation												
No Response	3.1	7	3.1	7	3.0	7	3.0	7	2.9	7	3.0	7
Direct Professional Experience	**3.2**	**368**	**3.5**	**365**	**3.1**	**363**	**2.7**	**362**	**3.0**	**365**	**2.8**	**364**
Professional Reputation	2.8	229	3.0	225	2.5	228	2.2	231	2.5	226	2.3	232
Other Personal Contacts	3.2	26	3.6	27	2.9	28	2.7	28	2.9	27	2.8	27
Type of Practice												
No Response	3.9	10	4.2	10	3.8	9	3.6	9	3.9	10	3.8	10
Private, Solo	3.2	96	3.5	95	3.2	96	2.9	95	3.2	95	3.0	95
Private, 2-5 Attorneys	3.3	63	3.6	63	3.2	62	2.9	61	3.2	63	3.0	63
Private, 6+ Attorneys	2.8	56	3.3	55	2.6	55	2.2	56	2.5	55	2.3	56
Private, Corporate Employee	3.0	5	3.2	5	2.6	5	2.8	5	3.2	5	2.8	5
Judge or Judicial Officer	3.3	42	3.8	42	3.3	42	2.8	41	3.1	41	2.9	42
Government	3.0	74	3.2	73	2.9	72	2.5	73	2.7	73	2.7	72
Public Service Agency or Organization (Not Govt)	2.3	7	2.7	7	2.3	7	2.4	7	2.3	8	2.3	7
Retired	3.7	11	4.0	11	3.5	11	3.0	11	3.8	11	3.6	10
Other	3.8	4	3.8	4	2.8	4	2.5	4	3.8	4	3.3	4
Years of Practice in Alaska												
No Response	3.6	27	3.8	27	3.5	26	3.3	26	3.5	27	3.3	27
5 Years or fewer	3.7	12	3.8	12	3.7	11	3.5	11	3.5	12	3.5	11
6 to 10 years	3.1	25	3.3	25	3.1	25	2.8	25	3.0	24	2.9	24
11 to 15 years	3.2	34	3.7	34	3.4	33	2.9	34	3.0	34	3.0	34
16 to 20 years	3.0	44	3.4	43	3.0	44	2.8	44	2.7	44	2.8	44
21 years or more	3.1	226	3.5	224	3.0	224	2.5	222	3.0	224	2.7	224
Gender												
No Response	3.7	14	4.1	14	3.5	13	3.2	14	3.8	14	3.5	14
Male	3.3	256	3.6	254	3.2	254	2.8	253	3.2	254	3.0	256
Female	2.8	98	3.0	97	2.7	96	2.2	95	2.5	97	2.4	94
Majority of Practice Consists of												
No Response	3.8	16	3.9	16	3.4	15	3.4	16	3.7	16	3.6	16
Prosecution	3.0	23	3.1	23	2.7	23	2.6	23	2.7	23	2.6	22
Mainly Criminal	3.3	14	3.8	14	3.5	14	2.9	14	2.9	14	3.0	13
Mixed Criminal & Civil	3.1	90	3.4	89	3.1	89	2.7	88	2.9	89	2.8	90
Mainly Civil	3.1	210	3.5	208	3.0	207	2.6	206	3.0	208	2.8	208
Other	3.4	15	3.9	15	3.3	15	3.1	15	3.5	15	3.2	15
Location of Practice												
No Response	3.9	10	4.0	10	3.6	9	3.5	10	3.8	10	3.7	10
First District	2.5	17	2.7	16	2.3	17	1.8	17	2.2	17	1.9	17
Second District	4.0	2	4.5	2	4.0	2	4.0	2	4.0	2	4.0	2
Third District	3.2	316	3.5	315	3.1	313	2.7	311	3.0	314	2.9	313
Fourth District	3.0	18	3.0	17	2.8	17	2.6	17	2.9	17	2.7	17
Outside Alaska	2.8	5	3.2	5	2.6	5	2.2	5	2.4	5	2.6	5
Amount of Experience												
No Response	3.1	34	3.3	34	2.9	34	2.6	33	2.9	34	2.8	34
Substantial & Recent	3.2	147	3.6	147	3.1	145	2.8	147	3.1	146	3.0	146
Moderate	3.2	114	3.5	114	3.0	113	2.7	112	2.9	112	2.8	112
Limited	3.0	73	3.4	70	3.1	71	2.6	70	2.9	73	2.7	72

NOTE: Ratings for only those respondents who reported direct professional experience with the applicant.

Table 27
Wayne Anthony Ross: Detailed Information on Responses

Applicant Wayne Anthony Ross was evaluated by 294 ABA members on at least one variable, based on their direct professional experience with him. The ratings received by this applicant were as follows: *Professional Competence* (3.2), *Integrity* (3.5), *Fairness* (3.1), *Judicial Temperament* (2.7), *Suitability of Applicant's Experience for this Vacancy* (3.1), and *Overall Rating for this Position* (2.9).

	Professional Competence		Integrity		Fairness		Judicial Temperament		Suitability of Experience		Overall Rating	
	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N
Basis for Evaluation												
No Response	3.3	3	3.0	3	2.7	3	2.3	3	2.7	3	2.7	3
Direct Professional Experience	**3.2**	**294**	**3.5**	**292**	**3.1**	**291**	**2.7**	**291**	**3.1**	**292**	**2.9**	**295**
Professional Reputation	2.7	179	2.9	178	2.5	180	2.1	181	2.6	181	2.3	181
Other Personal Contacts	3.1	25	3.4	25	3.0	24	2.7	24	3.0	24	3.0	24
Type of Practice												
No Response	2.8	5	3.4	5	2.8	5	2.4	5	2.8	5	2.8	5
Private, Solo	3.5	70	3.7	69	3.4	69	3.1	70	3.4	68	3.3	70
Private, 2-5 Attorneys	3.5	46	3.7	46	3.4	45	3.1	43	3.4	46	3.2	46
Private, 6+ Attorneys	2.7	38	3.1	38	2.3	38	2.3	38	2.4	37	2.3	38
Private, Corporate Employee	3.3	6	3.8	6	3.0	6	2.8	6	3.7	6	3.2	6
Judge or Judicial Officer	3.4	41	3.8	40	3.2	41	2.8	41	3.2	41	3.0	41
Government	2.8	73	3.1	73	2.8	72	2.5	73	2.8	74	2.6	74
Public Service Agency or Organization (Not Govt)	2.7	3	3.0	3	3.0	3	2.3	3	3.0	3	2.7	3
Retired	3.4	9	3.8	9	3.2	9	2.9	9	3.4	9	3.2	9
Other	3.0	3	3.0	3	3.0	3	2.3	3	2.3	3	2.7	3
Years of Practice in Alaska												
No Response	3.4	14	3.7	14	3.4	14	2.9	14	3.2	14	3.0	14
5 Years or fewer	2.5	11	2.7	11	2.5	11	2.3	12	2.5	12	2.3	12
6 to 10 years	2.9	19	2.9	19	2.7	19	2.4	19	3.1	19	2.7	19
11 to 15 years	3.1	33	3.5	33	3.2	33	3.0	33	3.2	32	3.1	33
16 to 20 years	3.1	30	3.5	29	3.2	29	2.8	30	3.1	30	2.9	30
21 years or more	3.3	187	3.5	186	3.1	185	2.7	183	3.1	185	2.9	187
Gender												
No Response	3.6	10	3.9	10	3.5	10	3.1	10	3.5	10	3.3	10
Male	3.3	206	3.6	204	3.2	204	2.9	204	3.3	204	3.1	207
Female	2.8	78	3.0	78	2.6	77	2.2	77	2.5	78	2.4	78
Majority of Practice Consists of												
No Response	3.7	9	3.8	9	3.4	9	3.2	9	3.6	9	3.4	9
Prosecution	2.6	26	2.8	26	2.5	26	2.3	27	2.7	27	2.4	27
Mainly Criminal	3.1	18	3.6	18	3.0	17	2.5	17	2.8	18	2.7	18
Mixed Criminal & Civil	3.2	78	3.4	77	3.1	77	2.8	76	3.0	76	2.9	78
Mainly Civil	3.3	155	3.5	154	3.1	154	2.8	154	3.1	154	3.0	155
Other	3.0	8	3.6	8	3.0	8	2.6	8	3.3	8	2.9	8
Location of Practice												
No Response	3.4	9	3.8	9	3.0	9	2.7	9	3.2	9	3.1	9
First District	2.2	13	2.5	13	2.1	13	1.8	13	2.1	13	1.8	13
Second District	5.0	2	5.0	2	5.0	2	5.0	2	5.0	2	5.0	2
Third District	3.2	251	3.5	249	3.1	248	2.8	249	3.1	249	2.9	252
Fourth District	2.8	16	2.8	16	2.6	16	2.5	15	2.7	16	2.8	16
Outside Alaska	3.3	3	3.7	3	3.0	3	3.3	3	3.3	3	3.3	3
Amount of Experience												
No Response	3.6	26	3.6	26	3.5	26	3.2	26	3.3	26	3.2	26
Substantial & Recent	3.2	118	3.6	118	3.2	118	2.8	117	3.2	116	3.0	118
Moderate	3.1	76	3.4	74	3.0	74	2.7	74	2.9	76	2.8	76
Limited	3.1	74	3.3	74	2.8	73	2.5	74	2.9	74	2.8	75

Note: Ratings for only those respondents with direct professional experience with the applicant.

Alaska Judicial Council
Application for Judicial Appointment

Position(s) for which you wish to be considered:
Alaska Supreme Court Justice

Date: 24 June 2007

I. Public Information (Questions 1-24)

Personal

1. (a) State full name* Wayne Anthony Ross

Name as it should appear on bar survey: Wayne Anthony Ross

* Unless otherwise specified, this is how your name will appear on the bar survey.

(b) Have you ever used or been known by any other name? If so, please identify
No

2. How long have you been a resident of the State of Alaska immediately preceding the date of this application?** 39 years _____ months
Total _____ years _____ months

3. How long have you been engaged in the active practice of law immediately preceding the date of this application?** 39 years _____ months
Total _____ years _____ months

Nonlegal Education

4. State names and dates of attendance of all colleges and professional schools (other than law schools) ever attended and degrees and dates conferred. List any honors.

University of Wisconsin - Milwaukee 1960-1962
Marquette University, College of Business Administration 1962-1965, BS Degree
Production and Personnel Management

** See AS 22.10.090; see also 1984 Inf. Op. Atty. Gen. (July 19; 366- 624-84).

Legal Education

5. List all law schools, dates attended and degrees conferred. If you did not receive a degree from any law school, please indicate.

Marquette University Law School 1965-1968; JD 1968

6. (a) Did you receive any honors in law school or belong to any honorary societies or groups?

☑ Yes ☐ No If yes, please give details.

Moot Court Team 1967

(b) Have you taken any CLE (continuing legal education) courses during the past five years?

☑ Yes ☐ No

Please describe or list. Please do not attach individual certificates of attendance.

See attached.

Military

7. Have you served in the armed forces (reserves or otherwise)? ☑ Yes ☐ No

If so, please provide the following information:

(a) Dates of service: 1986-1997; 2001-present

(b) Branch of service: Alaska State Defense Force

(c) Rank at time of discharge: Colonel (0-6)

(d) Type of military discharge: Still serving as Area Defense Counsel (as needed)

(e) Awards or citations:

Alaska State Service Medal; Alaska State Defense Force Achievement Medal; Alaska State Defense Force State Service Medal (2x); Alaska State Defense Force Drill Attendance Ribbon; Alaska State Defense Force Training Achievement Ribbon

(f) Have you ever been refused admission to or released from any of the armed services for reasons other than honorable discharge? ☐ Yes ☑ No If so, state the details.

6 (b) Have you taken any CLE (continuing legal education) courses during the past five years? Please describe or list.

The Best Looking Guy in Fairbanks: Bank Robber Dick Woodrung and the Law
Motion Practice: Tactics, Strategies and Tips
Ethics: The Game Show
Prelude to the Presidency: A Historical Presentation
What to do When the Media Calls
New Service Members Civil Relief Act
Annals of the Law: Fairbanks Lawyer Tom Margum
Legal Ethics: Name that Movie... Name that Rule
A Judiciary for Alaska: Celebrating the Alaska Constitutional Convention
Using a Joint Property Division Spreadsheet
CINA Off the Record
The Joy of Settlement
CLE for Lawyers and Judges Who Handle Domestic Relations Cases
New and Improved Property Division Program
Family Law Litigation
Anchorage Inns of Court (various programs)

(30)

Nonlegal Employment

8. Describe major nonlegal working experience. If you had a business or association that has been discontinued, please note whether there are unpaid debts or claims pending litigation.

I have worked continuously since I was 12 years of age (except for four weeks in 1968 when I drove to Alaska). I averaged 20-30 hours per week in college and law school and 40-60 hours per week during the summers. I worked for the City of West Allis, Wisconsin, Department of Forestry and Public Grounds; Sears; U. S. Post Office; and Kohls Food Stores. Since graduating from law school all my employment (other than brief periods of State Military active duty) has been in the legal field although I hold an Alaska Assistant Guides License (No. 1519).

Legal Experience

9. Describe chronologically your legal employment since admission to law school. **Please provide dates, name of employer, name of supervisor or person who can verify employment, addresses, the reason you left the position, and a brief description of type of practice (i.e., insurance defense, criminal, appellate, general, litigation, etc.)** ***for each position listed below***.

The Council will ask for comments from your current and former employers about your employment and your judicial qualifications. You may choose to list other persons as character and professional references in response to Question 20 of this application.

If the supervisor or contact person asks (in writing) that the letter be shared with the governor, the Council will send designated letters for each nominee. The applicant should not request a copy of the letter from the reference. References or letters not solicited by the Council are considered public (with few exceptions) and will be sent to the governor for all nominees.

Current Employer: Self-employed: Law Offices of Ross and Miner, P.C.

Supervisor or name of contact person who can verify employment: Edward L. Miner (partner)

Current address of this person: 327 East Fireweed Lane

City Anchorage State AK Zip 99503

Dates of Employment: From October 1977 To present

Description: General practice of law. Also had offices in Glennallen and Cordova in the late 70's and early 80's.

Previous Employers: *(In chronological order, most recent first)*

Employer: Law Offices of Edward J. Reasor and Associates

Supervisor or name of contact person who can verify employment: Edward J. Reasor

Current address of this person: unknown

City _____ State PA Zip _____

Dates of Employment: From July 1973 To September 1977

Description: General practice of law.

Reason for Leaving: To open my own office.

Employer: State of Alaska Court System

Supervisor or name of contact person who can verify employment: State of Alaska

Current address of this person: _____

City _____ State _____ Zip _____

Dates of Employment: From July 1969 To June 1973 (approximate)

Description: Court Trustee and Family Court Master

Reason for Leaving: To enter private practice of law.

Previous Employers (continued)

Employer: State of Alaska Department of Law

Supervisor or name of contact person who can verify employment: State of Alaska

Current address of this person:

City_____ State_____ Zip_____

Dates of Employment: From July 1968 To June 1969

Description: Assistant Attorney General

Reason for Leaving: Did not want to move to Juneau.

Employer:

Supervisor or name of contact person who can verify employment:

Current address of this person:

City_____ State_____ Zip_____

Dates of Employment: From_____ To_____

Description:

Reason for Leaving:

Employer:

Supervisor or name of contact person who can verify employment:

Current address of this person:

City_____ State_____ Zip_____

Dates of Employment: From_____ To_____

Description:

Reason for Leaving:

Employer:

Supervisor or name of contact person who can verify employment:

Current address of this person:

City_____ State_____ Zip_____

Dates of Employment: From To

Description:

Reason for Leaving:

Employer:

Supervisor or name of contact person who can verify employment:

Current address of this person:

City_____ State_____ Zip_____

Dates of Employment: From To

Description:

Reason for Leaving:

10. For the past five years, please indicate (approximately) the following:

(a) Percent of your practice that was:

Civil	70
Criminal	25
Other	5
	= 100%

Comment: _____

(b) Percent:

State	90
Federal	5
Other	5
	= 100%

Comment: _____

(c) Of practice in state courts, percent:

Supreme Court	2
Court of Appeals	2
Superior Court	80
District Court	16
	= 100%

Comment: _____

(d) Frequency of appearance in court:

☑ Regularly ☐ Occasionally ☐ Infrequently ☐ Not at All

Comment: _____

(e) Number of trials (by court or jury) you conducted in the past 5 years:

☐ None ☐ 1- 5 ☐ 6-15 ☑ 16-30 ☐ 31 or more

Comment: I am able to settle 95% of my cases without a trial.

(f) Percent of these trials which were: Jury 10 Non-Jury 90

Comment: _____

(g) Approximate number of appellate matters handled: 5

Comment: _____

(h) Approximate number of arbitrations or administrative hearings:

☐ None ☑ 1-5 ☐ 6-15 ☐ 16-30 ☐ 31 or more

Briefly describe type of matters heard:

Personnel hearings, UCMJ matters.

(i) Have you undertaken any *pro bono* work through a *pro bono* legal service provider (e.g. Alaska Legal Services, Alaska Network on Domestic Violence and Sexual Assault, etc.) during this period? ☐ Yes ☑ No

Describe:

Approximately 10% of the work I do is pro bono, although not through legal service providers. Instead, I provide free legal service to Veteran Service organizations. I also charge Veterans only 2/3 of my normal hourly rate.

11. List all the courts and administrative tribunals in the United States or elsewhere to which you are or have been admitted to practice, and the dates of admission.

Wisconsin Bar (1968);
Alaska Bar (1969);
Federal District Court, Eastern District of Wisconsin (1968);
Federal District Court, Alaska (1969?);
9th Circuit Court of Appeals; United States Supreme Court (1982)

Public Service

12. List bar associations, and sections and committees of which you are or have been a member or officer.

AK Bar Association('68-present)(Family Law Cmmte,'73-'78; Vice Chairman, '73-'74)(Hearing Officer, Fee Arbitration Cmmte,'81-'87,'94-'01)(Discipline Hearing Cmmte,'91-'94) Anchorage Bar Association ('69-present)(Member,Cmmte for U.S. Constitutional Bicentennial Celebration,'87) Wisconsin Bar Association ('68-'89,'91-present)(AK Chapt Chairman,'97-present)

13. List legal publications, if any (give title, subject and date of publications). Please include publications you have co-authored and the name(s) of the co-author(s).

I have no formal legal publications. However, I have many published articles. A list is attached.

14. Have you ever applied for a judgeship? ☐ Yes ☑ No

Please list dates and judgeships applied for, as well as whether you were nominated by the Judicial Council and appointed.

Judgeship	Date	Nominated By Council (Y/N)	Appointed By Governor (Y/N)

13.

WAYNE ROSS' PUBLISHED ARTICLES
Eff. 27 March 2007

"Abuse touches all walks of life within our society", The Anchorage Times, 4 November 1990.

"A 'Citizen Of The World' may be an undesirable citizen", The Anchorage Times, 17 January 1988.

"Action of adults toward children hold lasting memories", The Anchorage Times, 19 April 1992.

"A goodbye to my longtime friend", The Anchorage Chronicle, 10 - 17 October 2002.

"A 'good name', an asset beyond value", The Anchorage Times, 28 February 1988.

"Ah, it's the amenities in life", The Anchorage Times, 9 October 1988.

"Alaskans must meet challenge of subsistence regulation", The Anchorage Times, 31 December 1989.

"Amendments unfair to individuals", The Anchorage Times, 6 August 1986.

"America Lost A Good One When We Lost Joe Foss", Soldier of Fortune, April 2003.

"ANCSA amendments Bad For State, And Its Citizens", The Cordova Times, 5 June 1986.

"ANCSA deserves the Golden Fleece award", The Anchorage Times, 26 April 1987.

"An 'early retirement' doesn't offer dragons to slay, battles to fight", The Anchorage Times, 3 June 1990.

"Animal activists real enemy", The Anchorage Times, 2 December 1990.

"Another look toward 1991", The Anchorage Times, 15 May 1986.

"Anti-Gun laws do not aid the law-abiding", The Anchorage Times 5 February 1989.

"Applicant earns an 'A For Effort' on resume", The Anchorage Times, 26 August 1991.

"A promise is to be honored", The Anchorage Times, 16 August 1986.

"A reputation with a shadow, The Anchorage Times, 7 June 1987.

"Arm the pilots and the passengers", The Anchorage Chronicle, Aug. 29 - Sept. 4, 2002.

"Arms misuse threatens rights", The Anchorage Times, 24 February 1991.

"A road to Cordova would give more Alaskans access to the little-known treasure", The Anchorage Times, 20 August 1989.

"Assault weapons are being confused with automatic firearms", The Anchorage Times, 30 April 1989.

"As soon as I head out of town, the snow should start falling", The Anchorage Chronicle, 28 November 2002.

"At Ease - The Flying Jeep", Army Motors, Volume 104, Summer 2003.

"A tribute to Barbara on Mother's Day", The Anchorage Times, 10 May 1987.

"Average citizen finds legal system inaccessible", The Anchorage Times, 16 April 1989.

"Base subsistence priority on need", Voice of the Times, 8 August 2001.

"Battle lines are being drawn for subsistence war", The Anchorage Times, 11 March 1990.

"Bears will be bears - Can we allow it?", The Anchorage Times, 12 August 1990.

"Before you go hunting remember to vote", The Anchorage Times, 26 August 1990.

"Belief in Santa Claus isn't just for little kids", The Anchorage Times, 25 December 1988.

"Best choice to keep young", Anchorage Daily News, 6 August 1992.

"Burgers are best for a 'Trencherman's' lunch, The Anchorage Times, 11 December 1988.

"Bush achievements many", Anchorage Daily News, 29 August 1992.

"Buy American-made products in 1992", The Anchorage Times, 29 December 1991.

"Campaign provides a real education", The Anchorage Chronicle, 5 September 2002.

"Candidates' book is more than Alaska history", The Anchorage Times, 23 October 1988.

"Candidates do not agree on gun control issue", The Anchorage Times, 25 September 1988.

"Can our best afford public service?", The Anchorage Times, 8 January 1989.

"Chastity, adultery relegated to Dark Ages", The Anchorage Times, 23 February 1992.

"Christmas time sparks thoughts on old friends", The Anchorage Times, 16 December 1990.

"Commitment is needed before practice", The Anchorage Times, 19 June 1988.

"Community service isn't as recalled", The Anchorage Times, 21 June 1987.

"Defending the guilty: Our judicial system at its very best", The Anchorage Times, 4 January 1987.

"Determining when one man's refuse is another man's refuge", The Anchorage Times, 6 October 1990.

"Do you have the attributes and desire to run for office?", The Anchorage Times, 9 July 1989.

"Duty- a sense of obligation, obedience and respect", The Anchorage Times, 15 March 1987.

"Equality for women still has considerable distance to go", The Anchorage Times, 11 October 1987.

"Elders pass wisdom to young during hunt", The Anchorage Times, 12 January 1992; The Message, March 1992; Gun-News, Volume 9 - Number 1.

"Fall hunting is a family occasion", The Anchorage Times, 14 August 1988.

"False! False! False!", Supplement to The Anchorage Daily News, 6 November 2000.

"False reports of child sexual abuse devastate families and children", The Anchorage Times,28 July 1991; Speak Out For Families, December 1993.

"Family unit suffers from bureaucratic maze", The Anchorage Times, 22 May 1988.

"Family vacations offer fun and frustrations", The Anchorage Times, 24 April 1988.

"Fr. Boyle taught schoolboys lessons on discipline", The Anchorage Times 13 March 1988.

"Father's death helps him understand what a happy death means", The Anchorage Times, 22 September 1990.

"Fighting for Old Glory on battlefield of art", The Anchorage Times, 31 May 1992.

"Friends sometimes have to sit in the front of the canoe", The Anchorage Times, 3 July 1988.

"From Civil War typewriter to the modern computer", The Anchorage Times, 22 April 1990.

"Game permits seem to be for the lucky few", The Anchorage Times, 23 July 1989.

"Getting old is not for me", The Anchorage Chronicle, 27 March 2003.

"Goodbye my friend", The Anchorage Chronicle, 3 October 2002.

"Governor Cowper doesn't understand the issue", The Anchorage Times, 1 July 1990.

"Governor's duties clear on lands issues", The Voice of the Anchorage Times, 2 January 2001.

"Grass roots political meetings: a learning experience", The Anchorage Times, 27 March 1988.

"Gun law goes overboard with restrictions", The Anchorage Times, _____1990.

"Gun shows generate substantial revenue", The Anchorage Times, 14 February 1988.

"Gun 'waiting period' proposals unworkable", The Anchorage Times, 17 July 1988.

"Handling clients charged with drunken driving challenges lawyers", The Anchorage Times, 15 July 1991.

"Happy Birthday, AGCA!", AGCA News & Views, March-April 2007.

"Heading For The Rhine", Army Motors, Volume 63, Spring 1993.

"Helping neighbors in Middle East takes precedence over peace", The Anchorage Times, 13 January 1991.

"Hi Hopes still waiting for nomination", The Anchorage Times, 6 October 1991.

"Hollywood version of cops and robbers may be outcome for Hillside", The Anchorage Times, 17 November 1991.

"Horsepower limits on river unfair to many boat owners", The Anchorage Times, 31 July 1988.

"Housing shortage redefines luxurious", The Anchorage Times, 27 January 1991.

"How long has it been since you had your last physical exam?", The Anchorage Times, 27 January 1991.

"Hunter didn't like look of Simpson Bay 'Welcome Wagon'", The Anchorage Times, 17 December 1989.

"Hunters in danger of losing all hunting rights", The Anchorage Times, 28 January 1990, The Message. January 1992.

"Hunting in Alaska the bureaucratic way means staying home", The Anchorage Times, 2 August 1987.

"Hunting should not involve harassment", The Anchorage Times, 20 October 1991.

"In failing to resist lawlessness, we may lose what we value most", The Anchorage Times, 3 May 1992; Washington Arms Collectors Gun-News, Vol 8, Number 10 (October 1992).

"Is the justice system based on presumption of innocence?", The Anchorage Times, 29 October 1989.

"It is time we quit crying over the oil spill", The Anchorage Times, 17 September 1989.

"It's easier to throw a sacrifice to the wolves than fight the News", The Anchorage Daily News, 22 July 1992.

"It seems it's becoming 'We Vs. They' on Alaska issues", The Anchorage Times, 24 May 1987.

"It's National Convention time once again", The Trunk Line, August 2000.

"I wish Anchorage papers followed Milwaukee", The Anchorage Times, 15 June 1982.

"Joe Foss - America lost a good one", Voice of the Times, 8 January 2003.

"Join A Militia - Break The Law?", Soldier Of Fortune, April 1995.

"Judges leave attorney scratching his head?", The Anchorage Times, 9 February 1992.

"Katie Couric is going to be disappointed", The Anchorage Chronicle, 6 April 2003.

"Katz Decision limits citizens' participation", The Anchorage Times, 12 April 1987.

"Key to finding party candidates lies in understanding political process", The Anchorage Times, 21 October 1990.

"Kids and Guns, A Different Perspective", The Message, February 1994; Anchorage Daily News, 27 March 1994, 1994; The Firing Line, March 1997.

"KKK 'Art' project gets 'A' for courage", The Anchorage Times, December 1991.

"Lawyers don't deserve such a bad reputation", The Anchorage Chronicle, 30 January 2003.

"Laws that ban firearms are exercises in futility", The Anchorage Times, 5 March 1989.

"Legislative leadership", The Anchorage Times, 6 November 1988.

"Lesson In Hunting Concerns Life", The Message, October 1991.

"Lesson in hunting not just about killing but concerns life itself", The Anchorage Times, 8 September 1991; The Congressional Record, 9 October 1991.

"Little Will", Alaska Bar Rag, May 1979.

"Looking back, Westchester Lagoon might never have had its park", The Anchorage Times, 30 June 1991.

"Macie's .458 saved him and killed him", The Anchorage Times, 10 December 1989.

"Macie's Gewehr", Reisen Der Wild Nis, (Germany) 1991.

"Macie's Gun, Part One", The AGCA News & Views, November-December 2005.

"Macie's Gun, Part 2", The AGCA News & Views, Jan-Feb 2006.

"Man's best friend lives up to her name even in death - A 'Lady' to the end", The Anchorage Times, 24 March 1991.

"Marriage not measured in years", The Anchorage Times, 19 May 1991.

"Maybe this is how I got started in gun collecting?", National Firearms Museum Quarterly, September 2005; The M.V.A.C.A. Guardian, October 2005; The Dallas Arms Collectors News, December 2005; The Ohio Gun Collectors Association newsletter, March 2006.

"Media hypocritical in Quayle coverage", The Anchorage Times, 28 August 1988.

"Military Appreciation Day shows off The New Army", The Anchorage Times, 11 June 1989.

"Modern Turkey Hunting", Alaska Bar Rage 1979.

"Muffling doesn't change facts", Anchorage Daily News, 10 October 1992.

"Murkowski now holds state reins; he should drive to long-term fiscal health", The Anchorage Chronicle, 10 April 2003.

"MVPA Affiliate Profiles - Alaska Territorial Cavalry (Motorized)", Supply Line, May 2005.

"My feet are frozen to the ground of Alaska", The Anchorage Times, 6 December 1987.

"My 'other woman' will probably outgrow blue jeans and sweatshirts", The Anchorage Times, 20 May 1990.

"New Year's resolutions", The Anchorage Times, 3 January 1988.

"Never give a sucker an even break", The Anchorage Times, 2 June 1991.

"New York City residents and their gun Law", The Anchorage Times, 6 May 1990.

"Nickel' of life should bring more than instant gratification", The Anchorage Times, 19 March 1989.

"'1991' amendments further cause of native sovereignty", The Anchorage Times, 15 February 1987.

"No small world if you're from Munich", The Anchorage Times, 1 December 1991.

"Nothing like a wife to pop the ol' ego", The Anchorage Chronicle, 21 Nov 2002.

"NRA introduces Robinson as new president", The Anchorage Chronicle, 15 May 2003.

"NRA members come from all walks of life", The Anchorage Times, 3 September 1989.

"'One Man Band' gave a beat to Cordova's nights", The Anchorage Times, 29 July 1990; Alaska Bar Rag, November-December, 1990.

"One of Alaska's most popular fishing sites is threatened", The Anchorage Times, 19 July 1987.

"One out of three bills pass muster", The Anchorage Times, 7 April 1991.

"On joggers and gerbils' heartbeats and handyman talents", The Anchorage Times, 15 October 1989.

"Opportunity missed?", The Anchorage Times, 20 November 1988.

"Our liberty requires our vigilance", The Anchorage Times, 29 March 1987.

"Our senior citizens' stories should be saved for future", The Anchorage Times, 26 November 1989.

"'Outdoorsmen' and 'naturalists' must begin a dialogue", The Anchorage Times, 12 November 1989.

"Parochial schools foster priceless values", The Anchorage Times, 1 February 1987.

"Parties can set own rule", Anchorage Daily News, 12 September 1992.

"Point", The Anchorage Times, 15 February 1987.

"Politically correct is not for me!", The Anchorage Chronicle, 15 August 2002.

"Principles worth NRA election defeat", The Anchorage Times, 21 April 1991.

"Proponents of abortion are doomed to lose", The Anchorage Times, 14 May 1989.

"Puck was right! What fools these mortals be!", The Anchorage Chronicle, 13 March 2003.

"Real culprits in FDIC suit deadbeats, not defendants", The Anchorage Times, 5 May 1991.

"Republican voters cheated", The Anchorage Times, 22 January 1989.

"Resource Management would aid subsistence", The Anchorage Times, 25 February 1990.

"Response to a Man Disliking My Poem", Gun Week, 10 July 1981.

"Ridiculous Subsistence regulations", The Anchorage Times, 2 April 1989.

"Right to firearms not about duck hunting", The Anchorage Times, 22 September 1991.

"Runaway children: Solving the problem before its too late", The Anchorage Times, 18 January 1987.

"Running to keep up with Judge Butcher", The Anchorage Times, 17 May 1992.

"Sail battleships around the World once more", The Anchorage Times, 11 February 1990.

"Seeking to reach a liberal's heart", The Anchorage Chronicle, 6 February 2003.

"Share one of life's joys with a youngster", The Anchorage Times, 6 August 1989.

"Shooting his buddy's leg leaves more than 2 scars", The Anchorage Times, 18 November 1990.

"Small town lawyering holds big surprises", The Anchorage Times, 22 March 1992.

"Smoking for enjoyment should remain a matter of choice", The Anchorage Times, 11 August 1991.

"Sometimes You've Just Gotta Do It Yourself", Soldier of Fortune, August 2002.

"Spanking for misbehavior isn't necessarily abuse", The Anchorage Times, 26 January 1992.

"Steady, true friendships warm the heart", The Anchorage Times, 11 September 1988.

"Subsistence ruling levels the playing field", The Anchorage Times, 7 January 1990.

"Tax cap would reduce quality of life for Alaskans", Alaska Military Weekly, 2 November 2000.

"$10 solution to Park Service bears - Wayne Anthony Vs. Bill", The Anchorage Times, 9 September 1990.

"The Alaska Land Use Council needs Governor's leadership", The Anchorage Times, 10 April 1988.

"The Alaska State Guard stands ready to serve in time of need", The Anchorage Times, 1 March 1987.

"The Ballad of Harlon's Retreat", Gun Week, 10 July 1981.

"The Cacklers and Emperors may soon be but a memory", The Anchorage Times, 8 November 1987.

"The City Of Brotherly Love", Alaska Bar Rag, August-September 1982.

"The Din Of WAR", The AGCA News & Views, May 2005.

"The Din Of WAR", The AGCA News & Views, September 2005.

"The greatest dad in the whole world", The Anchorage Times, 5 June 1988.

"The Legend of Cuttin' Cowper", The Anchorage Times, 2 February 1987.

"The Little 'Buffalo': A Collector's Reminiscence", Alaska Bar Rag, November 1978; Gun Week, 22 October 1982; The Message, October 1987.

"The long arm of the IRS reaches from Utah", The Anchorage Times, 25 October 1987.

"The $1,000 Mouse", Alaska Bar Rag, August 1979; Alaska Outdoors, November-December 1982.

"The Other Side Of The Controversy Over The Taking Of Ducks and Geese", All Alaska Weekly, 4 December 1987.

"The Right To Be Wrong", The Anchorage Chronicle, 6 March 2003.

"The solution may be worse than the problem", The Anchorage Times, 1 October 1989.

"The Special Session highlighted misguided political leadership", The Anchorage Times, 15 July 1990.

"The Ultimate Restoration", Army Motors, Volume 64, Summer 1998; MEV Newsletter, Third Edition, Sept-Nov., 1996.

"They also serve who only stand and wait", The Anchorage Chronicle, 16 January 2003.

"Those Independence Day memories - past and future", The Anchorage Times, 5 July 1987; Wild Sheep, Summer, 1987..

"Those nickel-plated, engraved '49-ers' were real guns", The Anchorage Times, 25 March 1990.

Those rights that are constitutionally guaranteed us", The Anchorage Times, 10 December 1989.

"To cover its shortcomings, State heaps abuse on oil companies", The Anchorage Times, 28 May 1989.

"Today's military balance same as 1787", The Anchorage Times, 11 August 1987.

"To disagree doesn't mean to be disagreeable", The Anchorage Times, 8 April 1990.

"Tuesday I'll have no problem picking best choices on ballot", Anchorage Daily News, 28 October 1992.

"Ultimate safety cannot be provided to citizens", The Anchorage Times, 18 May 1988.

"Urban subsistence depends on State jobs", The Anchorage Times, 8 March 1992.

"U.S. justice system isn't always just or fair", The Anchorage Times, 5 April 1992.

"We'd have heroes if media lightened up", The Anchorage Times, 3 November 1991.

"'We Vs. They' mentality must end", Tundra Drums, 27 May 1993.

"What do I want for Christmas? My list has things that money can't buy", The Anchorage Times, 24 December 1989.

"Where is the respect for law enforcement?", The Anchorage Times, 19 February 1989.

"Where is the support the Governor promised?", The Anchorage Times, 30 August 1987.

"Where there's a wheel there's a way", The Anchorage Times, 16 June 1991.

"'White Eagle' provided exciting adventures", The Anchorage Times, 17 June 1990.

"Williams' new policy punishes all", The Anchorage Chronicle, 12 September 2002.

"Woe the conviction of an innocent man!", The Anchorage Chronicle, 9 January 2003.

"Would Florida's firearm legislation work in Alaska?", The Anchorage Times, 25 October 1987.

"You may not benefit from proposed tort reform", The Anchorage Times, 20 December 1987.

"Your lips tell me 'No! No!' but there's "Yes! Yes!' in your Legislation", All Alaska Weekly, 6 June 1986.

15. Have you ever held public or political office, elective or appointive? ☐ Yes ☑ No

If so, state office, manner selected, and when and where held.

16. Please provide the Council with information that you would like the Council to consider about other legal and nonlegal organizations and clubs of which you are a member, including civic, charitable, religious, educational, social and fraternal organizations. Please indicate whether you participate in the organization's activities, or simply hold a membership. Your involvement in the community is one of the criteria the Council uses in its evaluations. The Council does not use affiliation with a particular group as a criterion except to the extent that it might raise questions of conflict of interest or would affect an applicant's ability to impartially apply the law.

See attached.

17. Indicate (Yes or No) whether you have ever:

(a) been arrested, charged with, pled guilty or *nolo contendere* to, or been convicted of the violation of any law or ordinance, or been requested to appear before any prosecuting or investigative agency in connection with any matter in any jurisdiction, including all traffic offenses, unless the fine was less than $50 and there were no other sanctions?
☐ Yes ☑ No

(b) failed to answer any summons or other legal process served upon you personally at any time? ☐ Yes ☑ No

(c) as a member of any armed forces, been the subject of any charges which may have resulted in disciplinary action or court martial? ☐ Yes ☑ No

16. **Current:**

Alaska Gun Collectors' Association, Inc. (1972-present) (Charter Member) (Master-at Arms, 1972-1973) (Secretary, 1983-1985) (President Emeritus, 1989-2004) (Director, 1994-1996, 2001) (President, 1973-1977, 1979-1981, 1985-1989, 2005-present) (Life Member, Card Number 1)
Alaska Outdoor Council (1985-present)
Alaska Peace Officers' Association (1970-present)
Alaska Professional Hunters' Association, Inc. (1981-present)
Alaska Right to Life, Inc. (1972-present) (Founder Member) (Member, Board of Directors, 1972-1976) (Vice President, 1972-1975)
Alaska Territorial Cavalry, Motorized (Founder member, 1991-present) (Secretary and Newsletter Editor, 1991-1998, 2000-2006) (Life Member #1)
Alaska Veterans Memorial Museum (Founder Member, 2003-present)
American Society of Arms Collectors (2003-present)
Colt Collectors Association (1982-present)
Dallas Arms Collectors (Life Member, 1989-present)
49th Territorial Guard Regiment, Inc. (Member, 1987-1997, 2007-present) (President, 1987-1994, 1995-1996)(Director, 2007; Vice-President, 2007-present)
Fraternal Order of Alaska State Troopers (2005-present)
German Club of Alaska (1981-1994, 2001-present)
Gun Owners Action League (1987-present)
Military Vehicle Preservation Association (1989-present) (Member, Board of Directors, 1994-1996) (Vice President, 1994-1996)(life Member - 2005-present)
National Lawyers Association (1995-present)
National Rifle Association of America (1964-present) (Life member since 1975) (Benefactor member since 1984) (Member, Board of Directors, 1980-1992, 1994-present) (Second Vice President, 1988-1990) (First Vice President, 1990-1991) (Member, Executive Committee, 1984-1992, 1998-present) (Member, Education and Training Committee, 1980-1982) (Member, NRA Legal Affairs Committee, 1982-1988, 1996-present; Chairman, 1983-1987; Vice Chairman 1996-present) (Member, NRA Gun Collectors Committee, 1980-1992, 1994-96, 1997-present; Vice Chairman, 1982-1987; Chairman, 1987-1992, 1997-present) (Member, Committee on Hearings, 1987-1988) (Vice Chairman, President's Committee on Section 501[c][3] Status, 1986) (Member, Special Committee on Hunters' Funds for the ILA Task Force, 1987-1988) (Member, Ad Hoc Committee on NRA Member Organizations, 1987-1988) (Chairman, President's Task Force on Prayer Breakfasts, 1990) (Member, Ways and Means Committee, 1990-1991) (Member, Officers Compensation Committee, 1990-1991) (Member, Hunting and Wildlife Conservation Committee, 1991-1992) (Member, Legislative Policy Subcommittee on State and Local Guidelines, 1991-1992) (Member, Ethics Committee, 1994-present, Vice Chairman 1995-96, Chairman, 1998-present) (Member, Ad Hoc Committee on the Militia,1995) (Member, President's Ad Hoc Committee to Investigate Violations of Association Policy, 1995) (Member, President's Special Committee to determine the feasibility of providing financial compensation for NRA Presidents, 1995) (Member, Ad Hoc Committee to investigate memberships and upgrades sold at a reduced rate, 1997) (Member, Nominating Committee, 1981-82; Vice-Chairman, 1998-1999)(Member, Special Committee to study the Pros and Cons of A Regional Quarterly Board Meeting, 2001)(Chairman, Alaska Host Committee, 2005).
Ohio Gun Collectors Association (1980-present) (Honorary Life Member, 1990-present)
Pioneers of Alaska, Anchorage Igloo No. 15 (2000-present)
Smith and Wesson Collectors Association (1975-present)

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Former:

Alaska Junior Miss Scholarship Pageant, Inc. (Member, Board of Directors, 1973-1980) (Judges' Chairman, 1973-1977) (Vice President, 1977-1980)
Alaska Legal Services Third Judicial District Campaign Leadership Committee (2000)
Alaska National Guard Historical Holding (1989-1997)
Alaska National Guard Museum Fund, Inc. (Director, 1991-1999) (Chairman, 1996-1999)
Alaskans United Against The Tax Cap (2000)
Alaskans for Recriminalization of Marijuana Advisory Committee (1990)
Alaska State Rifle and Pistol Association (1980-1992) (Vice President, 1983-1988) (Secretary and Executive Officer, 1988-1989) (NRA Liaison Officer, 1989-1992)
Alaska Supreme Court Advisory Committee on Children's Rules (1972-1973)
American Bar Association (1968-1990) (Membership Chairman, Family Law Section, 1975-1976)
American Judicature Society (1970-1979)
Anchorage Clearinghouse Christian Ministries (Member, Board of Directors, 1992)
Anchorage Committee for the White House Conference on Children (1970)
Anchorage Council on Prevention of Alcohol & Drug Abuse (1984)
Anchorage Crime Commission (Committee on Prosecution, 1981)
Anchorage Veterans Monument Committee (Director,1998-2001)
Armed Services YMCA of Alaska (Advisory Committee Member, 1995) (Director, 1995-2003) (Program Committee Member, 2000-2003)(First Vice Chairman, 2001-2002)(Chairman, 2003)
Association of Family Conciliation Courts (1977-1978)
B.P.O.E., Lodge No. 1351 (1991-2003) (Vice-Chairman, Americanism Committee, 1991-1995)
Commonwealth North (1986-2002)
Congress of Racial Equality (1991-1992)
Cystic Fibrosis Foundation (1984-1987) (Member, Board of Directors, 1984-1987)
Holy Family Cathedral Parish Council (1971-1975) (Vice President, 1972-1975)
Izaak Walton League of America (1990-2000)
Law Enforcement Alliance of America (1992-2002)
Law Enforcement Committee on Alcoholism (1969-1970)
National Council of Juvenile Court Judges (1971-1986)
National Firearms Museum Fund (Director, 1982-1994; 1997-1998)
National Republican Lawyers Association (1985-1994)
Navy League (1988-1998)
Sierra Club (1985-1986)
Spenard Bar Association (1975-1977) (Vice President, 1976-1977)
State Guard Association of the United States (1987-1997) (Member, Board of Directors, 1992-1994)

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(d) had any proceedings brought to have you declared a ward of any court or adjudged an incompetent? ☐ Yes ☑ No

If your answer is "yes" to any part of this question, state the facts in detail. Give the name and place of the court or agency, dates of the beginning and end of any action or proceeding, case numbers, and the judgment or other disposition.

18. (a) Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities? ☐ Yes ☑ No

In particular, have you been the subject of any proceeding, criminal or civil, initiated against you by the Internal Revenue Service or a State Tax Office? ☐ Yes ☐ No

If so, give particulars, including case numbers.

(b) Have you ever been sued by a client? ☑ Yes ☐ No

If so, give particulars, including case numbers.

Mitford vs. Ross (Fed Ct) 90-35055 - Fee dispute. A former client claimed he was incompetent when he signed the fee agreement. The Federal Court dismissed his claim and awarded Rule 11 sanctions against Mitford and his attorney.
Owen vs. Ross - (State Ct) 3AN-99-6068 - Fee dispute. Settled for $500 nuisance value.

(c) Have you ever been a party in any other legal proceeding? ☑ Yes ☐ No

If so, give the particulars. Include all legal proceedings in which you were a party in interest, including petitioner or respondent in dissolution or divorce proceedings; a material witness; a named co-conspirator or correspondent; and subject or witness in any grand jury proceedings. Do not list proceedings in which you were sued only in a representative capacity (e.g. guardian ad litem, or as Commissioner of Natural Resources).

See attached.

18 (c) If so, give the particulars. Include all legal proceedings in which you were a party in interest, including petitioner or respondent in dissolution or divorce proceedings; a material witness; a named co-conspirator or correspondent; and subject or witness in any grand jury proceedings.

Case #	Party	Case Description	Result
3AN-78-4094CI	Plaintiff	Failure to pay legal fees.	Judgement in favor of plaintiff.
A88-0336CV	Defendant	Appeal - client failed to pay legal fees	Judgement in my favor.
A90-35055CV	Defendant	Fee dispute.	Judgement in my favor.
3AN-91-4807CI	Defendant	Husband sued wife and me (as her attorney) because she taped one of his phone conversations.	Court dismissed husband's claim.
3AN-91-6326CI	Plaintiff	Failure to pay attorney's fees.	Defendant signed confession of judgement.
3AN-93-11614CI	Plaintiff	Negligent work on vehicle.	Judgement in favor of plaintiff.
3AN-93-11668CI	Plaintiff	Failure to pay for structural flaw in vehicle.	Case settled in my favor.
A95-0053CV	Plaintiff	Voting - Civil rights issue	Filed Petition for Writ of Certiorari: Denied Position vindicated by similar case in California
A97-0272CV	Plaintiff	Constitutional rights - campaign contributions	Judgement affirmed in part and reversed in part.
3AN-97-4543CI	Defendant	Seizure of vehicle.	Release of vehicle in accordance to stipulated agreement.
3AN-97-6805CI	Plaintiff	Failure to pay for appraisal services.	Default judgement in my favor.
3AN-99-10332CI	Plaintiff	Failure to pay legal fees.	Default judgement in my favor.
3AN-02-9718CI	Plaintiff	Failure to honor vehicle warranty.	Defendant honored warranty.
3AN-06-4411SC	Plaintiff	Failure to pay debt.	Default judgement in my favor.

19. State the nature and disposition of any of the following actions which apply to you:

(a) Are there any unsatisfied judgments against you? ☐ Yes ☑ No

Have you ever defaulted in the performance of any court-imposed obligation, including payment of alimony or child support or compliance with another court order or decree?

☐ Yes ☑ No

In each case, list the name and address of the creditor, the court which rendered the judgment, the case number, the date, the amount of the judgment, and the circumstances on which such claim was based.

Has property owned by you been either judicially or non-judicially foreclosed?

☐ Yes ☑ No

Please state the circumstances and outcome of any such unsatisfied or default judgment, or of any foreclosure.

(b) Have you ever made an assignment for the benefit of creditors? ☐ Yes ☑ No

Have you ever filed any petition in bankruptcy? ☐ Yes ☑ No

If so, state the circumstances, case number, and the outcome.

References and Counsel Questionnaires*

* **Please Note**: Letters of reference from these persons are confidential and will not be given to the applicant. If the reference asks (in writing) that the letter be shared with the governor, the Council will send designated letters and counsel questionnaires for each nominee. The applicant should not request a copy of the letter from the reference. (You **should not** list the Chief Justice of the Alaska Supreme Court.)

References or letters not solicited by the Council are considered public (with few exceptions) and will be sent to the governor for all nominees.

20. (a) List the names, addresses, **including zip codes**, and **phone numbers** of two persons whom the Judicial Council may contact who can discuss your general character and background.

Name: Rex Close
Address: 31520 West Glenn Highway, Milepost 102.1
City/State/Zip: Sutton, AK 99674 Phone: 907-552-2482

Name: Ken Overvold
Address: P.O. Box 110709
City/State/Zip: Anchorage, AK 99511 Phone: 907-346-2887

(b) List the names, addresses, **including zip codes**, and **phone numbers** of three other persons whom the Judicial Council may contact who can discuss your professional competence and qualifications for a judicial position.

Name: David Baranow
Address: 2020 Abbott Road, Suite 4
City/State/Zip: Anchorage, AK 99507 Phone: 907-522-2136

Name: Colleen Baxter
Address: 310 K Street, Suite 200
City/State/Zip: Anchorage, AK 99501 Phone: 907-264-6747

Name: Timothy Peters
Address: 1500 West 33rd Avenue, Suite 100
City/State/Zip: Anchorage, AK 99503 Phone: 907-770-1616

References and Counsel Questionnaires (continued)

(c) List the names, addresses, **including zip codes, and suite numbers where applicable,** and phone numbers of each attorney involved in your three most recent cases that have gone to trial. Please do not list cases pending in the trial courts. (Applicants who are currently judges should list the three most recent trials they presided over.) List only those cases which have gone to trial within the past three years. Please include the judge's name and case names and numbers. (*Attach additional pages if necessary.*)

Case Number 1

Case Name: Kim Jaime
v. Mark Jaime
Case Number: 3AN-05-5656
Judge Name: Mark Rindner

Attorneys Involved:

Name: Steven J. Priddle
Address: 700 Hollywood Drive
City, State, Zip: Anchorage, AK 99501

Name: Wayne Anthony Ross
Address: 327 E. Fireweed Ln., Ste. 201
City, State, Zip: Anchorage, AK 99503

Name:
Address:
City, State, Zip:

Name:
Address:
City, State, Zip:

Case Number 2

Case Name: Cera Choi
v. Adam Choi
Case Number: 3AN-03-10163
Judge Name: Sharon Gleason

Attorneys Involved:

Name: John Pharr
Address: 733 West 4th Avenue, Ste. 308
City, State, Zip: Anchorage, AK 99501

Name: Wayne Anthony Ross
Address: 327 E. Fireweed Ln., Ste 201
City, State, Zip: Anchorage, AK 99503

Name:
Address:
City, State, Zip:

Name:
Address:
City, State, Zip:

Case Number 3

Case Name: Anita Gomez
v. Greg Mercer
Case Number: 3AN-03-11226
Judge Name: John Reese/Peter Michalski

Attorneys Involved:

Name: Lanae Austin
Address: 525 West 3rd Avenue, Ste. 107
City, State, Zip: Anchorage, AK 99501

Name: Wayne Anthony Ross
Address: 327 E. Fireweed Ln., Ste. 201
City, State, Zip: Anchorage, AK 99503

Name: William Ford
Address: 745 West 4th Avenue, Ste. 302
City, State, Zip: Anchorage, AK 99501

Name:
Address:
City, State, Zip:

References and Counsel Questionnaires (continued)

(d) List the names, addresses, **including zip codes, and suite numbers where applicable,** and phone numbers of each attorney involved in your three most recent cases that did not go to trial but in which you did significant work. Please do not list cases pending in the trial courts. (Applicants who are currently judges should list the three most recent cases they presided over that did not go to trial but in which they did significant work.) Please include the judge's name and case names and numbers. (*Attach additional pages if necessary.*)

Case Number 1

Case Name: Cheryl Young *Case Number:* 3AN-07-5618CI

v. Michael Young *Judge Name:* Mark Rindner

Attorneys Involved:

Name: Dorne Hawxhurst	Name: Wayne Anthony Ross
Address: 545 West 15th Avenue	Address: 327 E. Fireweed Ln., Ste. 201
City, State, Zip: Anchorage, AK 99501	City, State, Zip: Anchorage, AK 99503
Name:	Name:
Address:	Address:
City, State, Zip:	City, State, Zip:

Case Number 2

Case Name: Autumn Novak-Buechner *Case Number:* 3AN-06-12294CI

v. Daniel Buechner *Judge Name:* Craig Stowers/Michael Spaan

Attorneys Involved:

Name: Phyllis Shepherd	Name: Wayne Anthony Ross
Address: 800 East Dimond, Ste. 3-620	Address: 327 E. Fireweed Ln., Ste. 201
City, State, Zip: Anchorage, AK 99515	City, State, Zip: Anchorage, AK 99503
Name:	Name:
Address:	Address:
City, State, Zip:	City, State, Zip:

Case Number 3

Case Name: State of Alaska *Case Number:* 3AN-06-10996CR

v. William Cohen *Judge Name:* No judge assigned

Attorneys Involved:

Name: Brittney Dunlop	Name: Wayne Anthony Ross
Address: 310 K Street, Ste. 520	Address: 327 E. Fireweed Ln., Ste. 201
City, State, Zip: Anchorage, AK 99501	City, State, Zip: Anchorage, AK 99503
Name:	Name:
Address:	Address:
City, State, Zip:	City, State, Zip:

Writing Sample

21. Attach one example of a brief, memorandum of law, or legal opinion or similar example of legal writing (10-20 pages in length; 15-25 pages for appellate positions) prepared solely by you within the last five years. Please choose a sample that reflects your ability to do legal research and analysis. If you do not have a good sample of this length, include an excerpt from a longer writing. Make sure the sample contains sufficient facts to make it understandable. (Some reply briefs may not meet these requirements.) I do not write lengthy briefs or memorandums solo. Like the current justices, I regularly utilize law clerks if writing extensive briefs. I have attached an example or two of briefs done solely by me.
Please do not submit: (a) coauthored writing samples, (b) samples with confidential information unless redacted to remove such information, (c) longer writing samples.

22. Has any **public** sanction been imposed against you in response to a complaint, charge or grievance brought against you as an attorney or a judge? ☐ Yes ☑ No
Have formal grievance procedures been brought against you? ☐ Yes ☑ No
See Bar Rule 22(b) & (e) concerning public grievance procedures against attorneys, and AS 22.30.011(b) and .060(b)(3) concerning public grievance procedures against judges.
Have you ever been held in contempt of court? ☐ Yes ☑ No
In each case, state in detail the circumstances and the outcome.

Additional Comments (Non-Confidential)

23. Please make any additional comments that you wish to bring to the Council's attention about your experience and suitability for this judgeship.

See Attached.

23. I believe that I can bring a substantial amount of experience in a large number of areas to this position. I have been continuously employed since I was twelve years of age. My longest period of unemployment was the period of four weeks beginning after graduation from law school, admission to the Wisconsin Bar, my marriage, and our honeymoon drive to Alaska. I started as a newspaper delivery boy with the Milwaukee Journal, and since then have worked at the following jobs through high school, 4 and 1/2 years of college, and law school:
Bagger for Kohl's Food Store (one of my then bosses was Herb Kohl who is now US Senator from Wisconsin), Grounds Tender for the Milwaukee County Park Commission, Grounds Tender for the City of West Allis (Wisconsin) Department of Forestry and Public Grounds, "Momback[1]" for the City of West Allis Sanitation Department, chain link fence repairer and painter for the City of West Allis, Shoe Salesman for Sears (I had to face "da feet" every day), and Mail Handler for the United States Post Office. As a newsboy, I earned $6-$10 per week, plus tips, for working part time every day of the week. I started for the City of West Allis at, I believe, $1.10 per hour. Eventually I was making the princely sum of $2.65 per hour. As a shoe salesman, I made $2.10 per hour or 8% commission, whichever was more. When I started in private practice, I was billed at $45 per hour. When hourly rates were raised to $60 per hour, I had a real problem realizing that anybody could be worth $1 per minute! Now I am billing almost $4 a minute. It took me ½ a week when I began working to earn as much as I now make per minute. As a result of my experiences in earning a living while paying for my way through school, I have a real empathy for the average wage earner who finds himself or herself involved in my beloved legal system. That system is simply too expensive for the average person and I would like to work with the other justices and court administration to streamline court procedures and thereby reduce the expense of being involved in legal process. This State could use more judges who have had to make a payroll regularly, who know the real value of money, and understand the cost of litigation.

I was the first and only member of my generation in our family (including cousins, brother, and sisters) to attend and graduate from college. I taught courses at UAA entitled "Juveniles and the Law" (1973-74) and "Introduction to Criminal Justice" at the University of Alaska, Anchorage, for several semesters. I've been a guest lecturer at Marquette University Law School, the University of Alaska, Anchorage, and at Wayland Baptist College and I served as a member of the Board of Trustees (Secretary) for Lumen Christi High School from 1999 to 2001. One of our sons is a teacher, another is teaching for the USMC at Annapolis, and my wife is a former teacher. As a result, I have a deep appreciation for education, and the cost of such education.

I've been a member of the Alaska Peace Officers Association since 1970, have a daughter in law enforcement (Spokane Police Department) and, as stated, I have taught courses in criminal justice. In years past, I have represented Correctional Officers seeking to improve their lot with the DOC, as well as other police officers, and I believe that I have a good knowledge of the criminal justice system.

As a Family Court Master, I learned children's procedures and as a Court Trustee, I helped

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[1]A "Momback" is the guy that stands on the back of a garbage truck and signals the driver C'mon Back". As a result of that job, I can no longer enjoy eating white rice.

establish the computerized collection of child support that has developed into the Child Support Services Division of today.

I served as a Federal appointee to the Alaska Land Use Council Advisors' Committee as Vice-Chairman and Chairman and learned about land use in Alaska including management plans, and RS2477 problems. My firm handled the first McDowell case which guaranteed Alaskans equal hunting and fishing rights under our Constitution. I have traveled extensively in the Bush, and have conducted a number of trials there. I know and understand the problems of rural Alaska and Alaskans.

Alaska has an extensive population of military personnel and Veterans. I serve as Area Defense Counsel for the State Defense Force. I have served as a director for various veterans groups. Several years ago, I was told that I was the first civilian defense counsel to win a Court Martial case at Elmendorf Air Force base in 20 years. One of our sons is a Major in the USMC, having served in Iraq on 3 occasions. As a result, I understand the large percentage of Alaskans who have served or are serving now.

I have served on the Board of Directors of the National Rifle Association of America for over 20 years with people of widely divergent backgrounds. For example, I serve with Roy Innis (Executive Director of the Congress of Racial Equality) who has stayed in our home on occasion, Ted Nugent (Rock Star), and Charleton Heston (Actor). My clientele, too, is widely divergent. This has provided a plethora of experiences to a fellow like me who came from a quiet, Mid-Western background. As a result, I believe I understand people quite well and appreciate their varied background and philosophies. I am a good listener and have a good sense of humor, attributes that are too often lacking in today's society.

I enjoy writing, have an English Minor, and have written many published articles. A list is attached to this application.

I was told that when I was admitted, I was the 232nd attorney in Alaska. Now we have over 2800 practitioners. I have seen many changes over the years, the most notable being the increase in women attorneys. When I attended law school, there were only one or two females in my entire class. Now I understand that the number of women practicing law is approaching 50%. The increase in numbers of women involved in our profession is one of the real beneficial changes I have noticed over the years.

I believe that I have a reputation for honesty and integrity. I have had an enjoyable and stable life. I have been married to the same wonderful wife for 39 years and we have raised 4 great kids, all of whom are doing well. We have 3 sons (a teacher, a career Infantry officer, and an Engineer) and a daughter (a Policewoman). Alaska has been good to all of us and in the closing years of my legal career, I would like to try and give something back to the legal system I love.

I would appreciate your consideration.

Wayne Anthony Ross

Additional Comments (Continued)

24. Please indicate whether you prefer to be interviewed in public session or in private session. Your choice of a public or private interview has no bearing on the Council's determination of your qualifications or on the questions the Council may ask. You may change your request in writing at any time before the interview starts. No Preference.

☐ Public Interview ☐ Private Interview

25. Please prepare a brief biographical statement ***(limited to 150 words)*** about your background, legal education, and legal experience. Please do not list personal information about minor children. Your picture and a copy of this statement will be scanned and posted on the Council's website after the application deadline. In its Bar survey, the Council will invite attorneys to review the information if they wish to become more familiar with your background and experience. Use the form on the following page for your biographical statement. Please leave the box at the top empty. The Council will use this space for your scanned picture. ***To be fair to all applicants, the Council will strictly enforce the 150 word limit.***

If you object to the posting of your picture on the Council's website, please indicate your objection below. If you object, we will not post your picture, although you still must submit twelve photographs of yourself with your application.

☐ If you check this box we will not post your picture on the website.

Biographical Statement

Name Wayne Anthony Ross

Position(s) for which you wish to be considered:

Alaska Supreme Court Justice

Date: 24 June 2007

Former Assistant Attorney General, Court Trustee and Standing Master. Bachelor of Science degree from Marquette College of Business Administration and a Juris Doctoris degree from Marquette Law School (Milwaukee). Admitted to the Wisconsin Bar in 1968 and to the Alaska Bar in 1969. Mr. Ross has operated his own law firm in Alaska for 30 years with an emphasis on family law, criminal defense, wrongful termination, and plaintiff's personal injury. Has taught courses at UAA on Juvenile Law and Introduction To Criminal Justice. Member of Alaska, Wisconsin, and Anchorage Bar Associations. Area Defense Counsel, Alaska State Defense Force. Former member of the late (and great) Spenard Bar Association. Served as Chairman of the Alaska Land Use Council Advisors Committee. Member - Alaska Peace Officers Association since 1970. Assistant Guide, gun collector, lodge owner. Former columnist for the Alaska Bar Rag, Anchorage Daily News, and Alaska Chronicle. Twice Knighted (Poland and Vatican).

Certification and Waiver

I hereby certify that, to the best of my knowledge, the information provided on this application is true and complete; and that I am a citizen of the United States and of the State, and will be eligible to be licensed to practice law in Alaska at the time of expected appointment (Ak. Const. Art IV; § 4).

I waive any privilege of confidentiality I may have with respect to information concerning my qualifications for judicial office that the Judicial Council may desire to obtain. I specifically authorize the Council to obtain and examine my personnel files from current and past employers, including all files maintained by the Alaska Court System, and to obtain information, records and documents regarding me from any credit reporting agency, any law enforcement agency, any bar association, any occupational licensing board, any educational institution, and any disciplinary body, including specifically the Alaska Bar Association and the Alaska Judicial Conduct Commission. I further authorize these institutions, organizations, and individuals, and any other institutions, organizations and individuals to make available to the Council all confidential and non-confidential documents, records and information concerning me that the Council may request.

Signature of Applicant

Wayne Anthony Ross
Typed Name

25 June 2007
Date

Subscribed and sworn to before me this 25 day of June, 2007.

Notary Public, State of Alaska
My Commission expires: 6/26/10

TAMARA HUFFMAN NOTARY PUBLIC STATE OF ALASKA

NewsBank inc. America's Newspapers

JUBILATION AND FEAR - INDIAN COUNTRY

Anchorage Daily News (AK) - Saturday, July 5, 1997

Author: *Tom Kizzia Daily News Reporter ; Staff*

One weekend last December, the sky above northern Cook Inlet buzzed with small planes. Native leaders and seven dance troupes from around the state were flying to a potlatch at the last isolated Dena'ina Indian village in Alaska's most populated region.

A banner was hung in the high school gym: "Welcome to Tyonek's Victory Celebration."

It was a double-barreled celebration.

The 9th U.S. Circuit Court of Appeals had just ruled, in a case involving the northern Indian village of Venetie, that village-based tribes in Alaska may have territorial jurisdiction over "Indian country." Only weeks earlier, a federal judge had upheld Tyonek's claim to be a historical tribe, the end of a 15-year legal battle.

"We were celebrating recognition of our sovereignty," said Tyonek council president Peter Merryman. "We had it all the time, but now they recognized it."

On an alcohol-free weekend, the villagers and their guests danced all night.

"The jubilation that greeted this Indian country decision was amazing to me. It was like a rebirth," said John Sky Starkey, attorney for the Association of Village Council Presidents in the Yup'ik region around Bethel.

But jubilation was far from universal.

In Juneau, the Legislature set to work assembling a $1 million legal fund to fight the Venetie decision. Critics said tribal governments would ultimately hurt Natives, economically and socially, and would segregate Alaska into Native and non-Native camps.

"When I first came up here 30 years ago, everyone was proud to be an Alaskan," said Anchorage attorney and sportsmen's advocate Wayne Anthony Ross. "Now the impression is people are being taught to be more proud of being a Native than of being an Alaskan."

With state lawyers predicting chaos and Rep. Al Vezey, R-North Pole, calling tribal sovereignty an "absolute evil" during a House floor debate, the battle over tribal government in Alaska was far from over.

For now, all attention is on the state's appeal to the U.S. Supreme Court. Beyond that, both sides are talking about carrying their case to Congress. But thoughtful leaders on both sides are also beginning to worry about the difficulties that victory for their side would bring.

There may be no return to the political landscape that existed in rural Alaska before the Venetie decision.

Supreme Court to listen

Last November, Native rights lawyers won a stunning victory at the 9th Circuit. But now they face reinvigorated legal opposition and a Supreme Court that has not appeared inclined to expand the powers of Indian tribes.

In June, the Supreme Court agreed to hear the state's challenge of the Venetie decision. The state succeeded in getting the court's attention with a fusillade of legal arguments, supported by briefs from the Legislature, Sen. Ted Stevens, R-Alaska, and 20 other states.

NewsBank inc. America's Newspapers

GET OUT OF TOWN - INDIAN COUNTRY

Anchorage Daily News (AK) - Wednesday, July 2, 1997

Author: *Tom Kizzia Daily News Reporter ; Staff*

Tribal police officers escorted Jimmy Boan past the bell in front of the Moravian church and out of the village. In all directions, the tundra and the sea were a single flat line of white. The only civilization was at Boan's back.

An airplane waited. Boan didn't want to go.

He had been banished.

He was a white man living in Kipnuk with his Eskimo girlfriend -- until two years ago, when the Yup'ik tribal court expelled him as a troublemaker. Tribal officials said he pointed guns at people, brought in drugs and refused to follow the rules in the conservative, straight-laced village on the Bering Sea coast.

Boan said he was targeted because he refused to comply with an unconstitutional search of his baggage at Kipnuk's airport. He said they were after his girlfriend because she dared to criticize tribal leaders. He told the council they had no right to expel an American citizen.

They surrounded his house with snowmachines at night and cut off his electricity. When he finally left, he took a civil rights complaint to state and federal officials.

In Indian country, no issue cuts to the heart of self-determination like the power to decide who gets to live there.

For Indian country advocates, it is a fundamental right under federal Indian law and an essential tool of local control.

"Why do some of the villages have crime problems? It's because they leave it to an outside source -- they want the troopers to take care of them instead of taking on those problems themselves," said John Amik, administrator of the Kipnuk Traditional Council.

For Indian country opponents, the power to expel allows a tribe to set itself up as a foreign nation inside Alaska's borders.

"We moved out there for my girls to learn their language," said Boan, who now lives in Bethel. "I said, 'If this is the way you people are, I don't want them to learn your culture.' "

The ultimate power

Banishment was a traditional practice in many Alaska Native cultures before white civilization came, anthropologists and Native elders say.

In a world without prisons, it was the final solution for people who would not bend to the will of the community. After time alone in the wilderness, the exile might return, presumably contrite, or try to negotiate his way into another village. In times of war between tribes, banishment was a death sentence.

In the Lower 48, the power to exclude people and businesses from Indian reservations colors all relations between a tribal government and the outside world. It invigorates commercial and civil regulation: anyone crossing into Indian country agrees to play by the local rules or leave.

The Supreme Court has said a tribe "agrees not to exercise its ultimate power to oust the non-Indian as long as the non-Indian complies with the initial conditions of entry."

Before the federal appeals court recognized Indian country last November in Venetie and Arctic Village, tribal governments in Alaska appeared to have no clear authority to exclude anyone.

That was the legal hang-up in Alaska's best-known banishment case, in the Dena'ina Indian village of Tyonek across Cook Inlet from Anchorage.

In 1982, the Tyonek traditional council attempted to expel two white families, invoking a 40-year-old rule that read in part: "Any white men except government men or outsider coming in is allow to stay only 24 hrs. if weather permits them to go."

Tyonek's lawyers protested that it was really an issue of outsiders living in tribal housing without permission from the tribal council. But the white families' lawyers called it a "racial purification law." For many urban Alaskans, the Tyonek case became a powerful and damning symbol of Native sovereignty.

The eviction suit and a countersuit ground through the federal courts for more than a decade, climbing all the way to the U.S. Supreme Court.

"We thought Tyonek was going to be the case on Indian country and tribal status," said Kari Bazzy-Garber, who picked up the lawsuit in midstream and remains the village council's attorney.

Years of wrangling in the Tyonek case eventually focused on whether tribes in Alaska could be recognized under federal law. But the lawsuit was finally resolved last October, in Tyonek's favor, without the court having to face the difficult question of Indian country and the power to enforce that 24-hour ordinance.

Some Native rights lawyers say that's just as well. Aware of the publicity at stake in the Native sovereignty movement, they acknowledge that the power to exclude can paint tribes in an unfavorable light.

"I think there were some aspects to that case that made it not sympathetic," said Heather Kendall-Miller, a lawyer for the Native American Rights Fund. Kendall-Miller represented Venetie in the tax case that won recognition of Indian country in Alaska. "It's hard to be a sympathetic case to educate a state, when the issue involves what many people would consider racism."

Only serious power

Uncertainty over Indian country has not kept traditional councils from invoking the banishment tradition in rural Alaska. In fact, given the state's refusal to recognize tribal criminal authority, many villagers consider banishment the only serious power a village has to enforce its rules.

Two dozen expulsions have been debated by Indian tribal courts in the Interior in the past five years, according to William Walters, tribal court facilitator for the Tanana Chiefs Conference in Fairbanks. Eleven people were banished, most of them Indians.

"Tribes believe there's been Indian country here all along and have been acting accordingly," Walters said.

Most of the cases involved people shipped out of their own villages because they threatened domestic violence or refused to comply with local alcohol rules, he said. In a case involving a non-Indian who abused village elders, the threat of expulsion proved sufficient.

"It's not really for punishment, but to protect the health, safety and welfare of the tribe," Walters said. "The power is very rarely invoked, and in my experience there's always been a series of events that have been very disturbing to the community."

On the Kuskokwim Delta, a Native bootlegger who had been in and out of state courts brought booze home to the village of Quinhagak whenever he got out of jail, said village tribal administrator Anthony Caole. It was a hard decision, but the council finally ordered the bootlegger put on a plane, Caole said.

"Whenever he brought in alcohol, we had domestic violence, people drunk in public, people hurting themselves," he said. "The state didn't fix the problem, so we had to do something."

After a year, Caole said, the bootlegger's family asked that he be allowed to return. He has been back several months, performing community service projects. So far, there have been no repeat problems, Caole said.

Charges of racism

The power to exclude is used most often within the tribe. But when white people are banished, it can catch the outside world's attention.

In two cases that made newspaper headlines -- the 1995 expulsion from Kipnuk and the 1982 case in Tyonek -- non-Natives claimed to be the victims of racism and the cynical abuse of tribal law.

Such charges fell like sparks on dry tinder.

In Kipnuk, Jimmy Boan contends the dispute arose partly because his Yup'ik fiancee, Mary Tirchick, dared to speak out against the tribal council's leaders, questioning how they spent government grants and accusing them of hiring close relatives for all the best jobs. As a result, he said, the council cracked down on them during the tribe's airport searches for booze -- until Boan declared the whole search unconstitutional and refused to comply.

"If they had any proof of me selling drugs or booze," he said recently, they should have called in the Alaska State Troopers. "They said I was white guy and didn't belong there. They said they didn't have to listen to what the U.S. government said."

He stormed out of a court hearing before five tribal judges, complaining he wasn't allowed to cross-examine his accusers. He said he didn't bother to appeal, since the appeal would have ended with the traditional council.

"Everyone in that village is afraid of the tribal council," Boan said.

"Ridiculous," responded John Amik, the Kipnuk Traditional Council administrator.

"The only reason Jim Boan was kicked out was because of his actions that are against the rules and regulations of the community," Amik said. "All he wanted to do was whatever he wanted, freely, without respecting our laws."

Village leaders say Boan argued with neighbors, waved guns angrily and spurned tribal efforts to intervene when his behavior got out of bounds. Yup'ik tradition calls for leaders to counsel violators, Amik said, to "talk to a person over and over until they understand. . . . State statutes say they can't charge someone unless they see it (happen). We try to keep things from happening, before they occur."

In tribal court, Boan would have had a chance to cross-examine, but he kept interrupting while witnesses tried to tell their stories, Amik said.

"I think the larger issue was one of Mr. Boan not being willing to march to their drummer," said trooper Dan Donaldson, who found himself in the middle of the dispute.

Exile is a familiar custom in Kipnuk, a coastal village with 600 residents, though it hadn't been seen in a while. Amik's 75-year-old father, Luke Amik, who holds Kipnuk's elected chief-for-life position, said two brothers were banished years ago for keeping an especially good source of blackfish to themselves. Others were expelled, and later allowed to return, for making homebrew or consistently taking another person's dog team without asking.

The Boan expulsion triggered a small constitutional crisis. The traditional council cut off electricity to Boan's house for several months. Power was restored only after a state Superior Court judge ruled the local utility was subject to regulation by the Alaska Public Utilities Commission, which had received a complaint. Amik said the council couldn't find a lawyer at the time to argue that the utilities commission lacked jurisdiction in Indian country.

Donaldson said Kipnuk had a few "hotheads" but most of the leaders seemed "very intelligent and level-headed and willing to compromise."

On the other hand, a trooper investigation into village complaints against Boan never led to charges, Donaldson said. In February, however, Boan was sentenced to 20 days in jail for shoving Amik, spitting on him and punching him in the face when they ran into one another at a store in Bethel.

"Any time anyone from the Kipnuk Traditional Council came into Bethel, he would harass them," said former assistant district attorney Jim Valcarce, who prosecuted Boan. "He wanted to let them know they weren't welcome on his turf."

As for complaints about violations of his civil rights in the airport search, Donaldson said, the troopers applied a version of the Clinton administration policy known as "Don't ask, don't tell."

"We were supportive of the traditional council's effort to stop the flow of alcohol and drugs into their community," Donaldson said. "If that's their goal, it's righteous."

The Federal Bureau of Investigation also looked into Boan's charges and forwarded the results to the United States attorney and the civil rights division of the U.S. Justice Department, according to Anchorage FBI agent Bill Bounds.

The investigation has not been made public, but federal officials didn't step in. It would have been an especially tough call given the uncertainty about tribal powers in Alaska, said U.S. Attorney Bob Bundy.

"In Indian country, they have authority to throw anybody out. If there's no Indian country, people are free to exercise the right to travel," he said. "I don't even come close to knowing the answers to a lot of this, and I don't think anybody does."

Alaska Attorney General Bruce Botelho said the state usually doesn't intervene when adults complain that a government agency has violated their civil rights.

"I have fairly limited lawyer resources," Botelho said. "The policy call is largely dictated by whether an individual is able to vindicate his rights by himself" through a lawsuit.

"That's the typical weak response of a weak administration," said Wayne Anthony Ross, an Anchorage attorney and sovereignty opponent. Ross contends that the state should intervene in villages like Kipnuk where civil rights may be abused.

"They've taken it upon themselves almost vigilante style to search people. That's totally improper. The state needs to teach the village how to search for alcohol without trampling on other people's constitutional rights," Ross said. "There are Native lawyers who say the constitution doesn't apply in the village. That's as outrageous as bringing alcohol into a village that has outlawed it."

Trespassing or racism?

In Tyonek, villagers still wince at the mention of the expulsion case that started in 1982.

For years, they say, they were called racists when they left the village. In Anchorage, they say, they were refused hotel rooms and ordered out of taxis. Wear a Tyonek hat, the local saying goes, if you want to get in a fight in Anchorage. But they still insist they were misunderstood, that the case was about trespassing, not race.

"If I go to your house I've got to have permission to come into your house," said traditional council president Peter Merryman. Visitors to Tyonek should show the same respect, he said.

Erna "Bernie" Puckett, on the other hand, still insists it was a case of racial discrimination, at least on the part of a few village leaders. She winces, too, recalling her family's two-year battle to remain in their home in the village, including vandalism and anonymous late-night calls.

Puckett had worked at the Tyonek school for several years as a substitute teacher and tutor while her family lived in a nearby logging camp. When the camp closed, the family received village council permission to move into Tyonek and finish the school year. The Pucketts rented a house from a tribal member, who later sided with them in court. When the principal offered her the job of school secretary, they decided to stay beyond the agreed-upon year.

"The stories I could tell. I would not want anyone else to go through what I went through," said Puckett, who lives in Wasilla now. "It was discrimination. It wasn't OK for me as a white person to have the secretarial job."

Council members said the tribal housing was needed for tribal members in the village of 250 people. But others said the eviction was about the school job.

Jobs were few in Tyonek. Some tribal officials felt the school secretary should be a villager, according to Puckett.

For two years Puckett hung on to her job and her house, until troopers advised her to go.

"I want to think it was just a handful of people," Puckett said. "I had people come to my door saying they were no part of it, they didn't think it was right."

Puckett said her family has many happy memories of Tyonek. Her children starred in sports at the local high school. One of her sons is now married to a Yup'ik woman and lives in Dillingham, she said.

Some Indian country opponents continue to see the Tyonek case as a cautionary tale -- if not of anti-white racism unleashed by Native sovereignty, then of a village clique invoking the tribe's ultimate power of exclusion to achieve a small and divisive end.

In Tyonek, villagers refused to comment on any internal differences of opinion. But as the lawsuit evolved into a challenge to Tyonek's ability to govern itself under tribal law, the village closed ranks.

"They were just trying to protect what little they had," said Bazzy-Garber, the council's lawyer.

Tyonek once had a lot: a 29,000-acre land reserve, withdrawn by the federal government for the village in 1915 to fend off encroachments by commercial fishing traps. The reserve paid off in the 1960s with the discovery of Cook Inlet oil.

Leasing on the reserve made Tyonek rich by rural standards of the time -- though the council had to sue the Bureau of Indian Affairs to get control of a $12 million bank account. Some of the money was used to help launch the Alaska Federation of Natives. The village also built its own school and 60 houses for tribal members. The council passed a law that the new houses could not be leased or sold without council permission.

Those housing rules became central to the Tyonek banishment case.

The courts finally decided Tyonek has the right to set rules for tribal housing and that tribal officers enforcing those rules are immune from discrimination lawsuits. This was an internal tribal matter, the court said, whether or not Tyonek was in Indian country. The only remaining question was whether Tyonek had been a tribe in 1982, before the BIA issued a formal list of tribes. The U.S. District Court ruled last October that it had been.

In December, with a "Victory Celebration" banner still hanging in the log community hall from a weekend-long potlatch, council president Merryman told visitors that Tyonek's motivation has been to defend itself against the encroaching outside world.

That was the motivation in 1915, when Tyonek's land was protected in a federal reserve. That was what Tyonek's lawyers said they were attempting in 1982, when the 24-hour rule for whites hit the newspapers.

And that is the motivation cited today in Kipnuk -- and in Akiachak and Venetie, and many of the other villages

hoping Indian country will give them the tools they need to defend their way of life.

Merryman said the people of Tyonek don't want to see their corner of Cook Inlet swallowed by the white Western society, as happened to their Dena'ina cousins across the Inlet in Kenai.

The village has shrunk in the past decade, from 250 to 150 residents. Some of the tribal houses are boarded up, their owners moved away to find work. But coal fields, natural gas development, state land disposals and the industrial plans of Tyonek's own village corporation all will bring people to the west side of the Inlet, Merryman said.

"We need to keep control over here," Merryman said. "Everybody knows the west side is going to be a boom town."

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TWO DESTINIES, ONE LAND - INDIAN COUNTRY

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One morning last summer, at the height of the king salmon run, Granville Brinkman awoke to find himself in Indian country.

The avid angler was staying in a big private camp on the Kanektok River in Southwest Alaska, where dozens of similar camps crowd gravel bars when the salmon run thick. Anglers from around the world pay guides thousands of dollars a week to cast into the clear, cold water.

But for the 540 Yup'ik Eskimo residents of Quinhagak, whose ancestors have lived near the river mouth for centuries, the tourist boom has been a bust. It has meant no money for the tribe -- just competition for fish and drinking water polluted by fishermen's feces.

Now the village is doing something about it -- and making history in the process. Quinhagak's leaders are coolly asserting jurisdiction as a sovereign Native American tribe over outsiders camped on the riverbanks they call Indian country.

Brinkman, a Seattle businessman, was alone in camp last June when the entire Eskimo tribal council showed up in boats with a summons to tribal court.

"I just went up there to fish," Brinkman said. "All of a sudden there was a problem."

Last November, all of Alaska suddenly found itself in Brinkman's boots. A federal appeals court upended conventional wisdom, ruling that village tribes in Alaska may have jurisdiction over their traditional lands.

Now the U.S. Supreme Court is considering whether to uphold that decision. But as sportfishermen near Quinhagak have discovered, this is not just a dispute among lawyers. In the eyes of many rural Alaska Natives, Indian country already exists on the Kanektok River and in pockets across the state.

Villages are setting up tribal courts, imposing tribal taxes, hiring tribal police officers, and enacting tribal laws that affect villagers and non-Native visitors aike.

Tribal councils are ignoring state gaming laws and running their own bingo and pull-tab operations. One tribal government even envisions a casino in downtown Anchorage.

Citing the special powers of Indian tribes, local councils skirt the Constitution and routinely search incoming visitors for alcohol and drugs. Troublemakers, both Native and white, have been kicked out of villages by tribal edict.

Tribal governments in Alaska say they are doing all this to save a culture on the brink of destruction. And they are doing it even though state and federal policy-makers have said they have no legal right.

The state's lawyers argue that Alaska's Natives don't have the powers of tribes in the Lower 48. Alaska has a bigger percentage of Native Americans than any other state. But their legal status was supposedly different -- the very word "tribe" evoked a history of treaties and Indian wars that had little to do with Alaska's isolated Eskimo, Indian and Aleut villages.

Above all else, Indian country opponents say, the Alaska Native Claims Settlement Act, which created the state's unique system of Native-owned corporations and awarded them $962 million and 44 million acres of land, did away with any possibility of Indian country here.

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But last November, in a landmark ruling that stunned many Alaskans, a federal appeals court said yes, Indian country does exist in Alaska.

Alaska is now watching for the outcome of the state's appeal to the U.S. Supreme Court.

In Juneau, legislative leaders said the stakes over tribal sovereignty make every other issue, even subsistence hunting and fishing rights, pale by comparison. Indian country, they say, would create a chaotic patchwork of jurisdictions and deepen racial divisions.

The state's lawyers have been joined by 20 other states worried about the spread of a new tribes-without-reservations concept to the Lower 48.

Alaska Natives, speaking with increasing unity, respond that tribal government has never disappeared from the Bush. They say the decade-long tribal revival in rural Alaska is too far advanced to be stopped by court rulings or backstop acts of Congress.

"It drives me crazy when I hear people say the 9th Circuit has 'granted the right' for tribes to exist in Alaska," said Will Mayo, president of the Fairbanks-based Tanana Chiefs Conference. "This is not something that just suddenly appeared."

Both sides are raising practical arguments about how Indian country could hurt the state's broader interests or what it could do for rural communities. Underlying these concerns is a profound philosophical debate over race and history.

On one side is the national ideal of minority-group assimilation and the Alaska constitution's insistence on equality before the law. On the other is the historical right of America's first inhabitants to govern themselves and maintain a measure of control over their collective fate.

Suddenly, on the eve of the 21st century, the people of Alaska are faced with resolving one of the oldest unsettled arguments in American history.

It begins with a tax

Five months after Granville Brinkman was summoned to tribal court in Quinhagak, the 9th U.S. Circuit Court of Appeals handed down the decision that touched off the wider debate over Indian country in Alaska.

The 9th Circuit case involved a tax imposed by the joint tribal government of Venetie and Arctic Village, the two northernmost Indian communities in the United States. The federal appeals judges concluded that the land claims act and transfer of land to village Native corporations had not, by itself, removed the land from the authority of Alaska's village-based tribes.

The land around Venetie -- and any other land in Alaska that could meet the 9th Circuit's new test -- was Indian country, where tribes had jurisdiction and the state did not.

The ruling appeared to sanction village tribal activity that had spread rapidly for a decade, often under the carefully averted gaze of state officials who may oppose tribal government in principle but find it the only practical way to administer modern life in much of rural Alaska.

But to many Alaskans, the ruling came as "a bolt out of the blue," as the state's lawyers said when they asked the Supreme Court to hear an appeal.

Suddenly, under the Venetie decision, the most basic social and political relations in Alaska have been called into question.

The state's lawyers predict chaos if all 226 recognized tribal councils in Alaska invent their own rules for taxation and regulation independent of the state. They quoted one of the 9th Circuit's judges, who glumly anticipated "a

blizzard of litigation" as villages like Quinhagak test whether they, too, have tribal powers.

"In practically every area of government, Alaskans -- Native and non-Native alike -- must now ask themselves the basic question: who is in charge?" the state told the Supreme Court.

Native rights lawyers have tried to spin the issue the other way, saying the state's alarms are overblown. They say the 9th Circuit's test for Indian country is a good fit only for remote villages and is unlikely to affect most Alaskans.

Instead of demonizing tribes, they say, the state should be working with local councils to address the worries that gave rise to the Indian country movement: the future of subsistence, the absence of effective rural law enforcement, the unraveling of Native culture in a spiral of alcohol abuse, suicide, and powerlessness.

In remote villages where few non-Natives live, objections to tribal self-government can indeed seem harsh and overwrought. Even so, recognition of Indian country would bring profound change to Alaska.

An examination of state-tribal conflicts in the Lower 48 and dozens of interviews with Alaska tribal leaders, state officials and experts in federal Indian law suggest that Indian country would permanently alter ways of doing business here: shifting power away from Juneau, authorizing new kinds of taxes and regulations, and creating parallel legal systems that would be complicated to synchronize.

As Alaskans wait to hear what the Supreme Court will say, an ever-widening rift is opening on the Last Frontier.

The Legislature quickly passed a special $1 million appropriation to fight what legislators said was a challenge to the state's sovereignty. Republicans in the legislative majority cited such concerns as inconsistent fish and game rules and tribal taxes that they said might discourage rural development.

But many also expressed an underlying sense that Indian country is somehow un-American.

Sen. Robin Taylor, R-Wrangell, chairman of the Senate Judiciary Committee, said extra-constitutional baggage searches for alcohol, no matter how effective, were marks of a tyrannical dictatorship, potentially unfair to tribal members as well as outsiders. "Let's set up Juneau as a dictatorship and I'll bet you it would work real good," he said.

Native leaders responded that the concept of Indian self-determination is as old as the U.S. Constitution. In villages like Quinhagak and Venetie, the response has been bitter to the $1 million appropriation by legislators who could otherwise talk of nothing but budget cuts.

On the wall of the tribal office in Quinhagak is a picture of Gov. Tony Knowles, smiling in the midst of black-suited Quinhagak tribal police officers. Knowles, a Democrat, was narrowly elected with overwhelming support from rural Alaska. His opposition to Indian country since last November has stirred especially strong feelings of betrayal, said Frank Fox, 54, Quinhagak's tribal natural resources manager.

"If we'd known what was going to happen," said Fox with a rueful smile, "we'd have taken him hostage."

'The river is everything'

Many of the forces that brought Indian country to rural Alaska can be seen in a hand-painted plywood sign by the river in Quinhagak, 70 miles south of Bethel on the Bering Sea coast.

Faced by the unregulated growth of sportfishing on the Kanektok River, Yup'ik villagers put up the sign warning: "To Avoid Stray Bullets From Seal Hunters Do Not Sport Fish Beyond This Point." Anglers sometimes crowd upstream of the sign as if it were a Fish and Game marker.

The Kanektok River has sustained the Yup'ik people of Quinhagak for centuries. Today the river provides a small cash economy, salmon for the drying racks in summer, rainbow trout through the ice in winter, boat access to the mountains for caribou and firewood, water for drinking.

"This river is everything for us," Fox said.

The river and its low-water gravel bars belong to the state. The surrounding land belongs to the Native corporation and individual Native allotment owners.

Since 1980, sportfishing on the Kanektok has grown from nearly nothing to 5,800 user days in 1996, according to the U.S. Fish and Wildlife Service. The growth has meant trespassing on Native land, pollution, and development of permanent private and commercial camps on state riverbars that are supposed to have a three-day camping limit.

Nothing was being done about it, villagers say.

State troopers say they are too busy to attend to non-emergencies on the river.

Trespass complaints had to be filed in Bethel court. Few complaints were ever filed, and the offending campers were long gone before anything could be done.

The state could afford to send Department of Natural Resources officials to the river only once or twice a summer. Even then, visiting state officials had no authority to cite the long-term gravel-bar camps. Like the corporation, state officials could only file complaints in a distant state court.

Federal jurisdiction begins 20 miles upriver at the Togiak National Wildlife Refuge. But federal rangers who patrol the lower river said they were there only to provide information, which the illegal camps ignored.

In 1987, villagers charged upriver in their skiffs in a futile protest. They were angry their commercial fishery had been shut down but the outsiders could continue to sportfish.

"They just grabbed their rods and reels and ran off into the willows," Fox said.

Villagers asked the state Board of Fisheries without success to close the Kanektok to catch-and-release fishing, citing local cultural and religious beliefs. The practice of releasing fish may be high-minded conservation to anglers, but Yup'ik elders said playing with food insults the fish and drives them away from men.

"We've been treated just like the birdwatchers and rafters," said Anthony Caole, Quinhagak's tribal administrator. "Without a government-to-government relationship, we get no special standing."

Lately injury has been added to insult, as elderly people fell sick with diarrhea during the salmon runs. River water samples taken by tribal police and tested in Anchorage found high levels of human waste, with fecal coliform measurements spiking during the popular silver salmon season and in the spring, when high water reclaimed the gravel bars for the state.

Quinhagak has faced internal turmoil as well. Like the external modern problems on the river, the problems of cultural breakdown helped nudge the village toward tribal government.

A Quinhagak teenager died in 1987 after a drinking party featuring punch spiked with toxic cleaning fluid stolen from a school copier machine. Four years ago, another teenager was killed in a high-speed snowmachine accident after he'd been sniffing gasoline.

The village has voted itself dry under state alcohol law, and state courts took care of the worst alcohol-related crimes. But nobody was around to handle the smaller daily tragedies, the public drunkenness and senseless accidents and domestic violence, that can turn life in some villages into a battle zone.

"Predictions of chaos are one perspective," said Tanana Chiefs president Mayo, recalling the state's description of the consequences of sovereignty. "But from the village perspective, chaos already is occurring. I can't tell you how many potlatches we've had for our dying children."

Village officials found support for tribes in the work of a blue ribbon panel appointed by Congress in 1990 to investigate the cultural disintegration in many rural Native communities. The Alaska Native Review Commission concluded that tribal jurisdiction over alcohol control, community matters and law enforcement would strengthen village culture by allowing "Native solutions to Native problems."

"If you travel in Alaska, you find that the places acting the most like tribes are the places that are the most functional," said John Sky Starkey, a lawyer for the Bethel-based Association of Village Council Presidents who has represented Quinhagak in subsistence cases. "So if you really want a functional rural Alaska, it seems to me that Indian country is the way you get there."

In Juneau, however, legislators insisted that Native demands for greater local control be channeled through the state's own institutions.

"They'll do a better job there than we do here. I support them on that," Taylor said. "But run it through a municipal government. The only muster they have to pass is does it pass the constitution of the state of Alaska, which demands equal rights.

"The U.S. Constitution allows and encourages discrimination. The Alaska constitution demands equality," said Taylor, who appeared before the Alaska Federation of Natives in February to argue the case against Indian country. "This will all be thrown out. It could take 50 years. It cannot withstand the test of the Bill of Rights."

But in an era of state budget cutting, Quinhagak's leaders say their search for government help with village problems has brought empty rhetoric from the state.

Both Quinhagak's state magistrate and its village public safety officer, who reports to the troopers, have resigned. The magistrate isn't being replaced, and replacing the VPSO won't be easy: that program is chronically underfunded, with no money to hire an officer in one of four villages authorized. In Quinhagak, local law enforcement is now in the hands of five tribal police officers.

The Department of Environmental Conservation was unable to respond to years of village complaints about fecal pollution. "We've lost 50 percent of our general fund budget in the last five years. We cannot deliver that kind of public health service everywhere it's needed," said DEC commissioner Michele Brown. The tribe went to the federal Environmental Protection Agency for money to do its own water testing.

The Department of Fish and Game was unable to monitor spawning escapements in the Kanektok, despite biologists' concerns about increased fishing pressure. So the tribe assembled federal grants worth $75,000 to build a salmon-counting tower, which will be staffed by villagers with technical oversight from the state Department of Fish and Game.

"For a long time, the state has wanted to do an escapement count on the Kanektok, but we didn't have enough money," said Fish and Game research biologist Doug Molyneaux. "With this and other cooperative projects on the Kuskokwim, we've more than doubled the number of escapement projects we have."

And as state revenue sharing to municipalities shrank each year, new sources of money opened to tribal governments through federal self-determination programs.

When the Quinhagak tribal council was formally revived in 1993, the major goal at first was to tap federal grants for village jobs, concedes council president Wassilie Bavilla.

In a typical turn of events, the initial push came from a local resident, Bavilla, who had attended boarding school in Oklahoma and was familiar with tribal governments in the Lower 48.

The tribe hired as its administrator a non-Native married to a villager. Anthony Caole, who had studied the new tribal movement as part of a rural development program at the University of Alaska Fairbanks, started drafting personnel policies and ordinance codes.

From an initial $30,000 administrative grant, the tribe has grown to handle a payroll of more than $1 million a

year. The city council has been eclipsed, contracting with the tribe to handle all local services.

The tribe soon turned its attention to illegal sportfishing camps like the one where Granville Brinkman was a guest.

The camp had been set up by Mark Smith, an Anchorage fishing guide. Smith had been told by a tribal police officer that he was camped on Native corporation land.

"I said I beg to differ. They have no right to go in on state property and kick us out," Smith said. "Everything used to be fine out there, but then the village goes from municipal government to tribal rule and things started to get ugly."

Eventually a state official flew out from Anchorage and said the tribe was right about the gravel bar being above the high-water line, making it Native land. By that time, however, Smith had left the Kanektok. He'd had a second run-in with tribal police -- this time over alcohol and a fistfight with another guide at a hot fishing hole.

So it was left to Brinkman to settle a $900 account with the tribe and move the camp.

"The first encounter was a little tense, but we came to an agreement," Brinkman said. "To me, police are police. But with the corporation and the tribe, that is somewhat confusing."

Another tribal law required honeybuckets for human waste in camps along the river. Most fishermen happily agreed to drop their waste at the airport, Caole said. In what could be an interesting test of Indian country, the tribe will cite violators on state-owned gravel bars this summer.

This summer, one of the "informational" federal rangers on the lower river will be a deputized tribal police officer. The refuge had tried to hire a villager, Caole said, but ran into a local stigma against anyone from Quinhagak wearing a federal uniform.

Eventually, through signed three-way agreements with the state and federal governments, Quinhagak hopes to be able to enforce state and federal rules along the river, Caole said.

"Nobody's talking about trying to assume exclusive management of resources," Caole said. "We just want a meaningful role."

Meanwhile, the new tribal court has been busy with internal matters. Judges banished a repeat-offender bootlegger and clamped down on public drinking. Domestic violence cases have practically disappeared because people are mortified showing up before tribal judges, said Curtis Abalama, who resigned in May after serving six years as the village public safety officer.

"It used to be when the weather is warming up, we'd see more drunks," said John Smith, a former state magistrate who was appointed the tribe's chief justice. "I used to see families, their kids crying. I don't see it now."

A few villages with a more radical interpretation of their sovereignty have had well-publicized clashes with state troopers over the handling of more serious crimes. But Jim Hibpshman, a state trooper who occasionally visits Quinhagak, said this tribal court pays close attention to proper procedure and the tribal police cooperate with troopers.

"I know there are some people in the state who have some heartburn with it, but I think it's a good thing," said Hibpshman. "These are smart people and they know what works and doesn't work. If you were living out here and the river was out of control, what would you do?"

Tribal officials say they have no plan to ban sportfishing on the Kanektok, even if they could. In fact, they say, they are lucky to have some economic base for the future.

For three years, the Qanirtuuq Corp. has operated its own guided fishing camp upriver, having first won approval

for the idea in a villagewide vote. Young Native guides have learned to fish with fly rods, and other guides taught a fly-tying class for village children.

"I guess you could call it technology transfer," said Qanirtuuq's top guide, Willard Church, who had seen little interaction between sportfishing camps and villagers before that. "Native people have been adapting for 200 years," he said.

The corporation is promoting catch-and-release fishing to protect fish populations -- despite the continued grumbling of village elders.

"This is a challenging thing to keep the camp going, having objections from the elders," said Joshua Cleveland, head of the fish camp subsidiary.

But the corporation's effort has lost money so far. And when Quinhagak guides went to sports shows in the Midwest last winter to promote the camp, they said they met hostility spilling over from an Indian treaty battle over spearfishing.

"They would peek over there and see Native people and go away," Cleveland said.

In the future, Caole said, the tribal council may get even more involved on the river. That could mean barring alcohol from river camps, since Indian country is automatically dry under federal Indian law. Council members also have discussed zoning in Indian country -- including the many individual Native allotments along the river -- to limit the size of commercial operations, he said.

That may be where Indian country finally rubs someone the wrong way on the Kanektok River.

Alaska West, one of the biggest commercial operators on the river, has a camp on a Native allotment and hosts as many as 18 anglers a week, at $3,500 apiece. Guides there stressed that they keep human waste off the gravel bars and pick up trash when they see it.

John Rupp, a four-year river veteran from California, concedes there has been little communication between the village and their camp, located just one bend up the river. But with a little imagination, he said, he can put himself in the local Natives' shoes.

"It's especially poignant for them because it's their special place and they hate to see it change. But change is happening everywhere," Rupp said. "The river is here for everyone. It doesn't belong to any one person. Any of the villagers can move to California and go fishing there, just like here. This is still the United States."

Who will govern

Indian country is part of the United States, too, subject to the laws of Congress. It will be up to the Supreme Court to decide whether Alaska's Native villages have the power to act as governments in the way Quinhagak has.

Opponents of Indian country say the main thing inherent in tribal sovereignty is its unfairness. They say it would create ethnic enclaves in Alaska where one racial group gets to make the rules for everybody else.

"It's a giant leap backwards into the 19th century," said Anchorage attorney Wayne Anthony Ross, who represented sport hunters in the 1989 lawsuit that overturned as unconstitutional the state's subsistence preference for rural residents. "They want to see Alaska balkanized into little fiefdoms where these self-proclaimed Native leaders will reign supreme with help from the Great White Father."

Tribalism pushes Alaska Natives away from full citizenship into being wards of the federal government, some critics say. They contend the economic assimilation model of the land claims act is still Natives' best hope for the future. Sovereignty, they say, creates a natural conflict between powerful Native institutions: the corporation and the tribe.

But in contrast to the early 1980s, when tribal sovereignty first became a political issue, there are few Native voices making those anti-sovereignty arguments today.

The Indian country debate has injected a frank new discussion of race into Alaska politics.

"Congress has created institutionalized racial polarization. You couldn't think of a better way to do it," said Larry Long, deputy attorney general of South Dakota, where a checkerboard of Indian and private land has brought decades of litigation. "Where you have a substantial mix of non-Indians and Natives, I predict those areas are going to be the hotbeds."

Unconstitutional searches can seem more sympathetic in remote villages than in mixed-race communities, said Sen. Rick Halford, R-Eagle River, one of the Legislature's more outspoken critics of tribal sovereignty.

"Put that same village on the road system and that's where all the conflicts come up," Halford said.

Native leaders and their attorneys respond that it's not a matter of race, but of the historical relationship between Native American tribes and the federal government. The tribes are sovereign not because they get special minority favoritism, but because they never surrendered all their sovereignty to the United States.

"One disadvantage Indians have is you can't understand their position without understanding a long and complex history," says University of Colorado law professor Charles Wilkinson, one of the nation's pre-eminent authorities on Western land use and Indian law.

"To get a fair hearing, the Indians have to have the state's leaders or a portion of the public take the time to understand that context. Because when you take it out of its historic context, it does seem race-based and arbitrary. Unfortunately, most people don't have the time to do that."

Many Natives see racism not in tribal self-government but in the presumption of critics that tribal justice will be mean-spirited, tribal regulation shortsighted and tribal taxation extreme.

"Are tribal governments incapable of wise business practices?" asked Tanana Chiefs Conference president Mayo. "Are they, you know, some rabid dogs behind the fence that you've got to keep contained or eliminate?

"They don't even realize what they're doing, do they? They don't realize that the rhetoric, to paint those hook-nosed Indians, so to speak, greedy, stupid -- they don't realize what messages come from that rhetoric."

In the court's hands

It is June now, and schools of king salmon are again holding in the clear pools of the Kanektok River.

The state's lawyers are trying to convince the Supreme Court that the appeals court misunderstood the history of Native-white relations in Alaska.

If they fail, years of litigation may be necessary to sort out the extent of tribal powers in Alaska. For example, tribes such as Eklutna in Anchorage or the Kenaitze in Kenai, or even tribes in regional hubs like Bethel and Nome, would face a tough challenge qualifying under the 9th Circuit test, Native rights lawyers concede.

Meanwhile, Congress, which has the final word over Indian matters, could intervene and eliminate Indian country in Alaska -- or create a new, narrowly defined version of tribal power here. Already, Alaska's congressional delegation is hinting such a compromise may be possible, despite vows of national Indian organizations to fight efforts to limit inherent tribal rights.

But at least one Lower 48 skeptic warns that the prospect of a congressional fix is a mirage.

"Congress isn't going to answer any of these questions for you. We've been litigating this stuff since the '40s and Congress has not stepped in," said Long, the South Dakota deputy attorney general. "You folks are going into a brave new world."

Assembly member Kevin Meyer said he asked the mayor this week to consider Warner for the deputy chief's position if Udland is confirmed by the Assembly.

"I think it would be a win-win situation since she's so popular with the rank and file," Meyer said.

Last Wednesday, Mystrom announced Udland as his choice to replace O'Leary. The Assembly was to vote on whether to confirm him this past Tuesday. However, initial Assembly opposition prompted Mystrom to postpone Udland's confirmation vote until Jan. 28.

Some Assembly members have withheld support because of employees' concerns about Udland's authoritarian management style.

Assembly member Pat Abney said she was "amazed" at the number of negative calls about Udland she's received from police department employees. Mystrom said they were upset because, as deputy chief, Udland was required to implement unpopular decisions. The most controversial was the mayor's decision to switch patrol officers from a 10-hour, four-day work week to eight hours and five days.

The mayor also said Assembly member Joe Murdy was heading a police union effort to derail Udland's nomination.

"A number of Assembly people have said to me, 'I need Joe's vote on some things,' " Mystrom said Thursday. "That's a real sad thing."

Murdy said he hasn't talked to any of the union representatives, but many police officers and other employees have contacted him and expressed concerns. He denied trying to influence other Assembly members.

"I haven't called any chits in," Murdy said. "If the mayor had done the nomination the right way, he wouldn't be in the mess he's in. It's a shame he has to blame it on someone else."

Assembly member Charles Wohlforth said the mayor's attempt to paint employee opposition as only a union concern was wrong.

"It's not a union thing," Wohlforth said. "There's definitely legitimate unhappiness from many of the employees. It's something they really feel."

The police union has decided to remain neutral during the confirmation process, said union president Rob Heun.

Some National Rifle Association members also have expressed concerns about Udland because as deputy chief he testified against a successful bill in the Legislature allowing Alaskans to carry concealed handguns.

Assembly member Meyer said he received several calls from NRA members and questioned Udland about his opinions during a private conversation this week.

"I'm convinced he doesn't have any strong opinion against the right to carry weapons and I think opposition will deteriorate on that issue," Meyer said.

Anchorage attorney Wayne Anthony Ross, who is a national board member for the National Rifle Association, wrote Meyer a letter expressing his personal support for Udland.

Minority groups have sent the mayor a mixed message on his nomination.

The board of the Minority Community Relations Police Task Force voted 7-1 to endorse Udland's nomination. The president of the board, William Greene, wrote in a letter that he was concerned about Udland's record of promoting and hiring minorities and said he could not personally endorse him.

NAACP Anchorage chapter president Celeste Graham-Hodge said she has received several phone calls from

department employees who believe they have been discriminated against. Graham-Hodge said the NAACP wanted more information before it takes a position.

The Cook Inlet Tribal Council and the Alaska Native Justice Center have written letters supporting Udland.

Udland said Thursday that he has tried to maintain a "tough skin" and realizes the nomination process will result in a lot of criticism. Allegations that he's a racist, however, are the most hurtful, he said.

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NewsBank inc. America's Newspapers

STATE LOSES SUBSISTENCE FIGHT

Anchorage Daily News (AK) - Tuesday, May 14, 1996

Author: *DAVID HULEN Daily News reporter ; Staff*

The U.S. Supreme Court refused Monday to consider further appeals in the Katie John subsistence lawsuit, clearing the way for federal agencies to take control of some fisheries in Alaska starting next year.

Without comment, the court refused to consider the state government's appeal in the 6-year-old case. The suit had become the main battleground in the long, tangled dispute over who should have subsistence hunting and fishing rights in Alaska.

The court's decision Monday was a victory for Katie John, the Mentasta Lake grandmother whose attempts to fish for salmon at a camp on the Copper River mushroomed into a massive lawsuit involving government agencies, Alaska's biggest Native organization and the thorny question of whether the federal government can claim jurisdiction on navigable waters inside a state.

John happened to be in the Mentasta Lake tribal council office Monday morning when a lawyer from the Native American Rights Fund called with the news, said a niece, Lottie Wolf.

"She said, 'Ah good. Now we've got to go to work setting up camp this year and drying our fish,' " Wolf said.

In broader terms, the decision adds momentum to the court-ordered federal takeover of subsistence fishing and hunting on federal waters and lands across the state. Hearings on the plan are being held around Alaska this week and next, but the soonest the takeover could occur would be January, federal officials said Monday.

Federal officials have said the takeover could cost more than $20 million. Alaska's congressional delegation wrote a provision into law earlier this year blocking the program from taking effect until at least Oct. 1.

In Juneau, Gov. Tony Knowles said the state would fight the takeover, but would not say how.

"We are very strongly protesting that direction by the federal government and we are prepared to go to court," Knowles said.

Knowles, a Democrat, again asked the Republican majorities in the Legislature, now meeting in special session on the budget, to consider a package he says would allow the state to keep control of subsistence. Among the administration's ideas: amend the state's constitution to restore the state's old subsistence priority for rural Alaskans.

There was no sign the idea is going anywhere with the Republicans, who argue that the rural preference discriminates against urban hunters and anglers and that the real problem is the federal law.

"My solution is to get the feds the hell out," said Rep. Al Vezey, R-North Pole.

The state's appeal to the Supreme Court argued that "no current issue involving Alaska and its resources is of greater significance . . . because it determines the extent to which federal agencies will take over the management of Alaska's fisheries, and to a lesser extent, its wildlife."

Eleven other states filed briefs supporting Alaska.

But lawyers for the Clinton administration urged the court to reject the state's appeal, saying the case "does not present any issue of importance outside the state of Alaska."

The federal takeover was ordered last year by the 9th U.S. Circuit Court of Appeals after Native-rights lawyers argued the state was failing to protect John and other rural residents' subsistence rights. The issue is based in the 1980 Alaska National Interest Lands Conservation Act.

Subsistence hunters and fishermen enjoy a priority over other consumers of wild fish and game, sometimes with more liberal catch limits and seasons. ANILCA says only Alaskans living in rural areas are entitled to subsistence rights, and that the federal government can take over management if state law didn't give the same rural priority.

In 1989, the Alaska Supreme Court ruled the rural preference violated the state constitution's provision that resources belong to all Alaskans. Federal agencies took control of subsistence hunting, but argued they had no authority over waters. After the state stopped her from fishing at her camp, John and others sued. The federal appeals court ruled that Washington must take control of subsistence on waters that cross federal lands.

Federal officials have said repeatedly they don't really want control of fisheries. It would require a big effort cataloging catches around the state, said Deborah Williams, the top Interior Department official in Alaska. If commercial or sport fisheries cut into subsistence takes, federal agencies would go to court to cut those catches, she said. The solution, she said, is the state amending the constitution and keeping control.

Heather Kendall, a lawyer for the Native American Rights Fund, argued that such conflicts would be rare, and that the federal takeover isn't necessarily a bad thing. "It certainly won't result in mass chaos, as the state has been claiming," she said.

The subsistence salmon catch, statewide, is less than 3 percent of the total harvest, Kendall said, and the takeover would simply ensure that share.

Others, though, argue that any more control of Alaska salmon fisheries by Washington is bad. Republicans in Juneau want Congress to repeal the rural preference in ANILCA altogether. Natives have strongly resisted, as have the state's Republican congressional delegation.

"Why is the delegation afraid of that? It's because they have a big Native constituency and they don't want to incur their wrath," said Wayne Anthony Ross, an Anchorage lawyer and Republican national committeeman.

* Daily News reporter Ralph Thomas in Juneau contributed to this report.

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NewsBank America's Newspapers

Four Republican candidates battle to lead the state - Candidates vie for governor's office

Juneau Empire (AK) - Monday, August 12, 2002

Author: *TIMOTHY INKLEBARGER ; THE JUNEAU EMPIRE © 2002*

In the Aug. 27 primary, an Anchorage attorney and two political newcomers will find out how they stack up against Frank Murkowski. Lawyer and National Rifle Association director Wayne Anthony Ross and political newcomers Eric Wieler and Brad Snowden are challenging the state's junior U.S. senator in the GOP primary for governor.

Murkowski, a 22-year member of the U.S. Senate, has spent about half of the $946,000 he's raised so far this year in campaign contributions. Ross has raised about $79,000 and neither Wieler nor Snowden are actively raising money.

All four candidates oppose moving legislative sessions from Juneau.

Stating that thousands of jobs have been lost in resource industries in the past eight years, Murkowski said he will push for development of Arctic National Wildlife Refuge, increase access to oil and gas resources, restore fisheries, and develop timber and other natural resources.

He opposes implementing statewide taxes, instead proposing cutting inefficiencies in state government and working with the Legislature to address the $1 billion fiscal gap that threatens to exhaust the state's Constitutional Budget Reserve Fund by 2004.

"If we enter into this fiscal crisis with the idea that the only hope is to increase taxes, I think it's a self-defeating mechanism," Murkowski said.

While not disclosing much detail on his fiscal strategy, Murkowski said more development of resources would help slow the fiscal gap.

"If we could increase oil and gas exploration in this state by just 5 percent a year, in about four years we would equalize what we currently anticipate as our needs associated with our current budget," he said. "Let's face it, 80 percent of our revenue comes from oil. That's where you have to focus in to pick up your greatest percentage of revenue."

Murkowski, like Ross, has made public safety a priority in his campaign. He has pledged to provide more training for village public safety officers, expand state prisons and appoint members to the state's Judicial Council who will nominate judges that won't "coddle criminals." Murkowski did not specify which judges he thinks have gone easy on criminals.

Ross, Murkowski's top opponent, is an Anchorage lawyer, 22-year director of the NRA and former assistant attorney general for the state.

It's Ross' second run for the governor's office; he ran in 1998, receiving 16 percent of the vote in the Republican primary.

"A vote for Wayne Ross is a vote for two great Alaskans," he said, in an effort to convince voters Murkowski would be more effective in Washington, D.C., where he can continue to promote state issues such as opening ANWR for oil exploration. "It's absolutely foolish for Murkowski to run for governor and give up that seniority in Congress."

Clive Thomas, a political science professor at the University of Alaska Southeast, said if Republicans don't regain

control of the U.S. Senate in November, Murkowski would not necessarily be in a strong position to move legislation.

"He'll be in a stronger position than some people, but he won't be a committee chair," Thomas said.

Upcoming primary coverage

Tuesday's Empire will profile candidates running for governor in the Alaskan Independence, Libertarian, Green and Republican Moderate party primaries. Wednesday's articles will examine lieutenant governor candidates. Coverage of candidates running for the state Legislature and U.S. House and Senate will run Sunday through Thursday, Aug. 22.Ross, who has criticized Murkowski for not stating firm positions on issues such as the fiscal gap, proposes cutting state spending by $375 million to $500 million. Not going into specifics about what budget cuts he would make, Ross did say three "sacred areas" would not see reductions: law enforcement, education and services for veterans.

He proposes hiring 100 new state troopers, raising teachers' salaries and securing property tax exemptions and other benefits for veterans.

To solve the fiscal gap, Ross said he would push for the creation of an endowment fund made up of all state savings accounts and operate government from the account's earnings. This "super permanent fund," as he calls it, would use permanent fund earnings to pay dividends and balance the state's budget.

Ross estimates that this plan would result in a temporary reduction in dividends, with annual checks ranging from $500 to $750 per person.

He said getting lawmakers to agree on such a plan would be easier with so many seats opening up in the Legislature next year.

"The Legislature has been leaderless," Ross said, noting that he looks forward to working with "new Turks coming in who are willing to grab the reins."

Ross opposes implementing taxes as well as establishing a rural priority for subsistence hunting and fishing. Murkowski has said the state needs a more specific definition of rural.

"A lot of people really don't know," Murkowski said. "There are definitions that suggest the Kenai is rural and yet the state subsistence board has reviewed it on a second review and said that it's not necessarily rural."

Ross' law firm successfully argued the McDowell case before the state Supreme Court in 1988, which gave all Alaskans equal access to fish and game resources. Putting the state in violation of federal subsistence law, the decision prompted the federal government to take control of subsistence on federal lands.

Ross said he would push the state's congressional delegation to take back control of subsistence resources.

"We'll have to go to court if they can't get it done," Ross said, adding that he would appoint a "junkyard dog attorney general" to argue the case.

The other two candidates in the Republican primary, Eric Wieler and Brad Snowden, are running marginal campaigns with little or no budget.

Snowden, a 51-year-old hotel owner in Seward, already has conceded, saying he has abandoned the campaign to focus on priorities at home.

"First things first," Snowden said. "You've got to take care of your home front. Whatever support I may have had I want to throw to Frank Murkowski."

Eric Wieler, a 57-year-old Anchorage resident, is running with his twin brother Paul, who is seeking the Republican lieutenant governor's nomination.

"I don't know what kind of chance I have, but I thought I'd try to get some ideas out there," he said.

Wieler said people are "ticked off" about the way the state is being governed and the federal government's control over business. As an example, Wieler said the federal government took control of Kantishna mine claims in Denali National Park that rightfully belong to his family.

Wieler said he is pro-development and would like to see the state government tighten its belt in the face of a $1 billion budget deficit. He did not give specifics on where he would cut the state budget, noting that he would have to take a look at it first. He opposes taxes and strict environmental regulations.

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Fish dominate governor debate - FORUM: Candidates face off on subsistence, farmed fish, marketing.

Anchorage Daily News (AK) - Thursday, April 4, 2002

Author: *Dan Joling The Associated Press ; Wire*

If it had to do with fish, it was fair game for debate at the first gubernatorial candidate forum of the political season.

Five Alaskans who want to be governor sounded off on topics from subsistence to farmed fish to ways to aid the state's ailing fishing industry at the forum sponsored by United Fishermen of Alaska and the Kodiak Chamber of Commerce.

Lt. Gov. Fran Ulmer, considered to be the leading Democrat, and U.S. Sen. Frank Murkowski, the highest profile Republican, called for better marketing of Alaska salmon. Fellow Republican Wayne Anthony Ross, an Anchorage attorney, questioned where they would get the money to spend on that purpose considering the state's fiscal problems.

Former state Sen. Nels Anderson Jr., a Democrat from Dillingham, called for a region-by-region analysis of fishing problems and legislation to address them. Alaskan Independence Party hopeful John Wayne Glotfelty of North Pole called for fishing to be returned to the control of small Alaska operators rather than larger ships controlled by Outside interests.

Candidates answered questions from a panel of journalists and one another. The latter gave Ulmer and Murkowski opportunity to trade barbs on solving the subsistence issue.

Ulmer said Murkowski has told some people he favors a subsistence preference for rural residents and has told others that he would like to see changes in federal law that requires the preference.

She also said he had the opportunity -- and still has the opportunity -- to "lean" on members of his party in the state Senate to allow a vote by Alaskans on changing the state constitution to allow a rural priority. That would allow state officials to again manage fish and game in the state.

"We'd sure like your help," Ulmer said. "The session isn't over yet."

Murkowski said that he supports the change to the Alaska Constitution but that the federal law needs clarification -- perhaps before the statewide vote. As is, the federal law is too vague, he said.

"I would be very interested in knowing the lieutenant governor's definition of 'rural,' " Murkowski said.

Ulmer called for changes on the Board of Fisheries, a panel that she said has an impossible task. There are simply not enough seats on the board to address the concerns of the various regions and various fishing methods, she said. Ulmer called for a system of regional fisheries boards to make decisions closer to the affected fishery.

"To me that just builds the bureaucracy," Murkowski said in response. "I don't think we need to Balkanize Alaska."

The fishing industry would be better served with a renewed emphasis on quality control and creative marketing to emphasize it, Murkowski said.

"Folks in the media can sell virtually any kind of mousetrap if it's dressed up right," he said.

Ross laid claim as the most conservative candidate among the five.

On solving the subsistence problem, Ross said he would hire a band of "junkyard dog" assistant attorneys general to challenge the federal law that requires a subsistence preference or seek changes in the law through Congress.

He strove to place Alaska's commercial fishing problems in the context of the state's fiscal challenges.

"Other candidates are going to tell you we have money to spend," he said, but he questioned where they would find the money to do so given the gap between state income and spending.

Asked about the governor's influence on the Board of Fisheries, Ross said he would appoint the best people available and keep politics out. He said he opposes individual fishing quotas or any allocations for processor.

"I believe the free market system will eventually take care of the problem," Ross said.

Democrats Bruce Lemke of Anchorage and Michael Beasley and Alaskan Independence Party hopeful Don Wright of North Pole did not appear in Kodiak.

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NewsBank America's Newspapers

Anderson makes bid for governor - Murkowski sheds light on reasons for seeking office

Juneau Empire (AK) - Wednesday, October 24, 2001

Author: *KATHY DYE and BILL McALLISTER ; THE JUNEAU EMPIRE*

The pool of Democrats running for governor has grown to include a third candidate, who has vied for the seat before.

Former state legislator Nels Anderson Jr. of Dillingham announced on Tuesday that he will make another bid for governor in the 2002 election.

Anderson, 61, competed for the seat in 1998 but lost in the primary to incumbent Gov. Tony Knowles, who took nearly 39,000 votes compared with about 3,300 for Anderson.

In a written statement, Anderson said he is the only candidate with the broad political background needed to mend hard feelings between rural and urban residents.

"I have lived most of my life in rural Alaska," said Anderson, noting he also has lived in Fairbanks and Anchorage.

Anderson was majority leader during three terms in the state House from 1975-81. He also served in the state Senate from 1982-83. He will compete in the primary against Anchorage resident Bruce Lemke and Lt. Gov. Fran Ulmer, who announced her candidacy Saturday.

Ulmer, although considered an underdog against Republican U.S. Sen. Frank Murkowski, who quietly announced his candidacy Monday, is seen as the presumptive Democratic nominee.

"I think that Fran Ulmer is a really great, fantastic candidate and a great campaigner," said Scott Sterling of Wasilla, state Democratic chairman.

"I believe she has more fire in the belly than Frank does," said Juneau Democratic activist Rich Listowski, noting that Murkowski has considered a gubernatorial campaign for years.

The suddenness of Murkowski's announcement, made through a faxed news release and without the usual political fanfare, surprised some political watchers. But Murkowski said today it was not necessary to hold a press conference to announce his candidacy.

"I think the most significant thing was the question of whether we were going to run or not, and that was easily answered by a press statement," said Murkowski.

Murkowski lost his chairmanship of the Energy and Natural Resources Committee this year when Democrats took control of the Senate, and the 21-year political veteran said he considered the setback when deciding to run for governor.

"It wasn't the (only) consideration but it was a reality that lends you to look at other alternatives," said Murkowski, who estimated he would have to wait eight years for a finance committee chairmanship.

Although a formidable fund-raiser, Murkowski will have to start from scratch because no money from his Senate campaign

war chest can be used for his gubernatorial campaign.

Murkowski acknowledged that it may be difficult for him to campaign while the Senate is in session, but he

anticipates visiting Alaska and buying plenty of television ads.

"He'll probably play the Washington, D.C., card," said Clive Thomas, political science professor at the University of Alaska Southeast. That is, Murkowski might say he's too busy with national business to engage in direct debate with Ulmer, Thomas said. "It might be hard to pin him down" on state issues.

Murkowski said his priorities include working out a long-term fiscal plan for the state, but he didn't provide specifics.

"After all, we've only been in this mode for less that 24 hours," he said.

Ulmer also declined to endorse specific solutions to the state's fiscal gap.

Murkowski said he wants to work to resolve the state's subsistence dilemma, but said he was not prepared to spell out how he would do that.

Republican candidate Wayne Anthony Ross, an Anchorage attorney and 1998 gubernatorial candidate who isn't dropping out of the 2002 party primary, said: "Frank Murkowski, God bless him, hasn't been much help to us in Washington, D.C., on those (subsistence) issues."

Ross opposes federal intervention in creating a rural subsistence priority.

Alaska's U.S. Rep. Don Young and Sen. Ted Stevens, both Republicans, said they strongly support Murkowski's decision and said his move won't hamper efforts to open the Arctic National Wildlife Refuge to oil and gas development. Under his party's seniority rules, Murkowski will have to give up his post as top Republican on the Senate Energy and Natural Resources Committee next year.

Young also said he is not interested in assuming Murkowski's seat if he leaves the Senate.

"I am pleased to be chair of the transportation committee, which is probably one of the most influential in the House," Young said. "I think the House is where I belong."

An appointment by the governor would be required to fill the vacancy. Whether that governor would be Murkowski or the incumbent, Democrat Tony Knowles, is a topic of hot debate. Murkowski said he can name his own successor upon being sworn in for governor. In any case, by state law only a Republican could be named to fill the two years left on Murkowski's term.

Two Republicans, state Sen. Robin Taylor of Wrangell and former Anchorage Mayor Rick Mystrom, said Tuesday they might be interested in the Senate appointment. But Taylor said he was looking seriously at vying with former House Speaker Gail Phillips of Homer for the Republican nomination for lieutenant governor.

Phillips said she would provide good geographical balance, as she has lived in both Southcentral and the Bush, and Murkowski has lived in Fairbanks and Southeast. Taylor said Murkowski privately encouraged him to run, although he said he expects Murkowski to remain publicly neutral in the contest for the No. 2 spot.

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NewsBank America's Newspapers

Outdoorsman discovered his home in Alaska

Anchorage Daily News (AK) - Sunday, September 9, 2001

Author: *Natalie Phillips Anchorage Daily News ; Staff*

Name: Wayne Anthony Ross

Age: 58

Occupation/profession: attorney at law

Q. When and how did you end up in Alaska?

A. "It's a long story but, in summary, I ended up in Alaska because I realized I couldn't play basketball. At the urging of the coach, I decided to look for other sports ... and eventually got involved in hunting and fishing. Coming from Wisconsin, where opening day for walleye and deer season(s) are almost state holidays, I always hoped someday to visit Alaska.

"One day in law school, the professor referenced a case decided by the Supreme Court of Alaska and, with a mind like a steel trap, I suddenly realized that if Alaska had a Supreme Court, it had to have lawyers!

"From then on, I thought about moving to Alaska. I even sent some 40 letters to law firms here looking for a summer job but without success.

"During final exams in my junior year, a fellow student told me he had heard I was interested in going to Alaska and he was driving up the following Monday. He and I drove to Alaska that summer (1967) in a 1961 Volkswagen beetle. When I saw my first snowcapped mountains, I was hooked. I spent the summer as a law clerk and sightseeing bus driver in Anchorage and returned to Milwaukee to finish law school. In the spring of 1968, four days after Barb and I were married, we drove back here to make Alaska our home."

Q. What do you do if you can't be outdoors?

A. "I collect books and guns and was one of the founders of the Alaska Gun Collectors Association, which sponsors various gun shows in the area. I am also one of the founders of the Alaska Territorial Cavalry, a group that restores antique military vehicles and exhibits them at parades and shows throughout the state. In my spare time, I'm a national director for the National Rifle Association, have been chairman of the Alaska Land Use Council Advisors Committee, was Republican National Committeeman, served almost 12 years in the Alaska State Defense Force, ran for governor in 1998 and am doing so again."

Ross said he specifically collects variations of the Colt Model 1911. The pistol was used by the American military for more than 70 years. Ross sold much of his gun collection to pay for his children to go to college and to buy his candy-red Hummer. Its personal licence plates bear his initials: WAR.

"I drive it every day," he said. "It's like a four-wheel-drive Lincoln Towncar. Every vehicle I ever owned was the stripped-down model; this has every jim crack but a wood-burning stove. It's even got screen windows, a button to push to let air out of the tires and a fantastic stereo. I put on John Phillips Sousa when I'm on my way to court."

Q. What's your outdoor passion?

A. "Spending time with my family enjoying Alaska's outdoor experiences, especially hunting and fishing. I started teaching our kids firearms safety and got them involved in the shooting sports at an early age."

On the wall at home is a moose with an impressive 70-inch antler span. In an alcove next to the fireplace is a full-body mount of a 10-foot-6-inch brown bear shot by one of his sons.

"Greg, our oldest, is now a teacher at Mears Middle School. He got his first caribou at age 13 and, two years ago, bagged a record-book caribou with a .45 Colt revolver.

"Brian, now a U.S. Marine Corps captain, got his first moose with a .44 Magnum when he was 9 and was captain of the U.S. Naval Academy rifle team, the only captain to beat Army four years in a row.

"Tim, an engineer working for Wilder Construction, got his first moose with a .30-30 when he was 8.

"And Amy, our daughter, started taking small game when she was 6 and finally got her first moose when she was 17, a week before she left for college. Incidentally, Amy is a police officer with the Spokane (Wash.) Police Department and was the top tactical shooter out of 29 officers at her police academy even though she was the youngest officer there.

"Even my wife, Barb, has bagged a moose. She got it after hunting only eight minutes, and we were home putting the moose in the freezer by noon. As a result, Barb still cannot understand why I feel I need to go hunting for longer than a day at a time."

Q. What was your scariest or most memorable outdoor moment?

A. "The scariest was when I was charged by a brown bear near Cordova and had to shoot it. The bear dropped at 11 steps from the end of my rifle.

"And I've had some 'interesting' small-plane adventures, as most Alaskans have had.

"My most memorable hunt was with Ed Shavings of Nunivak Island, who guided me for musk ox. Ed is a wonderful guide and a real gentleman. I was able to take a musk ox with a .45 semi-automatic pistol as it ran past me at 35 yards. Hunting with Ed is like going back in time 10,000 years, although his equipment is first class. Ed Shavings is one of the finest men I have ever hunted with."

Q. What's next?

A. "Well, I'm running for governor so I expect that I won't have too much time to hunt and fish in the next several years. Alaskans are seriously divided over subsistence and between urban and rural philosophies. Having the outdoor experiences I have had, I think I can, and want to, bring us all back together again and make us all proud to be Alaskans."

Q. Got an Alaska hero?

A. "My boyhood home was on the site of the estate of Gen. Billy Mitchell, who helped run the telegraph north out of Valdez. So he is one.

"I really liked Edward Pagano, who was born in the Aleutians, joined the Army as a private and rose to the rank of major general serving as Alaska's Adjutant General.

"And I have a fondness and deep respect for Mitch Abood, Jay Hammond and Wally Hickel.

"In truth, however, there are so many wonderful people living in Alaska that it really is unfair to single any one out for special mention."

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NewsBank America's Newspapers

GOP candidates oppose subsistence amendment

Juneau Empire (AK) - Monday, August 17, 1998

Author: *MARK SABBATINI ; THE JUNEAU EMPIRE*

All three Republican candidates for governor oppose a state constitutional amendment to resolve the subsistence issue, but each has his own idea of a solution.

Senate Majority Leader Robin Taylor of Wrangell says fish and wildlife should be managed better so there's more to catch and eat. Anchorage attorney Wayne Anthony Ross maintains the real problem for Natives is their lack of control over Native corporations. Anchorage businessman John Lindauer favors a proposal that would essentially declare the entire state a rural area eligible for subsistence.

A Dec. 1 federal takeover of subsistence fishery resources is planned because the Alaska constitution is in conflict with a federal law requiring rural residents get subsistence priority. The state constitution guarantees equal access to all residents and attempts to place a constitutional amendment on the fall ballot were thwarted by conservative Republicans who said the federal law should be challenged.

A lawsuit by the Legislative Council and some lawmakers challenging the rural provision in the Alaska National Interest Lands Conservation Act was dismissed in July. The judge cited procedural reasons, including the statute of limitations for challenging the law had expired, but an appeal is expected.

Taylor said it's erroneous to assume there will be a Dec. 1 takeover, since he believes "the governor could stall it with one phone call." He also said the federal government lacks the financial resources needed to take effective action until next October, and that Alaska's congressional delegation should pursue both a delay in the takeover and measures to keep it from being funded.

"I don't believe that my congressional delegation will fund the federal takeover of Alaska," he said.

Taylor said the subsistence provisions of ANILCA must be overturned so fish and game can be managed locally. He predicts the U.S. Supreme Court will rule the federal government does not have the authority to take over subsistence management.

He said he favors boosting the population of moose, birds and other animals by means such as reducing predators, although environmental groups object to such proposals.

"The true answer to subsistence is abundance," he said.

Ross said he also favors a lawsuit against ANICLA and pressure on the congressional delegation, but believes the real area of discontent among Natives is the lack of control they have over their corporations. He said giving them full control and ownership over those organizations will help solve much of the divisiveness currently surrounding Native and rural issues.

Although Natives rallied at the Capitol during various legislative sessions demanding the provisions in ANILCA be upheld, Ross said he believes that may be the view of activists more than the rank-and-file.

"I don't believe the Native people are saying that," he said. "I believe their leaders are saying that."

Ross said local provisions could be passed to discourage subsistence hunting in certain areas, such as stating no one can be in the air 96 hours before a hunt. He said if the lawsuit loses he would probably allow a federal takeover as governor, believing that a new presidential administration in 2000 would reverse the action.

Lindauer said both an amendment to the constitution and the lawsuit favored by Taylor and Ross are unacceptable.

"Rural preference means that the urban Natives - of which Juneau, Fairbanks and Anchorage have large numbers - would be forever cut off from their cultural and historical traditions," he said. The lawsuit will likely take years to resolve and "if it is successful it eliminates subsistence for all of the Natives in Alaska (and) there is no reason to do that."

Lindauer said his proposal is to meet the letter of the federal ANILCA law by establishing broad subsistence regions "and if there is a shortage in the region then all fish taken in the region must be eaten in the region. That is de facto rural preference."

The regions would include the entire state, including urban communities such as Anchorage and Fairbanks, he said. He said he didn't expect support for the plan from leaders of organizations such as the Alaska Federation of Natives, claiming they are supporters of Knowles.

"My own feeling is very few additional fish will be needed if everybody gets subsistence preference," Lindauer said. "It seems like everyone who wants salmon is eating it."

Back to local headlines

Caption: Republican candidates for governor.

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NewsBank inc. America's Newspapers

Trio takes on Knowles, each other

Juneau Empire (AK) - Sunday, August 16, 1998

Author: *MARK SABBATINI ; THE JUNEAU EMPIRE*

This is the first of five articles examining the upcoming governor's race in the Aug. 25 primary.

The way the three major Republican contenders see it, the election of Gov. Tony Knowles was a fluke that can be easily corrected with the right candidate.

Whether any of them is it is still an open question.

The trio is far behind the Democratic incumbent in at least one opinion poll and many are predicting the November election is Knowles' to lose. But the GOP contenders are looking at the governor's 536-vote win in 1994 and concluding they can win, especially if they can lure some of the 28,000 Alaskan Independence Party votes cast that year.

"I have talked to a number of political strategists and their opinion is if Knowles is at 48 percent (in the polls) he has lost the election because he has a record," said John Lindauer, an Anchorage businessman who is the current GOP front-runner. "Forty-eight percent is the absolute top he'll get."

Fine, except the three Republican candidates got a combined total of 32 percent of the vote in the recently conducted poll, with the rest undecided. Lindauer led the Republicans with 16 percent, followed by state Senate Majority Leader Robin Taylor of Wrangell at 10 percent and Anchorage attorney Wayne Anthony Ross at 6 percent.

The Republican who many said had the best chance of defeating Knowles, longtime U.S. Sen. Frank Murkowski, kept party officials waiting for months before announcing in January he would instead seek a fourth term in office.

Even so, Knowles isn't taking anything for granted.

"I don't think there's any question that it's going to be a close election," he said. "That's certainly something I've always experienced in races I've been in and that's the nature of Alaska elections."

Knowles faces only token opposition in the Aug. 25 primary from Democrats Nels Anderson of Dillingham and Don Wright of Fairbanks. The main contest is which GOP candidate will win the right to oppose Knowles.

The incumbent is running on a theme of state prosperity; his opponents portray Alaska and its government as being in disarray.

Knowles, 55, is a native of Tulsa who worked for an Oklahoma drilling company and moved to Alaska when they started drilling on the North Slope in 1968. He later opened an Anchorage restaurant and was the mayor of Alaska's largest city from 1982 to 1987.

His well-worn slogan for four years has been "jobs and families" and he is continuing to talk about developing partnerships between the state and various industries.

"People have asked me 'Aren't there other important values?' but without jobs we won't have the resources to pay for other services," he said.

Lindauer, 60, said he's running because he wants to leave a legacy and is prepared to spend $1 million to secure that place in Alaska history. Opponents accuse him of trying to buy the election.

"I know that man is mortal and I would like to leave something good and constructive behind when I'm gone," he said.

A single term in the state House from 1983 to 1984 is the limit of his political experience, but he said he is "probably the most highly qualified person who has ever run for office" because of other work.

Lindauer was the first chancellor at the University of Alaska Anchorage in 1976, owned a chain of state newspapers and radio stations in mostly small communities, and was the 1990 AIP nomination for governor until he stepped aside at least partially due to his first wife being diagnosed with a terminal illness.

He wants to solve the subsistence issue by, in essence, declaring all of Alaska a rural area eligible for subsistence preference under federal law. He disputes that Alaska has a budget crisis, saying no cuts or new revenues are needed.

Taylor, 55, is a former state District Court judge who came to Alaska in 1961 and has lived in Wrangell for 22 years. He said he's "basically trained all my life for this job" and says he's the only major candidate with extensive legislative experience.

He was elected to the state House in 1984 and served four terms before being appointed to the state Senate in 1992. He was elected to the Senate later that year and reelected in 1996.

Taylor blames the Knowles administration and environmental groups for policies that have crippled Southeast Alaska's timber industry, has frequently sought a statewide advisory vote on the death penalty and tried last session to make knowing transmission of the HIV virus a felony. Most of his attacks have been against the Knowles administration, but he is increasingly targeting Lindauer as well.

"The only reason John's ahead of me is the millions of dollars he has and will spend," Taylor said.

Ross, 55, moved to Alaska in 1967 and has worked as a state attorney, a court trustee and a family court master. He is a board member of the National Rifle Association and has for years donated legal services to pro-gun and pro-life causes.

He said he is running for governor because the Legislature "is the art of the compromise" and he never was much of a horse-trader. He said he is bothered by what seem to be widening gaps between urban and rural areas, and Native and non-Native issues.

"I'd say the campaign motto is "Make the Great Land great again," he said.

Ross said he opposes federal management of subsistence and the real solution for appeasing Natives is allowing them full ownership rights of Native corporations. He favors further cutbacks in public assistance, wants the state to dispose of much of its land and thinks too many unnecessary environmental regulations are impeding businesses.

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The fuss over political signs in store windows and whether they violate the state's new campaign contributions law is over. The Alaska Public Offices Commission says most of them are legal.

The new law bans all contributions to candidates from corporations, including what's called "in-kind" contributions, meaning things other than cash. The puzzle was how it affected businesses that let candidates stick signs in their windows during the campaign season.

That is a long-standing practice that no one publicly questioned during last April's Anchorage municipal election. But most communities hold their local elections in October, and the signs became an issue last month in Fairbanks, Juneau and the Matanuska-Susitna Borough.

The APOC staff suggested candidates and store owners set a nominal sign-posting fee until the commission had a chance to consider the issue at its November meeting. Fee deals ranged from $10 in Fairbanks to a reported $1 in Juneau.

At its meeting last week, the commission ruled that "permission of a property owner allowing someone to post signs is not a contribution unless it's something the owner would normally charge a fee for," said Jenifer Kohout, APOC assistant director.

"Otherwise, if you're just sort of Joe's Garage, then it's not considered a contribution."

A memo issued Wednesday by Kohout says the ruling also applies to bumper stickers.

The ruling gets the commission "out of the business of trying to regulate political signs, which was something they didn't want to be doing," Kohout said.

Mike Frank, a lawyer who led the drive to reform Alaska campaign financing, was happy with the APOC decision.

"I think signs are kind of insignificant in the grand scheme of things," Frank said, "and I don't think they're a problem."

The commission will probably wait until two lawsuits challenging the constitutionality of the new law are resolved before turning their informal ruling into formal regulations, Kohout said.

The Alaska Civil Liberties Union has asked a state court judge to throw the law out. A hearing is scheduled for Dec. 8, said attorney Jon Rubini. Trial is tentatively set for March.

Lawyers Wayne Anthony Ross and Ken Jacobus, and Libertarian activist Scott Kohlhaas are doing essentially the same thing in federal court. They want the campaign contribution law overturned on the grounds that it abridges freedom of speech and the right to political association, Jacobus said.

The state law does not affect federal election rules, which also ban any contributions by corporations. Kelly Huff, a spokeswoman for the Federal Election Commission in Washington, D.C., declined to assess the legality of the big campaign signs that pop up in Midtown every so often on behalf of Alaska's congressional delegation.

If the property is commercial or owned by a corporation, "it could be considered an in-kind contribution, Huff said. "If someone wants to file a complaint we would take a look at it."

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This election, soft money is without limit - CAMPAIGN: Donations for party building aren't capped, reported.

Anchorage Daily News (AK) - Saturday, February 23, 2002

Author: *Don Hunter Anchorage Daily News ; Staff*

The state Republican Party can thank President Bush for drawing high-rollers to a fund

raiser last weekend and a federal judge for making it easier for some of those guests to write big checks.

Decisions handed down by U.S. District Judge James Singleton last April and June said it's unconstitutional for the state to limit contributions to political parties unless the money is going to be used to support candidates. Donations for party building -- voter registration drives, advocating on issues and the like -- now can't be limited and don't have to be reported, according to the Alaska Public Offices Commission.

Still intact, as Alaska heads into an intense election season, are limits and reporting requirements on contributions to candidates themselves or to groups formed to promote or oppose ballot initiatives.

The state is appealing the court decision.

Soft money is money donated to national or state political parties that is not directly related to electing or promoting candidates and is not regulated. Hard money is money donated for the purpose of promoting and electing candidates and is regulated.

Alaska Democrats, who say they don't like the court rulings, are also using the opportunity to raise soft money contributions.

"We've taken (soft) money only to be competitive" with the Republicans, said Tammy Troyer, the executive director of the state Democratic Party.

Troyer estimated the Democrats have received $45,000 to $50,000 in soft money contributions. Donors have included Native corporations, Alaska Communications Systems, and fuel companies Tesoro and Williams, she said.

Randy Ruedrich, chairman of the Republican Party of Alaska, wouldn't say how much soft money the party has collected since Singleton's rulings, although he said party leaders are considering how to respond to questions about that and may be more forthcoming later in the year.

Some of the guests at the fund-raiser that Bush headlined made soft money contributions to the Republicans Victory 2002 fund for noncandidate programs, he said. Others made reportable donations to the party's Governor's Fund, which will be used to support candidates.

Ruedrich said the decision is good for Alaska politics and predicted voters will notice little difference.

"The judge's ruling allows the citizens of Alaska to have an opportunity to build stronger parties, which are basically volunteer organizations, and in that context I think it's an absolutely great step for democracy and for giving people a better understanding of the political process and participation in that process," he said.

In any event, he said, the Republicans have no plans at present to use soft money to finance any issue advocacy. The party will, however, use it to pay for voter registration drives, absentee ballot mailing and tracking, and for phone banks to encourage people to vote, he said.

Ruling in a lawsuit filed by political activists who donate their services to the Republican and Libertarian parties,

Singleton recognized the state's authority to impose $5,000 limits on donations to parties for nominating and electing candidates. But he said the state can't limit or regulate money donated to parties for other purposes -- advocating issues, paying the rent or buying office equipment, for example.

Singleton also ruled that the state's ban on political contributions by corporations cannot apply to such soft money donations to parties.

State attorneys have appealed the ruling to the 9th U.S. District Court of Appeals, and oral arguments are scheduled for early next month. A ruling is not expected for months.

For now, any person, group, corporation or union can give any amount of money to a state political party, as long as the money is not used to help elect candidates, said Brooke Miles, the executive director of the Alaska Public Offices Commission. The soft money donations don't have to be reported to APOC, and neither the political parties nor the donors have to disclose who gave it.

Still unclear is exactly what "issue advocacy" amounts to, Miles said. The APOC may try to define that term when it meets next month, if commissioners decide they still have the authority to do so.

Decisions in prior federal cases suggest that an issue advertisement can be almost anything that doesn't include words like "vote for" or "defeat" in discussing candidates, or that a reasonable person would conclude were in support of candidates, she said.

Mike Frank, an attorney who spearheaded the citizen campaign finance reform effort in the mid-1990s that ultimately led to the Legislature tightening Alaska's campaign finance laws, predicted the APOC will have a hard time defining when an issue ad is advocating a candidate and when it isn't.

"There just isn't any good way to distinguish between party building and issue ads and candidate advocacy," Frank said.

Before the 1996 Alaska law, there were no limits on donations to parties, but donations had to be publicly reported.

In its appeal to the 9th Circuit, the state argues: "All party activities, including issue advocacy, ultimately further the political party's primary purpose of influencing the nomination and election of party members to office."

The three who challenged the law -- Republican Party counsel Ken Jacobus, Republican attorney Wayne Anthony Ross and Libertarian Party official Scott Kohlhaas -- say its plain language imposes limits only on donations "made for the purpose of influencing the nomination or election of a candidate" or passage or defeat of a ballot proposition.

The state has no business regulating donations made to help parties pay other kinds of expenses that have nothing to do with candidates, they say in their response.

Reporter Don Hunter can be reached at dhunter@adn.com or 907 257-4349.

Caption: Photo By Marc Lester Anchorage Daily News Sen. Frank Murkowski Was Jokingly Referred To As "Gov. Murkowski" By President Bush At A Republican Party Fund-raiser Last Saturday At The Alaska Native Heritage Center.

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MILLER AIMS TO LIMIT GUBERNATORIAL FUND RAISING

Anchorage Daily News (AK) - Thursday, February 5, 1998

Author: *Liz Ruskin Daily News Reporter ; Staff*

Saying he wants to make the race to the Governor's Mansion fair for all, Senate President Mike Miller introduced a bill Wednesday that would stop Gov. Tony Knowles from raising campaign funds until the legislative session ends this spring.

"My purpose is just -- with whoever the governor is -- to even the playing field," Miller said.

But the Alaska Democratic Party is complaining that the Republicans are trying to change the rules in the middle of the game.

Miller's bill would prohibit the incumbent governor and all challengers from raising money during legislative sessions, generally from early January until early May.

As it stands now, Knowles and all other gubernatorial candidates are free to take in campaign donations during the session.

Except for Robin Taylor.

That's because Sen. Taylor, R-Wrangell, is a sitting legislator. A campaign reform law the Legislature passed in 1996 bans legislators -- no matter what state office they are running for -- from fund raising during the session. But it allows the incumbent governor to continue raising money throughout the election year.

"When we passed the campaign finance reform, nobody anticipated that was going to happen," said Miller, R-North Pole. "It was just an oversight."

Deborah Bonito, chairwoman of the Alaska Democratic Party, says the Republican-led majority is trying to carve out a loophole to benefit one person: Taylor.

"It's the specialest of special-interest legislation," she said.

If the bill becomes law soon, it would also affect John Lindauer, one of three Republican candidates for governor. Lindauer, though, says he thinks the bill is great.

"It's a really good idea to level the playing field," said Lindauer, who was campaigning in Ketchikan on Wednesday.

Sure, it'll make it harder for challengers to raise money, the former newspaper publisher said, "but that's a small price to pay."

Lindauer hasn't held any fund-raisers yet. He said Wednesday that he plans to spend a million dollars of his own money on the race.

Wayne Anthony Ross, an Anchorage lawyer and another Republican candidate for governor, said it's no wonder Lindauer likes the bill.

"He's rich," said Ross. "I would call it a rich man's bill."

The campaign finance reform law has already restricted fund raising significantly, he said, noting that no candidate can start raising money until Jan. 1 of the election year.

"I would be opposed to further restriction on raising funds," said Ross, who was in Washington, D.C., Wednesday for a National Rifle Association board meeting. "It limits candidates to those who are rich, who can afford to bankroll their own campaign."

It won't have much effect on Knowles, Ross said, since the incumbent has a much easier time raising a lot of money quickly.

The candidates don't have to disclose how much money they have raised until 30 daysbefore the primary election. Donors, though, are required to report their contributions within 10 days.

According to reports filed by individual donors to the Alaska Public Offices Commission as of last week, Knowles has raised about $41,000 this year. Taylor's contributors reported donations of $21,000, and Ross' sum came to nearly $10,000. No one reported giving to the Lindauer campaign. These totals, though, may be less than the amount the candidates actually collected. They do not include group or party donations, or individual donations less than $250. Also, in past years the reporting requirement for contributors was rarely enforced and frequently ignored.

Miller's bill would be effective as soon as it becomes law. If the Legislature passes it, Knowles would have 15 days to exercise his veto power. His spokesman, Bob King, said Knowles' policy is to not announce what he is going to do until the bill hits his desk. But even if he vetoes the bill, the majority can override his veto. That means the bill could become law before the end of the session.

Alaska Campaign Finance

Before the 1996

campaign finance law

n Every candidate could raise money year-round.

n Ethics law of 1992 restricted legislators from receiving funds during the legislative session.

After passage of the 1996 campaign finance law

n Prohibits all legislative candidates -- incumbents and challengers -- from raising money during the session.

n Prohibits legislators who are running for governor from collecting money during the session.

n Allows the governor and lieutenant governor to raise money for their re-elections during the session.

n Allows a gubernatorial candidate not in public office to raise campaign money during the session.

Miller's bill, SB 275, would:

n Prohibit the incumbent governor from raising campaign money during the session.

n Prohibit all gubernatorial challengers -- even those not now in public office -- from raising campaign money during the session.

Source: Alaska State Statutes

KEVIN POWELL / Anchorage Daily News

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Tamara Huffman, paralegal

10 February 2009

To the individual members of the Alaska State Senate:

Dear Senator:

Our State employees are hard working folks who do the best job they can to serve the people of the State of Alaska. They should not have found themselves involved in what certainly appeared to be a political vendetta between some members of the Legislature and our Governor.

The expenditure of up to $100,000 by the Legislature to investigate the Governor's handling of the so-called Troopergate matter seems excessive and unwarranted given the State's current economic status. But some legislators chose to hire Steve Branchflower to handle that investigation and, as you are aware, he subpoenaed a number of State employees to give testimony on the issue.

After receiving the subpoenas, these employees received a memorandum from the Attorney General which indicated that a legal issue existed as to the validity of the subpoenas. The issue of the validity of the subpoenas was eventually litigated.

This office was retained to give advice to State employee Ivy Frye. We advised our client to let the litigation proceed and allow the courts to decide the validity of the subpoenas before giving any testimony.

Under such circumstances, Mr. Branchflower should have simply continued the date on which the employees and Mr. Palin were to supposed to testify until after the legal issues were resolved. Because Mr. Branchflower was under an artificial deadline tied intrinsically to the pending election (the legislators wanted his report released before the election for reasons of their own), he did not do so.

Mr. Branchflower, however, did provide a list of written questions to which the witnesses responded.

Now the Senate, without notice or hearing, has found our client, and others including Mr. Palin, in criminal contempt. Such a finding is a serious violation of those State employees' and Mr. Palin's

right to due process. It is unwarranted and embarrassing to each person named, wrongfully damages their reputation, and constitutes an insult to their integrity.

The principal purpose of civil contempt is to compel compliance with an order while the purpose of criminal contempt is primarily to punish individual for past noncompliance with an order. Moss v. State, 834 P.2d 1256 (Alaska App.1992). It is clear, therefore, that the Senate's finding of contempt was a finding of criminal contempt, not civil contempt.

A person facing contempt has the right to notice of the charges against him. Taylor v. District Court, 4th Judicial District, 434 P.2d 670 (Alaska 1967). Our client, and the others, were not given notice that the Senate contemplated a contempt finding or what charges were to be leveled against any of them.

The Senate could not have ascertained the wilfulness of any of these employees failure to abide by its subpoena from its own observations. Had it been able to do so, such contempt would have been direct contempt. Since it could not do so, such contempt would have been indirect contempt. Stadler v. State, 813 P.2d 270 (Alaska 1991).

However little distinction is drawn between direct and indirect criminal contempt; and a person charged with either is entitled to the same procedural rights that exist in other classes of criminal prosecution. That is, a person facing either such criminal contempt finding is entitled to all procedural safeguards which are consistent with the interest of the Senate in upholding its efficiency, dignity and authority. Weaver v. Superior Court, 3rd Judicial District, 572 P.2d 425 (Alaska 1977).

No procedural safeguards were provided to our client, to any of the other State employees, or to Mr. Palin when the Senate issued its contempt finding.

Furthermore, the premise in the Senate's findings that the subpoenas were ignored is a false premise in that, once the legal challenges were determined, all subpoenaed persons complied by furnishing the requested information to the best extent possible.

Our hard-working State employees, and Mr. Palin, should have never been put in the position that they found themselves in.

The Senate should not have ordered, and paid for, an investigation by outside counsel for what appeared to be political purposes. Once that was done, however, Mr. Branchflower should have simply continued the time of their testimony until the court litigation was over and the issue, raised by Mr. Colberg, on the validity of the subpoenas was legally determined.

Although the conclusion reached by Mr. Branchflower's report, in the opinion of many, lacks any factual or rational basis, in fairness to Mr. Branchflower he did allow the questions to be answered in writing even if it appears that he did not utilize those answers in formulating his report.

In short, the State employees **DID NOT** ignore any subpoenas!

Loyal, hard-working State employees, and the Governor's husband Mr. Palin, do not deserve such treatment, especially from such an August body as the Alaska State Senate.

The Senate's finding of contempt was unwarranted and improper and we request that it be immediately set aside.

Thank you for your prompt attention to this request.

Sincerely,
Law Offices of Ross & Miner, P.C.

By: Wayne Anthony Ross
Attorney at Law

cc: client
All Senators Through Senator French

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Wayne Anthony Ross was born 25 February 1943 in Milwaukee, Wisconsin. He graduated from Marquette University High School in 1960.

EDUCATION: After attending the University of Wisconsin-Milwaukee for two years, Mr. Ross transferred to Marquette University, where he graduated with a Bachelor of Science Degree in Business Administration in 1965, and a Doctor of Law (Juris Doctoris) Degree in 1968.

EMPLOYMENT HISTORY: Mr. Ross first came to Alaska in June 1967 between his junior and senior years of law school. He spent that summer serving as a law clerk for a local Anchorage attorney, and driving a sightseeing bus on weekends for American Sightseeing Company.

From 1968 to 1969, Mr. Ross served as an Assistant Attorney General for the State of Alaska. In 1969 he was appointed by Superior Court Judge Harold J. Butcher to be Court Trustee and Standing Master for the Family Court. During the next four years, sitting as a judicial officer, Mr. Ross heard over 90% of all dependency, child in need of supervision, and delinquency cases arising in the Third Judicial District, and also enforced child support orders entered by the Superior court. During Mr. Ross's tenure, a computerized system of collection was instigated, which has developed into the Child Support Services Division which exists today.

In 1973, Mr. Ross left State service to enter the private practice of law. He was an associate of Edward J. Reasor and Associates in Anchorage, Alaska and a partner in law firms in Cordova, Alaska and Glennallen, Alaska. In 1977, Mr. Ross opened his own office in Anchorage, Ross & Associates, now known as the law office of Ross & Miner, P.C. Mr. Ross's practice emphasizes family law, criminal defense, plaintiff's personal injury and business law. Some years ago, Mr. Ross obtained one of the highest settlements in a wrongful termination of employment case ever obtained in the United States.

BAR ADMISSIONS: Mr. Ross was admitted to the Wisconsin Bar in 1968 and the Alaska Bar in 1969. He is admitted to practice in the state courts of Wisconsin and Alaska and in the federal courts of the Eastern District of Wisconsin, the District of Alaska, the 9th Circuit Court of Appeals, and the United States Supreme Court.

MILITARY SERVICE: Mr. Ross was a Colonel in the Alaska State Defense Force. COL Ross was Commander of the Professional and Technical Detachment of the ASDF from 1986 to June 1987. He was Chief of Civil-Military Operations (G-5) from June 1987 until July 1988, and then took command of the Field Forces Teams. Several months later, he was appointed Judge Advocate General. From April of 1990 until May 1992, COL Ross was Chief of Operations and Training (G-3). In May, 1992, he was appointed Acting Chief of Staff. In March, 1993 he was appointed Chief of Staff. From July, 1994 until June 1996, he held the position of Inspector General. COL Ross was given command of the ASDF Rifle Team in September, 1989. COL Ross also served as Acting Commander, and was on the Officer Promotion and Selection Board. He participated in Mobex 88, Brimfrost 89, and Alcan Convoy 92 operations. Colonel Ross is now Area Defense Counsel for the ASDF. He founded, and was President of the 49th Territorial Guards Regiment, Inc. from 1987-1994, an organization established to support the Alaska State Defense force, its officers and soldiers, and was re-elected to that position in April, 1995, serving until August 1996. In 2007 he was again elected to the Regiment's Board of Directors and later elected to the position of Vice President and presently serves in that position.

COL Ross was awarded the Alaska State Service Medal, the Alaska State Defense Force Achievement Medal, the Alaska State Defense Force State Service Medal twice, the Alaska State Defense Force Drill Attendance Ribbon, the Alaska State Defense Force Training Achievement Ribbon, and the State

Guard Association of the United States Membership Ribbon. He was named 1988 Good Samaritan Attorney Of The Year by Veterans Living and Health, Inc. In 1990 he was knighted by the Polish Government and awarded the Commander's Cross of the Order of Polonia Restituta for services rendered to the cause of freedom.

CURRENT MEMBERSHIPS:

Mr. Ross is presently a member of the following:

Alaska Bar Association (1968-present) (Family Law Committee, 1973-1978; Vice Chairman, 1973-1974) (Hearing Officer, Fee Arbitration Committee, 1981-1987, 1994-2001), (Discipline Hearing Committee, 1991-1994) Alaska Gun Collectors' Association, Inc. (1972-present) (Charter Member) (Master-at Arms, 1972-1973) (Secretary, 1983-1985) (President Emeritus, 1989-2004) (Director, 1994-1996, 2001) (President, 1973-1977, 1979-1981, 1985-1989, 2005-present) (Life Member, Card Number 1)

Alaska Machine Gun Association (2000-present)

Alaska M.A.U.E.R.S. Society

Alaska Outdoor Council (1985-present)

Alaska Peace Officers' Association (1970-present)

Alaska Professional Hunters' Association, Inc. (1981-present)

Alaska Right to Life, Inc. (1972-present) (Founder Member) (Member, Board of Directors, 1972-1976) (Vice President, 1972-1975)

Alaska Territorial Cavalry, Motorized (Founder member, 1991-present) (Secretary and Newsletter Editor, 1991-1998, 2000-2006) (Life Member #1)

Alaska Veterans Museum (Founder Member, 2003-present) (Director - 2008 to present)

Alaskans Against The Death Penalty (2009)

American Society of Arms Collectors (2003-present)

Anchorage Bar Association (1969-present) (Member, Committee for U.S. Constitutional Bicentennial Celebration, 1987)

Colt Collectors Association (1982-present)

Dallas Arms Collectors (Life Member, 1989-present)

49th Territorial Guard Regiment, Inc. (Member, 1987-1997, 2007-present) (President, 1987-1994, 1995-1996)(Director, 2007; Vice-President, 2007-present)

Fraternal Order of Alaska State Troopers (2005-present)

German Club of Alaska (1981-1994, 2001-present)

Gun Owners Action League (1987-present)

Military Vehicle Preservation Association (1989-present) (Member, Board of Directors, 1994-1996) (Vice President, 1994-1996)(Life Member - 2005-present)

Missouri Valley Arms Collectors (2004-present)(Honorary Life Member, 2008-present)

National Lawyers Association (1995-present)

National Rifle Association of America (1964-present) (Life member since 1975) (Benefactor member since 1984) (Member, Board of Directors, 1980-1992, 1994-present) (Second Vice President, 1988-1990) (First Vice President, 1990-1991) (Member, Executive Committee, 1984-1992, 1998-present) (Member, Freedom Challenge Advisory Team, 2008) (Member, Education and Training Committee, 1980-1982) (Member, NRA Legal Affairs Committee, 1982-1988, 1996-present; Chairman, 1983-1987; Vice Chairman 1996-present) (Member, NRA Gun Collectors Committee, 1980-1992, 1994-96, 1997-present; Vice Chairman, 1982-1987; Chairman, 1987-1992, 1997-present) (Member, Committee on Hearings, 1987-1988) (Vice Chairman, President's Committee on Section 501[c][3] Status, 1986) (Member, Special Committee on Hunters' Funds for the ILA Task Force, 1987-1988) (Member, Ad Hoc Committee on NRA Member Organizations, 1987-1988) (Chairman, President's Task Force on Prayer Breakfasts, 1990) (Member, Ways and Means Committee, 1990-1991) (Member, Officers Compensation Committee, 1990-1991) (Member, Hunting and Wildlife Conservation Committee, 1991-1992) (Member, Legislative Policy Subcommittee on State and Local Guidelines, 1991-1992) (Member, Ethics Committee, 1994-present, Vice Chairman 1995-96, Chairman, 1998-present) (Member, Ad Hoc Committee on the Militia,1995) (Member, President's Ad Hoc Committee to Investigate Violations of Association Policy, 1995) (Member, President's Special Committee to determine the feasibility of providing financial compensation for NRA Presidents, 1995) (Member, Ad Hoc Committee to investigate memberships and upgrades sold at a reduced rate, 1997) (Member, Nominating Committee, 1981-82; Vice-Chairman, 1998-1999)(Member, Special Committee to study the Pros and Cons of

A Regional Quarterly Board Meeting, 2001)(Chairman, Alaska Host Committee, 2005)(Member, Freedom Challenge Advisory Team, 2008).

Ohio Gun Collectors Association (1980-present) (Honorary Life Member, 1990-present)
Pioneers of Alaska, Anchorage Igloo No. 15 (2000-present)
Saint Gabriel Possenti Society, Inc. (1998-present)
Smith and Wesson Collectors Association (1975-present)
Tyone Mountain Syndicate, Inc. (President, 1982-present) which owns and operates Tyone Mountain Lodge in the Nelchina Basin of Alaska.
Washington Arms Collectors (1992-present)
Wisconsin Bar Association (1968-1989, 1991-present) (Alaska Chapter Chairman, 1997-present)
Wisconsin Gun Collectors (1958, 1965-1967, 1988-1994, 2006-present)
Wyoming Weapons Collectors (1990-present)(ID #455)

PRIOR MEMBERSHIPS:

Mr. Ross was a member of the following:
Alaska Cigar & Yacht Club (1998-2001)
Alaska 49-ers (1995-2001)
Alaska Four Wheelers (1981)
Alaska Geographic Society
Alaska Junior Miss Scholarship Pageant, Inc. (Member, Board of Directors, 1973-1980) (Judges' Chairman, 1973-1977) (Vice President, 1977-1980)
Alaska Legal Services Third Judicial District Campaign Leadership Committee (2000)
Alaska Moose Foundation (Director, 1999-2000)
Alaska National Guard Historical Holding (1989-1997)
Alaska National Guard Museum Fund, Inc. (Director, 1991-1999) (Chairman, 1996-1999)
Alaska Professional Sportsmen's Association, Inc. (1990-1991)
Alaska Public Policy Research Institute, Inc. (1997-1998)
Alaskans United Against The Tax Cap (2000)
Alaskans for Recriminalization of Marijuana Advisory Committee (1990)
Alaska Rifle Club (1981-1999) (Legislative Liaison Officer, 1982-1988)
Alaska 2nd Amendment Coalition (ASAC) (1992-2000)
Alaska State Rifle and Pistol Association (1980-1992) (Vice President, 1983-1988) (Secretary and Executive Officer, 1988-1989) (NRA Liaison Officer, 1989-1992)
Alaska Supreme Court Advisory Committee on Children's Rules (1972-1973)
Aleutian Rod and Gun Club (1994-1995)
Alpha Delta Sigma National Professional Advertising Fraternity, C. Brooks Smeeton Chapter (1962-1968)
American Bar Association (1968-1990) (Membership Chairman, Family Law Section, 1975-1976)
American Federation of Police (1972)
American Historical Foundation (1986-1988)
American Judicature Society (1970-1979)
American Legion - Fairview Park Post (Ohio)(1990)
American Sports Car Association (1958-1960) (President, 1958-1960)
Anchorage Clearinghouse Christian Ministries, (Member, Board of Directors, 1992)
Anchorage Committee for the White House Conference on Children (1970)
Anchorage Council on Prevention of Alcohol & Drug Abuse (1984)
Anchorage Crime Commission (Committee on Prosecution, 1981)
Anchorage Interfaith School Foundation (1983)
Anchorage Snowmobile Club (1992-1993)
Anchorage Veterans Monument Committee, (Director,1998-2001)
Antique Automobile Club of America (1991-1998)
Antique Auto Mushers of Alaska (1991-1993)
Armed Services YMCA of Alaska (Advisory Committee Member, 1995) (Director, 1995-2003)(Program Committee Member, 2000-2003)(First Vice Chairman, 2001-2002)(Chairman, 2003)

Associates of Vietnam Veterans of America (2003-2007)
Association of Family Conciliation Courts (1977-1978)
Association of the United State Army (1990-1998, 2001-2002)
Boy Scouts of America (Sustaining Member, 1983-1991)
B.P.O.E., Lodge No. 1351 (1991-2003) (Vice-Chairman, Americanism Committee, 1991-1995)
California State Rifle and Pistol Association, (1988-2003)
Cinema Cynics (1973-1978)
Citizens' Committee to Keep and Bear Arms (1981-1983)
Coalition For The Alaskan Way Of Life (2000-2001)
Coalition of American Veterans (1987-1989)
Commonwealth North (1986-2002)
Congress of Racial Equality (1991-1992)
Copper Basin Shooting Club (2003-2004)
Cystic Fibrosis Foundation (1984-1987) (Member, Board of Directors, 1984-1987)
Delta Theta Phi Law Fraternity, Eschweiler Senate (1966-1968), Alaska Senate (1983-1989) (Tribune, 1983-1985)
Ducks Unlimited (Sponsor, 1985-1986)
Elephant Club of the Republican Party of Alaska (1985-1987)
Gun Owners of America (1988-1994)
Gun Rights Committee (1983-1992) (Legal Action Committee Chairman, 1983-1985)
Holy Family Cathedral Parish Council (1971-1975) (Vice President, 1972-1975)
Indiana Sportsmen's Council (1973-1974)
International Handgun Metallic Silhouette Association (1978)
Izaak Walton League of America (1990-2000)
Kodiak Island Sportsmen's Association (1992-1994)
Kodiak Rod & Gun Club (1984-1986)
Law Enforcement Alliance of America (1992-2002)
Law Enforcement Committee on Alcoholism (1969-1970)
Lincoln Society (1994) (Lincoln Day Gala Committee, 1993-1994)
Marine Corps League (1998-2006)
Matanuska Valley Sportsmen (2000-2002)
McKinley Mountain Men (1980-1986)
Military Transport Association of North Jersey (2002-2008)
National Council of Juvenile Court Judges (1971-1986)
National Federation of Independent Businesses (1976-1986, 1996)
National Firearms Museum Fund (Director, 1982-1994; 1997-1998)
National Mossberg Collectors Association (1989-1991)
National Policy Forum (Member, Policy Council on Free Individuals in a Free Society, 1994)
National Republican Congressional Committee's Gun Owners Task Force (2000-2001)
National Republican Lawyers Association (1985-1994)
National Rifle Association of Great Britain (1989-1991)
Navy League (1988-1998)
Neighbors for Educational Programming (Chairman, 1992)
Outstanding American Handgunner Awards Foundation (1979-1981)
Presidential Inaugural's Professionals Advisory Committee (1988-1989)
Republican National Committee (Member, 1992-1998)
Republican Party Platform Planning Committee (1992)
Republican Roundup Committee (1996-2002) (Chairman, 1996-2002)
Republican Speakers Association (1993-1998)
Ruger Collectors Association (1982-1993)
Safari Club International (2001-2002)
Save Our Constitution Committee (1992)
Second Amendment Foundation (1981-1983)
Sierra Club (1985-1986)
Spanish - American War Historical Association (1993-1994)

Spenard Bar Association (1975-1977) (Vice President, 1976-1977)
State Guard Association of the United States (1987-1997) (Member, Board of Directors, 1992-1994)
Statewide Advisory Committee, Alaskans for Equal Fishing and Hunting Rights (1982-1983)
Tanana Valley Sportsmen's Association (1983-1986)
Theodore Roosevelt Association (1982-1993, 1995)
Toy Gun Collectors Association (1989-1994)
Toy Gun Purveyors Association (1989-1994)
Ugashik Bay Beach Club
Wednesday Night Club (1983-1994)

TEACHING EXPERIENCE: Mr. Ross taught courses entitled "Juveniles and the Law" (1973-74) and "Introduction to Criminal Justice" at the University of Alaska, Anchorage, for several semesters. He has been a guest lecturer at Marquette University Law School, the University of Alaska, Anchorage, and at Wayland Baptist College. Mr. Ross served as a member of the Board of Trustees (Secretary) for Lumen Christi High School from 1999 to 2001.

POLITICAL EXPERIENCE: Mr. Ross first became involved in politics in 1960 when his father, Ray E. Ross, ran for the office of Alderman (City Councilman) of West Allis, Wisconsin's fourth largest city. Ray E. Ross was elected and held the Alderman's position for 3 four year terms. Wayne Ross was Campaign Chairman for two of those campaigns. He also participated in the Nixon campaign of 1960 and the Goldwater campaign of 1964 with less satisfactory results. Upon coming to Alaska, he was an alternate delegate to District 11's convention in 1972 and 1976. Mr. Ross has been involved in the Republican Party from precinct to national levels. Mr. Ross served as Parliamentarian at the 1980, 1982, and 1984 District 8 Republican Conventions and was Parliamentarian Pro Tem for the Republican State Central Committee in 1983. In 1984 he was Parliamentarian for the State Republican Convention and was an alternate delegate to the Republican National Convention in Dallas, Texas, where as a seated alternate, he was able to cast his ballot for Ronald Reagan for the Republican Party nominee for President of the United States. Mr. Ross was elected Vice Chairman of the District 8 Republican Party in 1982 and served as Chairman of that District from 1985 to 1988. As such, he was a member of the Alaska State Republican Party Central Committee. Mr. Ross was a member of that party's Elephant Club and was Chairman of the Rules committee from 1985-1988 and Co-Chairman of the 1988 State Convention's Candidate Recruitment Committee. In 1988, he was Alaska Chairman, Lawyers for Bush/Quayle. Mr. Ross was Republican Party National Committeeman, Alaska from 1992-1998. He attended the Republican National Convention in Houston 1992 as National Committeeman-elect and the 1996 National Convention in San Diego as National Committeeman. From 1995-1996, he served as Co-Chairman, Alaskans For Gramm. In 1997, Mr. Ross was a member of a delegation representing the United States and the Republican National Committee to the Republic of China (Taiwan's) 15th Kuomingtang National Congress in Taipei, Taiwan, China. Mr. Ross sat on the Republican State Central Committee from 2000-2001 as the Bonus Vote for District 18. He served as Secretary for Precinct 357 from 2000-2001. He also served as a member of the Republican Party Special Events Committee from 2000-2002. Mr. Ross was a Republican Candidate for Governor of Alaska in 1998 and 2002. In 2006 he served as Honorary Co-Chairman of the Sarah Palin for Governor campaign.

PUBLIC SERVICE: Mr. Ross was appointed to serve on the Alaska Land Use Council Advisors' Committee by the United States Department of Interior in January, 1984, and was re-appointed each year thereafter. In April, 1987, Mr. Ross was elected Chairman of that Committee. He served as Chairman from 1987-1988. He was elected Vice Chairman in 1988, and from 1989-1990, Mr. Ross held the position of Acting Chairman. Mr. Ross was appointed to the Advisory Council for the Commission On Privatizations and Delivery of Government Services by the Alaska Legislature in 1999, and assigned the Chairmanship of the Advisory Sub-committee to study the Office of the Governor.

Mr. Ross was appointed and served as an Alaskan Marriage Commissioner in 1969, 1970, 1971, 1972, 1973, 1976, 1984, 1985, 1994, 1997, 2003, and 2005.

AWARDS: Mr. Ross and his law firm have received awards from the National Rifle Association of America, the Alaska Outdoor Council, and the Alaska Christian Sportsman's Club for services on behalf of sportsmen. Mr.

Ross has been awarded the NRA Affiliated Gun Collectors Award of Merit for the Promotion of Gun Collecting. Mr. Ross has also received patriotism awards from the Daughters of the American Revolution, the Alaska Sea Cadets, the National Commander of the Veterans of Foreign Wars, and Anchorage VFW Post 9981.

Mr. Ross is listed in Who's Who in American Law, 1st- 9th, 14th, and 20th editions; Who's Who in American Politics, 15th, 16th, 17th and 20th editions; Personalities of the West and Midwest, 8th edition; Who's Who in Society, 1st and 2nd editions; Who's Who in America, 46th-49th and 55th-57th editions; International Who's Who of Contemporary Achievement, 1984/85 edition; Marquis Who's Who in the West (1996-1997); and Who's Who in the World, 12th and 18th and 21st editions.

PUBLICATIONS: Mr. Ross was a biweekly columnist for the *Anchorage Times* (FROM THE ARENA, every second Sunday) from 1986 until 1992. He later wrote for the *Voice Of The Anchorage Times* in the Anchorage Daily News from 1992-1993, and for *The Anchorage Chronicle* in 2003. He served as contributing editor (firearms) for the Alaska Bar Rag, the official newspaper of the Alaska Bar Association for which Mr. Ross received the coveted Stanley Award for Heroic Journalism. Mr. Ross also has had outdoor and firearms articles printed in the Congressional Record, Alaska Outdoors, Supply Line, Soldier of Fortune, Wild Sheep, the Message, the Washington Arms Collectors Gun News, the Missouri Arms Collectors newsletter, the National Firearms Museum Quarterly, and Gun Week magazines. He also has written articles for Army Motors and was book review editor for that magazine.

HOBBIES AND INTERESTS: Mr. Ross was a holder of a Federal Firearms Dealers License for twenty-five years and specializes in collecting large caliber Colt and Smith and Wesson handguns. He has testified before Congressional Committees in Alaska and Washington, D.C. on lands and hunting issues, and has lobbied the Alaskan Legislature for equal access to fish and game for all citizens. He has also appeared on numerous television and radio programs supporting hunting and the Right to Keep and Bear Arms. Mr. Ross has conducted seminars and given speeches on hunting and gun collecting in many parts of the country. He is listed on the NRA Gun Collectors Speakers Bureau.

Mr. Ross's hobbies include hunting (especially with a .45 caliber handgun), fishing, and gun-collecting and he is a licensed assistant guide. He has taken two moose, and three caribou, with a .45 Colt revolver; three Sitka deer and a musk ox with a .45 semi-automatic pistol; and numerous other large game with a rifle including Dall sheep, whitetail deer, moose, caribou, sika deer, black bear, and brown bear. He has been qualified as an expert witness on firearms in both Alaska and Texas State Courts and in the Federal District court for the State of Alaska, both in Anchorage and Fairbanks. He is also a bibliophile, collecting books by Robert Service, Rex Beach, James Oliver Curwood, Don Blanding, and Theodore Roosevelt, as well as possessing the largest library on firearms in the State of Alaska.

RELIGIOUS PREFERENCE: Mr. Ross is a Catholic. He, along with his wife, Barbara, participated in the Anchorage Archdiocese Pre-Cana Program as instructors from approximately 1972 until 1985. In 1988, he was Advanced Gifts Chairman of the St. Elizabeth Ann Seton Church building program. In 1991 he was Building Fund Committee Chairman for that church. In October, 1991, Mr. Ross and his wife were named, by the Vatican, to be a Knight and Lady in the Equestrian Order of the Holy Sepulcher of Jerusalem. In 1998, Mr. Ross was awarded the Saint Gabriel Possenti Medallion by the Saint Gabriel Possenti Society. Mr. Ross served as Secretary on the Board of Trustees of Lumen Christi High School, Inc. from 1999 until 2001 and helped in the transition of that school from a private corporation to a parish school under the auspices of the Catholic Archdiocese of Anchorage.

FAMILY INFORMATION: Mr. Ross was married to Barbara L. Froelich of Elkhart, Indiana in 1968. They reside in Anchorage and have four children: Gregory, age 38, Brian, age 35, Timothy, age 32, and Amy Katherine Ross, age 30 years, and six grandchildren. Gregory graduated from Pre-Law at Marquette University, was a commercial fisherman, obtained his masters degree in education from the University of Alaska, Anchorage, is now a teacher for the Anchorage School District and coaches high school hockey. For several years, he served on the Anchorage Fish and Game Advisory Committee. Greg is married to Shelli, and has one son, Oberon and two step-children, Ryan and Tristen. Brian graduated 13th in his class, the top Marine Corps officer (Class of 1994), from the United States Naval Academy, and is a Major in the U.S.

Marine Corps, having served 3 tours in Iraq. Brian recently obtained his Masters Degree at Marquette in Milwaukee and currently is assigned by the Marine Corps as an Instructor (Naval History) at the Naval Academy. Brian and his wife, Tracy, have two sons, Andrew Charles Ross and Matthew Edward Ross, and a daughter, Emily Louise Ross. Tim graduated with a degree in Mechanical Engineering from Marquette University and is working in Alaska as a project supervisor for ANC. Amy graduated from Gonzaga University in Spokane, Washington with a degree in Criminal Justice. She is police officer with the Spokane Police Department, and is a Spokane Police Department Firearms Training Officer. She was recently commissioned as a Special Deputy U.S. Marshall. Barbara and each of the Ross children and grandchildren are NRA Life Members. Barbara was the librarian at St. Elizabeth Seton Catholic Elementary School, was a member of that school's Service Club Board, and was President of its School Board. She worked for the Anchorage School District as a librarian's assistant, and is now retired. Barbara served for several years as Program Director for the Anchorage Republican Women's Club, was District Chairman for Republican District 32, and as Secretary for Alaska Right To Life, Inc. Currently she is a Director of Alaska Right To Life, Inc. (Eff. 1 Feb 09)

PUBLISHED ARTICLES
Eff. 17 March 2009

"Abuse touches all walks of life within our society", The Anchorage Times, 4 November 1990.

"A 'Citizen Of The World' may be an undesirable citizen", The Anchorage Times, 17 January 1988.

"Action of adults toward children hold lasting memories", The Anchorage Times, 19 April 1992.

"A goodbye to my longtime friend", The Anchorage Chronicle, 10 - 17 October 2002.

"A 'good name', an asset beyond value", The Anchorage Times, 28 February 1988.

"Ah, it's the amenities in life", The Anchorage Times, 9 October 1988.

"Alaskans must meet challenge of subsistence regulation", The Anchorage Times, 31 December 1989.

"Amendments unfair to individuals", The Anchorage Times, 6 August 1986.

"America Lost A Good One When We Lost Joe Foss", Soldier of Fortune, April 2003.

"ANCSA amendments Bad For State, And Its Citizens", The Cordova Times, 5 June 1986.

"ANCSA deserves the Golden Fleece award", The Anchorage Times, 26 April 1987.

"An 'early retirement' doesn't offer dragons to slay, battles to fight", The Anchorage Times, 3 June 1990.

"Animal activists real enemy", The Anchorage Times, 2 December 1990.

"Anonymous hate mail should not be permitted", The Bar Rag, October-December 2007.

"Another look toward 1991", The Anchorage Times, 15 May 1986.

"Anti-Gun laws do not aid the law-abiding", The Anchorage Times 5 February 1989.

"Applicant earns an 'A For Effort' on resume", The Anchorage Times, 26 August 1991.

"A promise is to be honored", The Anchorage Times, 16 August 1986.

"A reputation with a shadow, The Anchorage Times, 7 June 1987.

"Arm the pilots and the passengers", The Anchorage Chronicle, Aug. 29 - Sept. 4, 2002.

"Arms misuse threatens rights", The Anchorage Times, 24 February 1991.

"A road to Cordova would give more Alaskans access to the little-known treasure", The Anchorage Times, 20 August 1989.

"Assault weapons are being confused with automatic firearms", The Anchorage Times, 30 April 1989.

"As soon as I head out of town, the snow should start falling", The Anchorage Chronicle, 28 November 2002.

"At Ease - The Flying Jeep", Army Motors, Volume 104, Summer 2003.

"A tribute to Barbara on Mother's Day", The Anchorage Times, 10 May 1987.

"Average citizen finds legal system inaccessible", The Anchorage Times, 16 April 1989.

"Base subsistence priority on need", Voice of the Times, 8 August 2001.

"Battle lines are being drawn for subsistence war", The Anchorage Times, 11 March 1990.

"Bears will be bears - Can we allow it?", The Anchorage Times, 12 August 1990.

"Before you go hunting remember to vote", The Anchorage Times, 26 August 1990.

"Belief in Santa Claus isn't just for little kids", The Anchorage Times, 25 December 1988.

"Best choice to keep young", Anchorage Daily News, 6 August 1992.

"Burgers are best for a 'Trencherman's' lunch, The Anchorage Times, 11 December 1988.

"Bush achievements many", Anchorage Daily News, 29 August 1992.

"Buy American-made products in 1992", The Anchorage Times, 29 December 1991.

"Campaign provides a real education", The Anchorage Chronicle, 5 September 2002.

"Candidates' book is more than Alaska history", The Anchorage Times, 23 October 1988.

"Candidates do not agree on gun control issue", The Anchorage Times, 25 September 1988.

"Can our best afford public service?", The Anchorage Times, 8 January 1989.

"Change in Show Rules", AGCA News & Views, March/April 2009.

"Chastity, adultery relegated to Dark Ages", The Anchorage Times, 23 February 1992.

"Christmas time sparks thoughts on old friends", The Anchorage Times, 16 December 1990.

"Come Celebrate the Beginning", AGCA News & Views, May-June 2007.

"Commitment is needed before practice", The Anchorage Times, 19 June 1988.

"Community service isn't as recalled", The Anchorage Times, 21 June 1987.

"Defending the guilty: Our judicial system at its very best", The Anchorage Times, 4 January 1987.

"Determining when one man's refuse is another man's refuge", The Anchorage Times, 6 October 1990.

"Do you have the attributes and desire to run for office?", The Anchorage Times, 9 July 1989.

"Duty- a sense of obligation, obedience and respect", The Anchorage Times, 15 March 1987.

"Equality for women still has considerable distance to go", The Anchorage Times, 11 October 1987.

"Elders pass wisdom to young during hunt", The Anchorage Times, 12 January 1992; The Message, March 1992; Gun-News, Volume 9 - Number 1.

"Fall hunting is a family occasion", The Anchorage Times, 14 August 1988.

"False! False! False!", Supplement to The Anchorage Daily News, 6 November 2000.

"False reports of child sexual abuse devastate families and children", The Anchorage Times,28 July 1991; Speak Out For Families, December 1993.

"Family unit suffers from bureaucratic maze", The Anchorage Times, 22 May 1988.

"Family vacations offer fun and frustrations", The Anchorage Times, 24 April 1988.

"Fr. Boyle taught schoolboys lessons on discipline", The Anchorage Times 13 March 1988.

"Father's death helps him understand what a happy death means", The Anchorage Times, 22 September 1990.

"Fighting for Old Glory on battlefield of art", The Anchorage Times, 31 May 1992.

"Friends sometimes have to sit in the front of the canoe", The Anchorage Times, 3 July 1988.

"From Civil War typewriter to the modern computer", The Anchorage Times, 22 April 1990.

"Game permits seem to be for the lucky few", The Anchorage Times, 23 July 1989.

"Getting old is not for me", The Anchorage Chronicle, 27 March 2003.

"Goodbye my friend", The Anchorage Chronicle, 3 October 2002.

"Governor Cowper doesn't understand the issue", The Anchorage Times, 1 July 1990.

"Governor's duties clear on lands issues", The Voice of the Anchorage Times, 2 January 2001.

"Grass roots political meetings: a learning experience", The Anchorage Times, 27 March 1988.

"Gun law goes overboard with restrictions", The Anchorage Times, _____1990.

"Gun shows generate substantial revenue", The Anchorage Times, 14 February 1988.

"Gun 'waiting period' proposals unworkable", The Anchorage Times, 17 July 1988.

"Handling clients charged with drunken driving challenges lawyers", The Anchorage Times, 15 July 1991.

"Happy Birthday, AGCA!", AGCA News & Views, March-April 2007.

"Heading For The Rhine", Army Motors, Volume 63, Spring 1993.

"Helping neighbors in Middle East takes precedence over peace", The Anchorage Times, 13 January 1991.

"Hi Hopes still waiting for nomination", The Anchorage Times, 6 October 1991.

"Hollywood version of cops and robbers may be outcome for Hillside", The Anchorage Times, 17 November 1991.

"Horsepower limits on river unfair to many boat owners", The Anchorage Times, 31 July 1988.

"Housing shortage redefines luxurious", The Anchorage Times, 27 January 1991.

"How long has it been since you had your last physical exam?", The Anchorage Times, 27 January 1991.

"Hunter didn't like look of Simpson Bay 'Welcome Wagon'", The Anchorage Times, 17 December 1989.

"Hunters in danger of losing all hunting rights", The Anchorage Times, 28 January 1990, The Message. January 1992.

"Hunting in Alaska the bureaucratic way means staying home", The Anchorage Times, 2 August 1987.

"Hunting should not involve harassment", The Anchorage Times, 20 October 1991.

"In failing to resist lawlessness, we may lose what we value most", The Anchorage Times, 3 May 1992; Washington Arms Collectors Gun-News, Vol 8, Number 10 (October 1992).

"Is the justice system based on presumption of innocence?", The Anchorage Times, 29 October 1989.

"It is time we quit crying over the oil spill", The Anchorage Times, 17 September 1989.

"It's easier to throw a sacrifice to the wolves than fight the News", The Anchorage Daily News, 22 July 1992.

"It seems it's becoming 'We Vs. They' on Alaska issues", The Anchorage Times, 24 May 1987.

"It's National Convention time once again", The Trunk Line, August 2000.

"I wish Anchorage papers followed Milwaukee", The Anchorage Times, 15 June 1982.

"Joe Foss - America lost a good one", Voice of the Times, 8 January 2003.

"Join A Militia - Break The Law?", Soldier Of Fortune, April 1995.

"Judges leave attorney scratching his head?", The Anchorage Times, 9 February 1992.

"Katie Couric is going to be disappointed", The Anchorage Chronicle, 6 April 2003.

"Katz Decision limits citizens' participation", The Anchorage Times, 12 April 1987.

"Key to finding party candidates lies in understanding political process", The Anchorage Times, 21 October 1990.

"Kids and Guns, A Different Perspective", The Message, February 1994; Anchorage Daily News, 27 March 1994, 1994; The Firing Line, March 1997.

"KKK 'Art' project gets 'A' for courage", The Anchorage Times, December 1991.

"Lawyers don't deserve such a bad reputation", The Anchorage Chronicle, 30 January 2003.

"Laws that ban firearms are exercises in futility", The Anchorage Times, 5 March 1989.

"Legislative leadership", The Anchorage Times, 6 November 1988.

"Lesson In Hunting Concerns Life", The Message, October 1991.

"Lesson in hunting not just about killing but concerns life itself", The Anchorage Times, 8 September 1991; The Congressional Record, 9 October 1991.

"Little Will", Alaska Bar Rag, May 1979.

"Looking back, Westchester Lagoon might never have had its park", The Anchorage Times, 30 June 1991.

"Macie's .458 saved him and killed him", The Anchorage Times, 10 December 1989.

"Macie's Gewehr", Reisen Der Wild Nis, (Germany) 1991.

"Macie's Gun, Part One", The AGCA News & Views, November-December 2005.

"Macie's Gun, Part 2", The AGCA News & Views, Jan-Feb 2006.

"Man's best friend lives up to her name even in death - A 'Lady' to the end", The Anchorage Times, 24 March 1991.

"Marriage not measured in years", The Anchorage Times, 19 May 1991.

"Maybe this is how I got started in gun collecting?", National Firearms Museum Quarterly, September 2005; The M.V.A.C.A. Guardian, October 2005; The Dallas Arms Collectors News, December 2005; The Ohio Gun Collectors Association newsletter, March 2006.

"Medal Rescinded by NRA Committee", Man At Arms, December 2007.

"Media hypocritical in Quayle coverage", The Anchorage Times, 28 August 1988.

"Military Appreciation Day shows off The New Army", The Anchorage Times, 11 June 1989.

"Modern Turkey Hunting", Alaska Bar Rage 1979.

"Muffling doesn't change facts", Anchorage Daily News, 10 October 1992.

"Murkowski now holds state reins; he should drive to long-term fiscal health", The Anchorage Chronicle, 10 April 2003.

"MVPA Affiliate Profiles - Alaska Territorial Cavalry (Motorized)", Supply Line, May 2005.

"My feet are frozen to the ground of Alaska", The Anchorage Times, 6 December 1987.

"My 'other woman' will probably outgrow blue jeans and sweatshirts", The Anchorage Times, 20 May 1990.

"New Year's resolutions", The Anchorage Times, 3 January 1988.

"Never give a sucker an even break", The Anchorage Times, 2 June 1991.

"New York City residents and their gun Law", The Anchorage Times, 6 May 1990.

"'Nickel' of life should bring more than instant gratification", The Anchorage Times, 19 March 1989.

"`1991` amendments further cause of native sovereignty", The Anchorage Times, 15 February 1987.

"No small world if you're from Munich", The Anchorage Times, 1 December 1991.

"Nothing like a wife to pop the ol' ego", The Anchorage Chronicle, 21 Nov 2002.

"NRA Collectors Committee Rescinds Silver Medal", The American Rifleman, December 2007.

"NRA introduces Robinson as new president", The Anchorage Chronicle, 15 May 2003.

"NRA members come from all walks of life", The Anchorage Times, 3 September 1989.

"NRA National Gun Collectors Seminar in July in Anchorage", AGCA News & Views, March/April 2009.

"'One Man Band' gave a beat to Cordova's nights", The Anchorage Times, 29 July 1990; Alaska Bar Rag, November-December, 1990.

"One of Alaska's most popular fishing sites is threatened", The Anchorage Times, 19 July 1987.

"One out of three bills pass muster", The Anchorage Times, 7 April 1991.

"On joggers and gerbils' heartbeats and handyman talents", The Anchorage Times, 15 October 1989.

"Opportunity missed?", The Anchorage Times, 20 November 1988.

"Our liberty requires our vigilance", The Anchorage Times, 29 March 1987.

"Our senior citizens' stories should be saved for future", The Anchorage Times, 26 November 1989.

"'Outdoorsmen' and 'naturalists' must begin a dialogue", The Anchorage Times, 12 November 1989.

"Parochial schools foster priceless values", The Anchorage Times, 1 February 1987.

"Parties can set own rule", Anchorage Daily News, 12 September 1992.

"Point", The Anchorage Times, 15 February 1987.

"Politically correct is not for me!", The Anchorage Chronicle, 15 August 2002.

"Principles worth NRA election defeat", The Anchorage Times, 21 April 1991.

"Proponents of abortion are doomed to lose", The Anchorage Times, 14 May 1989.

"Puck was right! What fools these mortals be!", The Anchorage Chronicle, 13 March 2003.

"Real culprits in FDIC suit deadbeats, not defendants", The Anchorage Times, 5 May 1991.

"Republican voters cheated", The Anchorage Times, 22 January 1989.

"Resource Management would aid subsistence", The Anchorage Times, 25 February 1990.

"Response to a Man Disliking My Poem", Gun Week, 10 July 1981.

"Ridiculous Subsistence regulations", The Anchorage Times, 2 April 1989.

"Right to firearms not about duck hunting", The Anchorage Times, 22 September 1991.

"Runaway children: Solving the problem before its too late", The Anchorage Times, 18 January 1987.

"Running to keep up with Judge Butcher", The Anchorage Times, 17 May 1992.

"Sail battleships around the World once more", The Anchorage Times, 11 February 1990.

"Seeking to reach a liberal's heart", The Anchorage Chronicle, 6 February 2003.

"Share one of life's joys with a youngster", The Anchorage Times, 6 August 1989.

"Shooting his buddy's leg leaves more than 2 scars", The Anchorage Times, 18 November 1990.

"Small town lawyering holds big surprises", The Anchorage Times, 22 March 1992.

"Smoking for enjoyment should remain a matter of choice", The Anchorage Times, 11 August 1991.

"Sometimes You've Just Gotta Do It Yourself", Soldier of Fortune, August 2002.

"Spanking for misbehavior isn't necessarily abuse", The Anchorage Times, 26 January 1992.

"Steady, true friendships warm the heart", The Anchorage Times, 11 September 1988.

"Subsistence ruling levels the playing field", The Anchorage Times, 7 January 1990.

"Tax cap would reduce quality of life for Alaskans", Alaska Military Weekly, 2 November 2000.

"$10 solution to Park Service bears - Wayne Anthony Vs. Bill", The Anchorage Times, 9 September 1990.

"The Alaska Land Use Council needs Governor's leadership", The Anchorage Times, 10 April 1988.

"The Alaska State Guard stands ready to serve in time of need", The Anchorage Times, 1 March 1987.

"The Ballad of Harlon's Retreat", Gun Week, 10 July 1981.

"The Cacklers and Emperors may soon be but a memory", The Anchorage Times, 8 November 1987.

"The City Of Brotherly Love", Alaska Bar Rag, August-September 1982.

"The Din Of WAR", The AGCA News & Views, May 2005.

"The Din Of WAR", The AGCA News & Views, September 2005.

"The greatest dad in the whole world", The Anchorage Times, 5 June 1988.

"The Legend of Cuttin' Cowper", The Anchorage Times, 2 February 1987.

"The Little 'Buffalo': A Collector's Reminiscence", Alaska Bar Rag, November 1978; Gun Week, 22 October 1982; The Message, October 1987.

"The long arm of the IRS reaches from Utah", The Anchorage Times, 25 October 1987.

"The $1,000 Mouse", Alaska Bar Rag, August 1979; Alaska Outdoors, November-December 1982.

"The Other Side Of The Controversy Over The Taking Of Ducks and Geese", All Alaska Weekly, 4 December 1987.

"The Right To Be Wrong", The Anchorage Chronicle, 6 March 2003.

"The solution may be worse than the problem", The Anchorage Times, 1 October 1989.

"The Special Session highlighted misguided political leadership", The Anchorage Times, 15 July 1990.

"The Ultimate Restoration", Army Motors, Volume 64, Summer 1998; MEV Newsletter, Third Edition, Sept-Nov., 1996.

"They also serve who only stand and wait", The Anchorage Chronicle, 16 January 2003.

"Those Independence Day memories - past and future", The Anchorage Times, 5 July 1987; Wild Sheep, Summer, 1987..

"Those nickel-plated, engraved '49-ers' were real guns", The Anchorage Times, 25 March 1990.

"Those rights that are constitutionally guaranteed us", The Anchorage Times, 10 December 1989.

"To cover its shortcomings, State heaps abuse on oil companies", The Anchorage Times, 28 May 1989.

"Today's military balance same as 1787", The Anchorage Times, 11 August 1987.

"To disagree doesn't mean to be disagreeable", The Anchorage Times, 8 April 1990.

"Tuesday I'll have no problem picking best choices on ballot", Anchorage Daily News, 28 October 1992.

"Ultimate safety cannot be provided to citizens", The Anchorage Times, 18 May 1988.

"Urban subsistence depends on State jobs", The Anchorage Times, 8 March 1992.

"U.S. justice system isn't always just or fair", The Anchorage Times, 5 April 1992.

"We'd have heroes if media lightened up", The Anchorage Times, 3 November 1991.

"'We Vs. They' mentality must end", Tundra Drums, 27 May 1993.

"What do I want for Christmas? My list has things that money can't buy", The Anchorage Times, 24 December 1989.

"Where is the respect for law enforcement?", The Anchorage Times, 19 February 1989.

"Where is the support the Governor promised?", The Anchorage Times, 30 August 1987.

"Where there's a wheel there's a way", The Anchorage Times, 16 June 1991.

"'White Eagle' provided exciting adventures", The Anchorage Times, 17 June 1990.

"Williams' new policy punishes all", The Anchorage Chronicle, 12 September 2002.

"Woe the conviction of an innocent man!", The Anchorage Chronicle, 9 January 2003.

"Would Florida's firearm legislation work in Alaska?", The Anchorage Times, 25 October 1987.

"You may not benefit from proposed tort reform", The Anchorage Times, 20 December 1987.

"Your lips tell me 'No! No!' but there's "Yes! Yes!' in your Legislation", All Alaska Weekly, 6 June 1986.

LEAH BURTON
LETTER
AND
RESPONSE

Cindy Smith

From: Leah Burton [leahlb@gmail.com]
Sent: Wednesday, April 08, 2009 3:56 PM
To: Sen. Hollis French
Subject: Burton Testimony
Attachments: A WAR Test 4-09.doc

Senator Hollis,

Please copy to Committee Members in Senate Judiciary.

I can be reached at (206) 522-6314 this evening during the public testimony confirmation hearing if there is a need to contact me.

Respectfully Submitted,

--
Leah L. Burton

April 7, 2009

My name is Leah Burton. My father is former Commissioner of Public Safety, Richard L. Burton, who served under both Governor Hammond and Governor Hickel. I grew up in a law enforcement environment. Mr. Ross testimony today in response to Senator Hollis' questions about domestic violence and sexual assault victims enhances my testimony as to his prejudice on this very serious topic, especially given that, "Alaska rates among the top 5 states in the nation for per capita rates of domestic violence." (FBI/UCR 2007)

From 1989 through 1997 I lobbied on behalf of families and children in Alaska with regard to child support, custody, abuse, abandonment and neglect. In the course of that time my efforts put me in conflict with a group known then as the Dads Against Discrimination (DADS), and later renamed the Alaska Family Support Group.

Mr. Ross is one of the most successful attorneys in Alaska in his representation of the members of this organization and others who sought to avoid payment of child support through several means, not the least of which was to fight for custody.

In 1991, the DADS group held an area wide meeting at a Denny's Restaurant in Anchorage near DeBarr & Bragaw. I chose to go and sit in the main area of the restaurant near the opening of the meeting room where they convened so I was able to hear what they had to say and find out what plans they had for the upcoming legislative session.

At that point they still did not know what I looked like so I was able to sit there unnoticed. The meeting was well attended, Steve Strube was the head of the group at that time and another known member, John Grames (who Strube referred to as his Lt.), was also in attendance along with enough other members to fill the room. They were delighted to have Wayne Anthony Ross in attendance as a guest speaker.

Numerous comments were made that were appalling, not the least of which were remarks by Mr. Ross which included the following; "If a guy can't rape his wife...who's he gonna rape?" and "There wouldn't be an issue with domestic violence if women would learn to keep their mouths shut."

Other members made their own contributions such as, "We have the right to discipline our wives and children without the interference of government in our lives!"

These comments were greeted with laughter and affirmative responses by the group. Given the fact that they had referred to me in recent months as a "femi-nazi", the comments I was witness to at this meeting, while abhorrent, were unfortunately not surprising.

This announcement by Governor Palin is a slap in the face to all single parents who have no choice but to rely upon the State Department of Law to support court orders for child

support, as well as those persons who need the Department to enforce criminal laws against sexual assault and domestic violence. Mr. Ross is the antithesis of the type of person that should be the Attorney General. This has been clearly demonstrated by his own words and actions in public.

In closing, I am not alone in my assessment that anyone who condones, and contributes to that type of hateful and harmful discourse clearly does not have the judgment necessary to represent the people of the State of Alaska as their Attorney General.

Given his other special interests and his stated opposition to subsistence rights and other Alaska Native issues, I have brought this forth as yet another dimension of Mr. Ross' demonstrated inability to represent all the people of the State of Alaska fairly and impartially.

His clear racial and gender prejudice raise serious concerns with regard to his ability to represent all residents of the State of Alaska fairly and impartially as their Attorney General.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-2133
FAX: (907)465-2075

April 10, 2009

By Email and Capitol Mailbox

Honorable Member of the Twenty-Sixth Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Re: Letter Dated 7 April 2009 Purportedly From One Leah L. Burton

I am in receipt of a letter which purports to be from one Leah L. Burton. The letter is unsigned and I have been advised that it has been circulated to members of the Legislature. When I left my wife, Barbara, in Anchorage she cautioned me that "they are going to say bad things about you". "They will have to lie!" I responded, in an attempt to allay her fears. We have been happily married for more than forty years and like the tremendous lady she is, Barbara worries about me and doesn't like people criticizing her husband. (I thank the Lord for her every day.)

Apparently Barbara and I were both right. Not content to discuss my record, someone has now chosen to circulate this unsigned memo which is replete with totally false statements. I would call Ms. Burton a liar but, since the letter is unsigned and therefore may not have actually come from her, I will not do so. Instead, I am sending the response to you and referring to the letter, hereafter, as the "Burton" letter.

I believe I have heard of the Dads Against Discrimination and I have heard of a group known as the Alaska Family Support Group. Since I have practiced law in Anchorage in the private sector for over 35 years, I have given talks to many groups. I may have even spoken to this group although I do not recall having done so. If either group is the one I am thinking of, I had an unusual experience with one of its officers. On one occasion I received a call from a video store located on Lake Otis complaining about my "boorish behavior" to one of the store clerks. After ascertaining where and when this boorish behavior occurred, I advised the caller that I had never even been in his store. Intrigued by the caller's story, I asked if he had a videotape of the person who claimed to be Wayne Ross. It turned out that he had. I went to the store, viewed the

video, and recognized the person who had claimed to the clerk that he was me. The imposter was, if I recall, one of the founders of the above referenced group.

I will leave it to your imagination as to what occurred in the "Come To Jesus" meeting I had with this fellow when I was able to track him down. To my recollection, that was the last time I ever heard of either of these groups. They avoided me and I them, thereafter.

If I recall correctly, the only time I ever addressed this group, if indeed I ever did address them, was at a Denny's restaurant on either Benson and Denali or on Dimond and the Seward Highway. To my best recollection the only time I have been in the Denny's on Benson and DeBarr was to attend meetings of the Armed Services YMCA (I served on its Board and later as its Chairman) or to provide legal training for several concealed carry classes given at that location.

I do not believe I know a Steve Strube or a John Grames. I don't recall ever hearing such names before the Burton letter.

I have never ever stated to anyone "If a guy can't rape his wife... who's he gonna rape?"

I don't talk like that!

I don't believe in that!

I totally abhor such a thought and I totally reject it!

Indeed, if I ever heard such a comment from anyone, that person would have faced a serious confrontation with me. Rape is a serious crime; it is not something to joke about; it is not something I joke about; and I have no sympathy with anyone who does. Indeed, as AG I intend to pursue rapists with the full power of my office and put them behind bars for as long a time as possible.

Nor have I ever stated "There wouldn't be an issue with domestic violence if women would learn to keep their mouths shut!"

Such an allegation that I uttered those words is outrageous! Indeed, it is almost as outrageous as the words themselves!

I confess that I am a bit old fashioned when it comes to women. My dad taught me that the greatest honor that a father could show another man was to let that man date his daughter. If a guy was granted that honor, the absolutely worst thing a guy could do

was to breach the trust given to him by that father. I still believe that to this day. My wife and I learned about love-making only after we were married and we have been faithful to one another exclusively. She is my partner and I rely upon her completely.

The idea of "disciplining" a wife is outrageous! Wives are not children; they are partners (or at least should be). Any man who speaks to me about "disciplining his wife" deserves not to have one. And again, if I ever heard such a comment from anyone, that person would have faced a serious confrontation with me.

Both Barbara and I have "disciplined" our children. They have all turned out well. We are proud of them and they (all four of them) love their parents totally. Indeed, our children have turned out so well that I joke that they all take after their mother.

With regard to child support, I served as Court Trustee from 1969 to 1973. During my tenure, we developed the computerized system of collecting child support which has expanded into the Child Support Services Division with exists today. I have no patience or sympathy for any parent who fails to properly support his (or her) child.

In my practice of law when involved in divorce work, more often than not I represented the mother/wife. Ninety-five of my cases settled; only five percent went to trial. Divorces are sad situations for both spouses, and also for the attorneys who handle them. I have often said that the only reason I handled such cases is because I could go home at night to my beloved Barbara and realize how wonderful our life together is. I have always felt bad that many others cannot enjoy a marriage such as ours.

As I said above, I am old-fashioned. I take my hat off inside if a lady is present. I try to rise as often as possible when a lady enters the room. I always try to treat women like I would like my wife to be treated. Call me a dinosaur, if you will, but that is how I was raised.

I have had a good time during these conformation proceedings and I have met many interesting people. It matters not to me whether we agree or disagree on issues; what matters is that we can talk with one another and that we don't become disagreeable with one another.

The Burton letter, however, crosses the line. Now I am a bit angry! Whoever wrote that letter should be thoroughly ashamed of themselves. I do not deserve such treatment no matter how much the writer disagrees with me!

And since I am writing, let's deal with another issue. I am in receipt of a second memo dated 9 April 2009 referencing a lady who testified before the Senate Judiciary Committee on 8 April 2009.

The lady referenced my attendance at a UAA Forum in October 2005. She alleged that she heard me "argue that DV victims are liars".

I do not recall the date of such forum but I do recall attending such a forum. We were shown a movie about domestic violence. When it became my time to speak, I criticized the movie because it gave the misimpression that only men committed domestic violence on women.

I believed that I had been invited because of my years of experience in the field. I simply pointed out that men too could be victims of domestic violence. I also stated that on occasion people who sought domestic violence protective orders did so because they wanted to use the process "as a sword rather than as a shield". I said that in my experience I had seen cases in which people lied to get such protective orders and that our domestic violence system was sometimes abused.

Quite obviously the lady who attended the UAA forum heard only what she wanted to hear.

My remarks that day were accurate and based on almost four decades of experience in the field. The lady's recollection of the event, however, was not accurate.

Please feel free to contact me if you have any questions.

Sincerely,

Wayne Anthony Ross
Attorney General

cc: Sarah Palin, Governor
Mike Nizich, Chief of Staff
Sharon Leighow, Deputy Press Secretary

LETTERS OF OPPOSITION TO THE CONFIRMATION OF ROSS

Testimony of Robert W. Loescher
Before the Alaska State Senate Judiciary Committee Regarding Confirmation of
Wayne Anthony Ross as Attorney General

My name is Bob Loescher. I am a lifelong Alaska citizen and also a tribal member of the Central Council of the Tlingit and Haida Indians Tribes of Alaska, a federally-recognized tribal government located in southeast Alaska. Today I am representing and speaking on behalf of 26,000 tribally enrolled members and at the request of the Tribal President Bill Martin. I serve on the Judiciary Committee of the Tribe and am also speaking on behalf of the Alaska Native Brotherhood Camp # 2 of Juneau. The ANB is the oldest Native American fraternal organization in America and has stood up for Civil Rights of Alaska Natives and others.

I want to thank you Mr. Chairman and members of the Committee for the opportunity to speak on the matter of the confirmation of Wayne Anthony Ross as the Attorney General for the State of Alaska. This year marks the 50th Anniversary of Alaska Statehood and the implementation of the Alaska State Constitution. This last year, we witnessed the importance of the position and person of the Attorney General when the possibility of our Governor becoming the Vice President of the United States and our Lt. Governor's bid to become the US Congressman for Alaska arose. In this situation, the Attorney General would have become the Acting Governor until an election was held. All this did not happen- but the importance of the role of the Attorney General in our Alaska governance structure was highlighted.

The Attorney General is the highest ranking non-elected official. Over the 50 years of statehood, this position has had tremendous influence over the direction and administration of public policy within the State of Alaska and with regard to federal and tribal government policy and relationships.

Since the early days of Alaska Statehood through this year, Alaska Natives as tribal members and through their tribal governments, ANSCA corporations and affiliated institutions have made social, economic and political progress- as the State of Alaska has made equal and similar progress. The Alaska Natives cooperated with the State and Federal government to settle the Alaska Native Land Claims. This event opened the way for the right of way and construction of the Alaska Oil Pipeline and the unprecedented prosperity for all Alaskans.

The existence of Alaska Natives as "tribal members" has provided multi millions of dollars of federal transfer funds for health, education and welfare and other programs not only for Alaska Natives, but also for the benefit of all Alaskans.

The businesses and ANSCA lands have contributed billions of dollars to Alaska commerce, the economy and for job creation everywhere in our State.

Native institutions have brought modern services and benefits that have "offset" substantial impact to the State operating budgets.

Notwithstanding this progress and benefits to the total Alaska community due to the existence of Alaska Natives and tribal entities- participation has come at a high cost to the Alaska Native community. For the most part, Alaska Natives and tribal progress has come through litigation with the State of Alaska over equal education in rural Alaska, hunting, fishing, and gathering rights, children and family matters and another dozen issues that affect the well-being of Alaska Natives and tribal members.

Some progress has been made between the State of Alaska and the tribal community. There is cooperation on environmental protection, development of transportation infrastructure, land and resource development, coastal zone management and a myriad of other matters. However, the cooperation develops and exists based upon mutual need and financial contribution that are able to be committed to benefit all parties. The difficulty or impasses that are encountered and underlie determent of progress as a general matter is the issue of sovereignty of the state and that of federally-recognized tribes. The myth that the Attorney General Office advances at every turn that "Indian Tribes" do not exist in Alaska because of the Venetie case that asserts "Indian Country" does not exist in Alaska ignores the reality that tribes do exist as a result of federal recognition of the existence of tribes based upon tribal member enrollment.

As a result, the State Attorney office has litigated against Alaska Natives and tribes on children and family matters, and other similar issues. The State of Alaska has lost much of such litigation, but continues to oppose the recognition of tribes and tribal jurisdiction to administer and oversee the "inherent internal

affairs" of tribal members as recognized under the US Constitution and federal law.

Wayne Anthony Ross has a long documented public record of advocacy against the recognition of tribal entities in Alaska. He has taken public positions against the Alaska Native Claims Settlement Act and its amendments. He is opposed to Title 8 of ANILCA, the subsistence provision wherein a rural Alaskan priority preference for the gathering, hunting, and fishing is provided under federal law on federal lands in Alaska. Many of us in the Alaska Native community leadership have looked forward to the time when "constructive engagement" with the Governor of Alaska can be started and undertaken between the Alaska Native community and the State. The Confirmation of Wayne Anthony Ross would not assist or usher in this opportunity. It would continue the ongoing question by many Alaskans "who speaks and maintains the public policy relationships between the State of Alaska and the Alaska Native community and Tribes?" Is it the Governor with the Legislature or the State Attorney General?

The Confirmation of Wayne Anthony Ross would represent the extreme extent the State of Alaska would go to in order to prevent progress and relationships between the State of Alaska and Alaska Natives and their tribal institutions. Therefore, we urge you to oppose the Confirmation of Wayne Anthony Ross as Attorney General for the State of Alaska.

Robert W. Loescher Biography

Robert W. Loescher has served in executive capacity of many private and public corporations over the last forty (40) years. He was born and raised in Juneau, Alaska. He graduated from Fort Lewis College at Durango, Colorado. He started his career by working with Alaska Legal Services – a poverty law office. From there he worked in the Central Council of the Tlingit and Haida Indian Tribes of Alaska, a federally recognized tribal government, in the Office of Development Planning doing strategic planning and economic development. He was the Executive Director of the Tlingit and Haida Housing Authority, Tlingit and Haida Housing Development Corporation and the Tlingit and Haida Regional Electrical Authority. He led the development of over one thousand housing units and the supporting infrastructure of water, sewer, electrical generation and distribution, telephone, roads, health clinics and community halls throughout Southeast Alaska.

He served for twenty-five (25) years in executive management capacities and ended a career as the President and CEO of Sealaska Corporation – a regional Native corporation organized under the Alaska Native Claims Settlement Act. The company was listed as a Fortune 1,000 company.

Mr. Loescher owns two consulting companies – Loescher & Associates, LLC and Alaska Technology Development Group, LLC. These companies consult in economic development, technology and various industries. Over the last three years, Mr. Loescher has organized SBA 8(a) Alaska Native Corporation enterprises engaged in the technology industry with the focus on homeland security, defense industry, technology training and development of technology application software and maintenance. Additionally, he is currently involved in regional energy development, specifically, a member of the Tlingit and Haida Energy Working Group; the Thomas Bay Hydroelectric Project, energy

transmission lines, gas utility systems with the Alaska Intrastate Gas Company, and waste to energy with the Plasma Waste Recycling Company.

Mr. Loescher is familiar with Alaska Governmental affairs and activities in Washington, D.C. He served on the previous City Council of Juneau and served on the first Assembly of the City and Borough of Juneau. At the State level, Mr. Loescher served as a Director on the Alaska Industrial Development and Export Authority and the Alaska Energy Authority Board as well as serving on the Alaska State Fiscal Planning Commission; appointed by Governor Tony Knowles. Additionally, Mr. Loescher served on the transition teams for several newly elected Governors of Alaska. At the national level, Mr. Loescher was appointed by President Clinton to serve on the National Gambling Impact Study Commission and; served on the Federal Citizens Advisory Commission on Federal Lands.

He presently serves as a community councilmen and delegate to the Central Council of the Tlingit and Haida Indian Tribes of Alaska, a federally recognized tribal government; a member of the Douglas Indian Association, a federally recognized tribal government; and a camp councilmen for the Juneau Alaska Native Brotherhood Camp #2.

Contact Information:

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Fax:	907-586-8236
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	Juneau, Alaska 99801

Statement of Nelson N. Angapak, Sr.
Vice President, Alaska Federation of Natives

Testimony Before the Alaska State Legislature Senate Judiciary Committee
On the Confirmation of Wayne Anthony Ross
As Attorney General of Alaska
April 8, 2009

Good afternoon, Chairman French and members of the Senate Judiciary Committee. My name is Nelson N. Angapak, Sr., and I am Vice President of the Alaska Federation of Natives ("AFN"). Thank you for the opportunity to testify on the confirmation of Wayne Anthony Ross as Attorney General of Alaska. Seated with me is George Irvin, Senior Assistant to the President of AFN.

AFN EMPHATICALLY OPPOSES THE CONFIRMATION OF MR. ROSS FOR ATTORNEY GENERAL.

On Tuesday, March 30, AFN's Legislative Committee unanimously adopted a motion to oppose this nomination. I will highlight for you some of the reasons behind that decision.

Subsistence: Mr. Ross has been quite vocal in his opposition to recognition of a rural subsistence priority in state and federal law. His opposition to the rural priority found in federal law demonstrates a profound disrespect for Alaska Native peoples, for whom subsistence activities are an imperative. Subsistence hunting, fishing and gathering are the very core of Alaska Native life, as they have been for thousands of years. The vast majority of an estimated 125,000 Natives in Alaska practice subsistence regularly in order to put food on the family dinner table. Fish constitute 59% of the statewide rural subsistence diet -- subsistence activities *take only 2% of all the fish annually harvested in Alaska*. The other 98% go to commercial, personal use, and sport users. Most subsistence activities occur on federal lands and waters, where Congress has unequivocally enacted a rural priority (in Title VIII of the Alaska National Interest Lands Conservation Act of 1980).

If subsistence cannot be protected against overwhelming competition from other users, most residents living in rural villages will not be able to feed themselves, and will gradually be forced to abandon their homes and villages to move into urban areas. Such an enormous out-migration to Alaska's cities would create a socio-economic crisis that would be detrimental to all Alaskans - especially urban residents. A rural priority is not just humane, it is the intelligent thing to do in the interest of all Alaskans.

In his most recent gubernatorial bid, Mr. Ross stated that, if elected, he would hire "...a band of junkyard dog assistant attorney generals to challenge the law [Title VIII of ANILCA] ...." [1] This approach has already failed, however - many times. Opponents to the rural subsistence priority contained within Title VIII of ANILCA have challenged the

[1] *"Palin Names New Attorney General: Colorful Anchorage Attorney known for prompting gun rights,"* by Dan Joling, Associated Press, updated at 3/27/09.

constitutionality of this federal law time and time again in the federal courts. Each and every time, the courts have consistently upheld the rural subsistence priority on federal lands and waters in Alaska. It is well-settled law. Further litigation will simply waste time, human resources, and precious state monies that could be spent on other matters.

AFN wonders why any Attorney General would want to hire "junkyard dog" assistant attorneys general for any purpose?

Tribal Sovereignty: Mr. Ross's contempt for Native leaders and their governing institutions is patently obvious. He opposes the very existence of tribal governments, which continue to exercise their governmental authority as they have since time immemorial. Millions of federal dollars come into this state to serve Alaska Natives simply because the United States has a government-to-government relationship with the tribes in Alaska. These monies flow to tribal governments and non-profit tribal consortia to deliver vital human services, such as health care. If Mr. Ross actually wants to deprive 125,000 Alaskans of their health care, the surest way to achieve that is to attack the tribes enumerated within the Federally Recognized Indian Tribe List Act.[2] If Mr. Ross does not know about or understand the connection between the recognition of tribal governments and the many millions of federal dollars that come into Alaska to serve Alaska Native peoples, he is ignorant and uninformed. If he simply does not care, he is irresponsible.

Alaska Native Claims Settlement Act: Mr. Ross has often opposed the 1971 Alaska Native Claims Settlement Act ("ANCSA"), and the 1988 congressional amendments thereto. In 1987, he wrote that implementation of ANCSA had been a waste of public resources by Congress, claiming that: "...[w]e average Americans, native and non-native alike, haven't got much to show for the expenditure...and transfer of land."[3]

That statement is not true. By settling Alaska Natives' claims to the land, Congress cleared the right-of-way for construction of the oil pipeline. The enactment of ANCSA, more than any event since Statehood, created modern Alaska. Everything that we have here today was made possible by that 1971 real estate sale between Natives and the United States. If it had not happened, the pipeline, the oil and the resulting economic boom would have been held up for decades in the federal courts. Mr. Ross's view also completely disregards the abiding legal principle of aboriginal land title, which descends from colonial times. Mr. Ross does not understand ANCSA's history and legal foundation any more than he recognizes the benefits it provided to everyone in Alaska.

Mr. Ross also criticized the 1991 Amendments to ANCSA, noting that they would both promote tribal authority in Alaska, and allow "flim-flam artists [to] gain control of native lands..."[4] The truth, however, is the exact opposite of Mr. Ross' statement. Most of the tribes in Alaska opposed the 1991 amendments because the statute failed to give tribes sufficient authority over subsistence. Mr. Ross is clearly uninformed, and uneducated, about the laws that govern subsistence, and simply waves the term "tribal sovereignty" as

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[2] Federally Recognized Indian Tribe List Act of 1994, Pub. L. 103-454, codified at 25 USCA § 479a and 479a-1.

[3] *ANCSA deserves the Golden Fleece Award*", Anchorage Times, April 26, 1987.

[4] "*Amendments Unfair to Individuals,*" Anchorage Times, August 6, 1986.

a scare tactic to agitate the citizens of Alaska. His actions are nothing more than political shenanigans, and reflect his ignorance of the law that governs in this state.

Respect for Government Institutions: Mr. Ross was among several candidates for the Alaska Supreme Court seat vacated by Justice Bryner in 2007, and for the Court of Appeals seat vacated by Judge Stewart in 2008. He did not make the "short list" of qualified applicants sent to the Governor for either seat.

The Alaska Judicial Council handles nominations for the state judiciary, which rates all candidates by means of a Bar Survey sent to attorneys who are members of the Alaska Bar Association. To encourage frank, honest answers, the survey is anonymous. In a letter recently published by the Alaska Bar Association, Mr. Ross strongly objected to the anonymity of the Bar Survey as he wanted to know who had said-what about him. The secret ballot, however, is an axiom of political process in our democratic Republic. Mr. Ross's objection to the use of this process as part of an assessment for judicial fitness demonstrates a certain disregard for democracy, itself.

I reiterate AFN's opposition to confirmation of Mr. Ross as the Attorney General for Alaska. The Attorney General's responsibilities include representation of all citizens of Alaska, including those of us who are Alaska Natives. Mr. Ross holds strident beliefs in opposition to the two core issues that affect the survival of our Native communities and people: subsistence and tribal sovereignty. This raises a major concern about his ability to represent Alaska Natives on an equal footing with other citizens of Alaska.

Thank you for giving me this opportunity to present this testimony on behalf of AFN.

I ask that my written statement and comments be incorporated into record of this meeting.

Alaska Native Brotherhood/Alaska Native Sisterhood
Glacier Valley Camp #70

RESOLUTION NO. # 01-09

Title: Requests that Executive Committee Grand Camp oppose the confirmation of Wayne Anthony Ross to Attorney General for the State of Alaska.

WHEREAS, the Alaska Native Brotherhood and Sisterhood, Glacier Valley Camp #70 in a special session took up the subject of the appointment of Wayne Anthony Ross by Governor Sarah Palin of the State of Alaska, and

WHEREAS, Camp 70 recognizes it is not in the best interest of Alaska Native people and Alaska to have Wayne Anthony Ross as Attorney General for the State of Alaska, and

WHEREAS, Camp 70 believes Wayne Anthony Ross does not and will not honor subsistence agreements already agreed to by Alaska Natives and the state, but will also actively work against enforcement of subsistence rights and will not fairly represent their interest in future disputes between Alaska Natives, Commercial, Commercial Sport, and Sport users, and

WHEREAS, Camp 70 believes Wayne Anthony Ross will not work towards ending the energy price disparity that exists between predominantly Native rural communities and urban non-Native communities that seem to enjoy comparatively low cost of energy, and

WHEREAS, Camp 70 believes these issues are of regional and statewide concern that can best be addressed by testimony and evidence being provided by Grand Camp on behalf of all Camps organized in favor of ending discrimination and diminishment of Native rights, and

WHEREAS, Camp 70 knows the Attorney General for the State of Alaska has tremendous impact over the day-to-day life of Alaska Natives and therefore must be an individual who understands Native rights and honors the State of Alaska's obligation to treat all Alaskans fairly within the proper framework, jurisdiction and attitude, and

WHEREAS, Camp 70 believes Wayne Anthony Ross does not comprehend, understand and has demonstrated no interest in the special relationship between Alaska Natives, Tribal entities, the United States and the State of Alaska, and

NOW THEREFORE BE IT RESOLVED, that the Camp 70 requests that Grand Camp of Alaska Native Brotherhood and Sisterhood take all actions necessary to prevent the confirmation of Wayne Anthony Ross by taking actions including:

1. Providing direct testimony against his appointment
2. Calling all Local Camps to action and requesting written and oral testimony against his appointment
3. Providing a copy of this Resolution to Senators Albert Kookesh and Bert Stedman for further distribution to all State Senators
4. Providing a copy of this Resolution to Representatives Beth Kerttula, Cathy Munoz and any other Representative who is a member of the Alaska Native Brotherhood and Sisterhood for further distribution to all State Representatives
5. Authorizing the ANB and ANS Grand Presidents provide written and oral testimony at the Judiciary Committee hearings of each chamber on behalf of all members of the ANB and ANS

_____ _____

ANB Camp 70 President ANS Camp 70 President

ATTEST: I certify that this resolution was adopted by the ANB/ANS Camp 70 in a Special Meeting in Juneau, Alaska, on April 4, 2009.

_____

ANB Camp 70 Secretary

KAWERAK , INC. ○ P.O. Box 948 ○ Nome, AK 99762

TEL: (907) 443-5231 • FAX: (907) 443-4452

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TELLER
UNALAKLEET
WALES
WHITE MOUNTAIN

RESOLUTION 2009-03

A RESOLUTION IN OPPOSITION TO THE CONFIRMATION OF WAYNE ANTHONY ROSS AS ATTORNEY GENERAL FOR THE STATE OF ALASKA

WHEREAS, Kawerak, Inc. is a tribally authorized non-profit consortium whose mission is to assist, promote and provide programs and services to improve the social, economic, educational, and cultural well being of the people within the Bering Strait region; and

WHEREAS, the communities within the Bering Strait region include: Brevig Mission, Council, Diomede, Elim, Gambell, Golovin, King Island, Koyuk, Mary's Igloo, Nome, Savoonga, Shaktoolik, Shishmaref, Solomon, Stebbins, St. Michael, Teller, Unalakleet, Wales and White Mountain; and

WHEREAS, Governor Palin appointed Wayne Anthony Ross to serve as Attorney General for the State of Alaska on March 26, 2009 and the legislature will confirm or not confirm the appointment on April 16, 2009; and

WHEREAS, the Governor's news release, dated March 26, 2009 stated, "As Attorney General, Ross will work with the governor on issues surrounding development of Alaska's rich natural resources as the state continues its efforts to provide energy security for America and lower energy costs for Alaskans. As Attorney General, Ross also will help the governor protect Alaskans' right to bear arms, and he will work tirelessly to manage Alaska's fish and game resources for abundance through science and not politics. Governor Palin added, "Now more than ever, it is essential that Alaska's sovereignty be protected, that there is unity in Alaska, and that we all stand together to see Alaska's potential fulfilled with energy security contributions to ourselves and the nation, while protecting the Constitution"; and

WHEREAS, subsistence is central to our regions existence and vital to the health and welfare of regional residents; and

WHEREAS, Kawerak, Inc. supports a rural subsistence preference over sport and commercial interests to insure residents within the Bering Strait region can harvest fish and game for their health and welfare; and

WHEREAS, Subsistence has priority over sport and commercial interests in the State of Alaska; and

WHEREAS, Govenor Palin's Attorney General must insure that subsistence take priority over other interests as prescribed in law and regulation; and

WHEREAS, Wayne Anthony Ross, represented sport hunters in the 1989 lawsuit that overturned as unconstitutional the state's subsistence preference for rural residents; and

WHEREAS, in a Anchorage Daily News, August 13, 1998 article titled "Fed up, Ross stages battle for guns, family and Alaska pride," Wayne Anthony Ross was quoted as saying, "Rural preference is wrong and not necessary to ensure subsistence foods;" and

WHEREAS, tribal governments in Alaska are recognized under federal law; and

WHEREAS, tribal governments provide valuable leadership, resources, processes and tools to address the socio-economic, educational, and cultural needs of the Bering Strait region; and

WHEREAS, Governor Palin, with her authority to appoint key positions such as the Attorney General, has an opportunity to address rural concerns, namely the rural subsistence priority and tribal sovereignty; and

WHEREAS, Wayne Anthony Ross' stance regarding tribal sovereignty is reflected in his comments in the article titled "Indian Country: 2 Destinies, 1 Land" by Tom Kizzia in the Anchorage Daily News, June 29, 1997 in which Mr. Ross was asked to comment on the issue pending in the Venetie Indian Country case. He said "It's a giant leap backward into the 19th century...They want to see Alaska balkanized into little fiefdoms where these self-proclaimed Native leaders will reign supreme with the help from the Great White Father;" and

WHEREAS, Governor Palin's candidate for appointment of Attorney General should be an individual who exemplifies leadership skills that will seek collaboration with all local governments to resolve vital issues which would lead to safe, economically viable AND healthy communities; and

WHEREAS, Wayne Anthony Ross' record and professional stance on rural subsistence priority and tribal sovereignty exemplifies an extreme bias which will further exacerbate the process to resolve vital issues to our regional communities.

NOW THEREFORE BE IT RESOLVED THAT the Kawerak Board of Directors oppose the confirmation and appointment of Wayne Anthony Ross to serve as Attorney General for the State of Alaska.

By: _____
Robert Keith, Chairman

CERTIFICATION

I, the undersigned Secretary of the Kawerak, Inc. Board of Directors, hereby certify that the foregoing resolution was adopted by majority vote of the Board of Directors of Kawerak, Inc. during a duly called meeting on this ____ day of April, 2009.

By: _____
Kawerak Board Secretary

Cindy Smith

From: Chris & Nickie [cnbx3@mtaonline.net]

Sent: Friday, April 10, 2009 11:55 AM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes; Sen. Hollis French; Sen. Bill Wielechowski; Sen. Lesil McGuire; Sen. Gene Therriault

Subject: Ross Confirmation

Dear Representatives and Senators of the State of Alaska Judiciary Committee,

I belong to a very conservative family in the Mat-Su Valley and may be rocking the boat for some; however, in light of the testimony put forth during confirmation hearings for Wayne Ross for Attorney General, I'm compelled to urge you to ask the Governor to provide an alternate candidate that would prove capable of serving all Alaskans.

Some of the testimony given during the hearings is deeply disturbing especially the testimony of Leah Burton, but even if Ms. Burton's allegations turn out to be false other issues have also been brought to attention that cannot be disputed. This is an attorney that has in the past demonstrated a disregard for basic freedoms given to Americans through our constitution such as freedom of speech, and in all honesty his displays of general contempt towards other people, even during these proceedings, leads me to believe that this man is probably not the most stable person the Governor could have chosen for this position. In replacing Talis Colberg, Alaskans deserve better than Wayne Ross.

Thank you,
Nicole Brunnhoelzl

Hm. 746-1153
Nickie's cell 355-0754

Cindy Smith

From: Barbara Hanson [barbhansonak@yahoo.com]

Sent: Friday, April 10, 2009 12:59 PM

To: Jane Pierson; Cindy Smith; Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Lindsey Holmes; Rep. Max Gruenberg; Sen. Hollis French; Sen. Bill Wielechowski; Sen. Lesil McGuire; Sen. Gene Therriault

Subject: Public Comment Re: Vote NO on Confirmation of Wayne Anthony Ross as Attorney General

Please add my comment below to the public record.

Dear Members of the House and Senate Judiciary Committees,

I am writing to urge you strongly to vote NO on the appointment of Wayne Anthony Ross as Alaska's Attorney General.

I have followed the political aspirations of Mr. Ross throughout the twenty years that I have lived in Alaska. I must say that I have been appalled many times by his divisiveness, his racist and misogynistic overtones, and with the degree of bullying language that he has often used. It is very clear that Mr. Ross has strong and sometimes extreme political beliefs, including those regarding native sovereignty rights, domestic violence issues, and gay rights.

A person who serves as Attorney General must protect the rights of ALL citizens of Alaska, without prejudice. Objectivity and deference to federal and state law are required of anyone serving in that capacity, by definition of the position. It is clear that Mr. Ross' personal beliefs would preclude his ability to be objective in that position. His appointment would disenfranchise a huge proportion of the Alaska population. The potential for the Attorney General to make politically-biased decisions and court appointments could undermine the rights of many citizens of this state.

I also take exception to this appointment based on the fact that Mr. Ross appears to have no previous administrative experience, and the fact that he does not seem to have experience in other areas of law, including tax law and land use law, which are issues primary to this state.

I hope that you will choose to uphold the rights and concerns of ALL the citizens of the state that you represent, and vote "NO" on this appointment.

Sincerely,
Barbara Hanson
Palmer, AK

Cindy Smith

From: James Behlke [jim@behlke.com]
Sent: Friday, April 10, 2009 1:35 PM
To: Cindy Smith
Subject: AG nomination

Dear Ms. Smith:

This comment is for Senate Judiciary Committee (I made an earlier comment today but things seem to be happening quickly).

I just read Mr. Ross's letter responding to Leah Burton's statements.
This letter may be read at:

http://media.adn.com/smedia/2009/04/10/11/4-10-09
_Letter_from_AG_Ross.source.prod_affiliate.7.pdf

Note he also attacks the credibility of a SECOND person who witnessed his remarks at ANOTHER meeting. This meeting was more recent-- he can't deny it occurred, or his presence there, like he denied the 1991 meeting. So apparently the only thing left he can do is attack the credibility of the witness.

Also, in his letter, what's that video store story all about?

This letter entirely seems a bit strange.

I hope we won't feel rushed to decide on Mr. Ross's nomination. If a special session is necessary, so be it. If we Alaskans need more time for answers, let's take it.

Sincerely,

Jim Behlke

5762 Flagstone Cir
Anchorage, AK 99502

Cindy Smith

From: dicklafever@ak.net on behalf of Dick LaFever [dicklafever@ak.net]
Sent: Friday, April 10, 2009 12:14 PM
To: Cindy Smith
Cc: Jane Pierson
Subject: Ross/Attorney General Hearing

Hello: Please share my concern with all House Members. I have already sent this same email to members of the House Judiciary Committee, this morning!

Sincerely,
Dick LaFever

========

Alaska House of Representatives:

As a 30+ year Alaskan, a registered nonpartisan, and a concerned citizen, I am convinced that Mr. Ross's
appointment as Attorney General would have a detrimental and divisive impact on our state. His philosophy, personal behavior, and record has been one that demonstrates his narrow mindedness, disrespectful and chauvinistic views.

I ask that you not approve Mr. Ross as Attorney General. Out state deserves better!

Sincerely,

Kenneth R. (Dick) LaFever
815 W 19th Avenue
Anchorage, Alaska
258.7002
dicklafever@ak. net

Cindy Smith

From: Whitney Lowe [wlowe97@gmail.com]
Sent: Friday, April 10, 2009 11:17 AM
To: Jane Pierson
Cc: Cindy Smith
Subject: Re: please send this in your words

I would like to register my severe disapproval of Sarah Palin's pick,Wayne Anthony Ross, for Alaska Attorney General. He shows a blatant disregard for native rights in Alaska. His perspective about resource development also is extremely short-sighted and would represent one more step backwards for this state which needs to get away from our reliance on industry-influenced governing.

Whitney Lowe
PO Box 15303
Fritz Creek, AK 99603
wlowe97@gmail.com

Cindy Smith

From: Elise Wolf [ewolf@alaska.net]
Sent: Friday, April 10, 2009 11:00 AM
To: Cindy Smith
Subject: No on Olsen for AG

Hello,

I would like to register my disapproval of Wayne Anthony Ross for Attorney General.

Several reason are: his comments regarding Drift River Terminal and the volcano; his comments and beliefs regarding Alaska Natives and subsistence in rural areas; his beliefs regarding resource development in Alaska; and his comments regarding the Exxon Valdez Oil Spill.

Thank you,

Elise Wolf
PO Box 15303
Fritz Creek, AK 99603
907-235-2348

Cindy Smith

From: maryla@alaska.com on behalf of Mary La Fever [maryla@alaska.com]
Sent: Friday, April 10, 2009 10:23 AM
To: Cindy Smith
Subject: About the Ross appointment

Hello Cindy:
I am not certain how to do this, but want my vote/desire to be considered and counted: that these representatives would get my recommendation NOT to approve the appointment of mr. Ross. I am totally against his being in public office at all.
Is it possible for you to forward this to these folks at this late date?
Thank you.

Mary La Fever
Anchorage resident 41 years.

Senators French, Wielechowski, McGuire and Therriault

Cindy Smith

From: Kim Kloecker [kloecker@acsalaska.net]
Sent: Friday, April 10, 2009 10:19 AM
To: Jane Pierson
Cc: Cindy Smith
Subject: [Fwd: Please, no Wayne Anthony Ross]

Dear Ms. Pierson and Ms. Smith,

I'm hoping that I'm not too late with my comments regarding Mr. Ross. For the record, I am adamantly opposed to his confirmation!

thank you,
Sincerely,

Kim Kloecker

---------- Original Message ----------
Subject: Please, no Wayne Anthony Ross
From: "Kim Kloecker" <kloecker@acsalaska.net>
Date: Fri, April 10, 2009 10:14 am
To: Representative_Lindsey_Holmes@legis.state.ak.us
Cc: Senator_Hollis_French@legis.state.ak.us

Dear Representative Holmes and Senator French,

I am a registered voter in the Spenard/Turnagain area of Anchorage. I'm writing to ask that you take action to ensure that the appointment of Wayne Anthony Ross is not confirmed. I am fully supportive of "big" personalities and of our governor's right to appoint someone who shares her views on many issues, however I feel that Mr. Ross is not an acceptable choice for Alaska. I do not believe, as he claims, that he will be a different person representing the state versus private citizens.
A vote to confirm him would be an insult to women, Native Alaskans, indeed-- to all Alaskans. Please urge the governor to find a more suitable candidate.

Sincerely,

Kim Kloecker
2908 West 34th Ave
Anchorage AK 99517

907-245-4476

Cindy Smith

From: Turner, Michelle [Michelle.Turner@asrcenergy.com]
Sent: Thursday, April 09, 2009 6:39 PM
To: Sen. Lesil McGuire; Rep. Craig Johnson
Cc: Jane Pierson; Cindy Smith
Subject: Attorney General Confirmation

Dear Ms. McGuire & Representative Johnson:

I am writing you to request that you do not confirm Mr. Wayne Anthony Ross for the position of State Attorney General.

I believe that Mr. Ross does not have the disposition to be able to carry out the duties of the State Attorney General in a fair and impartial manner and for the benefit of ALL Alaskans. The obvious disdain with which Mr. Ross' holds people who disagree or who live lives unlike his own make it impossible to for me to think that he will carry out the responsibilities of the Attorney General.

Mr. Ross' opinion that there should be no subsistence preference bizarre and offensive, since there is literally no other way for people in rural Alaska to subsist. The opinions he has stated are one straw short of outright bigotry. His statements (for example testimony at yesterdays hearing) betray his view of the world: WAR. He likens the Federal government to a bear or giant out to devour Alaskans, and likens himself to a general at war (with the Feds?). He finds gays "degenerate," dismisses tribal sovereignty, and opposes the women's rights movement. If these are the people he does not represent, who are left? Is this really the best person Alaska can find to stand up and fight for our rights when we have been victims of violence or a miscarriage of justice?

Thank you for considering this opinion,
Michelle Turner

Michelle T. Turner
Senior Scientist
ASRC Energy Services Regulatory & Technical Services 2700 Gambell Street, Suite 201Anchorage, AK 99503
Ph: 907.339.5460 I Fax: 907.339.5475 I Cell: 907.351.6342

Michelle.Turner@asrcenergy.com www.asrcenergy.com Effective and dynamic solutions for our clients and their projects form the cornerstone of our operations.

Cindy Smith

From: dpharris@gci.net on behalf of Dennis P. Harris [dpharris@gci.net]
Sent: Thursday, April 09, 2009 11:51 PM
To: Alaska State Senators
Subject: Vote NO on Wayne Anthony Ross

Follow Up Flag: Follow up
Flag Status: Red

Dear Senator,

I urge you to vote NO on the confimation of Wayne Anthony Ross as Attorney General. His record and his testimony before the Senate Judiciary Committee both indicate that he is unsuited to be the State of Alaska's chief legal officer.

He is unfit to serve as Attorney General because of

1. His opposition to the subsistence rights given to rural residents by ANILCA;
2. His characterization of the US government as Alaska's "enemy";
3. The racism expressed in his public statements over the past 20 years, including his statements to the Senate Judiciary Committee; and
4. His statements in public meetings that "If a guy can't rape his wife…who's he gonna rape?" and "There wouldn't be an issue with domestic violence if women would learn to keep their mouths shut." that indicate his prejudice against women, as quoted in the testimony of Leah Burton.

As Ms. Burton said, "His clear racial and gender prejudice raise serious concerns with regard to his ability to represent all residents of the State of Alaska fairly and impartially as their Attorney General." I concur with her conclusion, and ask you to vote against his confirmation as Attorney General.

Dennis P. Harris
544 W. 12th St.
Juneau, Alaska 99801-1524

dpharris@gci.net

Cindy Smith

From: drobbins@gci.net on behalf of Doris Robbins [drobbins@gci.net]
Sent: Thursday, April 09, 2009 6:54 PM
To: Sen. Gene Therriault; Sen. Lesil McGuire; Sen. Hollis French; Sen. Bill Wielechowski
Subject: Testimony for the record: Confirmation for Attorney General
Attachments: Doris Robbins.vcf

Testimony for the Record

Senators,

I was going to stay out of this until I began to hear more about Mr. Ross. I have observed the Senate Judiciary Committee, and know you to be real By-the-Constitution legislators. I would hope that means you don't really need to hear from me.

However, if you are weighing the opinions of Alaskans I want you to know that I feel it would be outrageously wrong to put anyone in the AG position who can not be trusted to follow Alaska law without bias toward his own personal views. I fear that Mr. Ross has a personal agenda, or would blindly follow his or the governor's lead, without holding it up to the test of Alaska law.

I'm not one of the minority that you are hearing speak tonight, 4/09/09. However, if there is any truth to his wanting to end ANLCA or any other special consideration for any group, he has no business serving as the AG. I'm just a plain old Caucasian. I did learn, much to the distaste of relatives as I grew up in the South, to particularly respect the rights of the individual to equal/fair treatment. I fear that would not be the case by Mr. Ross.

I hope you reject this candidate.

Sincerely,

Doris Robbins

drobbins@gci.net
1281 Overhill Dr.
Fairbanks AK 99709
(907) 374-0597

Cindy Smith

From: L. Hamner [rainraven44@hotmail.com]
Sent: Thursday, April 09, 2009 10:32 PM
To: Cindy Smith
Cc: Jane Pierson
Subject: Confirmation hearings for Wayne A. Ross

Honorable members of the Alaska State Legislature,

I am writing about the confirmation hearings and proposed appointment of Wayne Anthony Ross for Attorney General of Alaska.

First, let me say that I am a resident of this great state, not someone from outside.

Second, while I am sure that Mr. Ross has some fine qualities, I don't believe that he should be confirmed as OUR Attorney General. I say OUR A.G. because, like all civil servants, we the citizens are his employers. As one of his employers, I think he is fundamentally incapable of equally representing the ALL of the citizens of Alaska, let alone ensuring that every citizens basic constitutional rights are not trampled on. Further, I believe that Mr. Ross is incapable of representing the citizens of this state whenever our rights contradict the chosen path of our Governor.

I find it intolerable that a person who has publically stated "If you can't rape your wife, who can you rape?" would be seriously considered for the position of A.G.

I find it unexplainable that a person who has publically supported a group that advocates committing domestic violence against their wives and children as a means of silencing and forcing familial compliance to avoid "governmental interference" (i.e. being forced to share custody and/or pay child support) would be seriously considered for this position.

I find it inexcusable that someone who has publically made racist comments about minorities would be considered for this position.

I find it unbelievable that a person who believes that the federal government is our enemy would be considered for this position.

I find it laughable that a person who has a long standing membership in a paramilitary group treading the narrow line between "self defense" and being a anti-government militia would be considered for a position within the government.

In short, please do not confirm this individual as OUR A.G. Alaska has no dearth of competent lawyers. Let's all encourage the Governor to choose one who is not a misogynist, domestic violence supporting, racist.

Thank you for your consideration and time,
Sincerely,
Lacy Hamner

905 Richardson Vista Rd. #46
Anchorage, AK 99501

907.929.2683

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Cindy Smith

From: Patricia Gaedeke [windpond@gmail.com]
Sent: Thursday, April 09, 2009 10:26 PM
To: Cindy Smith
Cc: Jane Pierson
Subject: Wayne Anthony Ross

In a poll in 2007 containing 13 candidates, and in 2008 with 14 candidates, for a seat for the Alaska Supreme Court, Wayne Anthony Ross scored the lowest overall and in each of the 6 categories (Professional Competence, Integrity, Fairness, Judicial Temperament, Suitability of Experience, Overall).

(information for this post comes from the **Alaska Budget Report** - Volume 19, No. 12)

Please convey my very strong opinion that Wayne Anthony Ross NOT be confirmed as Attorney General. His confirmation would be a disaster for Alaska.

Patricia Gaedeke, Owner
Iniakuk Lake Wilderness Lodge, LLC
Fairbanks, AK
www.gofarnorth.com
info@gofarnorth.com
iniakuk@gmail.com

Cindy Smith

From: Michael Sobocinski [msobocin@yahoo.com]
Sent: Friday, April 10, 2009 7:55 AM
To: Cindy Smith
Subject: Attorney General Nomination

April 10, 2009

Senate Judiciary Committee
Cindy Smith, Committee Aide
cindy_smith@legis.state.ak.us
907.465.3717

To Senators French, Wielechowski, McGuire and Therriault:

I am writing to express my deep concern over the appointment of Wayne Anthony Ross to the position of Attorney General.

Mr. Ross's behaviors over time seem to demonstrate a lack of professionalism coupled with at least an insensitivity to the needs of many people in our state whose values and views differ from his own. Unfortunately his actions may well represent intolerance and lack of respect for others. In many instances these are people who are relatively disempowered (e.g., victims of domestic violence) in the political system, and who require an advocate in the person of the Attorney General. Mr. Ross has given us serious reason to doubt his ability to represent the best interests of all Alaskans.

In addition, his antagonistic stance regarding the relationship between the United States Government and the State of Alaska indicates either an unwillingness or an inability to enter into productive, solution-focused dialogue on complex issues that impact the well-being of Alaskans.

I urge you to reject Mr. Ross's appointment to the position of Attorney General.

Thank you for your consideration of these concerns.

Michael Sobocinski
20021 New England Drive
Eagle River, AK 99577
907-622-5759

Cindy Smith

From: lwhiting@arctic.net
Sent: Thursday, April 09, 2009 10:51 PM
To: Cindy Smith
Subject: NO WAR

Greetings,
Please vote Against confirmation of Wayne A Ross for attorney general.

We need to work with the federal government on many issues, including the sensible management of all our natural resources. I see Mr Ross as a very divisive person not only among Alaskans but in his remarks about the federal government.

Charlene Whiting
Big Lake

If you think you are too small to be effective, you have never been in the dark wi

Gustavus, Alaska
April 9, 2009

Senator Hollis French
Alaska State Senate
Juneau, Alaska

Dear Senator French:

Wayne Anthony Ross would be an Alaska Attorney General with a strong political agenda, which I believe is not appropriate for the position. Among other things, I'm afraid that we'll wake to the morning news telling us that the State of Alaska has initiated or signed on to various litigation that we, as a body politic, would never have initiated.

Among my many concerns is his attitude toward gay and lesbian people, whom he has called "degenerates," etc. A number of the finest people I know in their capacity as citizens and community members are gay or lesbian. Moreover, I have two gay nephews and a gay cousin, all wonderful people whom I love. Most people, in fact, have gay and lesbian people in their families. These people deserve the respect and rights of all Americans, and of humans in general. As far as I can tell, being gay is something like being left-handed, a condition that falls to a significant minority of people.

I am also concerned about Mr. Ross's attitudes toward subsistence rights. He is a strong voice for the urban-suburban hunter, which is fine in many situations but not in situations where there is a shortage of game and fish, and urban hunters want to hunt in the backyards of rural communities. The survival of Alaska's rural communities, especially, but not only Native communities, is in question now even more than usual. We need to protect a subsistence preference because it is essential to the economies of rural communities and to the psychological and social basis of rural life.

So I hope you will not confirm Wayne Anthony Ross as State Attorney General.

Yours truly,

Judy Brakel
Box 94
Gustavus, AK 99826

Sara Jackinsky
PO Box 1044
Homer, AK 99603
907.235.6417
sarajackinsky@gmail.com

April 9, 2009

To the Senate & House Judiciary Committees of the State of Alaska

cc: Rep Paul Seaton, Sen Gary Stevens

I am writing to express my concerns about the appointment of Wayne A. Ross as Attorney General of Alaska. A confirmation of this appointment will be detrimental to the people of the State of Alaska. Please do not confirm this appointment.

1. Mr. Ross has taken a position that will undermine the subsistence rights of Alaska Natives.
2. Mr. Ross has taken a position that is not respectful of the rights of gay, lesbian and transgender Alaskans.
3. Mr. Ross has taken a position will perpetuate and perhaps increase the incidence of domestic violence in Alaska.

Mr. Ross is not the person that should be in the position of Attorney General of Alaska.

Thank you for your consideration.

Sincerely,

Sara L. Jackinsky

Cindy Smith

From: Roger Ranch [bonesetter@clearwire.net]

Sent: Thursday, April 09, 2009 5:13 PM

To: Sen. Albert Kookesh; Sen. Bettye Davis; Sen. Bill Wielechowski; Sen. Donny Olson; Sen. Hollis French; Sen. Joe Paskvan; Sen. Joe Thomas; Sen. Johnny Ellis; Sen. Lyman Hoffman

Subject: W.A.R.

Dear Senators,

Please, please DO NOT confirm Wayne Anthony Ross. We would be turning back the clock to the mid ages.

R. Ranch
boneseter@clearwire.net

Cindy Smith

From: Sheila Reynolds [ukreynolds@yahoo.com]
Sent: Thursday, April 09, 2009 2:53 PM
To: Cindy Smith
Subject: Re: The Confirmation Hearing for Wayne Anthony Ross as AG

Ms. Smith,

It would be much appreciated if you could forward this to those of the House Judiciary Committee so that my concerns can be related and entered as public record. I will phone you to ensure that this email has been received by your office.

Thank you,
Sheila Reynolds
Eagle River, AK
(907) 622-8222

To the Senate & House Judiciary Committees of the State of Alaska,

I am writing this letter to voice my concerns about the appointment by Governor Palin of Wayne Anthony Ross as Attorney General of Alaska. I sincerely hope that this appointment will not be confirmed.

I am certain that you have already heard many constituents voice their quite justified concerns about the position that Mr. Ross has taken in regard to the subsistence rights of Alaska Natives.

I am certain that you have already heard many constituents voice their quite justified concerns about the position that Mr. Ross has taken in regard to homosexuals.

I am certain that you have already heard many constituents voice their quite justified concerns about the position that Mr. Ross has taken in regard to the issue of domestic violence.

I am a born and raised Alaskan who does not believe that the subsistence rights of Alaska Natives in any way infringe on my rights as an Alaskan or citizen of the United States of America. I do not believe that one person's choice of life partner infringes on my personal freedoms or ability to lead an honest, productive and happy life, nor does it infringe on that of my children.

However, words cannot express the concern that I have in regard to Mr. Ross' stated position in regard to domestic violence. Alaska leads the nation in domestic violence and rape statistics. How, in good conscience, can our leadership possibly justify having an Attorney General that holds the beliefs of Mr. Ross? How can our state expect to address and ameliorate these problems with Mr. Ross as our Attorney General?

Domestic violence is a generational problem; I speak as the granddaughter of a woman beaten and eventually killed by her husband. My mother, my aunts and uncles, my cousins and I have grown up without the love of my grandmother. Children are shaped by exposure to domestic violence. Families are changed forever. What is the cost to individuals and society when the cycle of domestic violence is not addressed and treated?

Should Mr. Ross be confirmed as Attorney General, Alaskans will get an Attorney General more concerned with undermining the rural subsistence rights of Alaskan Natives than with addressing the prejudices and challenges that they face daily. Should Mr. Ross be confirmed, Alaskans will get an Attorney General committed to abolishing the rights of gay, lesbian and transgendered Alaskans, rather than supporting the rights of each and every Alaskan regardless of their sexual orientation or religious beliefs. Finally, if Mr. Ross is confirmed as Attorney General, Alaskans will continue to reap the sorrows perpetrated and perpetuated by domestic violence and rape as he fights for gun rights instead of human rights.

Please do not confirm Mr. Ross as Attorney General of Alaska.

Sincerely,

Sheila Reynolds

Cindy Smith

From: Eva Stassen [evastassen@hotmail.com]
Sent: Thursday, April 09, 2009 5:41 PM
To: Cindy Smith
Subject: Attorney General Nominee

Senate Judiciary Committee
Cindy Smith,

I am appalled by the nomination of Wayne Anthony Ross to be our next Attorney General. Public statements he has made in the past (and during his confirmation hearings) make it plain that he will not follow our laws any more than the previous Attorney General did. Apparently, he and Governor Palin are not clear about what the job of Attorney General actually entails. The appointment of Mr. Ross is an affront to all Alaskans, especially natives and women. I strongly urge the judiciary committee to vote "No" on this nominee.

Eva Stassen
11521 Discovery View Dr., Anchorage, AK 99515
907-830-6590

Cindy Smith

From: Jim Helm [jim@atmanagers.com]
Sent: Thursday, April 09, 2009 3:29 PM
To: Cindy Smith
Subject: Wayne Anthony Ross Appointment

Hello

My name is James Helm. I live in Juneau. I wish to go on record as not supporting the nomination of Mr. Ross to state Attorney General. After having seen his stand on issues like subsistence and reviewing a number of cases that he under took while in private practice I do not think he is an appropriate choice for this important office.

His defense of Rep. Kohring indicates to me that he is not on the right side of the corruption issue. We need an Attorney General that will prosecute not defend government corruption. He may state that he was simply doing his job as a defense attorney but this should still be a red flag to anyone that is concerned with cleaning out governmental corruption.

My next issue is with him comes on his record of respecting personal rights of free speech and demonstration. The specific issue is again his defense of a man in Soldotna that threw water on peaceful anti-war protestors during winter. This man then thought is was so much fun he went back and repeated the action. This time he videoed the incident. This represents an unprovoked assault on people that were peacefully exorcising their constitutionally protected right. Again he may say that he was simply doing his job as a defense attorney, but this once more calls his personal views into question. I do not want an Attorney General that thinks that that kind of behavior in acceptable or defensible. It makes me wonder what he might think was reasonable action to take against people that are protesting actions of the state or it's governor.

I am also concerned about his stance on subsistence. I have not found a single native organization that supports his nomination. His refusal to see the importance and need for a rural priority in the subsistence program makes it seem to me that he does not have a good idea of what it means to live in the bush or to need those subsistence rights to survive. To me this means that he will not be able to truly represent all of the states residents equally. This is a critical issue to many of the villages in western Alaska as it the subsistence fishing and hunting problems as well as the high energy costs that are causing a true crisis in this area.

My final issue with the appointment of Mr. Ross to this post is that he has personally represented Gov. Palin in the past as a personal attorney. Given the number of ethics complaints that have been files against our current Governor and that the Attorney General is directly involved in this process is to me a conflict of interest. The Job of the Attorney General in the ethics process is to help decide if a complaint is valid on its merits, not to simply defend the governor regardless of what is alleged. This post should be totally non partisan and committed to the single purpose of enforcing state law regardless of who is involved. We have all seen what happens when this is not how a governmental legal system is not run this way. The fall out from the Bush justice department should be a clear warning against appointing someone to a post like this if there is any indication that partisan politics will play a part in the way that they run their office or select their staff. The information I have been able to gather on Mr. Ross and public statement that he has made make me worry that he would run his offices in exactly this partisan manner and this in not something that Alaska needs.

Please understand that my objection to Mr. Ross is not based on political party. I am registered as non-aligned / Independent (can't remember exactly how it is on the voter card) and have voted for both Republican and Democratic candidates in elections past. This is strictly about my own personal concerns that Mr. Ross will not be a fair and impartial enforcer of the law, and his possible conflict of interest with Gov. Palin due to prior representation.

Thank you for your time. I may be contacted at (907) 321-4334 if you have questions or would like further comment.

James Helm
6734 A. Marguerite
Juneau Alaska, 99801

Cindy Smith

From: Carol Ford [whoville@pobox.alaska.net]
Sent: Thursday, April 09, 2009 3:17 PM
To: Jane Pierson; Cindy Smith
Subject: Ross confirmation

Dear Ms. Pierson and Ms. Smith:
I have written to all the Senators and all but one of the Representatives, and am writing to you just in case those emails aren't read in time, somehow.

I am writing to add my voice to those who ask that the legislature NOT confirm Wayne Anthony Ross as Attorney General for Alaska. I have been an Alaskan for almost thirty years. I am appalled by Mr. Ross's rhetoric, outlook, politics and lack of insight or even common decency - not to mention that even his legal credentials are unimpressive.

I have listened to portions of the senate hearings, and am concerned about Mr. Ross' very personal interpretation of the law to use it to condone racism, misogyny, domestic violence, anti-American violence, interpersonal violence, ecological violence, ignorance of all but his own narrow interests, and a disregard for — ironically — the rule of law.

I write to speak out against confirming Mr. Ross to take on this important position in Alaska's government. This is possibly one of the most important decisions the legislature will make this session, in my opinion. It is not a partisan issue, in spite of the current tendency to make everything partisan, and I fear that if it is viewed as such, without serious reflection, the state of Alaska and all of its people will suffer irreparable damage from making this choice by a partisan vote.

Senators, Representatives, please listen to Mr. Ross very carefully - and ask yourself if this man is the best, fairest, most level-headed, intelligent, virtuous and honest legal mind that you would choose to guide and represent the state of Alaska.

Sincerely,
Carol Ford
Kenai, AK

April 8, 2009

Honorable SJUD Chair French and Committee Members,

I am writing to express my concern over the Governor's nomination of Wayne Anthony Ross for Alaska Attorney General. In my view, Mr. Ross is eminently unqualified for this important position.

Mr. Ross has gone to some lengths, over the years, to portray himself as outside the mainstream in his personal views and actions. Former legislators, Alaska news media and even the nominee himself have painted him with this brush. Mr. Ross gives the appearance in his word and deed of being out of step with much of the American public, even advocating discrimination and promoting ownership of concealed weapons. One has good cause to wonder if he will focus on these issues to the detriment of other aspects of the role of Attorney General.

Mr. Ross has served as counsel to the Governor in the past. I have concerns that the Governor may seek to use this to invoke attorney-client privilege to avoid or obstruct prosecution in her multiple ethics-related charges.

Mr. Ross has had some ethics quandaries of his own. As a director for the NRA, he was charged with ethics violations in using his role to promote Republican candidates who had not been endorsed by the NRA leadership. Though the charges were dismissed, certainly there are other, equally capable attorneys in Alaska without the taint of impropriety.

Do we need an Attorney General who has been variously termed by the media and legislators as "the hero of his own life", a "goober candidate" and "someone who hates to be wrong"? With all the scandal and mockery of Alaskan politics nationally and internationally, don't the people of Alaska deserve an Attorney General who remains above the fray, rather than being the source of it?

There have been hints that Mr. Ross has been less-than-favorably rated by the Alaska Bar. In trying to research more on this, I noted that although Mr. Ross touts his pro-bono work (much around gun ownership and advancing his own views) he has never been recognized for this by the bar. That seems interesting, considering Mr. Ross's claims.

Do we need an Attorney General who finds it seemly to debate constitutional issues in "Soldier of Fortune" magazine (and apparently, not entirely on the money when it comes to his interpretation).

I am concerned for the potential conflict-of-interest between Mr. Ross's duties as an Attorney General and that of an attorney for Governor Palin's personal matters. Mr. Ross's first duty is to the State, but he doesn't give reason for much confidence that he will exercise his responsibilities with the proper emphasis.

Mr. Ross's nomination has met with consternation by the Alaska Federation of Natives and the Council of Village Presidents, largely over his very public and long-standing opposition to subsistence. He has only recently said he would not make this a central issue if he was appointed to the Attorney General role. How convenient. I believe his appointment is an affront to Alaska Natives, and would oppose his appointment on this issue alone.

Mr. Ross should have reminded the Governor that he is not yet the Attorney General and the announcement on the State web pages are inappropriate at best.

We don't need an Attorney General who is "good enough". We need an Attorney General who is good, and who can help steer Alaska through the various challenges facing us in the upcoming years.

Respectfully,

Cynthia Lagoudakis
P.O. Box 662
Petersburg, AK 99833

ALASKA WOMEN'S LOBBY

AWL Mission: To defend and advance the rights and needs of Women, Children and Families in Alaska

P.O. Box 20891
Juneau, Alaska 99802-0891
www.akwomenslobby.org

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Taber Rehbaum

Nancy Scheetz-Freymiller

Libby Silberling

Rose Wysocki

Dear Senator French,

I am writing this letter on behalf of the Alaska Women's Lobby to express our concern with the appointment of Wayne Anthony Ross to the position of Alaska's Attorney General and to urge you to vote against his confirmation. There are many reasons to object to this appointment.

Following his appointment, it was brought to our attention that at a panel discussion co-sponsored by Alaska Moms for Custodial Justice and UAA, Mr. Ross' comments regarding domestic violence were anti-victim and lacked any compassion for the difficult situation many women in Alaska face. During this panel, held a few years ago, Mr. Ross made comments alluding to domestic violence being the fault of the women's movement and that many domestic violence victims were liars. We hope that you will ask Mr. Ross about this panel and specifically question his views on domestic violence. We also encourage you to have a conversation with the organizers to learn more about his comments. As you know, Alaska has alarmingly high rates of domestic violence and to have an Attorney General that does not fully understand the gravity of this situation would be a disservice to the citizens of our state.

In addition to this, it was recently reported in the Anchorage Daily News that "during a fight several years ago over gay rights, [Allison] Mendel helped organize Anchorage lawyers in support of an anti-discrimination ordinance. Ross wrote a nasty letter to the Bar Association newsletter, using words like 'immoral', 'perversion' and 'degenerates'. The language went way beyond reasonable disagreement, Mendel and others said." This public display of disrespect for members of our community is of great concern to the Women's Lobby and again, we ask that you question Mr. Ross regarding his feelings about gay rights and equal rights as protected by the constitution of our great state.

The Lobby is also concerned with Mr. Ross' pro-gun, anti-choice and anti-subsistence rights views. Throughout the confirmation process, we hope that you will take a close look at Mr. Ross' expressed views as they are divisive for the Office of Attorney General and may be harmful to our state.

We hope that you will be probing and methodical in your confirmation hearings for Wayne Anthony Ross. We feel strongly that voting to confirm Mr. Ross as Alaska's Attorney General would be a step backward. We believe his views are out of line with a majority of Alaskans and he is therefore not qualified to serve in this position. An appointment of someone with such extreme views is not appropriate for a position of such authority. We thank you for taking the time to look into this matter further and for thinking of the best interest of the state and all its' citizens while going through the confirmation process of Mr. Ross.

Sincerely,

Geran Tarr
Chair

cc: Senator Bill Wielechowski, Senator Lesil McGuire, Senator Gene Therriault

Cindy Smith

From: Britteny Cioni-Haywood [britteny.cioni@gmail.com]
Sent: Friday, April 10, 2009 1:02 PM
To: Cindy Smith; Sen. Hollis French
Subject: Written Testimony on the AG Nomination of Wayne Allen Ross
Attachments: WARTestimony.doc

I unfortunately had to be at work during the scheduled time for the public testimony before the Senate Judiciary Committee. So, I am attaching a Word document that I would like to submit as written testimony against the nomination of Wayne Allen Ross for Attorney General. I will also copy the text below in this email as well.
Sincerely,
Britteny A. Cioni
Juneau, AK

Britteny A. Cioni

9093 Fireweed Lane

Juneau, AK 99801

Testimony Against the Nomination of Wayne Allen Ross for Attorney General

I am here to oppose the nomination of Wayne Allen Ross for Attorney General. It has become quite obvious that Mr. Ross is a very divisive person. I do not believe that Mr. Ross will be able to represent ALL citizens of Alaska and therefore in my mind is not qualified to hold this very crucial position.

Mr. Ross obviously has very strong beliefs about the LGBT community and views members of that community as immoral and degenerates.

Mr. Ross will also not represent people that believe in women's rights. Wayne Anthony Ross defended protesters who chained themselves to reproductive health clinic check in counters. Because of the all of the services provided by this clinic this stopped women from also getting birth control and STD testing and is more of an issue with privacy and trespassing than anything else. Mr. Ross has made statements that appear to condone

marital rape. Marital rape may be allowed in Afghanistan but not in the United States, it is NOT ACCEPTABLE.

Mr. Ross is hostile to our native population. He is opposed to subsistence priority, tribal sovereignty and ANSCA.

Mr. Ross was among several candidates for the Alaska Supreme Court seat vacated by Justice Bryner in 2007, and for the Court of Appeals seat vacated by Judge Stewart in 2008. He did not make the "short list" of qualified applicants sent to the Governor for either seat. If he is not qualified to hold these seats, how can he possibly be qualified to serve as our next AG?

So, Mr. Ross is unlikely to represent women, natives and LBGT community members. Who will Mr. Ross represent? Apparently, white heterosexual males. This representation is fine if it is in the confines of his private business but not for the entire state of Alaska.

Cindy Smith

From: amrcomputing@gci.net on behalf of Mike S [amrcomputing@gci.net]
Sent: Monday, April 13, 2009 8:58 AM
To: Sen. Hollis French; Sen. Linda Menard; Sen. Gary Stevens; Sen. Bettye Davis; Sen. Charlie Huggins; Sen. Donny Olson; Sen. Johnny Ellis; Sen. Joe Paskvan; Sen. Lesil McGuire; Sen. Bert Stedman; Sen. Bill Wielechowski; Sen. Tom Wagoner; Sen. Albert Kookesh; Sen. Joe Thomas; Sen. Fred Dyson; Sen. Gene Therriault; Sen. Lyman Hoffman; Sen. Kevin Meyer; Sen. Con Bunde
Subject: Regarding Mr Ross as Attorney General

Dear Alaska State Senators,

If I had an Alaska State Senator representing my district, I'd contact them about this, but since I do not, I am contacting all of you.

I have been paying attention to the news relating to Mr Ross's selection as the Governor's choice to be Alaska's Attorney General.
Given the initial information about Mr Ross, I was interested to learn how much was true and how much might not be, and what other people with more knowledge and information thought.

Clearly Mr Ross wants to be Attorney General. But, the hearing testimony and news stories I have read leaves me more than a little concerned. He seems to harbor some deep seated feelings that are at best divisive, and in may cases way outside mainstream views. I do not believe he is capable of fairly representing ALL Alaskans.

Please vote against confirming Mr Ross as Attorney General.

Thank you for reading.

Michael Sakarias
7943 N Douglas Hwy
Juneau AK 99801
907-586-4422

Cindy Smith

From: Ron [wildwingr@gmail.com]
Sent: Sunday, April 12, 2009 4:27 PM
To: Sen. Gary Stevens; Sen. Johnny Ellis; Sen. Gene Therriault; Sen. Con Bunde; Sen. Hollis French
Subject: I Am Against WAR 1

Dear Senators:
My name is Ronald T. Stanek, and I strongly oppose the appointment of Wayne Anthony Ross as Alaska Attorney General!! He does not represent my views or those of most Alaska residents. Please do not confirm his appointment.

I have lived in Anchorage for over 30 years. I moved to Alaska for jobs related to my university degrees in wildlife and parks management.
I worked in those fields in the State and Federal governments for 29 years.
I am an avid outdoorsman, actively participating in hunting, sport and commercial fishing, shotgunning, hiking, birding, boating, and many other outdoor activities.
I am also knowledgeable in the human cultural characteristics of Alaska having been an applied anthropologist for almost all of my working career in Alaska, and additional time in Africa.

Mr. Ross' past actions and current views regarding natural resource laws in Alaska have resulted in very damaging natural resource management practices and relationships among many public interest groups and Government agencies.
His (and his associates') actions in removing the Rural Preference only in times of resource shortages in the Subsistence Law have confounded both Federal and State management of sport and subsistence hunting and fishing activities .
Repealing the Rural Preference took away much of the State's right to manage its resources.
Doing so robbed the State of Alaska of Tens of Millions of dollars in Federal funding for wildlife management.
It created a cumbersome, and often confusing dual management system.
It drove a wedge between rural and urban residents.
Other of Mr. Ross' and his associates' actions influenced the State Legislature to deprive the residents of Alaska the opportunity to their constitutional right to a free and fair VOTE on an issue- (amending the state constitution).
If you attribute these problems to provisions in ANILCA, that is wrong, the people passed the Subsistence Law and this reflects Alaskans' recognition of the importance of natural resources as FOOD and CULTURAL IDENTITY to rural and urban residents.
Mr. Ross and his associates (Mr.Rod Arno and others) claim to represent Alaska Sports Hunters and Fishermen. NOTHING COULD BE FARTHER FROM THE TRUTH. They certainly do not represent me and my hunting and fishing partners and my family. In this regard, by appointing Mr. Ross to the AGs office, you will be laying a red carpet for rabid anti-subsistence sots to influence that office. As you know, or at least you should know or learn, these people have caused untold damage to resource management in Alaska through their positions and influence of committees and the Boards of Game and Fish and the legislature.

Lastly, Mr. Ross can not, as a result of his prejudices, be a fair and unbiased representative the interests of the people of Alaska. He does not currently, nor will he be, representative of even a significant fraction of Alaska residents, but rather of a small, very narrow-minded minority. A number of pending lawsuits challenge decisions made by the Boards of Game and Fish. I fear that

Mr. Ross will not adequately defend the Boards' decisions in these matters. Furthermore, it is likely that Mr. Ross will use the AGs office to advance an effort to remove subsistence provisions in ANILCA, this is wrong and not respectful of the needs of rural and urban residents.
Please vote against Mr. Ross's confirmation as AG. Strive to put forth someone who will fairly and equitably represent and defend the people and laws of Alaska.
Thank You!

Cindy Smith

From: Caty Zeitler [catyzeitler@gmail.com]
Sent: Monday, April 13, 2009 11:22 AM
To: Sen. Hollis French
Subject: Attorney General confirmation

Dear Senator Hollis,

I am an Alaskan resident and registered voter. I feel that Wayne Anthony Ross is a very poor choice for the position of Attorney General of Alaska. He has shown himself to be a very divisive person that has little or no respect for women or children. That is just a small reason this person is not a good choice for Alaska.
Please take my opinion into consideration.
Thank You for your interest in this matter.
Yours Truly
Cathy Zeitler
PO Box 81
Manley Hot Springs, Alaska
99756
907-672-3853

DELIVERED April 11, 2009 BY COURIER – UPDATE DELIVERED April 13, 2009

Testimony given before the Alaska House Judiciary Committee – April 10, 2009

April 10, 2009

Alaska State Legislature
Alaska State Capitol
Juneau, AK 99801

Re: Hearings on the appointment of Wayne A. Ross as Alaska Attorney General

Earlier this afternoon, Wayne Ross provided information as to how he evaluates people. For the record, and according to his measure, I am not a *communist*, I am not an *anarchist*, and *I love Alaska*. Again using Mr. Ross' words, I hope all of you will consider me *courageous* when I conclude my testimony.

My name is Barbara Bachmeier. As I am an 80% service-disabled veteran and because the VA in Anchorage does not provide the services I need, I'll be leaving soon on an extended trip to California. Today, I believe, will be my last testimony before the Alaska Legislature. I don't want to leave home, but I must. I'd certainly prefer not to give this testimony this afternoon, but I must. I flew in last night arriving at 9:30 p.m. in order to be here today. This matter is that important.

There was a time that I needed to hire an attorney in order to respond to a legal matter involving my expectation that students in Alaska's public high schools should be required to behave honorably and respectfully during the morning ritual recitation of the Pledge of Allegiance. It seems there were administrative personnel, one mother, and one student who disagreed. The mother contacted an attorney and suddenly I was in big legal trouble (civil not criminal).

Somebody suggested that I hire Wayne Ross. "You'll get your money worth from him", this person said. "He'll work hard for you". So, I met with Wayne Ross in his office and told him the facts of the case. My words and his questions took approximately ten minutes. After this, I listened to his response: rehearsed colorful stories and goofy analogies; considerable information about his successful law career; details about the successful career his son had in the US Marine Corps; his wife's excellent baking abilities; and attempted discussions about various souvenir-type items in his office. I discovered later that Mr. Ross charged me for the time he consumed with his unnecessary attempt at entertainment and his "This is My Life" monologue. My financial situation could only have been made worse if he had charged me at the "usual rate"; this experience caused me to realize that I could not afford even Mr. Ross' "military discount rate" given the way his time accounting served only to benefit him.

Either he responded to my somatic clues or ran out of colorful expressions, he eventually stopped the "chit-chat", shifted gears, and presented the grand strategy he would employ in response to my legal problem. He told me he would arrange for hundreds of veterans

to muster at a particular location as a "show of force" in support of my reasonable expectation for all public school students during the Pledge of Allegiance to our country.

Behaviorally, Wayne Ross carried himself as if he were a Flag Officer imposter. Perhaps sensing my response to his weird bravado, he assured me he had sufficient military clout to make such a "big deal" military formation take place. Although he did not discuss anything about the Alaska National Guard, he spoke with such effervescence that I fully expected him to propose the activation of the Alaska National Guard for a "Pass and Review" ceremony at someplace like the Anchorage Park Strip.

In Sean Cockerham's Anchorage Daily News article on April 9, 2009, Mr. Ross characterized himself as a " ... general who carries out campaigns." If I were to conduct a functional behavioral analysis of Wayne Ross (calling on my skills as a former SED special education teacher), there would be significant areas involving communications, interpersonal skills (including cheating), time management, and conflict resolution for which one would recommend intervention leading to improvement. I think Mr. Ross is less than he wants to be and makes every effort to overcompensate. During thoughts such as these and *really* wanting to run from his office, I focused on my need for an attorney that another veteran recommended. I stayed and wrote a check, but I should have followed my instincts.

Not long after I hired and paid Mr. Ross to serve as my attorney, perhaps when Vic Kohring realized he needed to get an attorney, Ross sent me a very brief note; I accepted it at face value although there was no signature (only initials). The quick note revealed that Wayne Ross had taken on "two serious criminal cases" and would no longer be available to help me with my legal problem. He offered to return part of my retainer and recommended that I hire a different attorney to handle my good case. The problem with the alternative plan he crafted was that the returned portion of the hefty retainer caused me to have insufficient funds to hire a new attorney.

As I am a retired lieutenant colonel in military intelligence, I have seen lots of general officers. I served on military assignments from Camp Casey, Korea (within easy artillery range of North Korea) to the Pentagon. There were no officers at any rank who behaved as pompously as Wayne Ross did when we met that first time, and seemingly continues to behave in the present. Wayne Ross is not the kind of individual that our state needs and deserves as her next attorney general. We need somebody who will observe his commitments, keep his word, and work for the common person, like me. We need an Attorney General who will honor veterans and not take advantage of them for personal and professional glory. Using the words he chooses to connote high praise, Alaska needs an attorney general whose "*word [one can take] to the bank*".

Wayne Ross is not a role model for professional attorneys and Alaska does not need the "band of junkyard dog assistant attorneys general" that he would hire (according to the ADN article referenced above); he graduated in the bottom segment in his law school class; he was not selected for two judgeships for which he made application; he proudly uses "jury nullification" (persuading a jury to return a "Not Guilty" verdict despite its belief that the defendant is "Guilty" of the violation charged) as a defense strategy when courts throughout our country expressly disallow this practice; with regard to his skills,

abilities, and competencies, what he demonstrated to me, was nothing but "smoke and mirrors" and a lot of extraneous joking around; and he is dishonest.

In considering how Wayne Ross described Governor Palin as *courageous* when she took on her party only to get, initially, an unpleasant letter from the Alaska Department of Law, I ask this committee to hear my testimony and find it worthy of honest consideration. Please do not send me a "poison" letter like the rambling one sent to Leah Burton after she submitted written email testimony (therefore explaining perhaps why Wayne Ross was confused by the lack of an official signature on the actual document. Ms. Burton is a professional writer and her work is regarded highly by her peers of all political persuasions.

My being here this afternoon was the honorable thing to do in this matter. I may not be around to give in-person testimony to the legislature again, but I will keep up on what's happening with state government. Perhaps in the future you will hear from me in the form of my writings. I'll stay in touch.

Thank you for your consideration of my testimony. Wayne Ross called Leah Burton a liar and this is not true. It is appropriate for me to tell you that Wayne Ross absolutely lied to me. And to make matters worse, he cheated Alaskans as he cheated me.

Sincerely,

Barbara Bachmeier

Barbara Bachmeier

Additional points added April 11, 2009:

a) During the public testimony session on April 10, 2009, House Judiciary Committee Chairperson Ramras announced that he had received complaints of harassment directed at some people who earlier provided testimony by telephone from their home telephone numbers. Apparently, people in disagreement with the opposing testimony, responded by finding the telephone number of the persons offering opposing testimony and placing calls to these people for the sole purpose of engaging in harassing and controversial conversation against them. Ramras did not identify which side of the argument allegedly made the harassing telephone calls or which side received them, but instructed those responsible to stop this behavior forthwith.

b) Today, April 11, 2009, I heard from a legislative staff person that the persons receiving the harassing telephone calls were those who spoke in opposition to the confirmation of Wayne A. Ross. The people allegedly making the harassing telephone calls were supporters of Ross' confirmation.

c) I find this alleged behavior absolutely intolerable and unacceptable. I request an immediate investigation into this matter so as to determine whether egregious partisan harassment actually took place and, if so, valid consequences that would be in order.

Cindy Smith

From: Janet Forbes [janet_forbes@ghscorp.org]
Sent: Wednesday, April 08, 2009 3:07 PM
To: Sen. Hollis French
Subject: Letter opposing Mr. Ross's Appointment for AG

4/08/09

Members of the Senate Judiciary Committee,

I am concerned with the appointment of Mr. Ross as Alaska's new Attorney General.

Mr. Ross has called Alaska's gay, lesbian, bisexual and transgendered population "degenerates," "immoral," and referred to being gay as a "perversion" in the state Bar Association newsletter. I want an Attorney General who represents all of Alaska's diverse population – including my loved ones and myself – with unbiased information and without discrimination and homophobia. This isn't only a gay rights issue, it's a human rights issue. Please listen to my voice as well as others when we ask you to consider his comments and know that all people want representation without any sort of discrimination in our state. This is not someone who myself an others want in such an important position in the State of Alaska.

Respectfully,

Janet Forbes
Juneau, Alaska

Cindy Smith

From: jwmelliott@att.blackberry.net
Sent: Thursday, April 09, 2009 7:12 AM
To: Sen. Hollis French
Subject: Attorney General Appointee (corrected)

I am writing in opposition to the confirmation of Governor Palin's appointment of Wayne Anthony Ross as attorney general for Alaska. Mr. Ross is an ideologue, with a record of disrespecting and opposing the federally protected subsistence rights of Alaska Natives.

Likewise, like Governor Palin, Mr. Ross supports predator control, a disreputable practice of dubious scientific merit.

He talks about being "the lawyer for the people of Alaska" but, to the contrary, discounts perfunctorily the views of those whom do not share his personal viewpoint, e.g., persons supportive of Alaska Natives' federally protected subsistence rights, those opposed to the Alaska Department of Fish & Game's predator control program, and those supportive of programs that protect the victims of domestic violence, particularly children and women victimized by the brutality of spouses and partners.

Mr. Ross's ill-considered pronouncements on a wide variety of social and legal issues, plus his extreme views in opposition to and disrespect for the supremacy of federal law, disqualify him, in my view, from holding the position of attorney general for Alaska.

Sent via BlackBerry by AT&T

Cindy Smith

From: Cathy Kerr [2feathers@acsalaska.net]
Sent: Wednesday, April 08, 2009 6:34 PM
To: Sen. Hollis French
Subject: Attornet Genreal Nominee

Dear Sen. French,

I know Mr. Ross from a past affiliation. His daughter Amy Ross took excellent care of my daughter for 2 summers after school while I worked. She could not have been a finer person. I congratulate Mr. Ross and his wife for raising such a lovely young woman.

However, I would like to go on record as objecting to the Governor's nomination of Mr. Ross for Attorney General of the State of Alaska. I do not think that in a state as diverse as Alaska someone who calls Alaska's gay, lesbian, bisexual and transgendered population 'degenerates,' 'immoral,' and who referred to being gay as a 'perversion' in a state Bar Association newsletter can represent all Alaskans. This is not a gay or lesbian issue for me, although I am alarmed at his harsh and judgmental statement – this is a human rights issue.

Mr. Ross also has many other opinions that disturb me because he so vehemently advocates for them. We all have opinions but most public servants don't wear their opinions on their sleeves, or their cars, and do not try to push their agendas onto other people's private lives. I do not think Mr. Ross can be a fair minded AG with such to the right of right opinions. His statement about getting a "ticket" to be able to overturn Roe v. Wade is just one example of the agenda he carries with him.

With this nomination of someone who may be a good father but speaks as an extreme and vocal advocate of the far, far right, it looks like Alaska is headed in a direction that is too extreme for all of Alaska's many different people.

Thank you for recording my statement.

Cathy Kerr

5701 Ridgeview Drive

Anchorage, AK 99516

Cindy Smith

From: Dael Devenport [daeld@hotmail.com]

Sent: Wednesday, April 08, 2009 6:48 PM

To: Sen. Hollis French

Subject: Nomination of Attorney General

Dear Senator French:

Please do not support Wayne Anthony Ross for the position of Attorney General. He does not possess the qualifications, ethical standards or temperament necessary to be the state's top law enforcement official. He has shown expectations of special privilege on more than one occasion, for example, when he threatened to sue the Permanent Fund Division because his son was denied the PFD since he had not lived in Alaska for fourteen years, and when he was turned down for judicial advancements twice by the Alaska Judicial Council. He has shown intolerance on numerous occasions, such as, during a talk on domestic violence he stated that the women's movement emasculated men and was the cause of domestic abuse, he called homosexuals 'degenerates' and pro-choice people 'baby killers'. Ross does not support subsistence rights which are very important for many Alaskans. Again, because of his mediocre professional ratings, openly expressed prejudice, and lack of concern for constituent needs, please do not support Wayne Anthony Ross for the position of Attorney General.

Thank you,
Dael A. Devenport

Rediscover Hotmail®: Get e-mail storage that grows with you. Check it out.

Cindy Smith

From: Bent Alaska [bentalaska@gmail.com]
Sent: Wednesday, April 08, 2009 10:11 PM
To: Sen. Hollis French; Sen. Bill Wielechowski; Sen. Lesil McGuire; Sen. Gene Therriault
Subject: My testimony against Wayne Anthony Ross as AG

"Does [Wayne Anthony Ross] have the qualifications, ethical standards and temperament to be the state's top law enforcement official and run such an important, politically sensitive department?" asked an ADN editorial.

Qualifications

- **Ross has been up for two separate Judicial advancements in the past two years, for the Alaska Supreme Court in 2007 and the Alaska Court of Appeals in 2008. He was not nominated by the Alaska Judicial Council either time. His mediocre Alaska Bar Association scores were cited as the reason he did not receive a nomination.**
- In response, he wrote a letter to the Bar Association newsletter complaining about the judicial selection process and the negative comments made about him in the anonymous Bar Survey used to rate the applicants.

Ethics and Temperament
There is an extensive written record on Ross from his two unsuccessful runs for governor and his long history of political activism. His zealous support for a host of controversial causes and his insulting public statements about those who believe differently show intolerance, bad judgement and the inability to seek common ground. He has a long list of enemies, and even his attorney peers and NRA buddies don't want him in positions of power.

- He called on the governor to fire an Assistant Attorney General for her participation in a peaceful animal rights demonstration. (*"Animal Activists Real Enemy"*)
- He threatened to sue the Permanent Fund Dividend division because they denied a check to his son Brian, who had not lived in Alaska for 14 years.
- During a talk on domestic violence, he said that the women's movement emasculated men and was the cause of domestic abuse.
- He promised to fight the federal law requiring rural subsistence, and opposes tribal sovereignty saying, "If the state wants to deal with tribes, it should treat them as it treats fraternal organizations rather than as governments."
- He did not support Mayor Wuerch for re-election because Wuerch refused to help Ross' friend get into the Anchorage Fire Department after the friend failed a required psychological test.
- He publicly stated that pro-choice people are "baby killers," and called gays and lesbians "degenerates" in an open letter to the state Bar Association.
- He endorsed Rick Mystrom for mayor in 2003 "because he fights the unions."
- He represented without fee, and personally supported, a man who twice poured buckets of water from a passing pickup onto anti-war demonstrators.
- He was a founder of Alaska Right to Life and has provided free legal services to anti-abortion activists since 1972.
- He blamed moderate Republicans for the state's fiscal problems saying, "Moderates are mush."
- He is a former vice president of the National Rifle Association and was in line to become president, but was voted out of office by his peers.
- He is frequently described as "arrogant," uncompromising and attention-seeking.

Do we trust an arrogant political activist with mediocre professional ratings, zealous positions on sensitive state issues, and openly expressed prejudice against groups of Alaskan citizens to be "the state's top law enforcement official and run such an important, politically sensitive department?"

I know you will listen to the concerns of the citizens and do what is best for the state. Thank you.

Sincerely,
E. Ross

Bent Alaska - GLBT News and Events with a Local Alaskan Bent.

Cindy Smith

From: Chris Coffman [chriscoff2002@yahoo.com]
Sent: Wednesday, April 08, 2009 10:50 PM
To: Sen. Hollis French
Subject: Comments Opposing Confirmation of Wayne Anthony Ross as Alaska's Attorney General

Dear Senator French,

I am writing to oppose confirmation of Wayne Anthony Ross as Alaska's Attorney General.

First, Mr. Ross's qualifications do not support such an appointment. In fact, he was rejected twice in the past by the Alaska Judicial Council for nominations for lesser positions (Alaska Supreme Court in 2007; Alaska Court of Appeals in 2008) because of his mediocre Alaska Bar Association scores. This record, insufficient even for lesser posts, hardly merits an appointment as Attorney General.

Second, Mr. Ross has repeatedly demonstrated a shocking disrespect for the persons and basic rights of people with whom he disagrees. In an open letter to the state Bar Association, for example, he referred to gays and lesbians as "degenerates," a word that implies an inferior and even less than human status. Mr. Ross's public use of language that expresses flagrant disrespect for a significant number of Alaskans raises serious concerns about his capacity to execute the responsibilities of Attorney General in a fair-minded manner.

His public remarks on domestic violence are just as bad, if not worse. They reflect a shocking ignorance of the pervasiveness of violence against women in Alaska, blaming the victims of such violence so as to avoid addressing the criminal nature of such violence. This rhetoric dehumanizes women so as to justify their unequal treatment under the law.

His threat to dismiss an Assistant Attorney General for her private participation in a political demonstration (not to mention his archiving of evidence of this threat on his firm's own website at http://rossandminer.com/articles/90-12-02.htm) raises even more serious concerns about his ability to exercise the responsibilities of Attorney General in an evenhanded fashion, as it demonstrates a lack of respect for a citizen's right to assemble and to engage in political discourse. Does Alaska really want an Attorney General that feels free to violate the rights of those that disagree with him?

Alaska can surely find an Attorney General whose qualifications are stronger than Mr. Ross's and who—unlike Mr. Ross--has demonstrated a capacity for treating all Alaskans, not just those he happens to agree with, with respect and with equality before the law. For these reasons I strongly urge disapproval of Mr. Ross's nomination.

Sincerely,
Chris Coffman
Fairbanks, AK

Cindy Smith

From: Robin Smith [ericrobin@customcpu.com]
Sent: Wednesday, April 08, 2009 5:39 PM
To: Sen. Hollis French; Sen. Bill Wielechowski; Sen. Kim Elton; Sen. Lesil McGuire
Subject: Attorney General

Please enter this into the Senate Judiciary record.

We are very disappointed in Gov. Palin's nomination of Wayne Anthony Ross for Alaska's attorney general.

We understand the Governor's right to have an attorney general who is aligned with her political positions, but surely she could fine a more appropriate candidate.

Alaska has a highly regarded judicial system that results in only the most qualified condidates becoming judges.

Ross has been submitted for two separate Judicial positions in the past two years, for the Alaska Supreme Court in 2007 and the Alaska Court of Appeals in 2008. He was not nominated by the Alaska Judicial Council either time.
His mediocre Alaska Bar Association scores have been cited as the reason he did not receive a nomination.

If he isn't qualified to be a judge in our state, he certainly isn't qualified to be Alaska's next Attorney General.

Please do not confirm him.

Eric McCallum and Robin Smith
14100 Jarvi Drive
Anchorage, Ak 99515

(Please note that we are constituents of Sen. McGuire.)

LETTERS OF SUPPORT FOR CONFIRMATION OF ROSS

Cindy Smith

From: glenner@gci.net on behalf of glenne ralls [glenner@gci.net]
Sent: Friday, April 10, 2009 11:21 AM
To: Sen. Gene Therriault; Sen. Hollis French
Subject: Wayne Ross for Attorney General

In my dealings with Wayne Ross I believe him to be an upstanding citizen with moral character. He has many years in the legal system that make him an outstanding candidate. I recommend you recommend him for the job. Sincerely, Glenne Ralls

Cindy Smith

From: Wendy McKinnis [schultzy@mtaonline.net]
Sent: Friday, April 10, 2009 12:45 AM
To: Sen. Hollis French
Subject: Vote to Confirm Wayne Anthony Ross

Follow Up Flag: Follow up
Flag Status: Red

Dear Chairman French:

Please ensure my letter is given to each member of the Senate Judiciary Committee.

Please vote to confirm Wayne Anthony Ross to be Alaska's next Attorney General.

Mr. Ross is an exceptional individual and attorney. He keeps his word, is a man of principal, and will serve to ensure Alaska's best interests are considered.

Governor Palin has chosen him to serve and he deserves to be appointed to fill the position.

Being the fair and impartial chairman you are, I expect that your disdainful behavior toward and the unprofessional political bias that you demonstrated against Governor Palin during the "Trooper-gate"
fiasco a thing of the past. Though you failed to lead fairly then, acted in a ways which brought shame to the state, and wasted precious state money, I have all hopes you have since learned to serve Alaska's interests first and not your own liberal political agenda when conducting business from the chair.

Should you oppose Mr. Ross' confirmation, it will be clearly seen by all that your own interests will have trumped Alaska's best interests.
I truly hope this will not be the case.

Mr. Ross, an outstanding and well-respected attorney, should be given nothing short of a considerate and fair hearing.

Thank you for your service and for supporting Mr. Ross.

Sincerely,

Doug McKinnis

Cindy Smith

From: schwaaby@gci.net on behalf of Bill and Jeannie Schwaab [schwaaby@gci.net]
Sent: Thursday, April 09, 2009 8:34 PM
To: Sen. Hollis French; Sen. Gene Therriault
Subject: Confirmation of Wayne Ross as Attorney General of Alaska

Dear Senators French and Therriault,
Please include our statements as testimony into the record of the Judiciary Committee and share it with each person on the committee.
I, Bill, have know Wayne Ross since 1972, when he was a State of Alaska Prosecutor. He is an outstanding choice for Attorney General of this great State of Alsaka, which he loves. He is an honorable, Godly man who is bound by principal and will be an exceptional Attorney General. He has been in the legal profession in Alaska for approximately 40 years with experience as a State Prosecutor and his own law firm. He was a vice president of the NRA. He has strong convictions and says what he means, with no pretence or double meaning. He will have best interests of the State in mind while fulfilling the duties of Attorney General.
We cannot urge you strongly enough to confirm the nomination of Wayne Anthony Ross as Attorney General of Alaska. He will do an excellent job.
Sincerely,
Bill & Jean Schwaab
2647 Havitur Way
Anchorage, AK 99504

Cindy Smith

From: Adele Morgan [adele@mtaonline.net]
Sent: Thursday, April 09, 2009 1:32 PM
To: Sen. Hollis French; Sen. Gene Therriault
Subject: Wayne Anthony Ross

Senator Hollis French and Senator Gene Therriault,

I strongly encourage you to keep Governor Palin's choice for Attorney General. In a world where common sense in not so common, Wayne Anthony Ross will be able to judge fairly and continue to fight for Alaska. I know Wayne personally and respect his character and his values! Thank you for your consideration and listening to the people of Alaska.
Adele Morgan
www.adelemorgan.com
www.blondetonemusicgroup

Cindy Smith

From: John & Candy Miller [3in1oil@gmail.com]
Sent: Thursday, April 09, 2009 12:56 PM
To: Sen. Hollis French
Cc: Sen. Gene Therriault
Subject: YES CONFIRM WAYNE ANTHONY ROSS

YES CONFIRM WAYNE ANTHONY ROSS!!!!

He will uphold the Alaska & Federal Constitution and

Stand for freedom justice and rights for all!

Candus Miller
Palmer
Alaska

Cindy Smith

From: Sally Heath [chuck38heath@gmail.com]

Sent: Thursday, April 09, 2009 12:26 PM

To: Rep. Nancy Dahlstrom; Rep. Anna Fairclough; Rep. Carl Gatto; Rep. John Harris; Rep. Wes Keller; Rep. Mark Neuman; Rep. Bill Stoltze; Sen. Fred Dyson; Sen. Linda Menard; Sen. Charlie Huggins; Sen. Gene Therriault; Sen. Hollis French

Subject: ATTY GENERAL

PLEASE show your support for Wayne A. Ross for attorney general. We are well aware of his integrity, fairness, and no-nonsense approach in dealing with a large variety of issues. He will be an asset to our state government.
Thank you,
Chuck and Sally Heath
425 Klouda Cir
Wasilla AK 99654
907-376-5790

--
Sally Heath

April 8, 2009

Dear Judiciary Committee,

We are unable to be involved in the public testimony time concerning Wayne Ross as Attorney General. We are in complete support of this appointment by Governor Palin as Mr. Ross has served us well in the interior on many Constitutional matters. It is not hard to realize he is the man for the job and he is not easily intimidated when pressured. He is a 2nd Amendment Rights advocate and is principled in every area of our lives. He works as an attorney for Individual Rights and stands firm on the Rule of Law--the Constitution.

Any of you who may have reservations do not know the backbone it takes to protect our state in matters of law but Mr. Ross will successfully do it where others will cower. You can be assured of security with him as attorney general.

Here in the Interior when our First Amendment Rights of peaceful assembly were going to be trampled, he stepped in and wrote a letter for us and gave us his phone number to let him know if it happened again. When our fair board was not going to let us have a pro-life booth even though there was a pro-abortion booth, he wrote a letter citing precedent and the case down in the Mat-su and the fair board backed off.

Most importantly, all it takes is a few good men to run the state government well and one of those needs to be Mr. Wayne Ross.

Sincerely,

Jonathan and Ruth Ewig
2325-30th Avenue
Fairbanks, Alaska 99701

Cindy Smith

From: Eva Heller [evaheller@hotmail.com]
Sent: Thursday, April 09, 2009 9:22 AM
To: Sen. Hollis French; evaheller@hotmail.com
Subject: confirm Wayne Ross

Thank you for your attention
Please vote your confirmation of Gov Palin's pick for Attorney General.
Please pass this message on to the Senate Judiciary Committee.
Eva LoForte

Rediscover Hotmail®: Now available on your iPhone or BlackBerry Check it out.

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
555 CAPITOL MALL, SUITE 625
SACRAMENTO, CALIFORNIA 95814
(916)446-2455 voice ■ (916)448-7469 fax

STATE & LOCAL AFFAIRS DIVISION
BRIAN JUDY, ALASKA STATE LIAISON

TO: Members of the Alaska State Legislature
FROM: Brian Judy, NRA-ILA Alaska State Liaison
DATE: April 15, 2009
RE: Wayne Anthony Ross AG Confirmation – **SUPPORT**

On behalf of the tens of thousands of National Rifle Association members who live in the State of Alaska, I would like to register strong support for the confirmation of Wayne Anthony Ross for Attorney General.

The Right to Keep and Bear arms and the natural right of self-defense are fundamental. There are few issues of greater importance to citizens in the State of Alaska. Wayne Anthony Ross is a staunch defender of Constitutional freedom. Based on his proven dedication and passion for the Second Amendment, Alaskans can rest assured their firearm freedoms and hunting heritage will have a consistent defender in the State Attorney General's office.

The National Rifle Association has been quite surprised to hear some of the things alleged by those who have spoken out in their opposition to this confirmation. Particularly shocking are suggestions that the nominee would be weak in going after perpetrators of domestic violence. It is impossible to believe that Wayne Anthony Ross would coddle any criminals, domestic abusers or otherwise.

In closing I would just reiterate, on behalf of its members, the strong support of the National Rifle Association for the confirmation of Wayne Anthony Ross to the office of Attorney General for the State of Alaska.

To: Senator Hollis French Fax 465-6595

From: Christopher M. Cromer

COVER PAGE
FOR
LETTER REF: ATTORNEY GENERAL CONFIRMATION

Please review attached letter, distribute as needed and consider it as a reference in the current proceedings. I hope this provides some clarification. You may reach me for any further clarification at (907)306-1818 or via email at christophercromer@gmail.com .

Sincerely,

Christopher M. Cromer

To: Senator Hollis French

cc: Twenty-Sixth Alaska State Legislature

From: Christopher M. Cromer

April 13, 2009

RE: Attorney General Confirmation

For nearly twenty years I have been an Alaskan resident. In 2002, I chose to leave Alaska to pursue a law degree, *since Alaska is the only state to not have a law school.* During my second year of law school, in 2004, I sought employment with Mr. Ross' law firm. He was known to me as an advocate of second amendment rights and domestic relations. After the summer, I returned to law school ultimately graduating in 2005. I then returned to Alaska and the position of law clerk at the law firm of Ross & Miner. At the same time, I was employed as an adjunct faculty member at the University of Alaska in Anchorage.

It is usually beyond my desires to engage in political matters through the means presented. However, I feel it is necessary, given the recent allegations and questions of Mr. Ross's character that I provide you with this letter. There is no secret between Mr. Ross and I that we differ in various political and religious views. As Mr. Ross attributes his philosophies to his rearing, as do I. My generation is extremely different in many respects from those of the hat-tipping and door opening generation. Today, we multi-task and often forget the consequences of immediate action. However, as a result, we as a culture have become more resilient and tolerant of one another. Mr. Ross exhibits a practice that is respectful and duty bound. While he is often outspoken, he serves as a guarantee that all respective sides of an issue are discussed. This is exactly what Alaska needs.

As for the recent allegations, they are clearly false. During my term of employment with Mr. Ross, never did I see him treat, act or hint of anything less than full advocacy for the preservation of dignity for both sexes. He has always proved himself to be a strong and capable advocate for both men and women whose rights have been violated or compromised.

According to his reply to the Burton letter, Mr. Ross states that a claim was made regarding statements during a UAA forum. I offer to you that he attended that meeting at my request and I was also at that meeting. The forum was in fact a summary of a study on domestic violence in Alaska. When asked by the panel of what other factors or considerations should be measured, Mr. Ross replied that it may be important to also identify the male victims of domestic violence. He added that it should be determined whether a reporting could be accurate with the likelihood of a stigma being attached to those individuals who do report. Mr. Ross then added, through his professional

experience, that restraining orders are sometimes misused by petitioners to immediately secure property and custody. I assure you that Mr. Ross made no sexist comments during this forum. He merely wished the panel to remain objective, view all sides and determine that victims of domestic violence are not limited to a single gender.

In closing, I can offer little more than that which I have already provided as a testimonial of Mr. Ross' character and fitness as Attorney General. It is my sincere belief that as representatives of the public and guardians of the Alaska Constitution that you reject the temptation to allow a difference of opinion guide you away from your duty. There is no question that Mr. Ross is passionate in his personal beliefs. But his sense of duty to Alaska trumps any personal philosophy. That alone will provide the greatest guarantee that individual rights in Alaska will be protected upon his confirmation.

Sincerely,

Christopher M. Cromer

Cozy CARPET INTERIORS

17035 N. Eagle River Loop Road
Eagle River, Alaska 99577

Phone: 907-694-2699
Fax: 907-694-8763
www.cozycarpet.com
melissa@cozycarpet.com

Fax Transmittal Form

To: Hollis French
Name:
Phone:
Fax: 907-465-6595

From: Melissa
Date: 4/8
Number of Pages:

Message:

I strongly urge you to approve of Wayne Ross and his ability to serve as our State Attorney General. He is an excellent choice. I would like for my voice to be heard on this matter.

Thank you for your service.

Melissa Hickey

Cindy Smith

From: Molly Friess [molly.harbor@alaska.net]
Sent: Wednesday, April 08, 2009 3:18 PM
To: Sen. Hollis French
Cc: Sen. Gene Therriault
Subject: Wayne Anthony Ross

Dear Senators Therriault & French,

Please provide this testimony to everyone on the Senate Judiciary Committee.

Wayne Anthony Ross is an outstanding choice for Attorney General. Please support Governor Palin's selection of this fine man for the position of Attorney General for the State of Alaska.

Molly Friess
PO Box 240566
Anchorage, AK 99524-0566

Home: (907) 522-5725
Work: (907) 277-1391
Cell: (907) 227-4066

Cindy Smith

From: Eileen Becker [ELBecker@webtv.net]
Sent: Wednesday, April 08, 2009 3:17 PM
To: Sen. Hollis French
Subject: Wayne Ross for Attorney General

Please vote for Wayne Ross for the position of AK State Attorney General. He is an excellent choice. A man of high integrity solid character and an asset to the State of Alaska.`Consider this as our personal testimony for today's hearing. Eileen & David Becker, PO ox
109 Homer, AK 99603

879

Senator Hollis French
1-907-465-6595

Senator Gene Therriault
1-907-465-3884

Governor Sarah Palin's Choice of Wayne Anthony Ross as the A.G for Alaskans is a great choice. Mr. Ross is a long time Alaskan, moral, upright. He will uphold our laws.

Please put your partisan "stuff" aside and look at integrity.

Thank you,
Sherri R. Jackson

C/C - LIO -
269-0111
269-0229

To: Senate Judiciary Committee

From: Carole Hart, small business owner/registered voter (907) 339-8083
6108 Winding Way in Anchorage, 99504

RE: Testimony to support Wayne Anthony Ross' appointment to Attorney General

I am writing today to urge you to confirm Wayne Anthony Ross to the position of Attorney General for the State of Alaska. I believe him to be an exceptional choice and a man of principle, and I fully support Gov. Palin's choice.

Again, please confirm Wayne Anthony Ross to the office of Attorney General. Thank you.

(Please disseminate to everyone on the Senate Judiciary Committee.)

Regards,
Mrs. Carole Michele Hart

To: Senate Judiciary Committee

From: Carole Hart, small business owner/registered voter (907) 339-8083
6108 Winding Way in Anchorage, 99504

RE: Testimony to support Wayne Anthony Ross' appointment to Attorney General

I am writing today to urge you to confirm Wayne Anthony Ross to the position of Attorney General for the State of Alaska. I believe him to be an exceptional choice and a man of principle, and I fully support Gov. Palin's choice.

Again, please confirm Wayne Anthony Ross to the office of Attorney General. Thank you.

(Please disseminate to everyone on the Senate Judiciary Committee.)

Regards,
Mrs. Carole Michele Hart

Dear Gentlemen,

I support Governor Sarah Palin's nomination of Wayne A. Ross as Attorney General for the State of Alaska. Mr. Ross's experience and qualifications will most certainly be an asset to the Department of Law serving as the legal advisor for the Governor and other State officials.
I believe that he is the right man for this position.

Thank you for serving.

Jo Pedersen
1729 University Ave #E52
Fairbanks, AK 99709

Dear Gentlemen,

I support Governor Sarah Palin's nomination of Wayne A. Ross as Attorney General for the State of Alaska. Mr. Ross's experience and qualifications will most certainly be an asset to the Department of Law serving as the legal advisor for the Governor and other State officials.
I believe that he is the right man for this position.

Thank you.

Mary R. Pedersen
2221 Eagan Avenue #117
Fairbanks, AK 99701

Dear Gentlemen,

I support Governor Sarah Palin's nomination of Wayne A. Ross as Attorney General for the State of Alaska.
Mr. Ross's experience and qualifications will most certainly be an asset to the Department of Law serving as the legal advisor for the Governor and other State officials.
I believe that he is the right man for this position.

Thank you.

Kenneth Lamb
1515 Noble Street
Fairbanks, AK 99701

Cindy Smith

From: John C Fleming [akflemings@gci.net]
Sent: Wednesday, April 08, 2009 4:19 PM
To: Sen. Hollis French
Cc: Sen. Gene Therriault
Subject: New Attorney General

Dear Senator French,
I understand that the Judiciary Committee will be taking testimony today regarding the Governors choice for Attorney General. I have known Wayne Anthony Ross for many years. He was in the State Militia when I first met him but I've had many other encounters with him over the years. All were positive! He strikes me as fair and honest and he is willing to listen to all sides of an issue. I urge you to support Mr. Ross for this important position in State government.

John C. Fleming
4701 Cambridge Way
Anchorage, AK 99503
230-7783

Cindy Smith

From: Kathy Newman [k_e_newman@yahoo.com]
Sent: Wednesday, April 08, 2009 4:16 PM
To: Sen. Hollis French
Subject: Wayne Ross

Dear Senator,

This is just to let you know that I think Wayne Ross is an excellent choice for Attorney General. He is a man of principal and won't be swayed by special interest groups. Please share this with the rest of the Senate Judiciary Committee.

Sincerely,
Kathy Newman
613 Oja St.
Sitka, AK 99835

Cindy Smith

From: Bill Lowe [snodinak@acsalaska.net]
Sent: Wednesday, April 08, 2009 7:00 PM
To: Sen. Hollis French
Cc: Sen. Gene Therriault
Subject: Wayne Ross

I hope it is not too late to say my two bits about Wayne Ross. My wife and I are 100% in favor his election to Attorney General. He has showed in the past to be a good man who stands up for Alaska and what is right. His record is as good as it gets. He is a honest man who does not falter to or be corrupted by the media, or other groups but plays it as he sees it, fair and honest. He has been a leader in NRA issues and stands up for the conservative rights my family lives by and live in Alaska for. We are 40 year Alaskans and proud of it and I do not want our state following the ways of those in the big cities of the lower 48. Thank-you.

Please put our vote in for Wayne Ross,

Bill & Shirley Lowe, Sterling Alaska. Thank-you once again.

Cindy Smith

From: Dan Crawford [dansandy@mtaonline.net]
Sent: Wednesday, April 08, 2009 8:01 PM
To: 'Alaska Right to Life'
Cc: Sen. Hollis French
Subject: RE: Urgent! Wayne Ross testimonies needed!

Hollis,

We (my wife and I) both wholeheartedly support Wayne Ross in his quest for Attorney General for the State of Alaska. We truly need some 'change' back to some common sense in our political system.

Thanks for your help!

Dan and Sandra Crawford
2208 W Lake Lucille Dr
Wasilla, Alaska 99654
907-357-1066

-----Original Message-----
From: Alaska Right to Life [mailto:prolife@mtaonline.net]
Sent: Wednesday, April 08, 2009 3:05 PM
To: dansandy@mtaonline.net
Subject: Urgent! Wayne Ross testimonies needed!

April 8, 2009

URGENT ALERT!!

The Senate Judiciary Committee is holding a teleconference TODAY (Wednesday. April 8th) at 5:30 to hear testimony about Wayne Anthony Ross and his ability to be the Attorney General for the State of Alaska.
Governor Palin has chosen him for this position, and the LIBERAL Legislators are trying to block his conformation for that position.

PLEASE either fax or email the Senate Judiciary Committee (ask that your testimony be given to everyone on the Senate Judiciary Committee) and let them know that Wayne Ross is an exceptional choice for Attorney General.
Wayne is man of principal and has Godly morals. He says what he means, and means what he says. There is no pretense or illusionary aspect to Wayne Ross. He's a true conservative, which is why the liberals are trying to take him out. Please help.

Chairman-Senator Hollis French
phone:1-907-465-3717
fax:1-907465-6595
email:Senator_Hollis_French@legis.state.ak.us

I strongly suggest notifying Senator Gene Therriault, also, just to make sure your voice will be heard. He's the only TRUE conservative on the Senate Judiciary Committee.
His phone # is:1-907-465-4797. Fax:1-907-465-3884
email:Senator_Gene_Therriault@legis.state.ak.us

You can testify in person (via teleconference) at your local LIO (Legislative Information Office). You will find your area LIO number in the phone book.
Call ahead to the LIO, so the people who work there don't lock up and go home, as it is after hours.
Thank you for helping and God Bless you!

In His service,

Karen L. Lewis
Executive Director

Alaska Right to Life

Cindy Smith

From: Burt Mason [burtmason@yahoo.com]
Sent: Thursday, April 09, 2009 6:09 AM
To: Sen. Hollis French
Subject: WA Ross

Senator

I have been practicing law in Alaska since 1979, and have known Ross for most of those years. Although I dont always agree with him, Ross is a very able and knowledgable lawyer. I think he will provide the State with high quality legal services, especially dealing with the oil companies. I urge you to approve his appointment.

Robert Burt Mason
Eagle River

Cindy Smith

From: DA McGilvary [grammy@gci.net]
Sent: Wednesday, April 08, 2009 5:08 PM
To: Sen. Hollis French; Sen. Gene Therriault
Subject: Urgent! Wayne Ross is a fabulous choice, None better.

Dear Senators,
(Please repeat my testimony to everyone on the Senate Judiciary Committee.)

Wayne Ross is an exceptional choice for Attorney General.
Wayne is man of principal and has Godly morals. He says what he means, and means what he says. There is no pretense or illusionary aspect to Wayne Anthony Ross. He'll uphold the Constitution of the US as well as Alaska's Constitution.

Wayne is a GREAT CHOICE for Attorney General.

Sincerely yours,
Frank McGilvary
Dorothy (D. A.) McGilvary

907 452-6929
<fmm@gci.net>
Fairbanks, Alaska

Cindy Smith

From: Katie [novcaski@gci.net]
Sent: Wednesday, April 08, 2009 5:13 PM
To: Sen. Hollis French
Cc: Sen. Gene Therriault
Subject: Wayne Ross

To: Senate Judiciary Committee

We are writing to voice our support of Wayne Anthony Ross for Attorney General for the State of Alaska. While we have only spent a little time with him personally, we see his actions at Church and hear statements he has made in the paper and in public, and know people who are good friends of his. What I hear from Mr. Ross is always clearly stated, what you see is what you get. We need people like him in our government that live by principals, even if they aren't always the most popular principals at the time.

Wayne Ross is one who would treat everyone fairly while looking at the law for our state. As a fellow Catholic, I know that Wayne looks at every person with the respect and dignity due to each person by their nature of being created by God (basic Catholic teaching). Wayne Ross is a very ethical and moral man, qualities that are essential for the Attorney General role.

Sincerely,

Richard and Katherine Novcaski

Alaska State Legislature

Please enter into the record my testimony to the Judiciary Comm.
committee name

committee on appt of W.A. Ross . dated 4/8/09 .
bill/subject as Attn. General

I listened to the testimony before your committee today. I feel the state of Alaska would be fortunate and well served to have Mr. Ross as our AG.

Signed: Audrey E Murphy
Testifier

Representing (Optional)

2490 Hayes St. Delta Junction AK
Address

895-4234
Phone No.

9/86 Legislative Information Office

4-8-09 Jake's testimony for the Ak.Senate Judiciary Committee Hearing on Confirmation of Wayne Anthony Ross for Attorney General

I've known Wayne Anthony Ross for many years & accompanied him in many endeavors, from hunting & fishing to political issues.

I've seen him in times of stress & disappointment. He is consistent in good times & bad. He does not panic or succum to knee jerk temptations.

His defense of the water thrower, behavior which neither he nor I approved, was courageous; however, bound to bring him bad PR, but indicative of his devotion to the law.

Every man deserves his day in court & proper defense. The foundation for the US is based upon individual rights, not group or mob rights, as Wayne Ross knows & practices.

It takes courage, at times, to do the right thing, when it is unpopular. Wayne Anthony Ross does not dodge his responsibilities to do the right thing.

His efforts to secure Subsistence rights, equally for all Alaskans is consistent with our State Constitution & the US Constitution, unprosecutably inclusive.

His tireless consistent defense of the Second Amendment - the right to keep & bear arms - is unpopular with some, but part of our Bill of Rights & crucial to the American & Alaskan way of life.

He knows that the Consitutions (both the US & Alaskan) are owner's manuals - which should be read & followed, by all citizens as owner/operators. Without this adherence to our fundamental rights, our society would slip into chaos, like that which we see in some of the radical societies around the world.

As he stated when Frank Murkowski beat him in the primary election for Governor, "This goes to show that the voters know, as I do, that I'm a better lawyer than politician."

We need this lawyer, not a politician as AG !

It is my hope that Wayne Anthony Ross will be confirmed unanimously by the Alaska Legislature. I know he will serve all Alaskans well.

"Jake" Jacobson, Kodiak & Kotzebue
Jake P Jacobson
PO Box 1313
Kodiak 99615
huntfish@ak.net

Cindy Smith

From: maryjane@gci.net on behalf of Mary Jane Sutliff [maryjane@gci.net]
Sent: Thursday, April 09, 2009 7:00 AM
To: Sen. Hollis French
Subject: Re: Confirmation of Wayne Ross

Mary Jane Sutliff
2205 Arcadia Drive
Anchorage, Alaska 99517-1341

April 9, 2009

Re: Confirmation of Wayne Ross

Dear Senator French,

I was a former prosecutor For the State of Alaska. My sister has been a social worker for 30 years in Sacramento, California. My brother-in-law was the head of Child Protective Services before he retired. My niece is a social worker in Oakland Califonia. My Niece's husband is a superving social worker in a unit that deals with severely abused children. I am and attorney and was previously a kintergarden teacher who stayed home to raise my child. I have heard of and seen child abuse cases from both sides of the issue of the removal of a child from a home.

The issue to take a child from a family is a delicate balance where wisdom, knowledge of the brain development of a child, awareness of stages of development and cultural awareness, not regulation, is needed. The State's handling of the "best interests of a child" does not mandate or teach these principles.

Mr. Ross has always been known as someone who listens and, with a bit of humor and good intentions chides people into compliance. His methods, manner, good heart and wisdom are *severely* needed in a young State with unresolved procedures that deal with delicate issues of grave concern.

Simply put Alaska needs the service of Wayne Anthony Ross. The fact that his opinions differ from some should not be the sum total of the objections to his confirmation. His opinions are based upon a solid understanding of the issues and law and a *seering* desire to be fair and just. He possesses the integrity that can give State government the respect that we all desire.

Mr. Ross is well known and controversial. His confirmation will reflect well on you and those who vote for him. It sits well with the voters that Mr. Ross did not "buy" his nominations. Favoritism shown to financial supporters, partisan selection, selections based upon nepotism are sensitive issues for the public. Mr. Ross is the product of none of these issues.

I urgently request that you move for his confirmation. His service is sorely needed.

Sincerely,
Mary Jane Sutliff, Attorney

Alaska State Legislature

Senate

Office of the Secretary

Official Business

State Capitol, Room 213
Juneau, Alaska 99801-1182
Phone: (907) 465-3701
Fax: (907) 465-2832
Email:senate_secretary@legis.state.ak.us

Memorandum

TO: Senator French, Chair
Judiciary Committee

FROM: Kirsten Waid
Secretary of the Senate

DATE: March 30, 2009

SUBJECT: Confirmation of Governor's Appointments

Pursuant to AS 39.05.080, the President has referred the following name, with attached resume, for legislative confirmation to your committee for a hearing, recommendation and report:

Attorney General
Wayne Anthony Ross Appointed 3/26/2009

Attachment

KW:lc
gl # 7

8/3/09 HEARING: REDUCING SEXUAL ASSAULT IN ALASKA

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Dennis Egan
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

MEMORANDUM

Report and Recommendations: Reducing Sexual Assault in Alaska

Introduction:

Alaska has the highest reported rate of sexual assault in the United States. Between 2003 and 2007, Alaska's reported rate of forcible rape was over two and a half times the national average, with Anchorage reports at almost three times the national rate and Fairbanks reports at over five times the national rate. This does not include all sexual assaults in Alaska, since the definition used in the federal reporting system (the Uniform Crime Report) excludes child victims, male victims, and many other forms of sexual assault. Nevertheless, forcible rape is a greater percentage of all violent crimes reported in Alaska than it is nationally, at 12% of all violent crime in Alaska as opposed to 6% of violent crime in the United States on average.

Between 2003 and 2004, the Troopers received 1,184 reports of sexual violence cases involving forcible rape, sexual assault, or sexual abuse of a minor. Of those, some 884 were deemed to have occurred and to have an identifiable suspect. The troopers then turned over 449 cases, or about half, to the Department of Law for their screening. Of these, 271 were accepted for prosecution, and some 217 convictions resulted.

During hearings of the Senate Judiciary Committee conducted during 2009, committee members heard testimony as to what Alaska can do to reduce sexual assault and improve rates of prosecution and conviction.

The following issues were discussed:

A. Inadequate and inaccurate data:

1. The current system for tracking reports of sexual assault is inadequate at best. The Uniform Crime Report (UCR) excludes many kinds of sexual assault, making it

unreliable, even for reported crimes. Not all police departments in Alaska provide information to the UCR, though they are statutorily required to do so. According to the Department of Public Safety, 41 local police departments failed to file the data needed for the Uniform Crime Report in 2007.

2. Alaska has never done a victimization study (a survey that includes both reported and unreported cases). Because of this, we do not know if Alaska's rates of sexual assault are higher, or the rate at which reports are made are higher, or both. So, for example, Fairbanks may have a very high rate of sexual violence, or it may be that citizens are simply more likely to report that violence, or it may be that both these things are true. Nationwide, it is estimated that 52% of sexual assaults are not reported to law enforcement. Without a victimization study, there is no way to know if this is also the case in Alaska.

3. Finally, the statistics that are available, largely collected through studies done by the Justice Center of the University of Alaska, show differences in the groups that are most likely to be victimized in various regions. For instance, a review of Alaska State Trooper cases showed that 94% reports are of victims who were 15 years of age or younger, while 73% of reports coming to the Anchorage Police Department are from victims aged 18 and older.

Recommendations:

- *The legislature should fund a victimization survey to determine the actual rate of both reported and unreported sexual assaults in Alaska. This survey should be large enough to look at the state by region, so that programs and policies can be tailored to be most effective.*

- *Legislation should be enacted requiring the Department of Public Safety to collect annual statistics on reported sexual assault in Alaska as defined in state law. This legislation should require local police department participation.*

- *A data system should be developed to track sexual assaults from report to conviction. This will require interagency cooperation and so should be addressed by a group such as MAJIC or the Criminal Justice Working Group.*

B. Certain resources have a disproportionate and positive impact on cases being accepted for prosecution, yet for the most part no consistent state policy has been implemented to ensure that these best practices are followed.

1. UAA Justice Center studies show that certain factors increase the likelihood of prosecution and conviction. These include the presence of a Village Pubic Safety Officer (VPSO), a Village Police Officer or Tribal Police Officer for crimes in villages. In State Trooper cases where a VPSO was available, rates of serious assault went down by 40% and the likelihood of the case being accepted for prosecution went up by three and a half times.

2. When victims received a medical-forensic exam, it more than doubled the likelihood that their case was accepted for prosecution. Documentation of non-genital injury was particularly important in the eventual decision to prosecute a case. However, of the 15 Sexual Assault Nurse Examiner programs that have been instituted in Alaska, only 4 are currently active.

3. In cases where witnesses were located and interviewed, and where appropriate investigative follow-up and victim support was done, the likelihood of prosecution increased by more than three times.

4. Finally, DNA evidence is becoming increasingly critical to sexual assault prosecutions and testimony indicated that there are significant delays and backlogs in getting this evidence processed in a timely way.

Recommendations:

- *The legislature should continue to increase the number of villages with local law enforcement through the VPSO program.*

- *The legislature should consider grant funding for local hospitals to provide qualified Sexual Assault Nurse Examiners and to support the cost of existing programs. In addition, a pilot project which looks at the use of telemedicine in extending SANE services to rural communities without SANE nurses should be explored.*

- *Law enforcement agencies should prioritize sexual assault investigations so that investigators have the time to contact potential witnesses, work with victims, and collect any other evidence that may be available in these cases.*

- *The legislature and the Department of Public Safety must address the needs of the State Crime lab and look at methods to process DNA evidence in a timely way.*

C. Alcohol use is significantly associated with sexual assault.

1. In a study of Anchorage Police Department cases, over 60% of victims and 70% of suspects had used alcohol just prior to or at the time of the assault. Similar statistics were also found in a study of cases in Alaska's Sexual Assault Nurse Examiner (SANE) program. In Trooper cases, where the victims tended overwhelmingly to be children, the victim use was 27% and suspect use was 42%. In addition, significant numbers of victims report having consumed alcohol to the point of incapacitation (e.g., Anchorage 23%; Fairbanks 31%). This both increases the vulnerability of the victim to an assault and can make cases more difficult to prosecute.

2. The UAA Justice Center reports that rates of serious injury from assault are 36% lower in dry villages and, further, that cases involving alcohol use are less likely to be referred for prosecution and are less likely to be accepted for prosecution when they are referred.

Recommendations:

- *Alaska should continue to support programs and policies that reduce alcohol consumption*

- *Education efforts in sexual assault awareness and prevention should specifically address alcohol use and its potential adverse effects on personal safety.*

D. Ongoing efforts to reduce recidivism by known sex offenders is critically important.

1. In a 1988 study (Abel, et al), of offenders who participated and who admitted to child molestations and rapes, 97% were never arrested for these crimes. The lag time for detection of sex offenders ranges from between 6 years to 16 years according to various national studies.

2. Nationally, almost 45% of prisoners serving time for rape or sexual assault committed their crime while on probation or parole.

Recommendations:

- *Alaska should continue to fund and expand its sex offender management programs, particularly the current Containment Model, which utilizes offender polygraphs but in prison and on probation.*
- *Alaska's Internet Crimes Against Children Task Force, which locates offenders who are looking for victims using the internet, should be expanded. This program has resulted in arrests and convictions of adults who would otherwise have offended against children.*

The Senate Judiciary Committee would like to thank the many experts who provided their time and knowledge to the committee during these hearings. The committee particularly acknowledges the work done by the UAA Justice Center, which has provided vital leadership in its research regarding violence against women in Alaska.

Justice Center, University of Alaska, Anchorage:
Andre Rosay, Phd., Interim Director

Alaska Department of Public Safety:

Commissioner Joe Masters
Deputy Commissioner Audie Holloway
Katie Tepas, Acting Director, Council on Domestic Violence & Sexual Assault
Sgt. Derek DeGraaf, Computer & Financial Crimes

Anchorage Police Department:

Sgt. Kevin McCoy, Sexual Assault Unit
Sgt. Ron Tidler, Cyber Crimes Unit

Alaska Sexual Assault Nurse Examiners (SANE) Program:

Tara Henry, RN, MSN, SANE-A, SANE-P

Alaska Department of Law:

Rick Svobodny, Deputy Attorney General
Sue McLean, Chief Assistant Attorney General

Aleutian Pribilof Island Association:

Richard Krause, VPSO Program Director

Alaska Department of Corrections:

Dwayne Peeples, Deputy Commissioner
Dr. Anthony Mander, Clinical Consultant
Rose Manafo, Criminal Justice Planner
Bernie Troglio, Probation Officer

ALASKA JUSTICE FORUM
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Index to issue | Complete issue in Adobe Acrobat PDF format

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Reducing Violence Against Women in Alaska

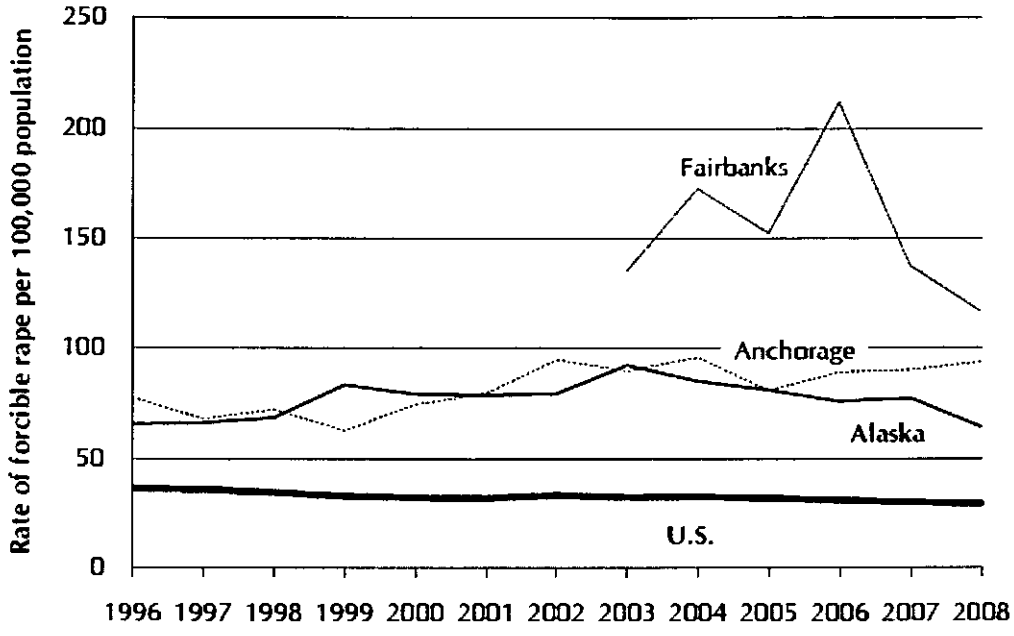
Justice Center, University of Alaska Anchorage. (Fall 2009). "Reducing Violence Against Women in Alaska." *Alaska Justice Forum* 26(3): 5. Alaska has long been plagued by high rates of violence against women. Relative to the average U.S. rate of forcible rapes reported to law enforcement from 2003 to 2008, the average Alaska rate was 2.6 times higher, the average Anchorage rate was 2.9 times higher, and the average Fairbanks rate was 5.0 times higher. Alaska has the highest rate of forcible rape reported to law enforcement out of all U.S states. This article summarizes recent recommendations from the Alaska Senate Judiciary Committee and from Governor Sean Parnell to reduce violence against women in Alaska.

See also:

- Violence against women

Alaska has long been plagued by astonishingly high rates of violence against women. National statistics on forcible rapes reported to law enforcement provide one example. Relative to the average U.S. rate from 2003 to 2008, the average Alaska rate was 2.6 times higher, the average Anchorage rate was 2.9 times higher, and the average Fairbanks rate was 5.0 times higher. Alaska has the highest rate of forcible rape reported to law enforcement out of all U.S states. While changing these trends is a daunting task, several initiatives are currently being considered. In chronological order, they include recommendations from the Alaska Senate Judiciary Committee and initiatives from Governor Sean Parnell.

Figure 1. Rates of Forcible Rape Reported to Law Enforcement in the U.S., Alaska, Anchorage, and Fairbanks, 1996–2008



Source of data: Uniform Crime Reports, 1996–2008

Alaska Senate Judiciary Committee Recommendations to Reduce Sexual Assault in Alaska

Four major areas are outlined in the recommendations: (1) getting better data on sexual assault, (2) increasing the number of successful prosecutions, (3) addressing the alcohol and sexual assault nexus, and (4) reducing recidivism by known sex offenders.

A brief summary of the recommendations follows:

- Improve data systems to track sexual assault cases statewide from report to conviction.
- Fund a victimization study to determine the actual rates of both reported and unreported sexual assaults.
- Increase the number of villages with local law enforcement through the Village Public Safety Officer (VPSO) program.
- Consider grant funding for local hospitals to provide qualified Sexual Assault Nurse Examiners (SANEs) and continue to support the cost of existing programs.
- Review ways to increase the State Crime Lab's ability to process DNA evidence in a timely way.
- Continue to support, as a state, programs and policies to reduce alcohol consumption.
- Address alcohol use specifically, and its potential negative impact on personal safety, in education programs about sexual assault awareness and prevention.
- Continue to fund and expand Alaska sex offender management programs.

- Expand Alaska's Internet Crimes Against Children Task Force which locates offenders who are looking for victims using the internet.

Governor Sean Parnell's Initiative to Reduce Domestic Violence and Sexual Assault

Three major areas are outlined in the initiative: (1) putting abusers behind bars, (2) helping victims heal, and (3) preventing abuse.

A brief summary of the recommendations follows:

- Launch a public education campaign encouraging Alaska's men to "Choose Respect."
- Increase law enforcement presence in every community that desires it, with new Village Public Safety Officers (VPSOs) and Alaska State Troopers.
- Fund specialized domestic violence/sexual assault training across multiple disciplines.
- Toughen penalties for sexual assault crimes, and toughen guidelines for prosecutors.
- Strengthen sex offender registry requirements.
- Expand prisoner re-entry programs to reduce recidivism among offenders.
- Increase support for victims of abuse including funding for shelters and the availability of pro bono legal services.
- Create a position within the Alaska Department of Law to coordinate state, federal, tribal, and non-profit domestic violence and sexual assault programs.
- Work with youth, community leaders, private sector, and religious organizations to raise awareness and develop prevention strategies.

For additional information, see the UAA Justice Center's violence against women webpage, the Alaska Senate Judiciary Committee's "Report and Recommendations: Reducing Sexual Assault in Alaska", and Governor Sean Parnell's "Choose Respect" Initiative.

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Last updated 06-Aug-2010 by UAA Justice Center
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Alaska State Legislature

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Committee Members:
Senator Bill Wielechowski
Senator Dennis Egan
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

AGENDA:

REDUCING SEXUAL ASSAULT IN ALASKA

10 a.m. - 11 a.m.	Dr. Andre B. Rosay, UAA Justice Center
11:00 - noon	Tara Henry, Sexual Assault Nurse Examiners program
Noon - 1:30 p.m.	Break
1:30 - 2:15 p.m.	Lt. Michelle Bucher, Anchorage Police Department
2:15 - 3:00 p.m.	Richard Krause, Aleutian Pribilof Islands Association VPSO program
3:00 - 3:45 p.m.	Commissioner Joe Masters, Department of Public Safety
3:45 -4:30 p.m.	Sue McLean, Alaska Department of Law

SEXUAL ASSAULT IN ALASKA

André B. Rosay, Ph.D.
Director, Justice Center
University of Alaska Anchorage
http://justice.uaa.alaska.edu

August 3, 2009
Alaska State Legislature
Senate Judiciary Committee

JUSTICE CENTER RESEARCH

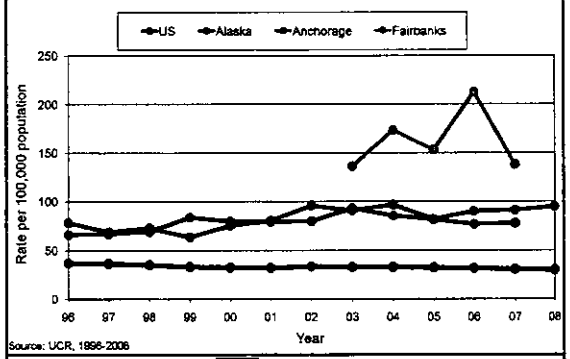
- **Data Overview:**
  - Uniform Crime Reports, State & Local Data
- **Key Results from UAA JC Research:**
  - SANE, AST, APD, DOL Studies
- **Key Implications from UAA JC Research**
- **Additional Research Needs**
  - Victimization Survey, Statewide Surveillance System

GRANT FUNDING

- **Council on Domestic Violence and Sexual Assault:**
  - *2003-WF-BX-0201, 2004-WF-AX-0033*
- **U.S. Department of Justice:**
  - *2000-RH-CX-K039, 2004-WG-BX-0003, 2005-WG-BX-0011, 2007-WG-R-007*
- **University of Alaska Anchorage:**
  - *UAA Faculty Development Grant*

Points of view in this presentation are those of the author and do not necessarily represent the official position or policies of the Council on Domestic Violence and Sexual Assault, the U.S. Department of Justice, or the University of Alaska Anchorage.

UCR FORCIBLE RAPE STATISTICS



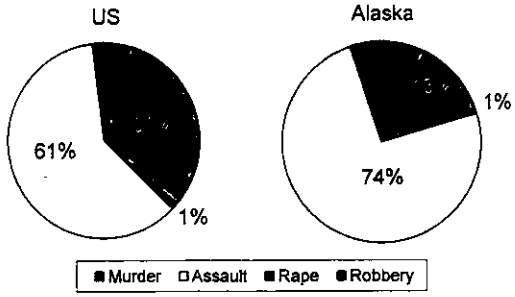
Source: UCR, 1996-2006

UCR FORCIBLE RAPE STATISTICS

	2003-2007 Average	Factor Difference
U.S.	31.5	
Alaska	82.4	x 2.62
Anchorage	89.4	x 2.84
Fairbanks	162.0	x 5.14

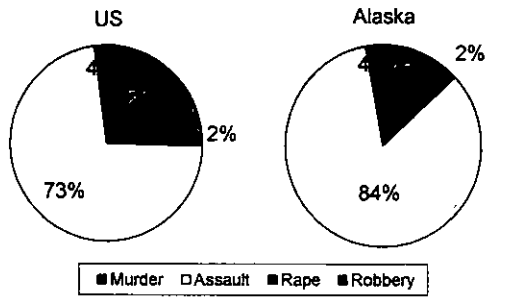
Source: UCR, 2003-2007

VIOLENT CRIME REPORTS



Source: UCR, 2007

VIOLENT CRIME ARRESTS



Source: UCR, 2007

UAA Justice Center

RATE RANKINGS

	Highest Rate per 100,000 Women		To Be Below Highest Rate, Decrease # of Forcible Rapes	
Year	State	Rate	From → To	By
2002	AK	164.6	511 → 327	184 (36%)
2003	AK	190.6	600 → 334	266 (44%)
2004	AK	175.4	558 → 346	212 (38%)
2005	AK	167.6	538 → 344	194 (36%)
2006	AK	157.3	509 → 356	153 (30%)
2007	AK	161.0	529 → 335	194 (32%)
Average		**169.4**	**541 → 340**	**201 (36%)**

Source: UCR & US Census, 2002-2007

UAA Justice Center

STANDARD UCR CAUTIONS

- **UCR Statistics exclude:**
  - Rapes not reported to law enforcement,
  - Statutory rapes,
  - Incapacitated rapes,
  - Rapes with male victims,
  - Other sex offenses,
  - Rapes with more serious offenses (homicide).
- **Reporting agencies vary by year.**
- **Rankings are invalid assessments (ignore variables that affect crime).**

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VICTIMIZATION SURVEYS

- **No data on forcible rape or sexual assault for Alaska…**
  - Samples often too small
  - No forcible rape / sexual assault questions
- **True victimization rates are unknown**
- **Factors that affect reporting are unknown**
- **Most vulnerable populations remain hidden**

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COST OF VICTIMIZATION

- **Victim costs are $114,517 per victimization**
  - Costs include tangible & intangible victim costs
  - Costs exclude all offender & justice costs
- **Total victim costs in 2007:**
  - $60.6 Million in Alaska, $29.4 Million in Anchorage, $4.9 Million in Fairbanks
- **Reducing the rate by 36% would save:**
  - $21.8 Million in Alaska, $10.6 Million in Anchorage, $1.8 Million in Fairbanks

Source: Philips and Votey (1981), Cohen (1988), NAS (1994), Miller et al. (1996), UCR (2007)

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STATE AND LOCAL DATA

- **Alaska SANE Study**
- **Alaska State Trooper Studies**
- **Anchorage Police Department Studies**
- **Alaska Department of Law Studies**

http://justice.uaa.alaska.edu/vaw

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STUDIES ONLY INCLUDE...

- **Offenses reported to law enforcement**
  - 52% of sexual assaults are not reported to law enforcement (BJS 2003); % in Alaska is unknown
- **Information from official reports**
  - Document report characteristics rather than offense characteristics; offense characteristics often remain unknown, particularly when victims used alcohol
- **Data up to 2006**
  - Need time to obtain legal resolutions

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INTERPRETING RESULTS

- **If rates are higher among 15-19 year olds:**
  - 15-19 year olds have higher victimization rates,
  - 15-19 year olds have higher reporting rates, or
  - 15-19 year olds have higher victimization and reporting rates.
- **If 15-19 year olds are less likely to use alcohol:**
  - 15-19 year olds may just be less likely to report alcohol use.

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POLICY IMPLICATIONS...

- **Difficult when victimization and reporting differences cannot be specified**
- **Higher victimization rates:**
  - Failing to protect a segment of the population
  - Ultimately a sign of failure
- **Higher reporting rates:**
  - Effective responses for a segment of the population
  - Ultimately a sign of success

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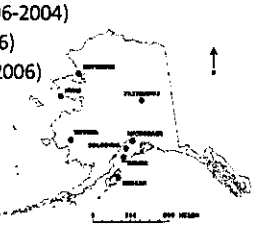
ALASKA SANE STUDY

- **Collected 1,699 SANE records:**
  - 1,383 from Anchorage (1996-2004)
  - 105 from Bethel (2005-2006)
  - 144 from Fairbanks (2005-2006)
  - 9 from Homer (2005)
  - 4 from Kodiak (2005)
  - 21 from Kotzebue (2005)
  - 19 from Nome (2005)
  - 14 from Soldotna (2005)



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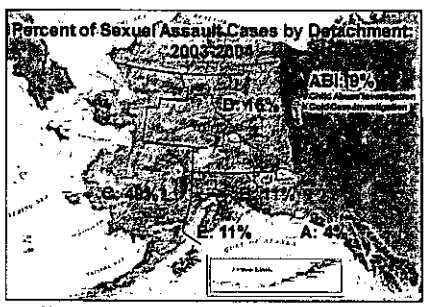
ALASKA STATE TROOPER STUDY

989 reports (2003-04)



Note: this study did NOT include offenses reported to local or municipal departments

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ANCHORAGE PD STUDIES

- **Sexual Assault Study I**
  - –2000 & 2001 reports
- **Sexual Assault Study II**
  - –2002 & 2003 reports
- **Sexual Assault Study III**
  - –2004 & 2005 reports

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DEPARTMENT OF LAW STUDIES

Case is Reported to Law Enforcement → Case is Referred for Prosecution → Case is Accepted for Prosecution → Case Results in a Conviction

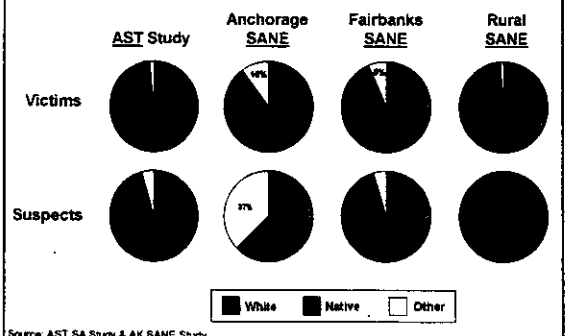
Justice Center

KEY RESULTS

- **Victim and Suspect Characteristics:**
  - Race
  - Age
  - Alcohol Use
- **Legal Resolutions:**
  - Referral
  - Acceptance
  - Conviction

Justice Center

RACE

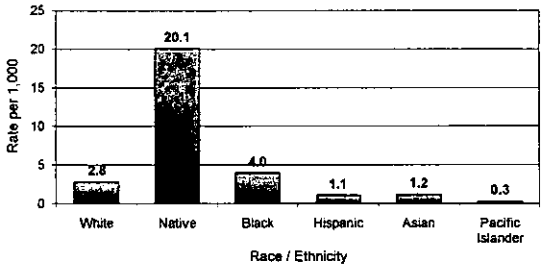


Source: AST SA Study & AK SANE Study

Justice Center

Victim Race in APD Studies

Four-Year Rates of Sexual Assaults Reported to APD by Victim Race

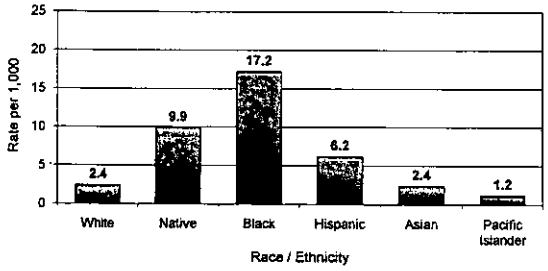


Source: APD Studies (2000-2003)

Justice Center

Suspect Race in APD Studies

Four-Year Rates of Sexual Assaults Reported to APD by Suspect Race



Source: APD Studies (2000-2003)

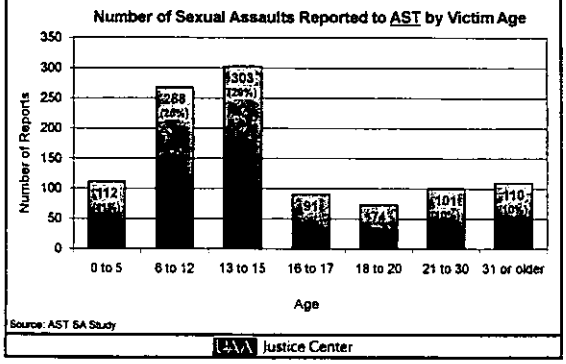
Justice Center

VICTIM & SUSPECT RACE

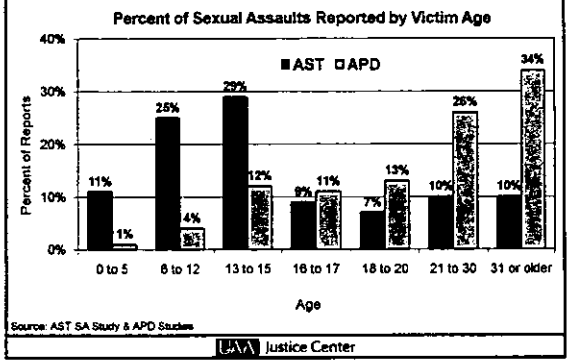
	% of Suspects Who Assault Someone of Their Same Race			
	All Suspects	White Suspects	Native Suspects	Other Suspects
APD SA Study	52%	66%	79%	15%
SANE Study	53%	53%	88%	15%
AST SA Study	87%	86%	94%	7%

Justice Center

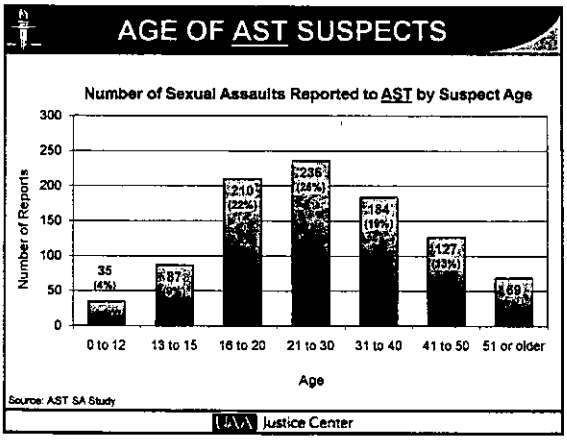
AGE OF AST VICTIMS



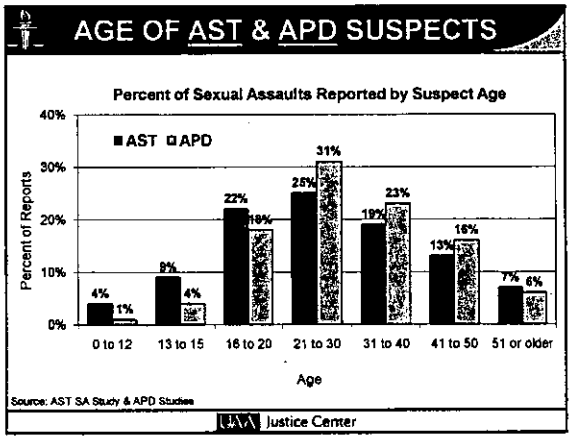
AGE OF AST & APD VICTIMS



AGE OF AST SUSPECTS



AGE OF AST & APD SUSPECTS



AST SUSPECT & VICTIM AGE

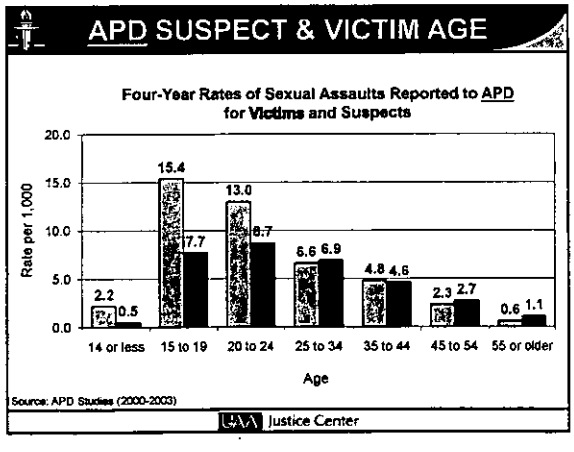
Five Most Common Age Combinations in AST Sexual Assault Cases (48%):

1. Victims 0-12 years old, suspects 31+ years old
2. Victims 13-15 years old, suspects 16-20 years old
3. Victims 13-15 years old, suspects 21-30 years old
4. Victims 13-15 years old, suspects 31+ years old
5. Victims 31+ years old, suspects 31+ years old

Source: AST SA Study

Justice Center

APD SUSPECT & VICTIM AGE



YOUTH RISK BEHAVIOR SURVEY

Sexual Risk Behaviors & Violence	Alaska	U.S.
% ever had sexual intercourse	45%	48%
% had recent intercourse (past 3 months)	31%	35%
If recent intercourse, % used alcohol/drugs	22%	23%
% physically forced to have intercourse	9%	8%

Source: 2007 YRBS; includes public school students with parental consent; excludes youth who dropped out of school and students who were enrolled in English as a second language classes, special education classes, correspondence schools, group home schools and correctional schools.

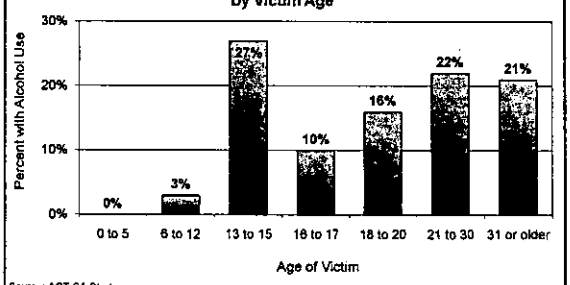
Justice Center

ALCOHOL USE

- **APD Studies:**
  - Every year, over 60% of victims use alcohol,
  - Over 70%of suspects use alcohol.
- **AK SANE Study:**
  - Over 65% of patients used alcohol, except in Homer and Soldotna,
  - Over 75%of suspects used alcohol, in every site.
- **AST Study:**
  - 27% of sexual assault victims used alcohol,
  - 43% of suspects used alcohol.

Justice Center

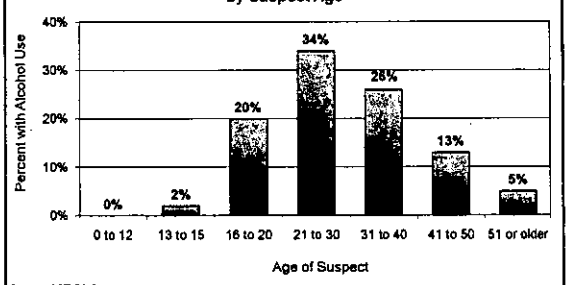
ALCOHOL USE BY VICTIM AGE



Source: AST SA Study

Justice Center

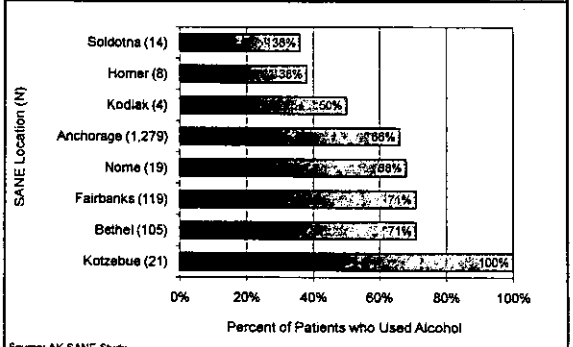
ALCOHOL USE BY SUSPECT AGE



Source: AST SA Study

Justice Center

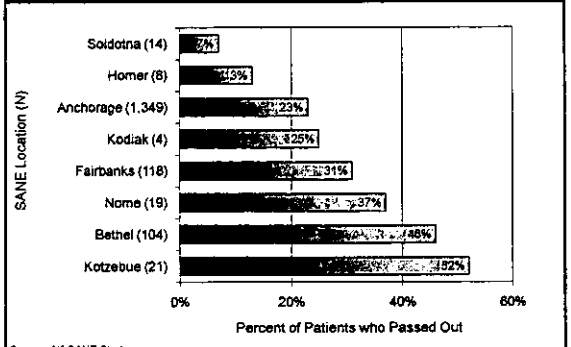
ALCOHOL USE OF PATIENTS



Source: AK SANE Study

Justice Center

INCAPACITATION OF PATIENTS



Source: AK SANE Study

Justice Center

DEPARTMENT OF LAW STUDIES

Sexual Assault Case is Reported to Law Enforcement

→ 18 to 46% are Referred

→ 60 to 69% are Accepted

→ 78 to 87% Result in a Conviction

Source: AK SANE Study, APD Studies, AST Study

Justice Center

DEPARTMENT OF LAW STUDIES

Sexual Assault Case is Reported to Law Enforcement

→ 18 to 46% are Referred

→ 12 to 28% are Accepted

→ 11 to 22% Result in a Conviction

Source: AK SANE Study, APD Studies, AST Study

Justice Center

RESOLUTIONS BY GEOGRAPHY

	All Sexual Violence		Rape / Sexual Assault		Sexual Abuse of a Minor	
	[redacted]	Non-Bush	[redacted]	Non-Bush	[redacted]	Non-Bush
Founded	[redacted]	76%	[redacted]	75%	[redacted]	77%
Referred	[redacted]	56%	[redacted]	56%	[redacted]	56%
Accepted	[redacted]	50%	[redacted]	44%	[redacted]	55%
Convicted	[redacted]	78%	[redacted]	74%	[redacted]	80%

Source: AST SA Study; significant differences in red; "Bush" is defined as off the road system

Justice Center

RESOLUTIONS BY GEOGRAPHY

	All Sexual Violence		Rape / Sexual Assault		Sexual Abuse of a Minor	
	[redacted]	Not Isolated	[redacted]	Not Isolated	[redacted]	Not Isolated
Founded	[redacted]	76%	[redacted]	75%	[redacted]	77%
Referred	[redacted]	55%	[redacted]	54%	[redacted]	56%
Accepted	[redacted]	51%	[redacted]	47%	[redacted]	54%
Convicted	[redacted]	81%	[redacted]	78%	[redacted]	83%

Source: AST Study; significant differences in red; "isolated" locations are defined as ones without a Trooper post

Justice Center

EFFECTIVE STRATEGIES

- **Enhancing local paraprofessional police presence (VPSO, VPO, TPO):**

3/13/09 graduation; photo courtesy Alaska State Troopers

- Reduces rates of serious injury caused by assault by 40%
- Increases likelihood of accepting cases for prosecution in sexual assault cases by 3.5 times

Justice Center

EFFECTIVE STRATEGIES

- **Strengthening local alcohol prohibitions**

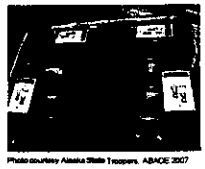


Photo courtesy Alaska State Troopers, ABADE 2007

- Rates of serious injury from assault are 36% lower in dry villages
- Cases with alcohol use are less likely to be referred for prosecution
- Cases with alcohol use are less likely to be accepted for prosecution

Justice Center

EFFECTIVE STRATEGIES

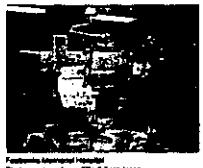
- **Enhancing investigation capacity**

- Likelihood to refer cases for prosecution is enhanced by more than three times when:
  - witnesses can be located and interviewed
  - time and resources are available to gain victim cooperation
- Having time to investigate and close cases also increases likelihood that cases are accepted for prosecution

UAA Justice Center

EFFECTIVE STRATEGIES

- **Promoting access to sexual assault nurse examiners**

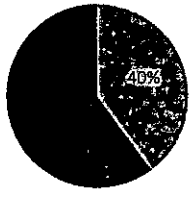


- Medical-forensic exams more than double the likelihood of accepting cases for prosecution
- Documentation of non-genital injury is particularly important: increases likelihood of referral, acceptance, and conviction
- Offers the best standard of care

UAA Justice Center

RECIDIVISM

- **Examined offenders released from Alaska Department of Corrections in 2001, tracked recidivism for three years:**



No difference between sex and non-sex offenders

No difference in re-arrest for sex crimes

Source: McKelvie (2008)

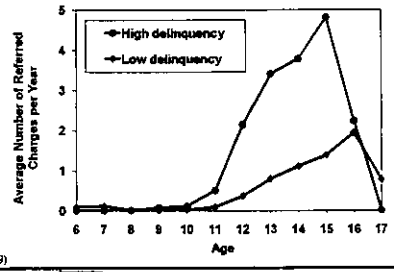
UAA Justice Center

RECIDIVISM

- **Examined juvenile sex offenders released from Alaska Division of Juvenile Justice in FY05-07:**

Found two groups of offenders (high & low delinquency)

Both groups showed signs of desistance by age 17, even when controlling for detentions and institutionalizations



Source: Rosay & Everett (2009)

UAA Justice Center

ADDITIONAL RESEARCH NEEDS

- **Statewide Victimization Survey:**
  - Need reliable and valid victimization estimates
  - Identify factors that hinder reporting
  - Evaluate criminal justice response
- **Statewide Surveillance System:**
  - Track all sexual assaults from report to conviction
  - Collect basic information from each report
  - Provide real-time information and explanations
- **Differentiate between high victimization and high reporting**

UAA Justice Center

SEXUAL ASSAULT IN ALASKA

André B. Rosay, Ph.D.
Director, Justice Center
University of Alaska Anchorage
http://justice.uaa.alaska.edu

(907) 786-1821
afabr@uaa.alaska.edu

UAA Justice Center

SEXUAL ABUSE AND SEXUAL ASSAULT CASES REFERRED - 2005 – 2009

Year/Charge	Total Referred	Pending	Accepted	Convicted	Percent of accepted cases	Accepted and Pending	Percent accepted and pending
2005							
Sexual Abuse of Minor	296	1	173	147	85%	6	3%
Sexual Assault	323	2	141	105	74%	0	
2006							
Sexual Abuse of Minor	260	8	123	100	81%	6	5%
Sexual Assault	320	4	156	119	47%	10	6%
2007							
Sexual Abuse of Minor	272	10	144	98	68%	22	15%
Sexual Assault	348	10	152	79	52%	33	22%
2008							
Sexual Abuse of Minor	242	23	116	51	44%	51	44%
Sexual Assault	271	26	117	39	33%	41	35%
2009	(projected)						
Sexual Abuse of Minor	135 (231)	34	72	3	4%	64	89%
Sexual Assault	171 (293)	31	66	5	8%	50	76%

COMPARISON – 2005 and 2007
AVERAGE SENTENCES FOR SELECTED CRIMES

Year	Crime	Number of Defendants convicted (highest crime)	Average sentence (in years)
2005	Sexual Abuse of Minor First Degree (SAM 1)	16	13.9
	Attempted SAM 1	5	12.4
	Sexual Abuse of Minor Second Degree (SAM 2)	47	4.9
	Attempted SAM 2	20	4.0
	Sexual Assault First Degree (SA 1)	12	15.6
	Attempted SA 1	3	5.6
	Sexual Assault Second Degree (SA 2)	12	6.2
	Attempted SA 2	11	3.2
2007	Sexual Abuse of Minor First Degree (SAM 1)	13	37.3
	Attempted SAM 1	3	24.3
	Sexual Abuse of Minor Second Degree (SAM 2)	22	17.8
	Attempted SAM 2	26	6.8
	Sexual Assault First Degree (SA 1)	4	41.25
	Attempted SA 1	0	
	Sexual Assault Second Degree (SA 2)		15.8
	Attempted SA 2		7.3

Senate Judiciary Committee
August 3, 2009

Department of Public Safety
Commissioner Joe Masters

Commissioner's Comments

- Sex crimes are a priority for DPS
- Sex crimes (sexual assault, child sexual abuse and child exploitation) are one of our highest public safety issues
  - Except our initial response to all of our calls for emergency service
- The problem is extensive and thus requires an extraordinary amount of resources
  - We are not able to give every case all the attention it deserves, but overall we do provide the best possible response and service.
  - Alaska, as a whole, has yet to systemically address the issue.

Commissioner's Comments

- "The problems presented by domestic violence and sexual assault are complex. Solutions require change that must come from Alaska as a society. Individuals, families and communities must all become involved until everyone is clear that domestic violence and sexual assault will not be tolerated." (CDVSA Legislative Task Force)
- Alaska needs to make the decision that we are going to actively collaborate so that we are no longer on the defensive. Until we do this, we will continue to remain reactive. We must go on the offensive.
- Partners: Communities, State of Alaska, Municipal Governments, Tribal Governments, Victim Service Providers, Religious Groups, Medical and Mental Health Providers and Others.

Commissioner's Comments

- To effectively respond and plan we need to understand and know the size and scope of the problem.
- We have been working collaboratively over the last several years to obtain reliable and valid statistics.
  - We need to continue our research efforts so that we have reliable and valid estimates regarding victimization
    - AST's data:
      - Is not statewide data as it is not representative of all police agencies
      - Is not longitudinal
      - Does not evaluate convictions and sentences
    - Anecdotal information is costly in terms of money and resources, because it is not inherently accurate
      - If we underestimate the issue we are not properly serving victims

Commissioner's Comments

- The problem is not just a criminal justice problem
- It is a social and public health problem
- Within DPS, CDVSA is best suited and situated to address the issue within both the public and private sector.
  - Members from Public Safety, Law, Health, Corrections and Education
    - DPS supports CDVSA in all of their efforts
  - CDVSA has developed a strategic plan for a violence free Alaska
    - Prevention, Crisis Management and Intervention, Perpetrator Accountability and Council Effectiveness

Colonel Holloway

- CY 2007 Sexual Assault: 359 cases, 514 offenses with 65 offenses unfounded
- CY 2008 Sexual Assault: 284 cases, 347 offenses with 43 offenses unfounded

- CY 2007 Sexual Abuse of Minor: 353 cases, 565 offenses with 77 offenses unfounded
- CY 2008 Sexual Abuse of Minor: 253 cases, 394 offenses with 36 offenses unfounded

Colonel Holloway
What AST is Not Always Able to Do

- More follow-up with victims
  - Safety checks
  - Follow-up interviews and forensic exams
- Coordination with DOL and timely requested follow-up
- Necessary or more thorough crime scene documentation
- Thorough investigations into prior incidents with the suspect
- Sex Offender Registry (SOR)
- Getting out to communities for “rumors”

Colonel Holloway
What We Are Doing

- All AST authorized positions are filled
  - Less experienced work force
- BHP- 10 Troopers
- Court Service Officer (CSO) hires
- JAG Stimulus Grant (5 ABI and 3 Municipal)
  - Team approach is best practice and successful
- VPSO
  - 22 newly funded positions for FY 10
  - Training, mentoring, case oversight and assisting in recruitment
  - 60% increase in convictions where a VPSO is in the village
- Our response is always dependent on weather and other limiting conditions
  - Aviation services

Katie TePas
What We Are Doing

- With federal funds from the Office on Violence Against Women:
  - Sexual Assault Evidence Collection Kits
  - SART training
  - Equipment for municipal police departments and hospitals
  - Advanced level training
  - Payment of forensic portion of exams for municipal police departments
    - This is an earmark and thus we are concerned about sustainability
    - Cost of the forensic portion of the exam range from $800-$3200. This does not include the cost of transportation or per diem.
  - Funding a DNA analyst position and back log project for unknown offender sexual assault cases
    - 200 unknown previously worked with Polymarker and DQ-Alpha AND 90 backlogged unknown suspect
  - First responder training (pilot project)
  - Data analysis

Katie TePas
Previous Studies

- UAA Sexual Assault, DV and Stalking
  - We desired reliable and valid data as well as an objective critique regarding our response to these crimes
  - OVW and NIJ funds
- Sexual Assault study
  - Enhanced forensic training for rural troopers (OVW funds)
    - Needs to be re-occurring

Katie TePas
Proposed Studies

- Statewide victimization survey
  - Partnering with UAA
  - Partial funding from CDVSA (FY 10)
- Real time data from all police agencies specific to sexual assault
  - Will be seeking funding from NIJ and partnering with UAA
- Legislation for statewide criminal justice statistics to be collected by DPS (AACOP)
  - Based on Alaska criteria and not UCR

Katie TePas
CDVSA Funded Program Data

- Persons who sought services from CDVSA funded programs that identified SA as their primary issue
  - FY 2005: 516
  - FY 2006: 653
  - FY 2007: 740
  - FY 2008: 803

Katie TePas
CDVSA

- CDVSA (FY 10) funded 20 victim service programs
- Despite the significant incremental increase ($1.2 PFD), the Council was unable to fund $1,777,657 of the overall requests by victim service programs.
  - CDVSA has $325, 511 in STOP stimulus funds
    - Services, Training, Officers, Prosecutors
  - CDVSA has $517, 750 in VOCA stimulus funds
    - Victim's of Crime Act
  - CDVSA has $218,00 is SASP funds
    - Sexual Assault Services Programs (direct service)

CDVSA Strategic Plan

- CDVSA Legislative Task Force
  - Overarching recommendation was to develop and implement a strategic plan
- Crisis Management and Intervention
- Prevention
  - RPE (ANDVSA and Public Health)
  - Statewide primary prevention and public awareness campaign with ANDVSA
    - CHANGING OF SOCIAL NORMS
      - Provide knowledge, change attitudes and change behaviors
      - Coaching Boys to Men
    - Increase in awareness of the incidence of violence in Alaska
- Perpetrator Accountability
- Council Effectiveness
  - Define and describe the scope and impact of dv and sa

Commissioner's Comments

- If we do a better job, victims will feel more empowered in reporting and every community and family will be safer.
  - A better job will mean an increase in cases which will impact all departments.
  - Over time, through **primary and secondary prevention** efforts, the number of assaults should decrease.
- We need to keep asking ourselves if we are doing enough and are we accurately defining and describing the scope of the problem.

Now Is The Time

- If we do not acknowledge the problem and get on the offensive as a statewide team, we will continue to have generations of victims and offenders and we will not make an substantive improvement.
- Now is the time.

2007 NON-CONTRIBUTING MUNICIPAL AGENCIES

Adak Police Department
Akiachak Police Department
Alakanuk Police Department
Aleknagik Police Department
Chefornak Village Police Department
Chignik Bay Police Department
Emmonak Police Department
Fort Yukon Police Department
Galena Police Department
Kake Police Department
Kasigluk Police Department
Kiana Police Department
King Cove Police Department
Klawock Police Department
Kotlik Police Department
Kotzebue Police Department
Kwethluk Police Department
Kwig Village Police Department
Marshall Police Department
Metlakatla Police Department
Mountain Village Police Department
Napaskiak Police Department
Nightmute Police Department
Nome Police Department
Nunam Iqua Police Department
Pilot Station Police Department
Quinhagak Police Department
Saint Mary's Police Department
Sand Point Police Department
Savoonga Police Department
Seldovia Police Department
Shaktoolik Police Department
Shishmaref Police Department
Stebbins Police Department

Togiak Police Department

Toksook Bay Police Department

Tuluksak Village Police Department

Unalakleet Police Department

Valdez Police Department

Whittier Police Department

Yakutat Police Department

PREVIOUS PARTICIPATION BY 2007 NON-CONTRIBUTING MUNICIPAL AGENCIES

	YEARS OF PARTICIPATION
Hoonah Police Department of Public Safety	1978
Kake Police Department	1999
King Cove Police Department	1999
Klawock Police Department	1987 – 1989 1991 – 2000
Kotzebue Police Department	1980 – 1983 2000 – 2001 2004 – 2006
Nenana Department of Public Safety	2000 - 2003 2005 (8 mo)
Nome Police Department	1978 - 1991
Sand Point Police Department	1989
Togiak Police Department	1994 – 1995
Valdez Police Department	1976 – 1983 1999 – 2002
Whittier Police Department	1978

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130 Seward St #209
Juneau, Alaska 99801
Phone: (907) 586-3650
Fax: (907) 463-4493
www.andvsa.org

ANDVSA
Alaska Network on Domestic Violence & Sexual Assault

Pro Bono Office
PO Box 6631
Sitka, Alaska 99835
Phone: (907) 747-7545
Fax: (907)747-7547

October 12, 2009

Senator Hollis French
716 W. 4th Ave., Suite 420
Anchorage, AK 99501-2133

Dear Senator French:

Thank you for meeting with Lisa, Nancy and myself on October 7, 2009. Enclosed is a copy of the Office for Victims of Crime, Technical and Training Assistance Center's Final Report that the Network contracted to have prepared in 2007. As you will note, the Network has been working on addressing many of the issues raised in the Senate Judiciary Committee Hearing on August 3, 2009 for over 20 years and we are happy to share our expertise on these issues.

The OVC TTAC report is a result of the Network's request for technical assistance and consultation addressing three specific areas to be researched and recommendations to be developed into a strategic plan. First, we requested that the number of sexual assault actually occurring be determined and the rate of intervention; second, we requested an analysis of the use of telemedicine as a possible solution to provide care in remote areas of the state; third, we requested that training and adherence to and improvement of standards of care and state protocols for responding to sexual assault be evaluated. In addition, the Network requested that the consultant chosen to perform this work, have experience in sexual assault issues and in particular, those issues in rural areas. The consultant chosen traveled to Alaska, visited many communities and spoke with many of the key stakeholders. The result is the attached report.

While many of the issues remain the same 12 years later, we have made some progress. In 2009, the legislature appropriated the first monies to the Council on Domestic Violence and Sexual Assault for data collection and prevention. The data collection project is helping to fund Dr. Rosay's victimization survey to be conducted later this year. In addition, the Council contracted with the Network to initiate a public messaging campaign and move forward with a social norms campaign that will engage communities in shifting social norms around intimate partner violence. These prevention campaigns are the first step in the long term investment of moving upstream and preventing intimate partner and sexual violence before it occurs.

Further, as we indicated to you, we have continued to watch the promising development of telemedicine in other areas of health care delivery as a possible solution to providing access to victims in the remote areas of the state. While we are encouraged by further enhancements in many other areas of

medicine, there are still significant challenges to implementing such a system that would provide forensic examination services to victims of sexual assault. If these challenges and issues could be addressed and all the key stakeholders were willing to make a commitment of providing equipment, training and funding, it would move the ability to increase reporting and to reduce sexual assaults forward.

Finally, as we indicated, we are in the beginning stages of planning a sexual assault mini-summit with federal earmark funds and will be looking at further exploring many of these issues.

If you have any further questions, please contact me.

Sincerely,

Peggy Brown, Executive Director

cc: Cindy Smith, Senate Judiciary Committee Aide
Lisa A. Mariotti, Policy Director, ANDVSA
Nancy Haag, Executive Director, STAR

Office for Victims of Crime
Training and Technical Assistance Center
Final Report
Alaska Network on Domestic Violence and Sexual Assault

Nature of technical assistance:

OVC TTAC provided two days of technical assistance to the Network to explore the critical issues facing victims of sexual assault within Alaska, specifically rural Alaska. This technical assistance focused on interviewing and discussing sexual violence with the Network Director and others throughout the state to identify any common threads of concern that might exist. After significant contact with advocates, prosecution, law enforcement, and nurse examiners, it became clear that several themes permeate the state. This report will outline those themes and provide specific recommendations for future action.

Contacts made:

Peggy Brown, Director, Network on Domestic Violence and Sexual Assault, *Juneau*
Ginger Baim, Director, Safe and Fear-Free Environment, *Dillingham*
Michelle DeWitt, Director, Tundra Women's Coalition, *Bethel*
Colleen James, Nurse Examiner, *Homer*
Tammy Young, Director, Native Women's Coalition, *Sitka*
Katie Tepas, Victim Services Coordinator, Alaska State Troopers, *Anchorage*
Chris Ashenberner, Director, Council on Domestic Violence and Sexual Assault, *Juneau*
Angie Rosales, Victim Witness Coordinator, Municipal Prosecutors Office, *Anchorage*
Diane DiSanto, Mayor's Office, *Anchorage*
Nancy Haag and Mary Elam, Director and Program Manager, Standing Together Against Rape, *Anchorage*
Tim Gilbert, Native Tribal Health Consortium, *Anchorage*
Teresa Foster, Prosecutor, *Anchorage*
Patti Bland, Director, Network Training Project, *Juneau*

Overview of Sexual Assault in Alaska:

The first and most pressing topic is that Alaska has led the nation in its rape rate for over 20 years. Specifically, the rate of adult sexual assault is 2.5 times greater and child sexual abuse is six (6) times greater than any other state. These statistics are based on reported rapes and represent a small percentage of actual assaults. Also troubling is the fact that American Indian & Alaska Native women are 3.5 times more likely to be sexually assaulted than any other race. The constant reality of sexual violence is something that community members and service providers face each day. The issue of sexual assault and certainly the issue of rural sexual assault are often, simply overwhelming.

There are sound services in place, strong leadership on the issues, community concern, a systems response that has significant successes, and a level of coordination and collaboration that surpasses much of the rest of the country. However, even with all of this in place, the shear volume of sexual assaults and the vast, isolated geography of the state make fully meeting the needs of victims an almost impossible task.

Alaska has 20 programs that serve domestic violence and sexual assault victims. Other than Anchorage, these programs are dual in focus. This means that in addition to serving the extensive needs of domestic violence, the programs have responsibility for addressing the critical needs of sexual assault victims. Providing support and services to all areas of Alaska remains a priority although in most cases, these are only available in the larger communities or "hub" areas. These domestic violence/sexual assault hub programs are responsible for their community as well as the surrounding villages. Some programs have as many as 54 villages in their service area, most of which are not connected by a road system. These villages vary in size and can range from 70-80 residents to larger populations of 1,000 or more. Actual services within the outlying villages are sporadic at best. Efforts are made for program advocates to travel to villages as often as possible and each program provides a toll-free crisis line that can be accessed for support and information.

In general, villages do not have on-site medical services, law enforcement services, or mental health services. Most do have Health Aides and Village Safety Police Officers as resources who provide residents with various types of assistance. For sexual assault victims, they are able to provide initial care and comfort but are not trained to perform the forensic exam or investigate a crime. A complicating factor is that the Health Aides and VPSO are generally related to either the victim or the offender in any given community. This creates a significant lack of privacy for victims stepping forward to report the crime.

In cases where victims do decide to report, they are faced with waiting for contact with a state trooper that is generally located in the hub community. In-person contact with law enforcement and being transported to a hub for an examination can take days, depending on weather conditions. Even after crossing these obstacles, there may be difficulties with the existence and expertise level of the SANE/SART program in some hubs.

SART/SANE:

The SART/SANE model began in Alaska in 1998 and there have been centers established in 14 communities over the years. In discussing current issues regarding this model, it is helpful to distinguish between the two acronyms. SART is the sexual assault response team which consists of advocates, law enforcement and medical personnel who have been trained and collaborate to bring a more coordinated, comprehensive response to victims of sexual assault. SART speaks to the overall coordination, action and protocols of responding to sexual assault. This is a three-pronged approach with the advocate,

medical personnel and law enforcement personnel being equally critical to addressing the needs to the victim. This model can be established utilizing services that are available in any given community. It may look differently from place to place but the overall goal is a coordinated response for victims. Although this model is preferred by communities, the coordination and supportive response to victims could be established in any community.

SANE speaks directly to the Sexual Assault Nurse Examiners who have received specific training for completing forensic examinations in cases of sexual assault. The SANE is an important part of the three-pronged approach to victims. The SANE component of SART has been a significant focus in Alaska over the past 10 years. Alaska has a few nurse examiners who are leaders on the issues of training, setting standards of care and addressing systematic change in the overall protocols for forensic examinations. These nurses are well known and respected locally, statewide and nationally and bring much skill and insight to the process.

Preliminary findings suggest that both the SART and the SANE structures need to be further reviewed and addressed. There are difficulties in activating and utilizing the SART structure to its fullest. There are concerns that in some communities, local police departments have returned to interviewing the victim alone for a couple of hours prior to contacting others on the team. In some communities, nurse examiners do not call out the advocate as they feel they are able to serve in both roles. These examples have not been documented but were related by those in the field who are experienced and currently active in providing intervention to victims and are aware of how their communities are responding.

The variation in SANE availability and functioning creates a dilemma in using this model at all. The existence of SANE exams in some areas has created a standard within the courts for evidence not attainable in other areas of the state. As a result victims do not receive equal care and opportunity for prosecution based on where they reside. The SANE model is not a realistic option for small communities in its current form. There are significant struggles to recruit, train and maintain nurse examiners in all communities, including the more urban areas of the state. Anecdotally, there appears to be a reduction in prosecution over the years which could be found to reflect the lack of SANE evidence in some communities.

To determine the most effective process for serving those victims who choose to come forward and report, there needs to be a full review of the SART/SANE responses. It would be helpful to assess what is currently happening in each community, identify specific barriers to effectiveness and determine solutions that would create effective responses to victims regardless of where they reside. Many of the existing struggles have been clearly articulated by current responders. The issues of turnover in staffing, extensive training needs to maintain expertise, team members not working together in some cases, cases being pled down in a significant numbers of cases, and the exacerbation of geographic isolation from services are all a part of what needs to be addressed more extensively to make the systems response to sexual assault more effective.

Telemedicine:

In the face of these existing issues, communities have been seeking solutions. One of the most discussed ideas is that of telemedicine. These discussions are, for the most part, just beginning and there are varied views on its efficacy in real practice. Concerns regarding the use of this technology range from the extensive implementation costs, to the disclosure of evidence requirements, to the added demands on victims and the impact on their privacy. To implement telemedicine, there would need to be a large capital budget that could provide computers, digital cameras and other types of equipment to each location as well as a clear, well-developed implementation plan that would ensure victim safety.

There are specific concerns around the requirement to disclose all evidence to defense which would now include videos and phone call conversations. There are also concerns regarding the storage and transport of evidence while complying with the chain of evidence, the added costs to bring in additional witnesses involved in exams at remote location and the need that this creates to have witness training, medical training, and legal training at the village level.

Telemedicine is currently being used effectively in several areas of the state for other medical issues and in one area is being utilized for sexual assault examinations. While telemedicine seems to be an excellent solution to rural isolation in theory, there are many issues to be explored more thoroughly to ensure the protection and prioritization of victims.

Addressing and ending the violence:

Beyond the SART/SANE discussions, the most common topic in the interviews was the continued high levels of sexual assault within the state. The common question was, "What are we going to do with stop this violence from happening to our people?" While the question itself comes from exhaustion, frustration and sadness, the fact that everyone is seeking solution is a positive thing. It is clear that there is a collective consciousness of people throughout the state, in all capacities, that the primary concern for Alaska is ending this on-going violence and the time is now. This collective will throughout the state speaks to the determination and hope that Alaskans have about solving this problem no matter how difficult it is. This speaks to the strength of the service providers and members of the communities.

To interrupt this pattern of violence there must be a grassroots community approach and will need to involve all members of the community. There must be an intolerance developed for this violence at every stage of the community and a solution based plan that is created by each community that fits their specific needs. There can be a basic model of approaches, education issues and community action activities to select from but

each community will need to use the information in ways that best fit their individual needs and infrastructure.

There has been significant work done in Alaska through a Center for Disease Control project called Delta that is focused on four (4) specific pilot sites within Alaska. There has been significant success and the Director is looking to expand this model to address prevention of sexual assault. The difficulty has been identifying funding streams that can be directed to this purpose. Existing funds remain dedicated to meeting the needs of those who are being victimized each day.

It is clear that ending violence of this magnitude must be initiated at the micro-level with individuals and communities. It will require a multi-faceted approach to building an environment that does not tolerate, implicitly condone, nor accept sexual violence in its many forms. It requires working with individuals and communities beyond the stages of increasing awareness but rather builds individual and community capacity to address these issues in collective ways. Working to determine community-driven solutions that empower individuals to work together in effective ways to interrupt the cycles of sexual assault will be required to empower each village and community to create a plan that will work for them.

Certainly having the highest rate of rape in the Nation for over two decades has devastated many communities and countless individual lives of Alaskans. Any community work that addresses the continued violence must be able to incorporate the healing of those who have experienced multiple traumas that have remained unaddressed through the years. Without this healing, it would be impossible to ask those community members to step forward to address and change the level of sexual violence that is currently happening.

The communities seem poised to begin this work and the advocates, legal system, medical system and law enforcement are all at the ready to work together. The ultimate issue is the lack of resources. The state has worked diligently to explore funding sources that would support these community-based initiatives without reducing the already limited funds available to those being victimized each day. A complicating factor for funding is that almost all federal grants are population based and Alaska, the size of one-third of the United States, with no road systems to most of its communities, gets the same level of funding as an area the size of the District of Columbia with a total area of 69 square miles. Said differently, Alaska is asked to serve an area that is 429.9 times larger than Rhode Island with basically one-half of the funding resources.

In closing, Alaska has a number of unique barriers that need to be considered. Solutions for addressing victims' needs in Alaska need to include progressive action plans that will identify the immediate and short-term changes that need to be addressed as well as a planned, long-term approach to create sustainable solutions at the community level. While there are strong core services in place that work diligently to address as many needs as possible, the needs far exceed the current resources.

This report provides a very brief overview of the problem areas to be addressed based on informal interviews with a few representatives across the state. It does not intend to serve as a full needs assessment on the issues facing Alaska. The report has recommendations for further support and action steps that could more fully address the issue of sexual assault, specifically rural sexual assault, within Alaska.

Immediate issues that need to be addressed:

I. The Network needs to take a strong leadership role in assessing current responses to sexual assault throughout the state to ensure that all responses are best for victims.

- Network-directed assessment of current responses to SA victims to include:
  - Rural response
  - Law enforcement availability and response
  - Medical and SANE/SART response
  - Prosecution Response
  - Development of effective solutions for victims

II. Determine if and how the SART/SANE model is an effective model for Alaska and for victims by researching data on:

- The usage and availability of SART/SANE
- The impact on cases
- The cost of maintaining SART/SANE in Alaska
- Discrepancies in level of care based on location of victim

III. Explore the possibility of telemedicine as a safe, supportive option for victims of sexual assault to:

- Determine technology currently available
- Access safety of this approach for victims
- Identify resource needs, personnel needs and training needs for implementing this tool on a statewide basis
- Create graduated levels of response based on these findings to ensure all victims receive some response
- Develop policies and procedures for utilizing any technological solutions for gathering forensic evidence prior to implementation

Short-Term Needs Identified:

- Address levels of turn-over in key SART positions
- Develop and provide additional witness testimony training for nurse examiners to provide needed support and reduce turnover

- Standards of SART/SANE evidence not consistently available through state. Determine ways of minimizing this reality such as:
    - Training
    - Graduated system of care for all victims
    - Prosecutor training to manage cases without SANE exam
- Address the status of cases:
    - Being reported
    - Having forensic exams
    - Being prosecuted
    - Being pled out

Long-Term Priorities:

I. Develop and implement a statewide strategy to address the overwhelming incidents and impact of sexual assault in Alaska, specifically rural Alaska.

- With full community in-put and direction, create grassroots efforts to:
    - Increase awareness of incidents and impact of sexual assault on community members
    - Develop a no tolerance mentality that supports victims and holds perpetrators accountable with respect to cultural norms
    - Address and heal the multiple and generational issues of trauma that community members have experienced
    - Activate community to take lead on solutions, responses and prevention of sexual assault based on their individual needs and strengths
    - Spread effective models of solution to other communities throughout the state

Alaska Intimate Partner Violence and Sexual Violence Prevention Plan 2010-2016

DRAFT

ANDVSA
Alaska Network on Domestic Violence & Sexual Assault

This plan completes funding requirements for Grant US4/CE02285-06 of DELTA II.

Alaska

Intimate Partner Violence and Sexual Violence

Primary Prevention Plan

2010 - 2016

DRAFT

This plan was initially developed to complete the Center for Disease Control requirement for Domestic Violence Prevention Enhancements and Leadership Through Alliances (DELTA) Program. A statewide sexual violence prevention plan is being developed and will be fully incorporated into this primary prevention plan.

Forward

Intimate partner and sexual violence in Alaska is frequently referred to as an "epidemic," but the true extent of its damaging effects goes unrecognized. These effects include developmental delays of children being reared in violence, child abuse, substance abuse, self harm, high intentional and unintentional injury rates, and other negative health outcomes. Perhaps most significantly, unaddressed intimate partner violence in families and communities leaves Alaska's young people at risk for unbroken intergenerational patterns of intimate partner violence that spans decades and destroys lives. Intimate partner violence is a devastating reality for many Alaskans. Many organizations and agencies from private media to governmental agencies devote significant resources to address intimate partner violence or the chronic health and safety issues that are shaped by violence within our state.

Nationally, there is a growing movement to work towards preventing violence before it ever occurs by addressing the root causes of violence, using effective prevention principles, strengthening protective factors for our youth and communities, and by using proven or promising practices. Through this document, and emerging efforts around the state, Alaska has begun to join this national movement to work towards building healthier and safer relationships for all Alaskans.

In 2007, Alaska Intimate Partner Domestic Violence Needs and Resource Assessment was conducted by this Statewide Steering Committee and compiled by ANDVSA. Extensive efforts have been made to bring together all available information on prevalence of intimate partner violence, teen dating violence, and the risk and protective factors prevalent within Alaska. While clearly, additional state-specific data is needed, we were able to draw on the existing data and community-based knowledge to shape the goals and outcome of this plan.

Within this context, building on Alaska-specific and national resources to promote healthy relationships, we have developed a plan to prevent intimate partner and sexual violence and to promote healthy relationships.

This plan establishes a framework within which we can organize and coordinate a range of prevention and promotion efforts over the next 8 years. When working in tandem with one another, the seven goals put forward in this plan, act as a foundation, in which we can organize our efforts to collaboratively achieve our vision.

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Vision

As Alaskans, we reinforce the social and cultural norms that promote equitable and respectful relationships across the lifespan thereby creating violence-free lives for all Alaskans.

This plan asserts that intimate partner violence and sexual violence is preventable. Successful strategies will embrace these approaches:

- Establish a strengths-based approach to community building, youth empowerment, and healthy relationship / sexual health promotion throughout the state.
- Employ new and innovative approaches to build strong individuals, relationships, and communities.
- Empower youth to take an active role in developing and implementing IPV prevention.
- Ask difficult questions to create dialog and develop potential solutions.
- Develop gender-specific, culturally relevant, and regionally-appropriate approaches to engaging communities throughout Alaska.
- Build on prevention successes of partner agencies within the state and nationally.
- Learn from evidence-based practices in a statewide, national and international context.
- Expand collaborative efforts to strengthen protective factors and reduce risk factors of Alaskan individuals, relationships, and communities.
- Prioritize resources for IPV/SV prevention to create healthy, safe, educationally and economically thriving individuals and communities.
- Develop primary IPV / SV prevention systems to complement secondary prevention and intervention approaches throughout Alaska.

Over the course of the next six years, it is the intention of the SSC to work towards achieving the goals and outcomes within this document, to measure the effectiveness of the prevention/promotion strategies, and to determine how well this plan has been translated into action that results in measurable results.

On behalf of the Statewide Steering Committee, we hope that this plan is a resource for your agency and community and thank you in advance for supporting these efforts to ensure healthy and safe individuals, relationships, and communities for all Alaskans.

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Introduction

Preventing Intimate Partner Violence (IPV) and promoting healthy and safe relationships involves the convergence of complex issues, policies, and systems. An effective plan of action brings together diverse voices to work collaboratively and comprehensively to supporting a range of prevention efforts.

With funding support from the Center for Disease Control and Prevention (CDC) and coordination by the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), more than 20 individuals participated in the development of a comprehensive approach to promote healthy relationships and prevent IPV/ SV before it occurs.

The Statewide Steering Committee (SSC), worked together for an 18 month period from 2007-2009 to develop an Alaska Prevention Plan. These voices represented diverse professions, regions, cultures, and experiences.

We thank the representatives for their commitment and dedication to building safer relationships and communities in Alaska.

More than 30 individuals, youth and adults, took their time to respond to surveys, phone calls, and individual meetings to provide feedback to this plan. We know that this plan is stronger as a result of the contributions from across the state. Please accept our gratitude for your assistance in developing this document.

This Plan was supported by the ANDVSA DELTA Project which is funded through Cooperative Agreement US4CE02285-6 with the Centers for Disease Control and Prevention (CDC). The contents of this document are solely the responsibility of the authors and do not necessarily represent the official views of ANDVSA or the CDC.

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Shared Definitions

There has been considerable discussion about the terminology of intimate partner violence prevention and healthy relationship promotion. To use a common a language for the purposes of this document we have defined healthy relationships, healthy sexuality, and intimate partner violence in the following ways:

Healthy Relationship

A healthy relationship consists of a connection between people that increases well-being, is mutually enjoyable, and enhances or maintains each individual's positive self-concept. Healthy relationships are frequently characterized by:

Mutual Support	Compromise	Trust	Respect
Mutually Fair	Self-Confidence	Honesty	Equality
Understanding/ Empathy		Good communication	

Healthy Sexuality

Healthy sexuality implies experiencing sexuality in a state of physical, emotional, social, and cultural well-being while having the capacity to enjoy and control one's own sexual and reproductive behavior in accordance with personal and social ethics.

Intimate Partner Violence

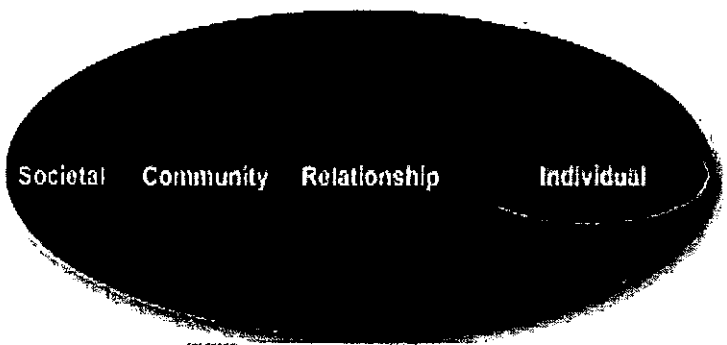
A pattern of assault and coercive behaviors including physical, sexual, economic and psychological abuse that adults or adolescents use against their intimate partners. Intimate partner violence can be seen in both same sex as well as heterosexual relationships.

Sexual Violence

Sexual violence refers to sexual activity where consent is not obtained or freely given.

Primary Prevention of IPV and Promotion of Healthy Relationships

Across the nation, there is growing recognition that reversing health disparities in communities share many commonalities regardless of health concern. First and foremost, successful strategies rely upon prevention, rather than intervention, often primary prevention. Primary prevention efforts seek to bring about change in individuals, relationships, communities, and society.



The focus of primary prevention is to prevent intimate partner violence before it occurs and it is distinguished from secondary prevention because it explicitly focuses on action before there is a threat of violence. Primary prevention efforts foster social norms and environments in which intimate partner violence and sexual violence does not occur. The primary prevention of IPV: 1) Promotes the factors associated with healthy relationships and healthy sexuality, and 2) Counteracts the factors associated with the initial perpetration of sexual violence and intimate partner violence. This work values and builds on the strengths of diverse individuals, cultures, and communities to eliminate the root causes of intimate partner violence, to create healthier social environments.

Purpose of the Prevention Plan

The social, health, educational, and economic costs of intimate partner violence (IPV) are far too great within Alaska. This plan seeks to reverse this trend and to ultimately reduce risk and build strengths to prevent violence before it ever occurs. We know that the impacts of strengthening individuals and relationships in Alaska will positively impact each and every one of us and will influence business, health, education, public safety, and the cultural well-being of all our neighbors across Alaska.

This plan is merely a first step in statewide efforts to prevent violence by reinforcing the social and cultural norms that promote equitable and respectful relationships across the lifespan.

Ultimately, we hope that this plan can support your efforts in creating a healthier and safer Alaska

Whether you become involved in prevention where you work, worship or play, your efforts to promote healthy relationships can make a lasting impact on the lives of many Alaskans.

SSC Recruitment

Original SSC membership included representatives from each DELTA pilot site, university representatives, health and tribal health consortium, tribal justice organizations, rural workers, ANDVSA member programs, local government and others. The SCBT intentionally incorporated diverse perspectives including individuals active in an administrative and managerial capacity, direct services, and research-based work. Geographical, experience-base, and cultural backgrounds were also considerations. Agency retention and make up of the Statewide Steering Committee remained fairly consistent from inception to present.

SSC History

Since September of 2007, the Statewide Steering Committee has collaborated on every aspect of this plan through in-person quarterly meetings and periodic participation in IPV prevention subcommittee work groups. Subcommittees assisted in these key areas: Alaska Profile and Direction (needs and resource assessment), public-used plan, develop evaluation, communication and dissemination, and document preparation. In 2008, the SSC also developed subcommittees to support plan development and implementation around each key goal area: infrastructure, media, youth, education, root causes, data, and community engagement.

SSC Processes

To examine intimate partner violence in Alaska, the Alaska DELTA Project Profile and Direction Subcommittee examined local intimate partner violence prevention and intervention efforts taking place statewide. The communities are geographically and ethnically diverse, and range in size from urban to rural, or geographically isolated. Most communities in Alaska remain inaccessible by road.

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To better understand efforts to prevent intimate partner violence around Alaska, the Profile and Direction subcommittee developed and conducted key informant interviews and co-developed a statewide telephone-based survey with individuals in 12 communities, as well as representatives of other statewide organizations and agencies, public and private. Information sought in the key informant interviews and statewide surveys included: perceptions of intimate partner violence, prevalence, consequences of, and individual and community efforts to address intimate partner violence and intimate partner violence prevention.

In addition to the literature review, crime statistics, and key informant interviews, the entire SSC committee participated in an environmental scan that reviewed the Strengths, Weaknesses, Opportunities, and Threats (SWOT) of IPV prevention and healthy relationship promotion across Alaska. This scan identified resources and strengths from which we can build our prevention efforts on.

The review of data reinforced that there is a dearth of information on adequately evaluated primary prevention strategies for preventing IPV nationally, and specifically for rural, remote, and Alaskan Native communities. The data limitations provided direction for future research priorities including: Alaska-specific IPV risk and protective factors, effective prevention strategies for Alaska, and root causes of the statewide health disparities.

These research priorities have been included in the AK plan to promote healthy relationships and prevent intimate partner violence.

Finally, the Profile and Direction Subcommittee gathered and analyzed state and national data related to intimate partner violence from a variety of sources:

1. Alaska Council on Domestic Violence and Sexual Assault data
2. Alaska Division of Juvenile Justice case data
3. Alaska-specific Behavioral Risk Factor Surveillance System (BRFSS) data
4. Alaska Youth Risk Behavior Survey 2003
5. Kids Count Alaska 2006-2007
6. Descriptive Analysis of Sexual Assault Incidents Reported to Alaska State Troopers: 2003-2004
7. Initial Report and Recommendations of the Alaska Rural Justice and Enforcement Commission
8. Municipality of Anchorage Domestic Violence Analysis, Incidents Reported to Police in Anchorage Alaska 14 years study, 1989-2002
9. World Report on Violence and Health- World Health Organization

SSC Decided No Executive Summary

10. Alaska Justice Forum, Winter 2004, Volume 20, No. 4. Justice Center Sexual Assault Study. University of Alaska, Anchorage

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Letters of Endorsement [Will be inserted here when politically viable and timely]

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GOALS TO PREVENT INTIMATE PARTNER VIOLENCE IN ALASKA 2009-2015

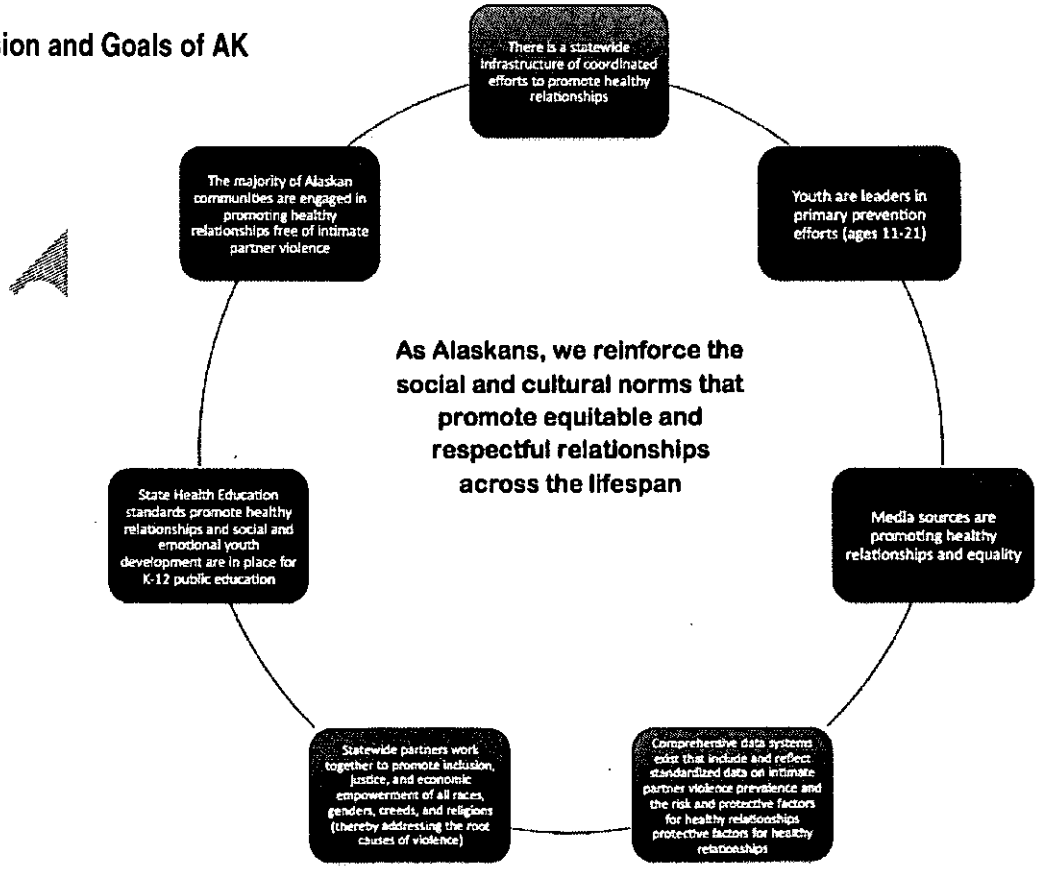
Introduction

Based on the needs and resource assessment, the SSC has developed a shared vision, and a framework for IPV prevention and healthy relationship promotion within AK. The goals and outcomes were generated by the entire statewide steering committee. These are broad goals and measurable outcomes that will support healthy relationship development and prevent IPV.

Contributors to this plan, worked together to review evidence or promising strategies. The number of IPV-specific evidence-based strategies is limited, and those appropriate for Alaska communities, even fewer. In response, this plan prioritizes both research efforts of IPV prevention strategies (currently being used in communities and promising strategies nationally) and support for local community adaptation of promising practice from related fields.

Many of the specific actions and strategies put forward within this document are to be carried out at a statewide level, lending support and establishing an infrastructure for community-driven strategies. The SSC has also prioritized developing a cache of prospective strategies for community level consideration. As we move prevention efforts forward, we anticipate that additional partners will help to establish this cache, building on various prevention, marketing, research, or community expertise.

Vision and Goals of AK



Goal 1) There is a statewide infrastructure of coordinated efforts to promote healthy relationships

Rationale: *Intimate partner violence prevention and healthy relationship promotion has had limited coordination and resource allocation in Alaska. These prevention efforts are complex and require comprehensive, coordinated, well-resourced approaches to ensure successful programming at a state and local level. Through increased resource designation to IPV prevention, seamless training and support, and meaningful prevention policy, we can provide a support structure to support the goals and outcomes within this plan and IPV prevention in Alaska.*

Outcomes:

Resources

1.1 By January 2010, funding for existing primary prevention programming and initiatives is maintained

1.5 ANDVSA, CDVSA, DHSS, and SSC partners have identified funding strategies (2010) and secured a 20% annual increase in funding for "intimate partner violence prevention plan" implementation.

1.6 From 2010 to 2015, there will be a minimum 10% annual increase in human resources dedicated to the ongoing support of IPV primary prevention at state organizations, as compared to baseline

1.2 Starting in January , there will be a minimum of 10% annual increase in new funding sources (local, state, federal, tribal) for IPV prevention throughout Alaskan communities.

1.3 By January 2011, new primary prevention programming and initiatives will be established to promote healthy relationships at the state level

1.4 By January 2011, new primary prevention programming and initiatives will be established to promote healthy relationships at the local level

Statewide Training & Support

1.7 By January 2012, training infrastructure is in place to support primary prevention initiatives and programming

1.8 By January 2012, evaluation infrastructure is in place to support primary prevention initiatives and programming

Statewide Policies

1.9 Policies that support the primary prevention of intimate partner violence are identified (2012) and adopted (2014), as reflected in public documents such as state legislation, local and tribal policy, memorandums of understanding, and agency documents.

Strategies:

- Educate potential funders about IPV primary prevention and needs for state-level funding
- Identify short and long-term funding for IPV prevention plan implementation, technical assistance, and local efforts.
- Identify and document key staff or "human capital" to implement plan
- Maintain and establish working groups for various goals and for overarching IPV prevention capacity building
- Develop media campaign messages that have Alaska-specific messages to prevent IPV
- Establish recommendations for initiating comprehensive prevention efforts in diverse communities across Alaska.

Goal 2) Youth are leaders in primary prevention efforts (ages 11-21)

Rationale: *Effective IPV prevention efforts must build skills and create opportunities for young people to promote healthy relationships. The most effective programs focused on protective factors for youth in the areas of teen pregnancy, substance abuse, and bullying identify youth development and youth leadership as important components. A growing number of youth in Alaska have become more interested in promoting non-violence in relationships and equality in communities. We intend to build on this enthusiasm and movement to shape prevention efforts in this state.*

Outcomes:

2.1 By 2010, there are local resources and opportunities for youth to build skills and participate in small projects that promote peace and equality
2.2 From Sept 2010-2015, there will be a 10% increase in the number of youth recognized as statewide leaders in promoting healthy relationships
2.3 By 2012, there is a 40% increase in local and statewide youth leadership training opportunities to promote healthy relationships in and out of school (e.g., conferences, policy-making situations
2.4 By 2012, a 10% increase in youth will providing healthy relationship messages and that are youth-accessible and interesting, both in and out of the school
2.5 By Dec 2014, 60% of state and local decision- making boards, commissions, task forces, and advisory groups have designated seats and identified adult mentors for youth.

Strategies

- Identify and coordinate human resources working on youth leadership to promote healthy relationships and prevent intimate partner violence.
- Compile youth group objectives from across the state to coordinate youth efforts across the state.
- Engage youth coalitions throughout the state that already exist to get more involved in youth-led programming
- Support and expand youth leadership events (e.g., LeadOn!, youth Rotary, AFN Elders and Youth)
- Identify best practices in youth development both nationally and statewide
- Encourage youth groups to have youth leadership as a goal for their own agency's objectives
- Provide healthy relationship train-the-trainer opportunities (e.g. Lead On!) at the youth events
- Research and identify 5 evidence-based promising practices for youth development and leadership training
- Draft legislation that will create designated seats utilized on youth-focused prevention and promotion decision-making boards
- Provide trainings (topical, leadership, legal)
- Support and launch a youth led social marketing/ media campaign (ties in with Goal 3)
- Use of innovative strength building programs (Girls on the Go, Men of Strength etc, Leadership Asset Youth)
- Recognize and honor youth leaders in various locations across the state

Prospective Partners: United Way, AASB, MCH, Behavioral Health, Boys and Girls Clubs, Big Brothers Big Sisters, Boy / Girl Scouts, Youth Development Academy, Alaska Network for Youth, AFN, Member Programs, Spirit of Youth, Rural Cap, Alaska Lung Association, Alaska Youth for Environmental Action, Anchorage Youth Development Coalition, Schools, Church Group Leaders, others? *Alaska State Community Service Commission- Mita Mattson, Covenant House, Jake's place, Member programs,* public health, tribes, youth centers , residential and afternoon centers, RYLA, MediaAK

Goal 3) Media sources are promoting healthy relationships and equality

Rationale: *Media is a primary source of information and entertainment for youth ages 11-21. Exposure to violence and repeated gender stereotypes may cause many youth to feel confused about relationships and violence. Prolonged exposure to violent or aggressive media portrayals results in increased acceptance of violence as an appropriate means of solving problems and achieving one's goals. A growing body of evidence (in tobacco cessation and other areas)[1], [2] confirms that public health driven campaigns speaking to teens in their own voice are effective approaches to influencing behavior.*

Outcomes:

3.1 By 2010, there are youth-led, media-supported campaigns promoting healthy relationships
3.2 By 2010, journalists and public relations specialists employed with Alaska radio, television, and newspaper outlets understand the role of media in promoting healthy relationships and preventing intimate partner violence
3.3 By 2011, 50% of regional and state media sources are promoting healthy relationships in their advertising and programming
3.4 By 2012, campaigns developed to promote healthy relationships and positive imaging in the media includes regional artists and "celebrities

Strategies:

- This goal has 2 foci (1) Awareness of the role of media and (2) media campaign/ social marketing for all of DELTA
- Use promising existing media campaigns and adapt to Alaska and tailor to specific Alaska audiences.
- Recruit Alaska spokespeople to promote healthy relationships in Alaska
- Develop advocacy plan to recruit media outlets
- Establish awards for positive advertising and media messaging
- Tie into existing youth groups to develop/ create/ influence media campaign
- Statewide campaign to counteract negative imaging, gender stereotyping and violence
- Link in to local and national campaigns (e.g., my strength is not for hurting- that's not cool)
- Launch campaigns promoting positive identities and relationships
- Launch campaigns exploring cultural implications for IPV and promoting strong cultural identities
- Develop a cache or templates for media campaigns to be adapted and printed upon request of communities (built on research of national and international campaigns)
- Establish tools to develop media literacy and media education in AK
- Seek legislative resolution to protest negative imaging and gender stereotyping

Prospective Partners: Private Radio, TV, and Newspapers across Alaska, Public Radio / TV across Alaska, Alaska Teen Media Institute, MediAK, campus radio stations, military media, musicians, marketing firms, UAA Journalism, UAF Journalism, Alaska Broadcasting Association, Anchorage Daily News

Goal 4) Comprehensive data systems exist that include and reflect standardized

[1] McKenna J, Gutierrez K, McCall K. Strategies for an effective youth counter-marketing program: recommendations from commercial marketing experts. Journal of Public Health Management and Practice,2000; 6(3):7-13. See also Columbia Marketing Panel. (1996). Tobacco Counter-Marketing Strategy Recommendations, Draft Report.

[2] Bauer UE, Johnson TM, Hopkins RS, Brooks RG. Changes in youth cigarette use and intentions following implementation of a tobacco control program: findings from the Florida Youth Tobacco Survey, 1998-2000. Journal of the American Medical Association 2000; 284(6):723-728.

data on intimate partner violence prevalence and the risk and protective factors for healthy relationships
Rationale: *Accurate and relevant data for IPV prevention remains scarce in Alaska, particularly for prevalence and protective factors amongst youth. Our success in addressing IPV will be determined in part by our understanding of IPV/SV in Alaska across regions, cultural, economic groups. Our success will also be determined by our ability to effectively evaluate healthy relationship strategies to develop Alaska-appropriate solutions.*
Outcomes
4.1 By June 2010, a broad group of researchers and practitioners in the state will identify the risk and protective factor data available relevant for "healthy relationship" promotion. 4.2 By January 2012, Alaska will be funded to participate in the National Incident Based Reporting System (NIBRS). 4.3 By January 2012, mechanisms for gathering data exist that are culturally sensitive and ensure safety when reporting abuse (with particular attention to confidentiality in small villages and the need for aggregating data across villages) 4.4 By 2012, researchers collecting data on interpersonal violence will coordinate to create a central clearinghouse (including website) to share and access information about the risk and protective factor data available for "healthy relationships" and encourage unduplicated data collection 4.5 By 2012, a dynamic body of knowledge will be initiated by the SSC that clarifies the root causes of intimate partner violence in Alaska 4.6 2016, there are 3 promising IPV prevention strategies and national evidence-based strategies that have been evaluated within Alaska
Strategies
• Adopt and participate in the National Incident Based Reporting System (NIBRS) • Develop a workgroup to identify IPV data needs, coordinate IPV data research efforts, and collection mechanisms • Coordinate with Federal, State, Tribal agencies to enhance data • Determine data sharing technology to assist statewide data coordination • Develop an electronic communication strategy that will increase advocacy of IPV prevention research efforts. • Establish more asset (protective factors) based survey mechanisms, build on resiliency work in-state. • Review the SPF-SIG report on population-based indicators • Develop an infrastructure for practitioners to communicate promising practices • Develop protocols or guidelines for culturally responsive data collection, and reporting • Identify local policymaker and other organized groups who will advocate for ongoing funding sources for IPV prevention research • Research prevalence of youth dating violence

Prospective Partners: Alaska Network on Domestic Violence and Sexual Assault, Council on Domestic Violence and Sexual Assault, Alaska Family Violence Prevention, Alaska Native Justice Center, Alaska Dept of Health And Social Services (Public Health, Behavioral Health), UAA, UAF, legislators, local councils, tribal health, Alaska Federation of Native. Governor. Senators. Alaska Mental Health Trust

Goal 5) Statewide partners work together to promote inclusion, justice, and economic empowerment of all races, cultures, genders, and classes
(thereby addressing the root causes of violence)

Rationale: *A disproportionate number of health disparities and risk factors are present within marginalized communities in Alaska. Specific communities and cultural groups have unique prevention needs that should be addressed by tailoring strategies and nuances to enhance prevention effectiveness.*

Outcomes

5.1 By 2012, there will be a 50% increase in the number of organizing efforts among Alaskan males to collectively work to promote and respect social equality
5.2 By 2012, key health service, nonprofits, funders, and administrative leaders will recognize the root causes of intimate partner violence
5.3 By 2012, state policy makers will understand the relationship between economic disparity and health indicators as evidenced by new policies and proposals
5.4 By 2013, key health service, nonprofits, funders, and administrative leaders will commit resources to address the root causes of violence
5.6 By 2013, local and state policy makers will commit to programmatic and policy decisions which promote economic parity
5.7 By 2014, intimate partner violence prevention program planning and implementation will reflect the diversity of cultures and communities in Alaska

Strategies

- On all of our committees, organizations, boards, "root causes" are discussed
- Outreach, education, training on root causes of IPV (include youth as messengers) is carried out strategically
- Establish documentation of causal factors of IPV/SV and other social/health disparities
- Work with AFN in the development of resolutions – articulating root cause and relevant strategies
- Work with coaches' certification program to make coaching boys to men a part of their curricula
- Engage boys and men in healthy relationship promotion that includes land-based and outdoor activities
- Support programming that integrates traditional Alaska Native healthy living with healthy relationships.
- Host a conference focused on men's role in ending interpersonal violence
- Promote the Flags on Mountain campaign
- Record and share male elders' stories about equality and respect among men and women
- Implement the "Inspiring Moments" campaign
- Promote media campaigns where men take a lead in intimate violence prevention
- Engage men to serve as positive role models to adult youth
- Engage civic organizations and others to speak about IPV prevention and root causes
- Complete an analysis of economic, educational, and health disparities with a gender and culture-based lens to segment issues and identify population appropriate solutions.

Prospective Partners: Groups who are funded to address poverty, housing, racism; rural voices; marginalized populations, rotary clubs, service organizations with majority male membership, college and high school coaching organizations, LeadOn! youth and planning team, Native youth organizations or groups, AFN, local DELTA-funded communities who have worked to organize men (e.g., Dillingham), ANTHC; Alaska White Ribbon Campaign; UAA fraternities

Goal 6) State Health Education standards that promote healthy relationships And social and emotional youth development are in place for K-12 public education

Rationale: *Healthy relationship education and social and emotional development is one piece of a broader strategy to help children and adolescents to make good choices and navigate life-changing developmental minefields such as substance use, bullying, sexual relationships, and violence*

Outcomes:

6.1 By Jan 2010, representatives of the State Steering Committee and the Department of Education along with health educators from the schools and universities will develop state education health standards that promote healthy relationships and social and emotional youth development in accordance with evidence-based guidelines
6.2 By Sept 2012, the State Board of Education will adopt the state education health standards drafted in 7.1
6.3 By Sept 2013, all professional and paraprofessional education staff will be required to complete evidence-based professional development that fulfills the Alaska health education statute adopted in 7.2
6.4 By 2014, professional and paraprofessional education staff will integrate k-12 health education promoting healthy relationships and social and emotional youth development into the classroom

Strategies:

- Bring together identified representatives of the SSC, schools, universities, community based health educators and the Dept of Education to develop guidelines as described in 7.1
- Adapt or identify culturally responsive IPV prevention curriculum that has an emphasis on diversity or represents Alaska populations
- Evaluate promising curricula for use in Alaskan communities, such as the Fourth R
- Introduce bill that comprehensively addresses healthy relationship and social and emotional curriculum
- Engage the Statewide School Board to advocate for an incorporated curriculum that is comprehensive and works to address multiple risk factors
- Work with the coordinated school health efforts and special interest groups to review overlapping interests.
- Bring together identified representatives, school, university and community based health educators, Dept of Ed representatives to develop guidelines as described in goal
- Develop educational materials to publicly explain this work, including definitions of healthy relationships
- Ask LeadOn! youth to present in their communities on healthy relationships in their community
- Advocate for an incorporated curriculum that is comprehensive and work to address multiple risk factors

Prospective Partners: Coordinated School Health Program workgroup; groups that are doing healthy lifestyle trainings; Head Start program; special interest groups with similar interests in health curricula; South Central Foundation; Health Education Committee; AFN; ANTHC; Boys & Girls Club; First Alaskans Institute; Covenant House; Rural Cap; Joel's Place; Coaches' certification program – work with these programs and make this part of that training - tap into coaching boys to men; Local Schools; Commissioner and State Board of Education

Goal 7) The majority of Alaskan Communities are engaged in promoting healthy relationships free of intimate partner violence

Rationale: Many individuals are unaware that IPV is preventable. Other Alaskans are concerned about the levels of intimate partner violence, but are uncertain what to do about it. While most communities are best-positioned to develop appropriate messages and create change, many communities state that they lack the resources or support to effectively carry out comprehensive intimate partner violence programming.

Outcomes:

7.1 By 2011, at least 50% of youth-serving professionals (or at least 50% of community members in # of communities) can identify their role in promoting healthy relationships

7.2 Starting in 2011, there is a 10% annual increase in the number of community leaders and/or youth serving organizations that promote healthy relationships (compared to baseline)

7.3 By 2011, at least 25% of the target audience for a statewide social marketing campaign to promote healthy relationships will recall messages about the characteristics of a healthy relationship

7.4 By 2012, at least 50% of the organizations doing primary prevention of IPV will know how to access a cache of evidence-based strategies for promoting healthy relationships and preventing IPV

7.7 By 2012, at least 80% of state-level stakeholder groups (see work plan for examples) will be aware that IPV is preventable

7.8 By Jan 2011, at least 60% of key prevention stakeholders will have a clearly identified role in primary prevention on the statewide prevention team

7.5 By 2013, at least 25% of Alaska's communities are using primary prevention technical support and training available through the public health department or ANDVSA.

7.6 Starting in 2014 there is a 10% annual increase in communities that have active, committed groups working collaboratively on individual and relationship wellness (as measured by # of task forces, program, activities, and work plans

Strategies:

- Identify and recruit community natural helpers to initiate healthy relationship discussions on a community level
- Develop accessible training and support technical assistance (coaching, etc) for IPV prevention coalition building on a community level for IPV prevention capacity building.
- Collaborate with statewide youth organizations providing training to youth-serving organization staff to assist with healthy relationship promotion within usual activities.
- Develop mechanisms to share promising practices in Alaska
- Implement statewide media campaign
- Implement population focused media efforts
- Incorporate prevention efforts in the theater, art, music, film, poetry

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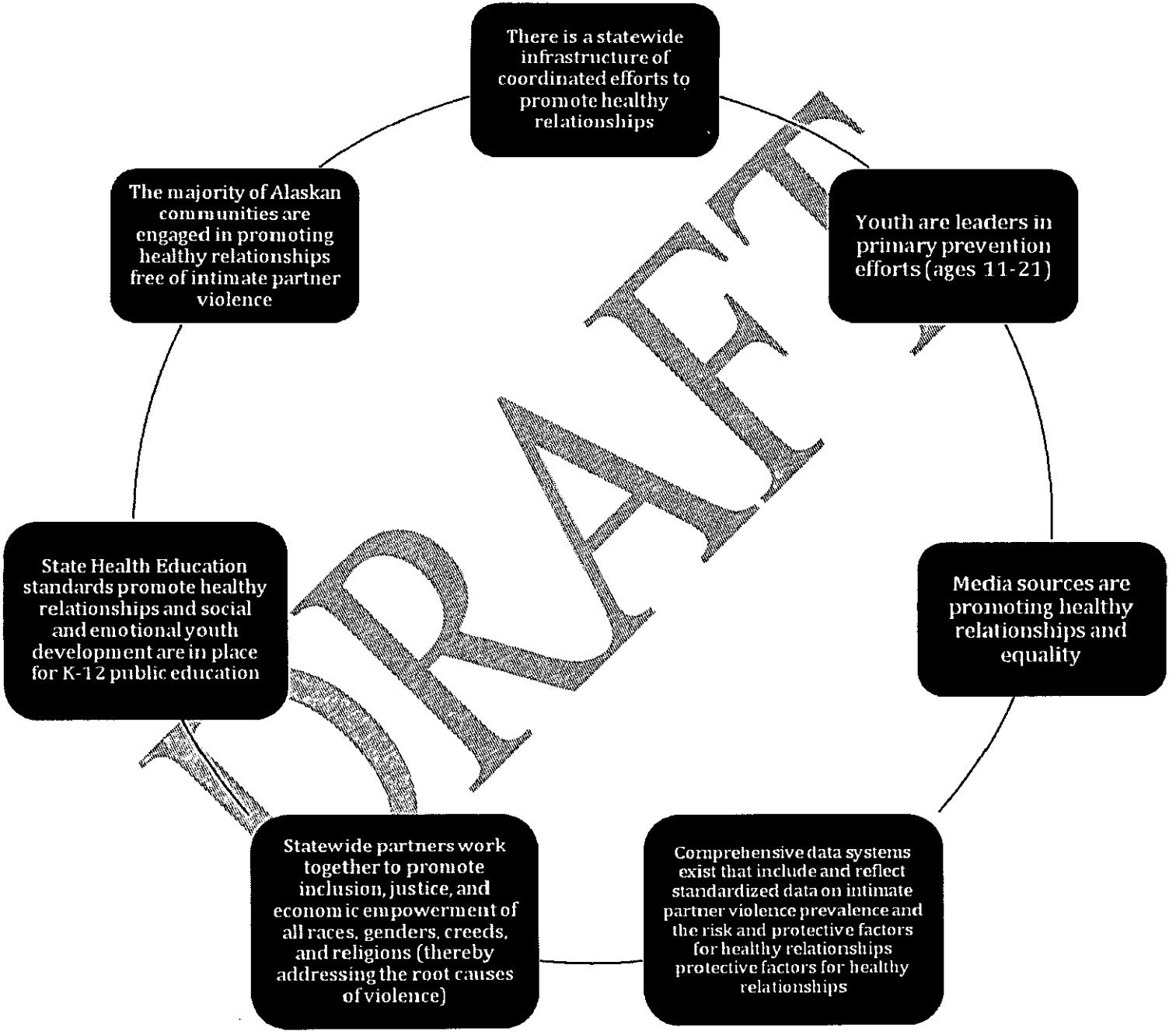
Logic Models


There is a statewide infrastructure of coordinated efforts to promote healthy relationships
Youth are leaders in primary prevention efforts (ages 11-21)
Media sources are promoting healthy relationships and equality
Comprehensive data systems exist that include and reflect standardized data on intimate partner violence prevalence and the risk and protective factors for healthy relationships protective factors for healthy relationships
Statewide partners work together to promote inclusion, justice, and economic empowerment of all races, genders, creeds, and religions (thereby addressing the root causes of violence)
State Health Education standards promote healthy relationships and social and emotional youth development are in place for K-12 public education
The majority of Alaskan communities are engaged in promoting healthy relationships free of intimate partner violence
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Goal 1: There is a statewide infrastructure of coordinated efforts to promote healthy relationships

Resources/Inputs	Strategies and Activities	Outputs	Short Term Outcomes	Intermediate Outcomes	Long Term Outcomes
• Clarify and prioritize available resources in DELTA III	• Educate potential funders about IPV primary prevention and needs for state-level funding • Identify short and long-term funding for: Statewide Steering Committee group, implementation, technical assistance, • Identify staffing or "human capital" to implement plan • Maintain and establish working groups for various goals and for overarching IPV prevention capacity building • Develop media campaign messages that have Alaska-specific messages • Establish recommendations for initiating comprehensive prevention efforts in AK	• Materials (for segmented audiences) • # of presentations to funders • strategic funding plan with checklist or action plan for prospective funders • # of funding streams • agreements from agencies designating staff for implementation • coalition • protocols for diverse membership recruitment • Alaska specific messages defining healthy relationships • List of "small wins" for working groups and statewide capacity building group • Historical document explaining the DELTA SSC and process (spirit of intent document) • Marketing materials on IPV prevention (tv ads, radio ads, posters, web-based materials, event templates etc.) • Umbrella website that includes prevention activities and strategies • Social networking sites that discuss prevention • # of messages aired, material distributed • guidelines for initiating ipv prevention in communities • baseline and evaluation tools	• 1.1 By January 2010, funding for existing primary prevention programming and initiatives is maintained • 1.5 By Jan 2010, ANDVSA, CDVSA, DHSS, and SSC partners have developed funding strategies for "intimate partner violence prevention plan" implementation. • 1.6 From 2010 to 2015, there will be a minimum 10% annual increase in human resources dedicated to the ongoing support of IPV primary prevention at state organizations, as compared to baseline	• 1.2 Starting in January 2011, there will be a minimum of 10% annual increase in new funding sources (local, state, federal, tribal) for IPV prevention throughout Alaskan communities. • 1.3 By January 2011, new primary prevention programming and initiatives to promote healthy relationships are established at the state level • 1.4 By January 2011, new primary prevention programming and initiatives to promote healthy relationships are established at the local level • 1.7 By January 2012, training infrastructure is in place to support primary prevention initiatives and programming • 1.8 By January 2012, evaluation infrastructure is in place to support primary prevention initiatives and programming • 1.9 By Dec 2012, policies that support the primary prevention of intimate partner violence are identified and adopted, as reflected in public documents such as state legislation, local and tribal policy, memorandums of understanding, and agency documents.	

Goal 2: Youth are leaders in primary prevention efforts (ages 11-21)

Resources/Inputs	Strategies and Activities	Outputs	Short Term Outcomes	Intermediate Outcomes	Long Term Outcomes
• Clarify and prioritize available resources in DELTA III	• Identify and coordinate human resources working on youth leadership to promote healthy relationships and prevent intimate partner violence. • Identify key contact person at each youth organization to coordinate youth efforts across the state. • Compile youth group objectives from across the state. • Engage youth coalitions throughout the state that already exist to get more involved in youth-led programming • Engage youth leadership events (e.g., LeadOn!, youth Rotary, AFN Elders and Youth) • Identify best practices in youth development national and statewide • Encourage youth groups to have youth leadership as a goal for their own agency's objectives • Do a train-the-trainer at LeadOn! at the youth events • Research and identify 5 evidence-based promising practices for youth development and leadership training • Draft legislation that will create designated seats on youth-focused prevention and promotion decision-making boards • Provide trainings (topical, leadership, egal) • Youth led social marketing/media campaign (ties in with Goal 3) • Use of innovative strength building programs (Girls on the Go, Men of Strength etc, Leadership Asset Youth Coalition)	• **Job descriptions that include youth-leadership development as a part of their job** • **A database of youth-serving organizations** • **Training and networking opportunities for youth-serving organizations** • **Toolkit for promoting youth leadership** • **Compiled list of youth leadership examples in Alaska and nationally** • **Guidebook for decision making bodies to involve youth members and youth mentors** • **A resolution on youth designated seats** • **#of trainings** • **#of youth organizations that participate** • **#of youth participating in healthy relationship promotion** • **#of programs carried out that promote protective factors and youth leaderhsip**	• 2.1 By 2010, there are local resources and opportunities for youth to build skills and small project developments that promote peace and equality • 2.3 From Sept 2010-2015, there will be a 10% increase in the number of youth recognized as statewide leaders in promoting healthy relationships	• 2.2 By 2012, there is a **40% increase in local and statewide youth leadership training opportunities to promote healthy relationships in and out of school (e.g., conferences, policy-making situations)** • 2.4 By 2012, **youth will provide healthy relationship messages and that are youth-accessible and interesting, both in and out of the school**	• 2.5 By Dec 2014, 60% of state and local decision-making boards, commissions, task forces, and advisory groups have **designated seats and identified adult mentors for youth.**

Goal 3: Media sources are promoting healthy relationships and equality

Resources/Inputs	Strategies and Activities	Outputs	Short Term Outcomes	Intermediate Outcomes	Long Term Outcomes
• Clarify and prioritize available resources in DELTA III	• This goal has 2 foci (1) Awareness of the role of media and (2) media campaign/ social marketing for all of DELTA • Use promising existing media campaigns and adapt to Alaska • Recruit Alaska spokespeople to promote healthy relationships in Alaska • Advocacy to media outlets • Awards for positive advertising • Tie into existing youth groups to develop/ create/influence media campaign • Statewide campaign to protest negative imaging • Link in to local and national campaigns (e.g., my strength is not for hurting- RWJF-DELTA broaden reach, that's not cool) • Campaigns exploring positive identities and relationships • Campaigns exploring cultural implications for IPV • Have a cache or templates for media campaigns in communities (built on research of national and international campaigns) • Statewide campaign to protest gender stereotypes and degradation in the media • Establish tools to develop media literacy and media education in AK	• AK Broadcasting Association annual meeting—be on agenda and present on role/power of media and need for positive messaging • Tips and 'Please Don't Use' sheet for advertisers annual recipients of media award • # of radio personality endorsements, # of AK spokespeople agreements. AK famous/recognized spokespeople: Scotty Gomez (hockey), Klkkan Randal (skiing), Steve Helmel • Toolkit or guidelines for youth-led media campaign • Toolkits or statewide support for campaigns to Alaska Native men • # of groups involved in media campaign development • Templates for marketing campaigns • Facebook and MySpace advocacy sites • Engaging media literacy toolkits	• 3.1 By 2010, there are youth-led, media-supported campaigns promoting healthy relationships • 3.2 By 2010, journalists and public relations specialists employed with Alaska radio, television, and newspaper outlets understand the role of media in promoting healthy relationships and preventing intimate partner violence	• 3.3 By 2011, 50% of regional and state media sources are promoting healthy relationships in their advertising and programming • 3.4 By 2012, campaigns developed to promote healthy relationships and positive imaging in the media includes regional artists and "celebrities"	

Goal 4: Comprehensive data systems exist that include and reflect standardized data on intimate partner violence prevalence and the risk and protective factors for healthy relationships protective factors for healthy relationships

Resources/Inputs	Strategies and Activities	Outputs	Short Term Outcomes	Intermediate Outcomes	Long Term Outcomes
• Clarify and prioritize available resources in DELTA III	• Adopt and participate in the National Incident Based Reporting System (NIBRS) • Develop a workgroup to determine what data exists and what data is needed and how to coordinate data collection • Coordinate with Federal, State, Tribal agencies to enhance data • Find out what technologies exist that allow you to access data across individual data systems (to assist statewide data coordination) • Develop an electronic communication strategy that will increase advocacy of IPV prevention research efforts. • Establish more asset (protective factors)-based survey mechanisms, build on work in-state. • Review the SFF-SIG report on population-based indicators • Develop an infrastructure for practitioners to communicate promising practices • Recommended process • Develop protocols or guidelines for acquiring culturally responsive, data collection, and reporting • Identify local policymakers and other organized groups who will advocate for ongoing funding sources for data collection and analysis	• NIBRS data • Data priorities • Technology options for data streaming in AK • Research champion • Risk factor data advocacy group • Electronic strategy for communication • List of statewide • Advocacy team • Tools to collect protective factor data • Resolution on more IPV data collection • Overview and guidelines for responsible, culturally responsive data collection and reporting	• 4.2 By June 2010, a broad group of researchers and practitioners in the state will identify the risk and protective factor data available for "healthy relationships."	• 4.3 By January 2012, Alaska will be funded to participate in the National Incident Based Reporting System (NIBRS). • 4.4 By January 2012, mechanisms for gathering data exist that are culturally sensitive and ensure safety when reporting abuse (with particular attention to confidentiality in small villages and the need for aggregating data across villages) • 4.5 By 2012, everyone who is collecting data on interpersonal violence will coordinate to create a central clearinghouse (including website) to share and access information about the risk and protective factor data available for "healthy relationships" and encourage unduplicated data collection • 4.6 By 2012, a dynamic body of knowledge will be initiated by the SSC that identifies the root causes of intimate partner violence in Alaska	• 4.7 2016, there are 3 promising IPV prevention strategies and national evidence-based strategies that have been evaluated within Alaska

Goal 5: Statewide partners work together to promote inclusion, justice, and economic empowerment of all races, genders, creeds, and religions (thereby addressing the root causes of violence)

Resources/Inputs	Strategies and Activities	Outputs	Short Term Outcomes	Intermediate Outcomes	Long Term Outcomes
• Clarify and prioritize available resources in DELTA III	• On all of our committees, organizations, boards, etc talk the "root causes" talk • Outreach, education, training • Ask LeadOn! Youth do these presentations in their communities • Write a document that shows how IPV/SV is caused by similar factors as other social/health problems • Work with AFN in the development of resolutions – articulating root cause • Work with Coaches' certification program to make coaching boys to men a part of their curricula • Consider social norms approach to teach Native youth about traditional ways of living a healthy life • Host a conference focused on men's role in ending interpersonal violence • Promote the Flags on Mountain campaign • Capture male elders' stories about equality and respect among men and women • Implement the "Inspiring Moments' campaign • Promote media campaigns where men take a lead in intimate violence prevention • Men serve as positive role models to adult youth • Engage civic organizations such as Rotary, Elks and others will have speakers talk on issues of IPV	• #of meetings, events, etc where root cause is discussed • Training materials to explore root cause • Research document - overlaying root cause and various health indicators (powerpoint, etc) • #of youth involved in educating on root cause • Alaska federation of native resolution • Certification program and coaches toolkit • #of programs focused on culture-based prevention strategies, integrating healthy relationship wisdom • Conference on Men Ending Violence • Flags on Mountain 'Inspiring moments campaigns • Elders stories on relationship values • Distribution of stories (radio, print, etc) • Male led media campaign materials • #of civic organizations engaged in project		• 5.2 By 2012, there will be a 50% increase in the number of organizing efforts among Alaskan males to collectively work to promote and respect social equality • 5.3 By 2012, key health service, nonprofits, funders, and administrative leaders will recognize the root causes of intimate partner violence • 5.5 By 2012, state policy makers will understand the relationship between economic disparity and health indicators as evidenced by new policies and proposals	• 5.4 By 2013, key health service, nonprofits, funders, and administrative leaders will commit resources to address the root causes of violence • 5.6 By 2013, local and state policy makers will commit to programmatic and policy decisions which promote economic parity • 5.7 By 2014, intimate partner violence prevention program planning and implementation will reflect the diversity of cultures and communities in Alaska

Goal 6: State Health Education standards promote healthy relationships and social and emotional youth development are in place for K-12 public education

Resources/Inputs	Strategies and Activities	Outputs	Short Term Outcomes	Intermediate Outcomes	Long Term Outcomes
• Clarify and prioritize available resources in DELTA III	• Bring together identified representatives of the SSC, schools, universities, community based heath educators and the Dept of Education to develop guidelines as described in 7.1 • Adapt or identify culturally responsive curriculum—diversity as a guiding principle • Evaluate promising curricula for use in Alaskan communities, such as the Fourth R • Introduce bill that comprehensively addresses healthy relationship and social and emotional curriculum • Engage the Statewide School Board • Advocate for an incorporated curriculum that is comprehensive and works for ALL special interest groups • Work with the coordinated school health efforts and special interest groups to review overlapping interests. • Bring together identified representatives, school, university and community based health educators, Dept of Ed representatives to develop guidelines as described in goal • Develop educational materials to publicly explain this work, including definitions of healthy relationships • Ask LeadOn! youth to do these presentations in their communities • Advocate for an incorporated curriculum that is comprehensive and works for ALL special interest groups	• Culturally responsive curriculum for Alaska • Evaluation of Alaska Perspectives Fourth R curricula • Legislation • School board presentations and meetings • List of suggested comprehensive approaches to health education • List of overlapping core education areas that address risk and protective factors • # of coordinated education meetings participate • Training materials in healthy relationships and social and emotional learning • Meeting with key stakeholders	• 6.1 By Jan 2010, representatives of the State Steering Committee and the Department of Education along with health educators from the schools and universities will develop state education health standards that promote healthy relationships and social and emotional youth development in accordance with evidence-based guidelines	• 6.2 By Sept 2012, the State Board of Education will adopt the state education health standards drafted in 7.1	• 6.3 By Sept 2013, all professional and paraprofessional education staff will be required to complete evidence-based professional development that fulfills the Alaska health education statute adopted in 7.2 • 6.4 By 2014, professional and paraprofessional education staff will integrate k-12 health education promoting healthy relationships and social and emotional youth development into the classroom

Goal 7: The majority of Alaskan communities are engaged in promoting healthy relationships free of intimate partner violence

Resources/Inputs	Strategies and Activities	Outputs	Short Term Outcomes	Intermediate Outcomes	Long Term Outcomes
• Clarify and prioritize available resources in DELTA III	• Identify community natural helpers to engage them in healthy relationship training • Technical assistance (coaching. etc) • Implementation (of what?) • Develop mechanisms to share promising practices in Alaska • Implement statewide media campaign • Implement population focused media efforts	• Community trainings • List of interested natural helper contacts in identified communities • Parameters and tools to provide technical assistance. • Staffing discussed in goal 1 • Website, listserv, hub community libraries • Media see goal 3 outputs • Campaign material for practitioners and organizers in the field • Local level activities		• 7.1 By 2011, at least 50% of youth-serving professionals (or at least 50% of community members in # of communities) can identify their role in promoting healthy relationships • 7.2 Starting in 2011, there is a 10% annual increase in the number of community leaders and/or youth serving organizations that promote healthy relationships (compared to baseline) • 7.3 By 2011, at least 25% of the target audience for a statewide social marketing campaign to promote healthy relationships will recall messages about the characteristics of a healthy relationship • 7.4 By 2012, at least 50% of the organizations doing primary prevention of IPV will know how to access a cache of evidence-based strategies for promoting healthy relationships and preventing IPV • 7.7 By 2012, at least 80% of state-level stakeholder groups (need examples-providers etc.?) will be aware that IPV is preventable • 7.8 By Jan 2011, at least 60% of key prevention stakeholders will have a clearly identified role in primary prevention on the statewide prevention team (SSC/whatever it is called)	• 7.5 By 2013, at least 25% of Alaska's communities are using primary prevention technical support and training available through the public health department or ANDVSA. • 7.6 Starting in 2014 there is a 10% annual increase in communities that have active, committed groups working collaboratively on individual and relationship wellness (as measured by # of task forces, program activities, and work plans)

Alaska

NEEDS AND RESOURCE SUMMARY

Intimate Partner Violence

Primary Prevention Plan

2010 - 2016

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STATE PROFILE - Demographic Information

Alaska has a statewide population of 686,293. (U.S. Census Bureau). There has been a gradual growth trend, with a total 50,000 person increase since 2000. This trajectory is likely to continue unless economic changes within the state eliminate or create employment in oil and mining industries.

Alaska's geographical constraints are unparalleled by any other state. Alaska's territory is equal to approximately one-third the entire landmass of the United States. Within Alaska's territory, there are over two hundred villages ranging in size from less than one hundred to six thousand people. Most of these villages are accessible only by boat or small bush plane with most services provided from hub communities.

Roughly half of the state's population resides in Anchorage 279,243 in 2008. The Anchorage School District, which enrolls approximately 20,000 youth between the ages of 10 and 14, reports 122 languages spoken. Anchorage is the commerce center of the state and many individuals work and travel to Anchorage for employment. In recent years, Anchorage School District has been determining how to best support the increased number of village youth that move in and out of the Anchorage school systems.

Racial Composition of Children (19 and Under), by Region, 2005

Region	White	Alaska Native	Black	Asian/Pacific Isl.
Anchorage	72.6%	12.2%	6.9%	8.3%
Mat-Su	83.5%	10.9%	2.3%	3.2%
Gulf Coast	78.7%	13.8%	1.3%	6.3%
Interior	74.0%	16.2%	6.6%	3.2%
Northern	13.1%	83.6%	0.7%	2.7%
Southeast	68.4%	24.4%	1.2%	6.0%
Southwest	13.5%	83.8%	0.7%	2.0%
Alaska	67.2%	22.6%	4.5%	5.8% a

a Also includes American Indians, who make up 0.5% of Alaska's population.
Source: Alaska Department of Labor and Workforce Development, Research and Analysis, Demographic Unit

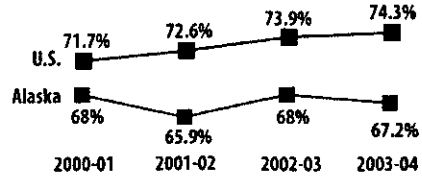
The state of Alaska is rich in the traditions of the Alaska Native people. Alaska's population is 15.4% Alaska Native or American Indian, compared to only 1.0% of the US population. (U.S. Census Bureau) Some parts of the state are predominantly Alaska Native, such as the Bethel Census Area with 78.1% of the population identifying as Alaska Native or American Indian and 65.6% of the population speaking a language other than English at home. Twenty native languages are spoken throughout the state.

Taken from Alaska Kids Count 2008

Education

Graduation rates in Alaska are below the national average at 67.2% in 2004. In 2005, Alaska's drop-out rate was higher than the national rate and ranked Alaska 36th among the states. 2005-2006 Department of Employment and Economic Development data indicates drop-out rates in Alaska vary by region. Rates were lowest in the Gulf

High-School Graduation Rates,* Alaska and U.S. Average



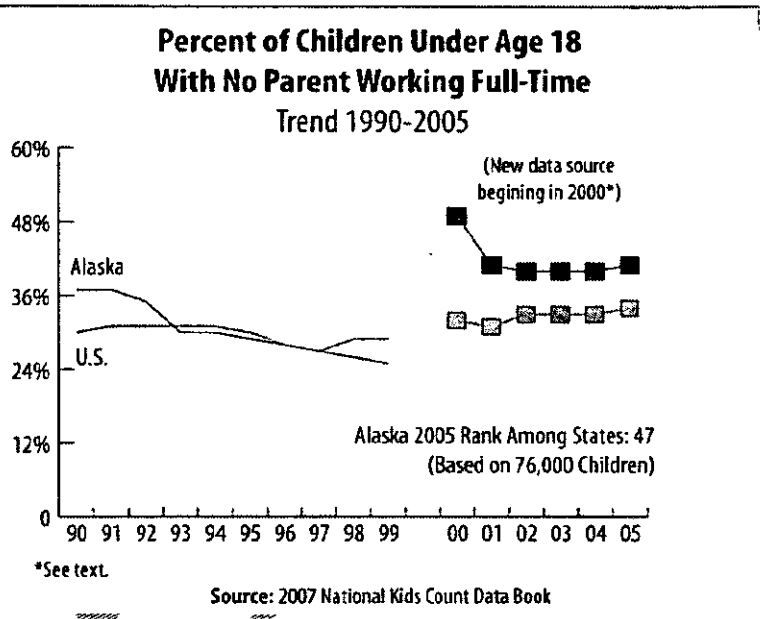
*The number of graduates divided by the estimated count of freshmen four years earlier.
Source: National Center for Education Statistics

This report was compiled by ANDVSA and completes funding requirements for grant

Coast and Southeast regions and highest in the Northern, Southwest, and Interior regions (Taken from AK Kids Count).

Economy and Governance

In addition to the Alaska state governing bodies, the Alaska Native Claims Settlement Act of 1971 established twelve Regional Native Corporations for the state. The corporations range from over 35,000 members to under 1,000 members. The federal government recognizes over 220 Indian Entities in the state (Department of Interior, Bureau of Indian Affairs). While there are similarities among Alaska Natives, geography, language, cultural markers make each tribe and Native village distinct.



Much of the state government funding is derived from oil revenues. With fluctuating prices of oil, revenue in years to come is difficult to predict. The potential shrinking economic climate makes it difficult to advocate for new resources for programming. Sustainability of subsistence economy has also come into question in the past years with fewer salmon, changing environmental conditions interrupting historical ranges of various plants and animals impacting this livelihood strategy.

According to the 2000 Census, 6.7% of Alaskans live below the poverty level. Over 6% live in homes without complete plumbing facilities. Over 5% live in homes without complete kitchen facilities. Three percent of Alaskans do not have telephone service. In 2005, 11 percent of people were in poverty. Fifteen percent of related children under 18 were below the poverty level, compared with 7 percent of people 65 years old and over. Eight percent of all families and 25 percent of families with a female householder and no husband present had incomes below the poverty level. The chart below highlights unemployment and underemployment in Alaska. Many individuals in remote communities have few cash employment opportunities and offset minimal paid employment with subsistence living (hunting, fishing, gathering) which is a traditional, although increasingly less viable, way of life in Alaska (AK Kids Count 2006-2007).

In the past year, fuel prices reached a record high during the summer months (when fuel must be barged into communities). In an already overpriced market, fuel became inaccessible or required a much greater percentage of incomes in rural and remote communities. With shrinking fish returns and fewer subsistence options, cash resources and reliable food was unavailable to entire communities. In 2009, these communities made a statewide plea for assistance for basic necessities of food and heat.

Communities across Alaska are varied, from tourism hubs to pipeline communities, from urban areas to villages, from farming communities to fishing communities. There are populations and influences of Alaska Native, Filipino, Old-believer Russian Orthodox, and emerging cultural enclaves across the state. There are communities that are dry (prohibits alcohol) and communities that are "wet". There are traditional communities and modern. It is difficult to make generalizations about the communities of Alaska or the conditions of living in Alaska. Prevention efforts will have to be tailored or defined for and by the communities of Alaska.

Regardless of location, Alaskans continue to be overrepresented in health, economic, and educational disparities. Ranking distinctively high in high-school drop out rates, child abuse, alcoholism, and intimate partner violence.

MAGNITUDE OF INTIMATE PARTNER VIOLENCE IN ALASKA

Research indicates that intimate partner violence is a particularly challenging public health issue to address: it is simultaneously common and largely unseen (and unacknowledged). According to findings from the most recent National Violence Against Women Survey, 22.1% of women and 7.4% of men reported experiencing some form of intimate partner violence in their lifetime. In Alaska, existing research indicates a significantly greater prevalence of intimate partner violence: the 2006 Alaska Network on Domestic Violence and Sexual Assault Public Opinion Research Survey found that almost 75% had experienced or known someone close to them that has experienced some form of intimate partner violence. Findings from a 2006 study by the Violence Policy Center indicate that with a 2004 homicide rate of 2.83 / 100,000 residents. In recent years Alaska has often received the highest ranking for women murdered by men in the nation. Among the homicides in which a victim / offender relationship could be established, 100% of female victims were murdered by someone they knew: not a single female victim was killed by a stranger.

Criminal justice data is not always seen as reliable in Alaskan communities, as geographical isolation and the frontier nature of communities often precludes either reporting or response to incidents of abuse. In Anchorage, a mostly urban/suburban community with one of the more reliable systems for tracking incidents of IPV, the average annual number of IPV reports in 2002 was 3,014, and children were documented as present in 42% of the reported incidents[i]. Of incidents where children were identified as present, 48% witnessed a minor injury and 13% witnessed a moderate or major injury. Sexual abuse is also high in Alaska Native populations. Alaska Natives are 7.6 times more likely than non-Natives to be a victim of sexual assault and rape, with the highest rate of forcible rape among 15 to 19 year olds (28.9%).[ii] More than 3 out of every 4 American Indian and Alaska Native (AI/AN) women will be physically assaulted in her lifetime.

Intimate partner violence doesn't only affect Alaskan adults; the prevalence of intimate partner violence among Alaska youth is also a concern. 2003 YRBS indicates that 10.8% of Alaska high school students (both genders) self-report as having been slapped or physically hurt by a boyfriend or girlfriend, compared to 9.5% of respondents nationally. When weighted by gender, twelfth grade female high-school students self report at an even higher rate (and difference in prevalence): 12.3% of twelfth grade Alaska women report being slapped or hit by a boyfriend or girlfriend in the past month, according to 9.8% of twelfth grade female respondents nationally. Because the definition of intimate partner violence that informs this report includes sexual violence, included here is data

that indicates, according to the 2003 YRBS, that ninth and tenth grade Alaska women are more likely to report being forced to have unwanted sex than the equivalent national population; though rates for eleventh and twelfth grade women are slightly less in Alaska (9.7 and 12.0% respectively) than nationally (9.9 and 12.2% nationally). It is important to note here that the definitions of violence and relationships that inform the 2003 YRBS do not include threats of sexual and / or physical violence, psychological and / or emotional violence, and / or stalking. As such, the true prevalence of intimate partner violence prevalence amongst Alaska high school students is currently unknown, though it may be assumed that prevalence is much higher than reported.

2003 data reported to the state Council on Domestic Violence and Sexual Assault from local shelter programs and crisis centers reflected a slight increase (from 4,638 to 5,916 clients) in Alaska residents seeking services for intimate partner violence victimization. Of the clients seeking services from ANDVSA member agencies, a clear majority (41 percent) identified a spouse or partner as their abuser. Bruises and abrasions were the most commonly reported type of physical injury, while humiliation, isolation, and threats to property, pets, and personal items were the most common types of non-physical assaults (reported by 22.45, 7.25, and 6.73 percent of respective clients seeking services). Related to risk, 26 percent of clients requesting services reported having had parents who were in abusive relationships, and over 50 percent of clients reported that alcohol use was a factor in their assault.

In Alaska, teens living in geographically isolated communities who are Alaska Native face additional risks for victimization. A higher number of Alaska Natives experience physical abuse in their lifetime than non-Native Alaskans (33% of Alaska Natives compared to 22.2% of non-Natives), and disclosure of IPV in the past 5 years among Alaska Natives (11.8%) is more than twice the rate disclosed by non-Natives (5.4%). More than 1 out of 4 (28.6%) Alaska Natives were exposed to domestic violence during their childhood, and adults with lower incomes were significantly more likely to disclose recent physical abuse by an intimate partner. Twenty-six percent of clients requesting services at local shelter programs and crisis centers in Alaska report having had parents who were in abusive relationships, and over fifty percent of clients reported that alcohol use was a factor in their assault.

Criminal justice data is not always seen as reliable in Alaskan communities, as geographical isolation and the frontier nature of communities often precludes either reporting or response to incidents of abuse. In Anchorage, a mostly urban/suburban community with one of the more reliable systems for tracking incidents of IPV, the average annual number of IPV reports in 2002 was 3,014, and children were documented as present in 42% of the reported incidents. Of incidents where children were identified as present, 48% witnessed a minor injury and 13% witnessed a moderate or major injury. Sexual abuse is also high in Alaska Native populations. Alaska Natives are 7.6 times more likely than non-Natives to be a victim of sexual assault and rape, with the highest rate of forcible rape among 15 to 19 year olds (28.9%).

These statistics point to the clear need for prevention efforts that target risk factors common to Native and rural populations, such as intergenerational trauma, geographic isolation, suicide, and the effects of colonialism on families/historical trauma.

Within Alaska there is tremendous scope for expanding the accuracy and variety of IPV / SV

prevalence data, but what has been obviously absent from the available data is information linking specific risk factors or root cause elements with IPV and SV in Alaska, with particular attention to teen dating violence prevalence. Similarly there is very little data on protective factors for healthy relationships, healthy individuals, and healthy communities in Alaska.

The needs and resource assessment findings indicate that: 1) Intimate Partner Domestic Violence is an unfortunate reality for many Alaskans; 2) there is significant statewide awareness of the magnitude of Intimate Partner Domestic Violence and related need for prevention; and 3) many individuals, agencies, and communities would implement activities designed to prevent Intimate Partner Domestic Violence but lack the expertise and community resources to do so.

RISK AND PROTECTIVE FACTORS FOR PERPETRATION

Data that explicitly links risk and protective factors to IPV in Alaska is unavailable. The SSC carried out a SWOT analysis that highlighted much of the information we have on individual and community risk and protective factors: Weakness, Strengths and Opportunities have been included below:

Risk Factors for Male Perpetration of IPV
TABLE taken From the World Health Report on Violence and Health

Individual Level:
- **Young Age**
- **Heavy drinking**
- **Depression**
- **Personality disorders**
- **Low academic achievement**
- **Low income**

Relationship Level
- **Witnessing or experiencing violence as a child**
- **Marital conflict**
- **Marital instability**
- **Male dominance in the family.**
- **Economic stress**
- **Poor family functioning**

Community Level:
- **Weak community sanctions**
- **against domestic violence**
- **. Poverty**
- **. Low social capital**

Societal Level:
- **Traditional gender norms**
- **Social norms supportive of**
- **Violence**

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Risks and Gaps	Strengths and Assets
• Lowest graduation in 18-24 range (AN males lowest) • Psychosocial indicators are below average for boys and even lower for AN males • Difficult to access money • Seasonal affect / isolation • Alcohol consumption is some of the highest in the nation • Incarceration rate is very high • Male participation on IPV prevention is low • multigenerational- makes unhealthy community • Low population / isolation / disconnection • Cross-cultural non-understanding / racism • Violence or submission of women is a part of some Alaskan faith-based community norms • We don't train our own • High rates of child abuse and sexual abuse • Poor data quality standardization / data availability • Health and social services are minimized in the state • Health and social services and public Safety are not coordinated • Many of us are working in silos • Professional recruitment strategies are mismatched with community healing needs • No health education standards, social and emotional learning, or comprehensive sexuality education. • No guarantee that there is a school curriculum on relationships. • State leadership and visionaries have not embraced primary prevention • Historical- internalized oppression • Frontier mentality- gender norms • Unintended consequences of legislation • Expensive to travel • Difficult to replicate or compare diverse communities	• Low resident # means it is possible to reach most of the population • Connection to land and subsistence activities • We are a very word of mouth state • Youth peer-to-peer initiatives • White Ribbon and other community engagement activities • Warrior program (family violence prevention initiative) • Faith-based community engagement (engaged with the violent crimes compensation board). • Healthy and safe schools committee • Community engagement activities have had some success: ICE, community schools, elders to youth. • Willingness to try new things in Alaska • We have been involving youth • Many of our programs empower youth • strengths-based approach • Alaska Native Land Rights or Community Living (not reservations like many other states). • Strength of native community leadership, economy, healthcare • Most wired state in the country • Tribal Courts- tribal adoption, can set norms within tribes • We have a statewide steering committee that understands relationships • We are willing to ask difficult questions based on data • There is a shift happening in the state- ex. OCS has been shifting to discussion on oppression and healing. • There are other forums concerned about the safety of youth: • The physical environment • Strong networks and network spanners working for us 500 Nonprofit organizations improving Alaska

Opportunities

- **Elder and Youth Forum with AFN- Linking Elder and Youth**
- **DELTA funding and opportunity to develop a plan**
- **Build on successful relationships and networks**
- **National Congress of American Indians (our Senator will participate)**
- **Youth to youth trainings- expanding some of these efforts to a statewide component**
- **Getting leveraging funding because of past and existing collaboration.**
- **We have and are invited to many workshops, conferences for sharing information on prevention work**
- **Many communities have trialed curriculum. There is an opportunity to share curriculum (OWL, Anchorage School District (ASD), SEICUS, Roots of Empathy, the 4th R).**
- **Department of Education has a health curricula educator position pending**
- **Rural Cap (utilize volunteers in rural communities).**
- **Tap into university resources(graduate and undergraduate)**
- **Take advantage of conference / presentations, rural providers, school board, statewide PHN for presentation, statewide DATA collection efforts.**
- **There are other leaders, individuals, and agencies that would advocate for DELTA if they were informed.**
- **Statewide Steering Committee members are engaged and can engage others.**
- **There is an opportunity to engage faith-based communities**
- **Collaboration with work being undertaken by ICWA**
- **Work with new leadership (receptive)**
- **Community education systems and web/internet-based learning opportunities.**
- **Work more closely with faith-based communities**

Universal and Selected Populations Addressed in This Plan

While in Alaska there is not specific data on risk-factors for perpetration or victimization, the World Health Organization has identified some general risk and protective factors for intimate partner violence. Gender is the greatest determinant of perpetration or victimization. Men are the most likely to perpetrate intimate partner violence and women are most likely to be victims.

Many of the WHO risk factors associated with perpetration match the risk factors present in Alaska, including high rates of alcoholism, economic inequalities, and prevalence of child abuse or witnessing family violence, few economic opportunities, and other risks.

Based on available data and state level information the following selected populations have been chosen:

1) **Youth Ages 11-21**

After reviewing the data and discussing health, justice, education experiences across the state, there was consensus that systems in Alaska are failing many of our youth, especially Alaska Native youth and Alaska Native boys. Because most first time victimization and perpetration occurs between the ages of 16-21 (local data not available), the Statewide Steering Committee chose age groups 11-21 to be the target of two of our goals and have considered youth in many of the outcomes throughout this document.

2) Men and boys

In Alaska, as in other states the majority of perpetration is carried out by men. Alaska data also indicates that Alaskan many boys are already involved in risk behaviors that increase the likelihood of perpetration. The environmental scan indicated that there are few Alaska-tried strategies that have successfully engaged men in IPV prevention within Alaska. Surveys and community-based discussions indicate that men are underrepresented or largely not present in the discussion and solution around intimate partner violence prevention. This was established as a priority population to work with although we have fewer resources to build on in this area.

Universal Goals:

Many of the goals include outcomes that are more universal in nature. However, even goals and outcomes that were developed with universal populations in mind have placed some emphasis on geographical, cultural, and generational relevance.

For example, several strategies are focused on bringing Elders into the IPV prevention discussion and solution. This is building on the cultural practices of Alaska and will assist with overcoming historical trauma and reconnecting culturally significant adults with youth in the community.

System Goals:

We realized that many of the outcomes and goals for selected population will be chosen on a community to community basis, addressing health disparities and risk factors that fit within the community context. Much of the AK plan to prevent intimate partner violence and promote health relationships addresses system level goals and infrastructure that can support local level programming.

Several of our system goals involved education of specific individuals that are influential in the health and policy landscape. Policy makers and other IPV prevention educators were identified as essential population to focus on to successfully achieve systems goals.

ALASKA'S IPV PREVENTION SYSTEM CAPACITY

Prevention system capacity is composed of the following eight dimensions:

1. System profile
2. Leadership
3. Strategic planning
4. Information sharing
5. Community and constituency focus
6. Human resources
7. System operations
8. Results/outcomes

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The SSC did not use a formal measure of prevention system capacity, but rather engaged in discussions about state capacity to support primary prevention activities and strategies. Below is a summary of the two main areas of relevance to Alaska's prevention system: previous prevention efforts and policy.

Prevention Efforts:
Historically within Alaska, the vast majority of intimate partner violence prevention programming has fallen within secondary or tertiary prevention. Meaning most of the efforts are directed towards those who have had some experience as a victim or perpetrator.

Within the past ten years, several communities have begun to direct resources and energies towards primary prevention, stopping violence before it occurs. These efforts are primarily spearheaded by local domestic violence shelters. Most of these efforts are directed towards youth and often in school settings. Those communities with funding support and statewide technical assistance have been able to most effectively expand primary prevention organizing efforts within their community. There are many other primary prevention efforts for "selected populations" of this plan, which focus on reducing risk and enhancing protective. Many of these are shared with IPV risk and protective factors. Many of these programs have the ultimate goals of deflecting substance use, tobacco cessation, teen pregnancy and others. There are synergies with many of these programs which seek to address similar root causes and expand protective factors with individuals, influencers, and communities. Recent suicide prevention efforts have been trialed in remote villages and primarily Alaska Native communities. These are being researched and evaluated for effectiveness and feasibility for replication.

Policy:
Alaska statutes address the IPV and SV statewide, while individual communities have enacted (or not) specific community ordinances that are used to intervene in intimate partner violence and / or promote healthy relationships, ultimately leading to a reduction in incidence of intimate partner violence. Nationally, the primary law impacting intimate partner violence in Alaska and throughout the United States is the federal Violence Against Women Act (Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994 HR 3355), which addresses intimate partner and sexual violence, stalking, children exposed to intimate partner violence, health care to support victims of intimate partner violence, crisis support for victims of sexual violence, and efforts to engage men and communities in intimate partner and sexual violence prevention.

The central state statutes addressing intimate partner violence in Alaska are in Title 18 (Health, Safety, and Housing) of the 2006 Alaska State (A.S.) legal statutes. Chapter 66 includes statute A.S. 18.66.010, which establishes the Council on Domestic Violence and Sexual Assault (CDVSA) within the Alaska State Department of Public Safety. The purpose of the CDVSA is to plan and coordinate services for victims of intimate partner and / or sexual violence and their families; plan and coordinate services for perpetrators of intimate partner and / or sexual violence, and to provided for crisis intervention and prevention programs related to intimate partner and / or sexual violence.

Other sections of A.S. 18.66 address issues related to intimate partner violence including: protective orders (A.S. 18.66.100 – A.S. 18.66.170), definitions related to intimate partner and / or sexual violence intervention efforts in Alaska (A.S. 18.66.250), standards and procedures for health care in

intimate partner violence cases, continuing education for all public employees, court system employees, and prosecuting authorities (A.S. 18.66.310), and the establishment of intimate partner violence fatality review teams (A.S. 18.66.400). Other Alaska legal statutes addressing intimate partner violence directly or indirectly include: A.S. 11.41 (assault, stalking, kidnapping, etc), A.S. 11.46.300 – 310 (burglary), A.S. 11.46.320 – 330 (criminal trespass), A.S. 11.46.400 – 430 (arson) A.S. 11.46.475 – 486 (criminal mischief) A.S. 11.56.807 or A.S. 11.56.810 (terrorist threats), A.S. 11.56.740 (a)(1) (violating a protective order), and A.S. 11.61.120 (a)(2)-(4) (harassment).

There are currently no provisions in any state statute directly related to the provision or administration of programs or activities related to the primary prevention of intimate partner violence, including addressing populations at elevated risk for victimization or perpetration of intimate partner violence.

There is a high commitment amongst statewide steering committee and community level allies to initiate primary prevention efforts. Through advocacy of shelters, sexual assault services, health workers, steering committee members, and other community level advocates, greater attention has been placed on moving upstream. Noticeably, in recent years administrative and policy leaders are asking questions about prevention and reversing trends of the many of the chronic issues that exist within Alaska, including
IPV.

[See Progress Report for greater discussion of Prevention System Capacity]

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1/20/10 OVERVIEW: COST OF CRIME ISER RECOM. & UPDATE

Alaska Department of Corrections
Program Overview
Senate Judiciary Committee
20 January 2010

As of July 21, 2009, the Alaska Department of Correction's (DOC) population stood at 5,500 inmates; as of today, there are 5,628 inmates. There are approximately 6,000 individuals on Probation/Parole. The current incarceration rate in the United States is 1 in 100 adults.[1] When you include parole and probation numbers 1 in every 31 U.S. adults is behind bars, on parole or probation. The rate in Alaska is 1 in 36. [2]

An estimated 95% of Alaska's sentenced offenders return to our communities, of those 66% re-offends; this administration concluded it was time to consider a different approach.

These statistics translate into real numbers when it comes to our Alaskan communities:

- In 2008, DOC processed in excess of 38,000 bookings including 4,000 Title 47 12-hour holds
- From 2006 -2008, DOC incarcerated on average 3,714 sentenced felons
- In 2008, DOC released 15,382 sentenced offenders (felons and misdemeanants)
- The average DOC stay for a felon is 285 days
- The average DOC stay for a misdemeanant is 27 days
- In 2008, DOC released on average, 287 felons per month

DOC programs in place or in the planning stage for implementation:

Substance Abuse: FY2010 Authorization $3,517.7 (fund sources listed below). All programs adhere to the American Society of Addiction Medicine criteria. 79% of offenders arrested had an active substance abuse problem during the 12 months preceding their arrest.[3]

- $941.1 (GF/MH, GF, I/A) funds the Hiland Mountain Correctional Center (HMCC) & Wildwood Correctional Center (WWCC) programs: 6 month inpatient programs at HMCC 32 beds, WWCC 42 beds, and 80 beds at the out-of-state (OOS) facility. This will provide treatment for 240 inmates per year.

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[1] Pew Center on the States, ONE IN 100: BEHIND BARS IN AMERICA 2008 (2009),
[2] Pew Center on the States: THE LONG REACH OF AMERICAN CORRECTIONS, at 43 (2009 March 2, 2009)
[3] North Charles Research and Planning Group, Substance Abuse Treatment Needs of Alaska's Newly Incarcerated Prisoner Population Prior to Incarceration: Final Report, at 60, *available at*: http://www.hss.state.ak.us/press/pdfs/akprisonerfinalreport.pdf.

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- $1,301.0 (GF): 3 to 4 month institutional intensive out-patient programs at Yukon-Kuskokwim Correctional Center (YKCC), Anvil Mountain Correctional Center (AMCC), Fairbanks Correctional Center (FCC), Lemon Creek Correctional Center (LCCC), and Spring Creek Correctional Center (SCCC). Treatment capacity of 25 inmates per group per facility for each program with a maximum capacity of 100 inmates per year.

  FY2009 facilities: YKCC, LCCC, FCC, SCCC, Anchorage Community Residential Center (CRC); FY2010 funding increase incorporated the Palmer Correctional Center (PCC), Anchorage Correctional Complex (ACC), AMCC, and the Fairbanks Northstar CRC.

All of these programs have aftercare components as part of the treatment protocols.

- The PCC/Matanuska-Susitna Pre-Trial (MSPT) and ACC programs consist of assessment and referral to appropriate treatment providers. In addition, the PCC program will provide a 30-day educational component which will serve a maximum capacity of 250 inmates per year.

Anger Management: This 12 week program covers the areas of hostility, aggressiveness, temperament, violence and cognitions favorable to violent behavior. This program is part of our substance abuse curriculum as a very high percentage of people with substance abuse issues also have anger issues. It is also offered as a stand alone program that meets court ordered requirements (individualized treatment plans and discharge summaries) in all DOC facilities. Up to 15 inmates per program, 4 program sessions per year, for a statewide total of 765 inmates.

48-week Offender Treatment Program: This program covers the areas of criminal thinking, socialization, poor problem solving, interpersonal relationship issues, risk-taking behavior and Anger Management. It is currently available in 8 facilities, ACC, SCCC, WWCC, FCC, LCCC, PCC, HMCC, and the OOS. 15 inmates per program, for a total of 120 inmates per year. The 4 phases of this program are:

1. Anger Management
2. Criminal Thinking Errors
3. Moral Reasoning and
4. Rational Problem Solving and Relapse Prevention

Criminal Attitudes Program or CAP: A comprehensive cognitive-behavioral program that focuses specifically on the attitudes, values, beliefs, and rationalizations conducive to criminality. It is a 22-session program that is available in all 13 institutions through the Education Unit. 20 inmates per group, 4 groups per year, for a potential total of 1,040 inmates per year.

Parenting, Inside/Out Dads: This is a program for incarcerated fathers. This is a 12-session program that provides practical and innovative ways to help overcome the physical and psychological challenges that incarcerated fathers face both inside and outside of prison. This program is offered in 13 of our facilities through the Education Unit. HMCC currently offers the Active Parenting Today program for female offenders. Both programs are designed to diminish intergenerational criminality. 20 inmates per group, 4 groups per year, for a potential total of 1,040 inmates per year.

Sex Offender Treatment: FY2010 authorization $2,636.0 (GF) - Institutional treatment to began operation in January of 2010. This is a 25 bed, 18-month intensive inpatient treatment program located at LCCC. The LCCC program is long-term and treats multi-custody offenders with focus on higher risk offenders.

The Bethel Tundra Center program is a CRC-based short-term residential sex offender treatment program for released offenders. The treatment staff also provides a companion community treatment program for program graduates and those who do not require residential treatment.

There are several out-patient sex offender management programs for released offenders that include assessment, treatment, supervision and polygraph testing. They are located in Fairbanks, Kenai, Juneau, Anchorage, Ketchikan, Sitka and Palmer.

Both treatment and supervision include polygraph testing. This testing occurs in Fairbanks, Kenai, Juneau, Anchorage, Ketchikan and Palmer.

Domestic Violence Programming: FY2010 authorization $174.7 (GF) -- Domestic Violence Perpetrator Programs are currently offered at FCC, LCCC, PCC, and Point MacKenzie Correctional Farm (PMCF), using psycho-educational groups loosely based on the Duluth Model, a model frequently used with this population. The department is working with the Council on Domestic Violence and Sexual Assault (CDVSA) to determine the efficacy of these programs and identify evidence-based programs for use with this population (as recommended by the CDVSA Legislative Task Force in 2008).

General Education Development/Adult Basic Education (GED/ABE): FY2010 authorization $582.3 (GF, FED, I/A) - GED/ABE, Vocational Certification/Training and Re-Entry Programming in all 13 facilities. We have increased the number of inmates receiving GEDs from 182 in 2008 to 247 in 2009. We project 384 GEDs in 2010.

Vocational Rehabilitation: Workplace & Community Transitioning Grant FY10-$51.0 (FED) -- DOC currently provides vocational training programs for inmates to receive certifications upon completion. In addition to the state program for building maintenance, cook/baker, barber, plumber and carpentry, we also utilize the federal workplace & community transition grant which provides limited funding for the pursuit of post-secondary and vocational education. The department intends to expand the number and availability of these programs. In the FY2011 Governor's Budget, the DOC requests $150.0 to expand our current construction apprenticeship program (electrical, plumbing, carpentry).

Re-Entry Program: The re-entry begins at sentencing (felons) with a comprehensive risk/needs assessment, the development of the Offender Management Plan referral into indicated programs and a preliminary re-entry plan that focuses on employment, housing, sober support, and family reunification. Specific program components will consist of the Federal Bureau of Prisons Re-Entry Survival Program, the Department of Labor Job Preparedness Program, Criminal Attitudes Program, Parenting, and Substance Abuse.

In Summary:

Substance Abuse Treatment Program: FY2010 total authorization $3,517.7 (various fund sources) –

$ 110.0	Program Oversight
$ 941.1	RSAT
$1,301.0	LSAT
$ 165.6	After Care
$1,000.0	Secure Detox RSA w/H&SS

Sex Offender Treatment Program: FY2010 total authorization $2,636.0 (GF) –

$ 182.1	Program oversight
$ 950.0	Community Treatment and Polygraph direct authorization
$1,303.9	SB218 Sex offender Treatment legislation
$ 200.0	Institutional Treatment Program (LCCC)

Domestic Violence Program: FY2010 total authorization $174.7 (GF)
Batterer's support provided via RSA with Public Safety.

Education Programs: FY2010 total authorization $582.3 (various fund sources) –

$ 51.0 (Fed)	Workplace & Community Grant
$ 40.0 (I/A)	ABE/GED Program
$ 16.3 (I/A)	MOS Program
$475..0 (GF)	Education Programs and oversight support

RESEARCH SUMMARY
Institute of Social and Economic Research
University of Alaska Anchorage • January 2009
R.S. No. 71

The Cost of Crime: Could The State Reduce Future Crime and Save Money by Expanding Education and Treatment Programs?

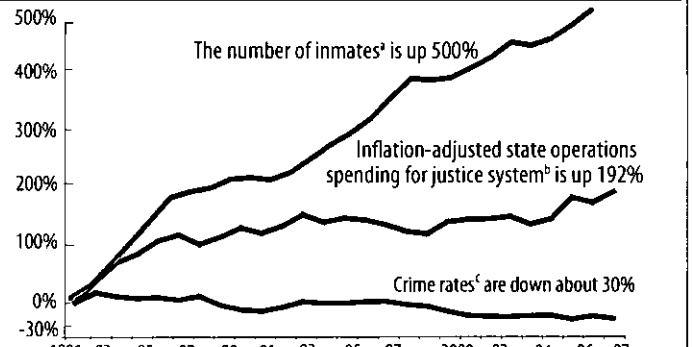
By Stephanie Martin and Steve Colt

Alaska's prison population is among the fastest-growing in the U.S., with five times more inmates in 2007 than in 1981. Spending for the state justice system has nearly doubled since 1981—but the crime rate has dropped only about 30%.

Here's the dilemma for the state, given the pattern shown in Figure 1: what can it do to hold down the number of inmates and stem the rising costs—while at the same time keeping the public safe and using tax dollars effectively?

Senator Hollis French asked ISER to project growth in the number of Alaska inmates and the associated costs—and then evaluate whether the state could reduce that growth by expanding intervention and prevention programs for people already in prison or at risk of ending up there. Alaska currently spends about $17 million a year for such programs, but they aren't available to many of those who might benefit from them.

Figure 1. Percentage Changes in Alaska Crime Rate, Spending for Justice System, and Number of Inmates, 1981-2007



[a]Inmates in prisons, jails, and halfway houses
[b]Spending for Departments of Corrections, Public Safety, and Law; court system; Division of Juvenile Justice; Public Defender Agency; and Office of Public Advocacy. Does not include capital spending or payment on debt.
[c]Rates per 100,000 for murder, rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft.
Sources: U.S. Department of Justice; state budget documents; Alaska Department of Corrections

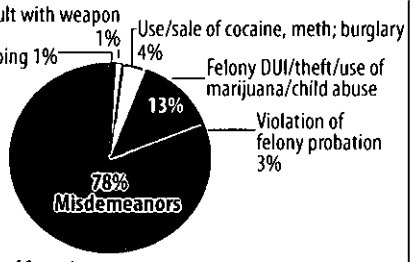
There are a wide range of such programs. But it is programs for adults who are already in prison or jail that have the most potential to save money and reduce crime in the next 20 years. That's because they can reach the most people.

We know that without any intervention, about two-thirds of those who serve their sentences and are released commit new crimes. Stopping at least some of them from committing more crimes would not only help improve public safety but also reduce growth in both the number of inmates and in spending.

Also, most of those released committed misdemeanors (Figure 2). Those who commit the most serious crimes serve long sentences and make up a small share of those released in any given year.

To analyze which programs have the most potential to reduce crime *and* save the state money, we worked with the Alaska Criminal Justice Working Group and the Washington State Institute of Public Policy. That institute did a similar analysis for Washington state and provided us with data it collected from program evaluations nationwide (see back page). What did our study show?

Figure 2. Who Gets out of Jail or Prison in Alaska?
(Total Releases, 2002-2007: 82,339)



Source: Alaska Department of Corrections

- *With no change in policies, the number of Alaska inmates is likely to double by 2030,* from 5,300 to 10,500.
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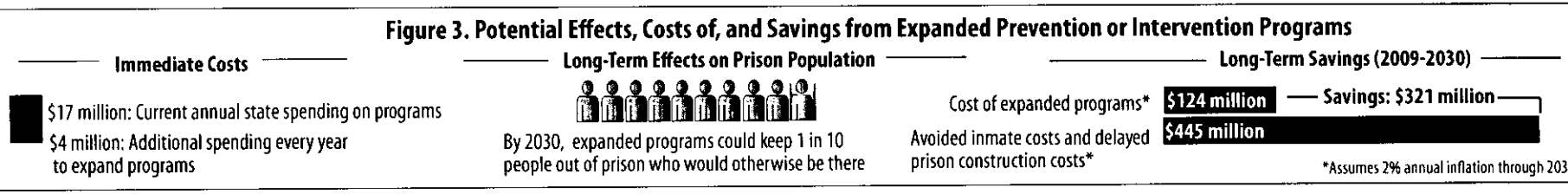

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Studies in other states have shown that some intervention and prevention programs can help cut both costs and crime, either by keeping people who have served their sentences from committing new crimes after they're released, or preventing some people from going to prison in the first place.

What Programs Did We Analyze?

The Alaska Criminal Justice Working Group gave us a list of programs to analyze. We looked for programs with the biggest potential payoff for the state—those that could reduce growth in both numbers of inmates and in spending for corrections, at a reasonable cost for the state.

Alaska already has a number of programs in place, and we found that expanding some of those would be most cost-effective. Table 1 lists the programs in our final analysis. As a guideline for what was a "reasonable" expansion, we used 10% to 20% of the eligible people not already served—except for very small programs that can't easily be expanded that much.

These programs would serve inmates, at-risk juveniles, and young children. They are all intended to reduce future crime in some way. Programs that treat substance-abuse or mental heath disorders have been shown to reduce recidivism—and as Figure 5 shows, almost all current inmates have those disorders.

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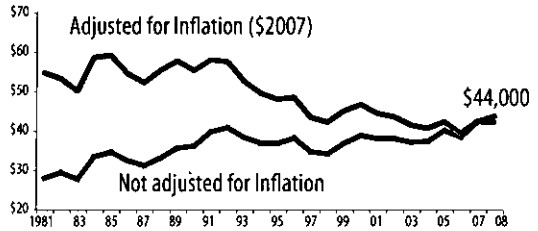

*Average cost of incarcerating people in prisons, jails, and halfway houses.
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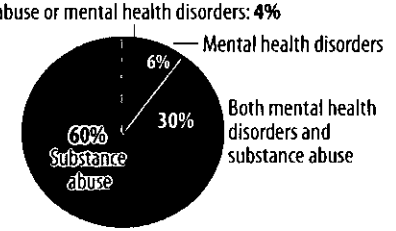

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Programs	Currently serve	Reasonable expansion	Potentially eligible (2008)
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Transition from prison			
Transition for inmates with mental health disorders (Institutional Discharge Project)	70	100	36% of inmates (1,600)
Alternatives to Incarceration	500	500	Approximately 5,000[c]
Mental health, drug, alcohol courts; electronic monitoring; residential substance-abuse treatment			
Juvenile offenders	Approximately 500	1,000	Approximately 3,000
Aggression replacement training; family therapy; residential treatment; institutional transition			
Prevention	3,025	450	Approximately 8,000[e]
Head Start for 3- and 4-year olds from low-income families[d]			

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[b]To effectively reduce crime, sex offender treatment programs need to be offered in both prison and the community. Treatment is currently available only in the community, so the number served in prison is currently zero—but there are proposals to add treatment in prison.
[c]People facing low-level charges and with substance-abuse problems.
[d]Head Start is a federal program, but the state supplements federal money and Governor Sarah Palin has proposed additional state funding.
[e]We assume all children from families with up to double the poverty-level income would be eligible.

We looked at but excluded other programs from our final analysis. The criminal justice working group decided that a few programs, while effective elsewhere, wouldn't be feasible to implement in Alaska at this time. For other programs, there wasn't enough available evidence to judge how effective they were in saving money or reducing crime, or the available evidence showed them to be largely ineffective.

How Do the Programs Compare?

As Figure 3 (front page) shows, expanding programs to serve more of the eligible people would save the state about $321 million and reduce the projected number of inmates 10% by 2030. Figures 6 and 7 show how the various programs contribute to costs, savings, and reductions in the number of Alaskans behind bars.

- *Education and substance-abuse treatment programs for inmates save two to four times what they cost*, reduce recidivism by about four percentage points, and can reach the most people.

- *Intervention programs for juveniles who have committed crimes are very effective* at saving money and reducing recidivism, but they serve a much smaller number of people.

- *Programs that set up transition services for inmates with mental-health disorders* coming out of prison are among the most effective—but they can't readily be expanded to serve the many people who could benefit from them.

- *Alternatives to prison for some people charged with lesser offenses save the state money right away, and almost all reduce recidivism*. The exception is electronic monitoring, which is inexpensive but hasn't been shown to reduce future crime.

- *Treatment programs for sex offenders do reduce crime*, but they are very expensive and so don't save the state money.

- *Programs that prevent future crime by helping very young at-risk children are the most effective*. But the effects of spending for those programs aren't apparent until many years later.

Figure 6. How Effective Are Various Programs at Saving Money and Reducing Crime?

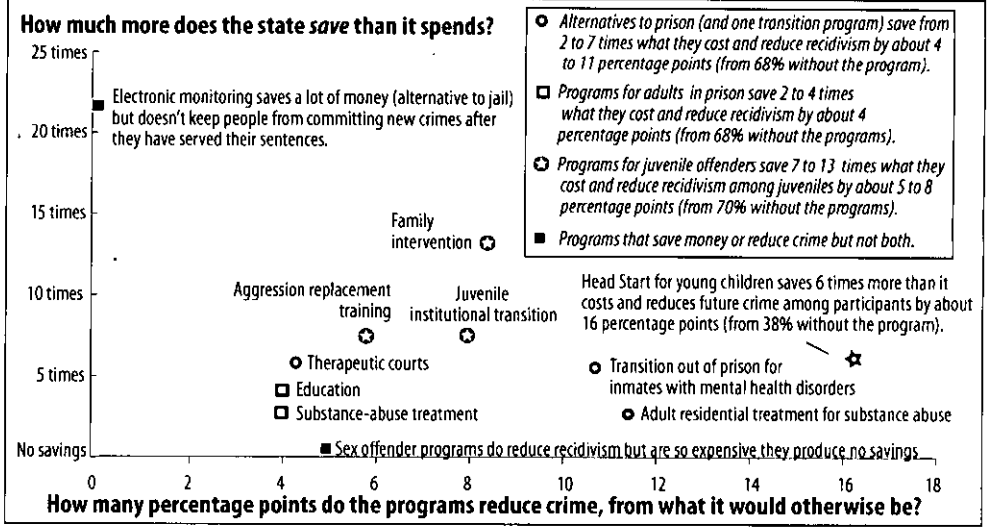
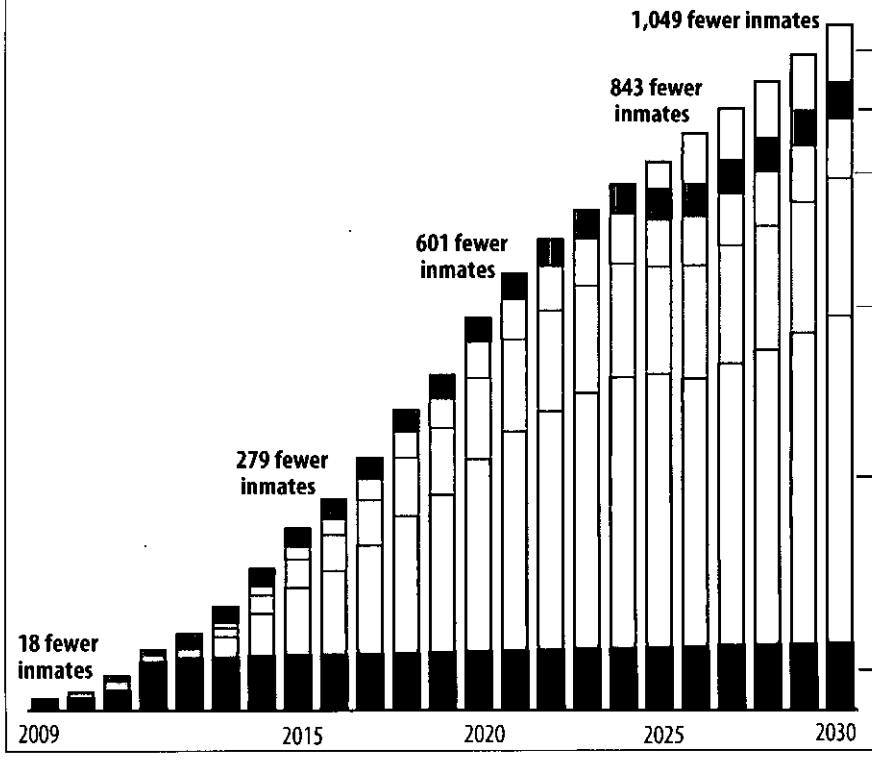


Figure 7. How Would Expanding Specific Programs Contribute to Reducing Growth in Numbers of Inmates?



Pre-school programs for at-risk children cost about $1,000 per child but save many times that much, by reducing future crime. The effects of the spending aren't apparent for years, until the children grow up.

Programs for juveniles offenders cost an average of about $2,500 per person, but save almost 10 times that much by keeping kids out of prison. They serve only a subset of the population of 12- to-17-year-olds.

Transition programs for people with mental health disorders are extremely effective, add about $2,000 per person to inmate costs, and save about four times that much. But the programs currently serve very few people and can't readily be expanded to serve large numbers.

Programs that treat inmates for substance abuse add about $2,000 a person to inmate costs, but over time save about twice as much. They are effective, but can't readily be expanded to reach all the people who need them.

Education and job training programs in prison add about $1,000 to inmate costs, but they reach the most people and save about four times more than they cost. Because they are offered in every facility, they can easily be expanded and can reach more people. (Reductions in the number of inmates as a result of the sex-offender treatment program are also included here, but are only one or two people a year.)

Programs that keep people out of prison save the state money right away, because they cost much less than the $44,000 per person the state spends to lock people up. They include therapeutic courts for substance abuse and mental health disorders, electronic monitoring, and residential substance-abuse treatment.

Conclusion

In conclusion, Figure 8 shows how Alaska's corrections system got where it is and where it's likely to go—if intervention and prevention program are kept at their current levels, and if the most effective programs are expanded to serve more of the eligible people.

We found that the state could both reduce the number of Alaskans in prison or jail and save considerable money over the next 20 years, by adding about $4 million a year to the $17 million it currently spends to keep people from returning to prison— or prevent them from ever going there at all.

Spending more for these programs even as oil prices and state revenues are falling may not seem like a good idea. But Alaska also needs to look to the future—and over time the benefits of strategically expanding those programs that reduce crime and keep more Alaskans out of prison far outweigh the costs.

Method of Analysis

Our job was to assess whether specific programs could reduce long-term state spending for corrections by reducing growth in the number of inmates. As a starting point, we needed evaluations of how effective various programs are at reducing future crime.

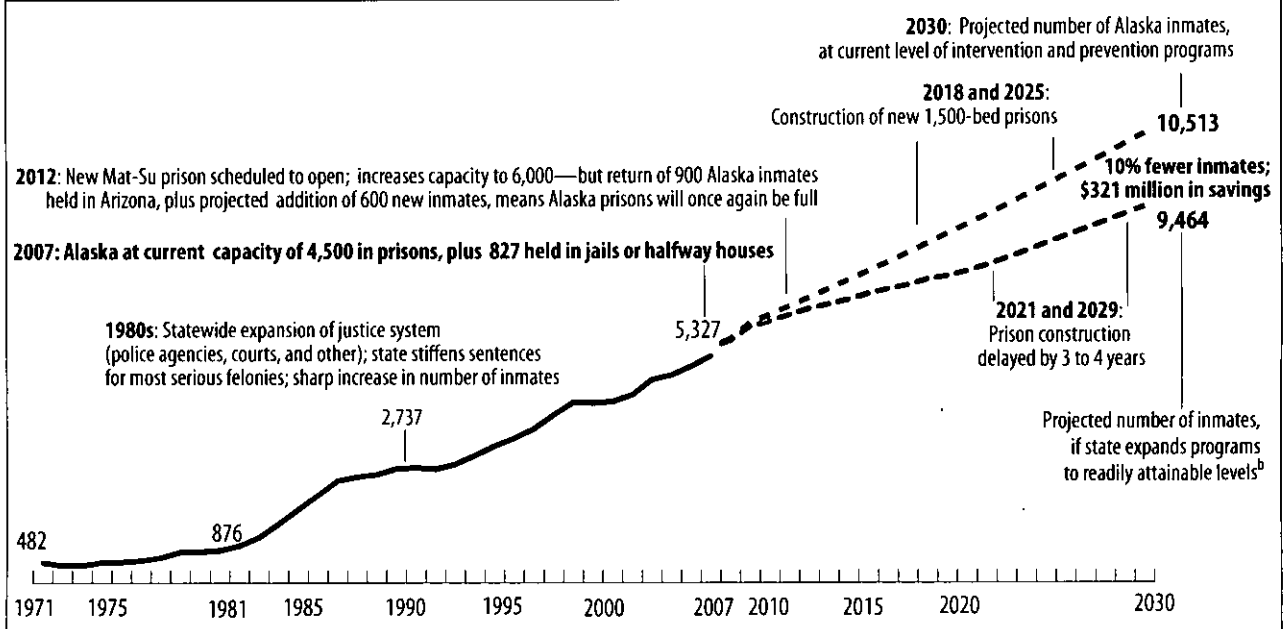
But except for some of the therapeutic court programs, most programs in Alaska have not been rigorously evaluated. Therefore, we used results of a Washington state assessment that systematically reviewed 571 program evaluations from around the country.

To be included, evaluations had to have carefully designed control groups, replicable results in multiple settings, and long-lasting effects. This method is evidence-based public policy, which merges research and practice. It is similar to clinical trials in medicine. Keep in mind that this is a new field, and only about 10% of programs in place nationwide have been evaluated at this standard.

With data from rigorous evaluations, the Washington State Institute of Public Policy created a model that estimated the effects of programs on recidivism—and then combined those results with a cost-benefit analysis to estimate the long-term effects on state spending and inmate populations.

We combined the institute's estimates of recidivism with Alaska data on program costs, eligible groups, and state population to estimate long-term effects on crime and state spending.

Figure 8. Average Number of Alaska Inmates,[a] 1971-2007, and Projected Number, 2008-2030



[a]Average daily number of people in prisons, jails, and halfway houses. [b]The number of people who could be readily added to program rolls varies considerably by program; see Table 1.

Sources: Alaska Department of Corrections; ISER projections of number of prisoners, based on Alaska Department of Labor projections of Alaska population 18-64 and assuming no change in current use of rehabilitation programs as well as expanded use; Washington State Institute of Public Policy

The authors thank the members of the Alaska Criminal Justice Working Group for their help in identifying programs to evaluate and for comments on drafts of this publication. The Alaska Legislature funded this group in 2007 and authorized the Alaska Judicial Council to act as its staff.

The group is chaired by a justice of the Alaska Supreme Court and Alaska's lieutenant governor. Other members include top policymakers from the departments of Corrections, Public Safety, Health and Social Services, and Law, as well as the Alaska Mental Health Trust Authority; the heads of the Alaska Public Defender Agency and the Office of Public Advocacy; the administrative and deputy directors for the Alaska Court System; the executive director of the Judicial Council, the U.S. attorney, and Anchorage's police chief.

This group meets monthly to talk about long-term justice issues, as well as to resolve any inter-branch issues that come up among the many agencies and organizations that deal with aspects of Alaska's justice system.

The authors also thank Elizabeth Drake and Steve Aos of the Washington State Institute of Public Policy for developing the methods and models we used and for helping us apply them to Alaska. For more information go to www.wsipp.wa.gov.

This research summary and many other publications on a wide range of topics are available on ISER's Web site:

www.iser.uaa.alaska.edu

Editor: Linda Leask Graphics: Clemencia Merrill

1/27/10 OVERVIEW: JUVENILE JUSTICE PROGRAMS

STATE OF ALASKA

SEAN PARNELL, GOVERNOR

DEPARTMENT of HEALTH and SOCIAL SERVICES

DIVISION of JUVENILE JUSTICE

P.O. BOX 110635
JUNEAU, AK 99811-0635
PHONE: (907) 465-2212 FAX: (907) 465-2333

February 2, 2010

The Honorable Hollis French
Chair, Senate Judiciary Committee
Alaska State Legislature
Alaska State Capitol, Room 417
Juneau, AK 99811

Dear Senator French:

Listed below are responses to questions that were posed to the Division of Juvenile Justice (DJJ) on Wednesday, January 28, 2010, during the Senate Judiciary Committee hearing.

Senator Coghill: *It is his understanding that law enforcement is not referring all the youth that it could to the DJJ for minor consuming violations. If it did, DJJ would see its referral trends dramatically increase. Is this DJJ's understanding as well?* DJJ only has jurisdiction for minor consuming offenses when they rise to the habitual level—that is, a youth has to be cited for minor consuming three times before he is referred by law enforcement or the District Court to DJJ. First and second-time referrals for minor consuming are managed through District Courts. We are unable to locate statistics from District Court on the frequency of first- and second minor consuming citations statewide, but for DJJ to manage these violations would undoubtedly and dramatically increase the number of referrals we would need to manage, and require significantly more resources for the division. In addition, changes to the statutes surrounding minor consuming and juvenile delinquency would be needed, as these would be the only violations under the jurisdiction of the division. (The division currently manages offenses only when they rise to the misdemeanor or felony level, unless they occur as probation violations for youth already under our supervision.)

Out of the 7,692 offenses referred to DJJ in FY09, there were 117 (1.5%) alcohol related offenses (primarily "habitual minor consuming" but also a variety of others such as furnishing alcohol to a minor). Additionally, there were 469 (6.1%) probation or conduct violations related to alcohol and drug use.

Senator McGuire: What *neurological anomalies are we seeing with the 10 and under age group?* DJJ has no data readily available on neurological anomalies among its population. A mental health screening for youth at admission would assist us in getting an understanding of the frequency of these anomalies among our youth, so we will continue to explore the possibility of adding such a screen to our practice.

Currently, a mental health assessment required within seven days of institutionalization for youth. At that time we ask each institutionalized youth for a history of head injuries. If there is significant TBI this in noted as a DSM IV diagnosis (axis three, as it is a medical issue) and in our recommendations, we let the treatment team know what to look for with TBI and more effective ways of dealing with the resulting outcomes of TBI. This mental health assessment is presented and reviewed with the treatment team by the mental health clinician as part of our practice.The mental health clinicians who work at the Division have received training on TBI, and at McLaughlin Youth Center they work closely with Dr. Randy Moss, a psychiatrist who is able to assess TBI issues that our mental health clinicians think may be present. Over the years, youth have been sent to a neuropsychologist for specialized assessments and treatment suggestions. They have identified youth with TBI as a result of three- and four-wheeler accidents, abuse, and other issues. In addition, Dr. Moss has worked with the lead McLaughlin mental health clinician to provide training in TBI in March for all interested staff. This will be the second time staff have been offered TBI training, and the expectation is that this training will be offered at McLaughlin once each year.

Do you know the number of youth who also experience abuse/neglect? The division has actually been devoting considerable attention to this question recently. Last week, we pulled the current open supervision cases in the six pilot communities for the department's Families First project. The six locations are: Anchorage, Mat-Su, Fairbanks, Nome, Juneau and Sitka. Specifically, of the 1120 youth with open referrals or open supervision within the juvenile justice system, 24% also had an ORCA ID number. This means that the youth has had some current or past involvement with a child abuse or neglect case. The youth could be a sibling or a victim, or in a rare instance, possibly the natural child of a foster parent. This information is consistent with a recent informal survey of juvenile justice supervisors statewide, who estimated that that 10%–20% of the approximately 1,300 juveniles under division custody or supervision on any given day have current or recent involvement with the state's child protective services agency.

The division expects that the development of the Department of Health and Social Services's Master Client Index (MCI) will assist us in our desire to understand how many youth are involved with the juvenile justice and child protection systems, as well as other agencies in the department such as Public Assistance and Behavioral Health. We expect to refine our data-extraction methods as development of the MCI progresses.

In addition, both DJJ and the Office of Children's Services have made recent changes to their divisional databases to increase the ease with which staff may mutually access and share information through these IT systems.

Senator French: *It would be good to see the DJJ Recidivism further broken down by region.* Please see below:

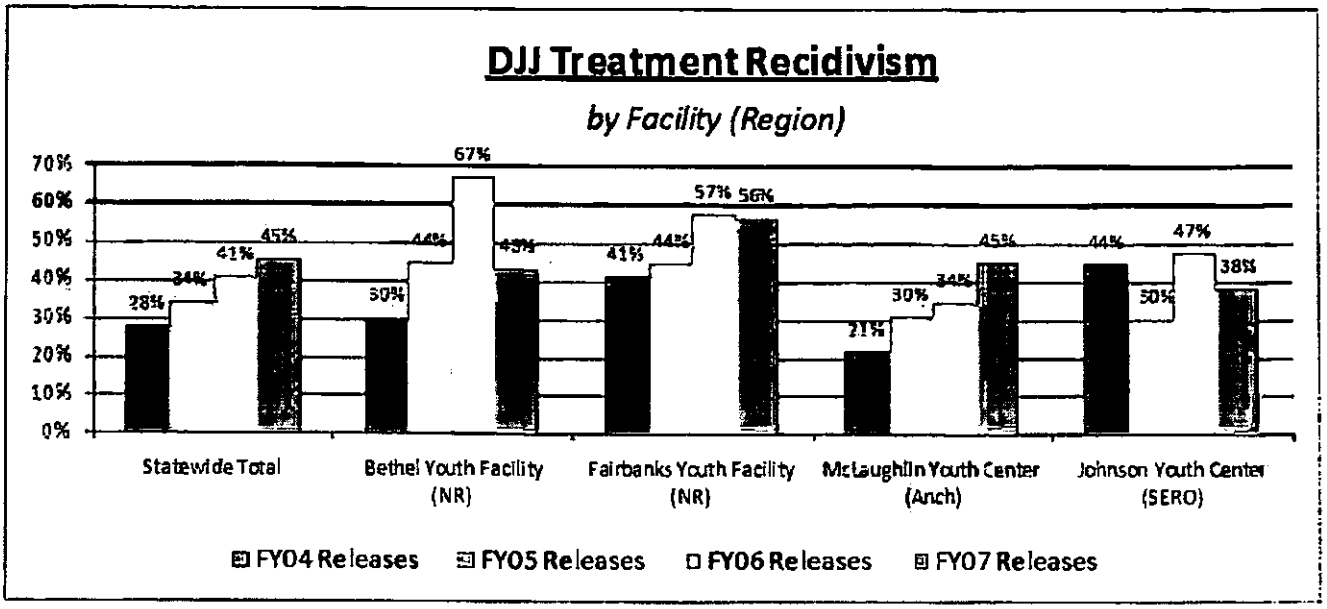
If you have additional questions, please do not hesitate to contact me at (907) 261-4335 or via e-mail at Stephen.Mccomb@alaska.gov.

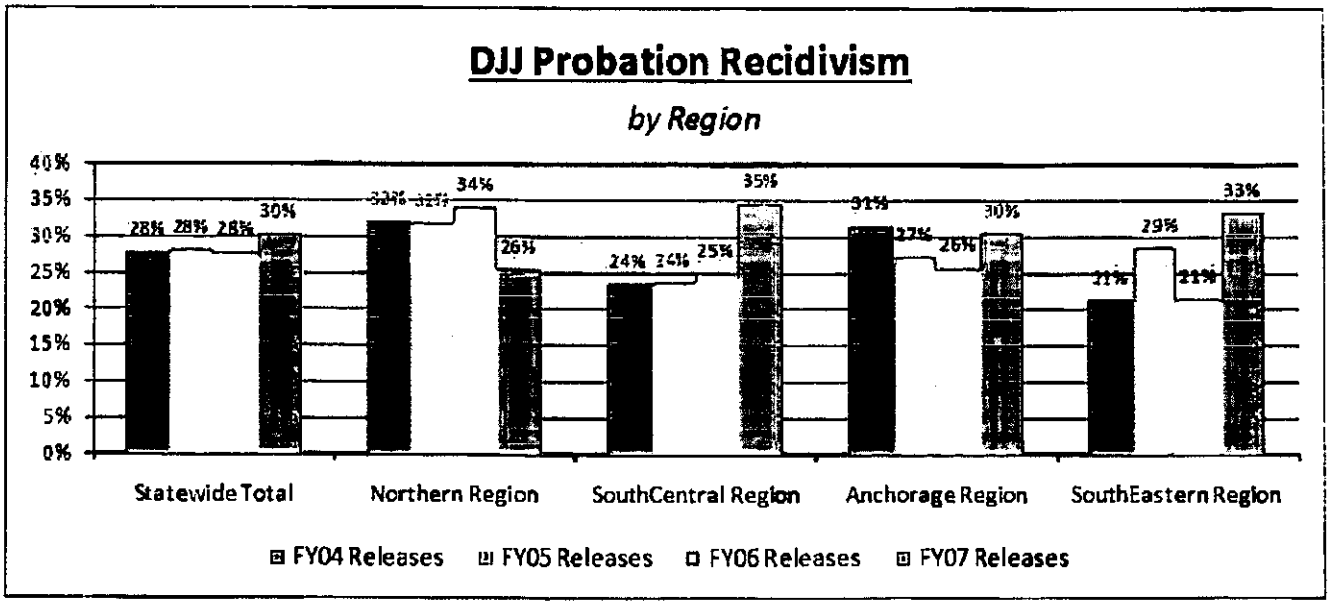
Sincerely,

Stephen F. McComb

Stephen F. McComb
Director

cc: Commissioner William H. Hogan
Deputy Commissioner Patrick Hefley
Assistant Commissioner Alison Elgee





What would be the cost for three positions to provide oversight and quality assurance for our evidence-based practices?: The division has determined that the position ranges would likely be one Range 21 position and two Range 20 positions. These positions would work to ensure the sustainability and effectiveness of evidence-based programs such as Aggression Replacement Training, a curriculum proven to change behavior of youth demonstrating chronic violent behavior and aggressiveness; and the Youth Level of Service Inventory, an assessment tool highly effective in identifying those youth at high risk of reoffending. The cost for the three positions would be approximately $350.0.

RESEARCH SUMMARY
Institute of Social and Economic Research
University of Alaska Anchorage • January 2009
R.S. No. 71

The Cost of Crime: Could The State Reduce Future Crime and Save Money by Expanding Education and Treatment Programs?

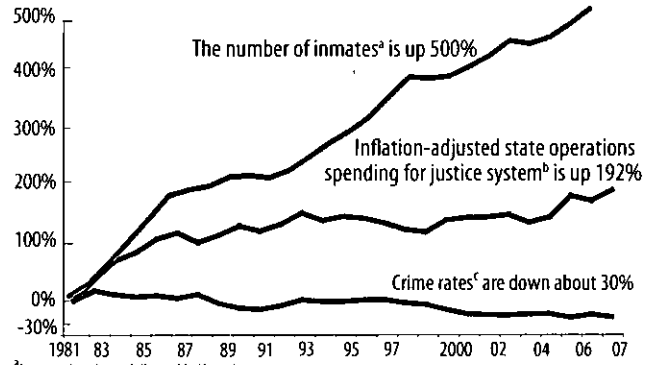
By Stephanie Martin and Steve Colt

Alaska's prison population is among the fastest-growing in the U.S., with five times more inmates in 2007 than in 1981. Spending for the state justice system has nearly doubled since 1981—but the crime rate has dropped only about 30%.

Here's the dilemma for the state, given the pattern shown in Figure 1: what can it do to hold down the number of inmates and stem the rising costs—while at the same time keeping the public safe and using tax dollars effectively?

Senator Hollis French asked ISER to project growth in the number of Alaska inmates and the associated costs—and then evaluate whether the state could reduce that growth by expanding intervention and prevention programs for people already in prison or at risk of ending up there. Alaska currently spends about $17 million a year for such programs, but they aren't available to many of those who might benefit from them.

Figure 1. Percentage Changes in Alaska Crime Rate, Spending for Justice System, and Number of Inmates, 1981-2007



[a]Inmates in prisons, jails, and halfway houses
[b]Spending for Departments of Corrections, Public Safety, and Law; court system; Division of Juvenile Justice; Public Defender Agency; and Office of Public Advocacy. Does not include capital spending or payment on debt.
[c]Rates per 100,000 for murder, rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft.
Sources: U.S. Department of Justice; state budget documents; Alaska Department of Corrections

There are a wide range of such programs. But it is programs for adults who are already in prison or jail that have the most potential to save money and reduce crime in the next 20 years. That's because they can reach the most people.

We know that without any intervention, about two-thirds of those who serve their sentences and are released commit new crimes. Stopping at least some of them from committing more crimes would not only help improve public safety but also reduce growth in both the number of inmates and in spending.

Also, most of those released committed misdemeanors (Figure 2). Those who commit the most serious crimes serve long sentences and make up a small share of those released in any given year.

To analyze which programs have the most potential to reduce crime *and* save the state money, we worked with the Alaska Criminal Justice Working Group and the Washington State Institute of Public Policy. That institute did a similar analysis for Washington state and provided us with data it collected from program evaluations nationwide (see back page). What did our study show?

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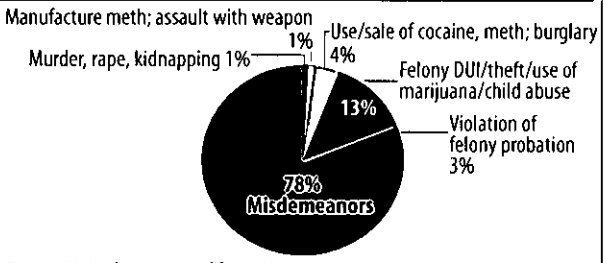

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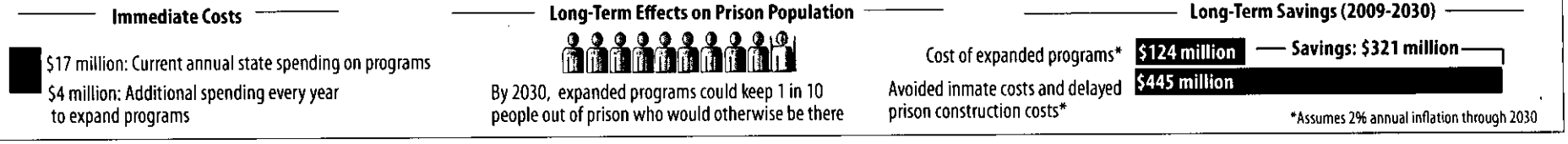

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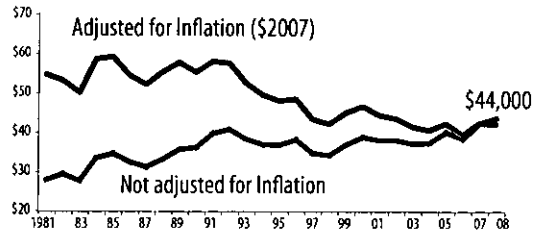

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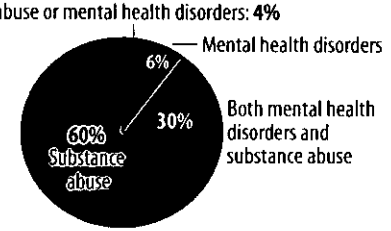

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Head Start for 3- and 4-year olds from low-income families[d]			

[a]Programs included in our final analysis are those for which we found evidence that expansion would have significant pay-offs for the state at a reasonable cost. We evaluated additional programs not included here, either because there wasn't sufficient evidence to assess their effectiveness or because they weren't feasible to implement in Alaska at this time.
[b]To effectively reduce crime, sex offender treatment programs need to be offered in both prison and the community. Treatment is currently available only in the community, so the number served in prison is currently zero—but there are proposals to add treatment in prison.
[c]People facing low-level charges and with substance-abuse problems.
[d]Head Start is a federal program, but the state supplements federal money and Governor Sarah Palin has proposed additional state funding.
[e]We assume all children from families with up to double the poverty-level income would be eligible.

We looked at but excluded other programs from our final analysis. The criminal justice working group decided that a few programs, while effective elsewhere, wouldn't be feasible to implement in Alaska at this time. For other programs, there wasn't enough available evidence to judge how effective they were in saving money or reducing crime, or the available evidence showed them to be largely ineffective.

How Do the Programs Compare?

As Figure 3 (front page) shows, expanding programs to serve more of the eligible people would save the state about $321 million and reduce the projected number of inmates 10% by 2030. Figures 6 and 7 show how the various programs contribute to costs, savings, and reductions in the number of Alaskans behind bars.

- *Education and substance-abuse treatment programs for inmates save two to four times what they cost*, reduce recidivism by about four percentage points, and can reach the most people.
- *Intervention programs for juveniles who have committed crimes are very effective* at saving money and reducing recidivism, but they serve a much smaller number of people.
- *Programs that set up transition services for inmates with mental-health disorders* coming out of prison are among the most effective—but they can't readily be expanded to serve the many people who could benefit from them.
- *Alternatives to prison for some people charged with lesser offenses save the state money right away, and almost all reduce recidivism*. The exception is electronic monitoring, which is inexpensive but hasn't been shown to reduce future crime.
- *Treatment programs for sex offenders do reduce crime*, but they are very expensive and so don't save the state money.
- *Programs that prevent future crime by helping very young at-risk children are the most effective*. But the effects of spending for those programs aren't apparent until many years later.

Figure 6. How Effective Are Various Programs at Saving Money and Reducing Crime?

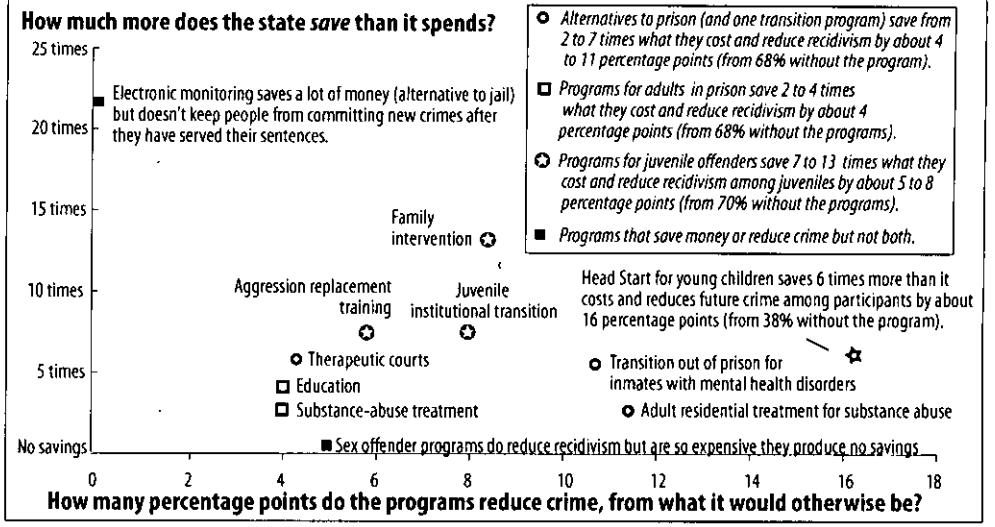
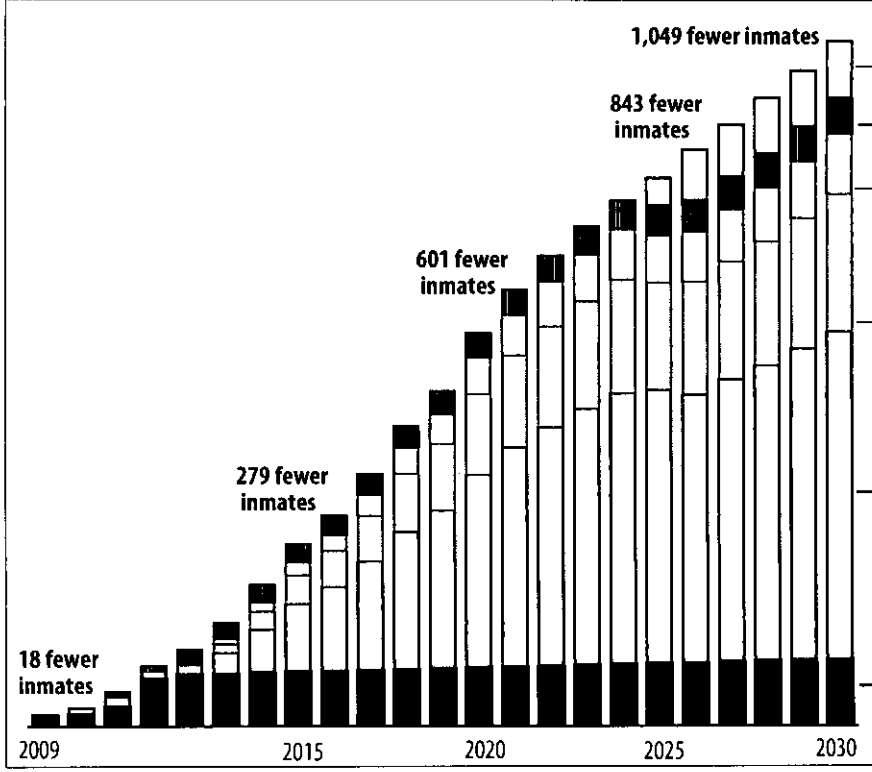


Figure 7. How Would Expanding Specific Programs Contribute to Reducing Growth in Numbers of Inmates?



Pre-school programs for at-risk children cost about $1,000 per child but save many times that much, by reducing future crime. The effects of the spending aren't apparent for years, until the children grow up.

Programs for juveniles offenders cost an average of about $2,500 per person, but save almost 10 times that much by keeping kids out of prison. They serve only a subset of the population of 12- to-17-year-olds.

Transition programs for people with mental health disorders are extremely effective, add about $2,000 per person to inmate costs, and save about four times that much. But the programs currently serve very few people and can't readily be expanded to serve large numbers.

Programs that treat inmates for substance abuse add about $2,000 a person to inmate costs, but over time save about twice as much. They are effective, but can't readily be expanded to reach all the people who need them.

Education and job training programs in prison add about $1,000 to inmate costs, but they reach the most people and save about four times more than they cost. Because they are offered in every facility, they can easily be expanded and can reach more people. (Reductions in the number of inmates as a result of the sex-offender treatment program are also included here, but are only one or two people a year.)

Programs that keep people out of prison save the state money right away, because they cost much less than the $44,000 per person the state spends to lock people up. They include therapeutic courts for substance abuse and mental health disorders, electronic monitoring, and residential substance-abuse treatment.

Conclusion

In conclusion, Figure 8 shows how Alaska's corrections system got where it is and where it's likely to go—if intervention and prevention program are kept at their current levels, and if the most effective programs are expanded to serve more of the eligible people.

We found that the state could both reduce the number of Alaskans in prison or jail and save considerable money over the next 20 years, by adding about $4 million a year to the $17 million it currently spends to keep people from returning to prison— or prevent them from ever going there at all.

Spending more for these programs even as oil prices and state revenues are falling may not seem like a good idea. But Alaska also needs to look to the future—and over time the benefits of strategically expanding those programs that reduce crime and keep more Alaskans out of prison far outweigh the costs.

Method of Analysis

Our job was to assess whether specific programs could reduce long-term state spending for corrections by reducing growth in the number of inmates. As a starting point, we needed evaluations of how effective various programs are at reducing future crime.

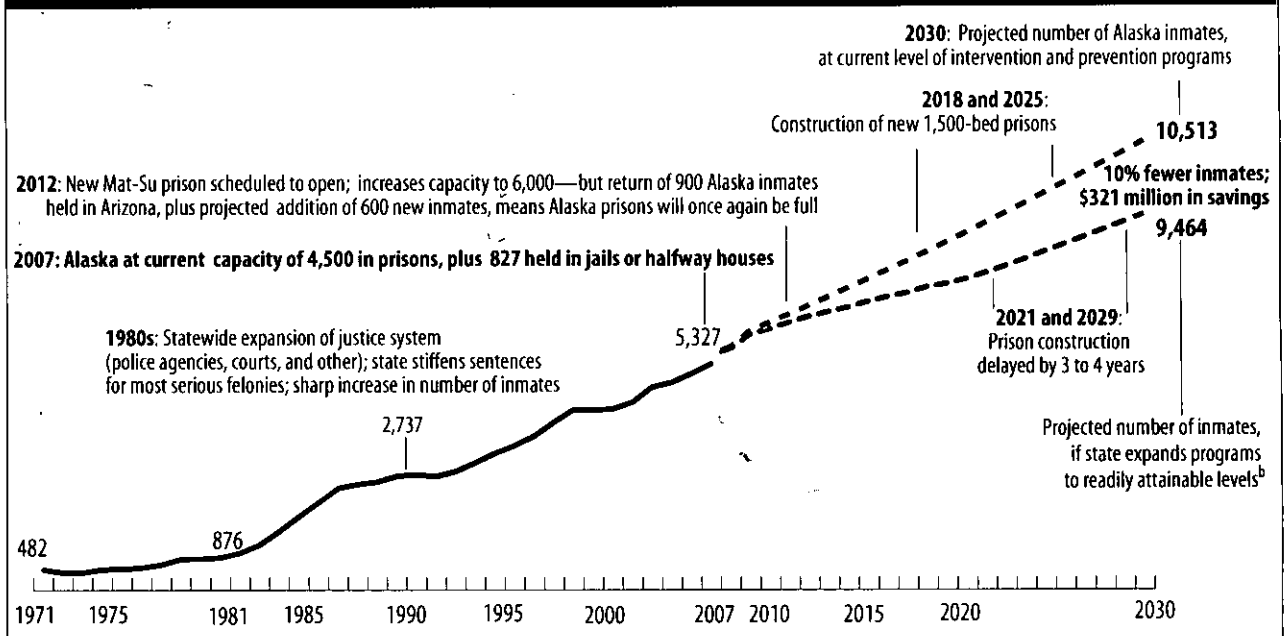
But except for some of the therapeutic court programs, most programs in Alaska have not been rigorously evaluated. Therefore, we used results of a Washington state assessment that systematically reviewed 571 program evaluations from around the country.

To be included, evaluations had to have carefully designed control groups, replicable results in multiple settings, and long-lasting effects. This method is evidence-based public policy, which merges research and practice. It is similar to clinical trials in medicine. Keep in mind that this is a new field, and only about 10% of programs in place nationwide have been evaluated at this standard.

With data from rigorous evaluations, the Washington State Institute of Public Policy created a model that estimated the effects of programs on recidivism—and then combined those results with a cost-benefit analysis to estimate the long-term effects on state spending and inmate populations.

We combined the institute's estimates of recidivism with Alaska data on program costs, eligible groups, and state population to estimate long-term effects on crime and state spending.

Figure 8. Average Number of Alaska Inmates,[a] 1971-2007, and Projected Number, 2008-2030



[a]Average daily number of people in prisons, jails, and halfway houses. [b] The number of people who could be readily added to program rolls varies considerably by program; see Table 1.

Sources: Alaska Department of Corrections; ISER projections of number of prisoners, based on Alaska Department of Labor projections of Alaska population 18-64 and assuming no change in current use of rehabilitation programs as well as expanded use; Washington State Institute of Public Policy

The authors thank the members of the Alaska Criminal Justice Working Group for their help in identifying programs to evaluate and for comments on drafts of this publication. The Alaska Legislature funded this group in 2007 and authorized the Alaska Judicial Council to act as its staff.

The group is chaired by a justice of the Alaska Supreme Court and Alaska's lieutenant governor. Other members include top policymakers from the departments of Corrections, Public Safety, Health and Social Services, and Law, as well as the Alaska Mental Health Trust Authority; the heads of the Alaska Public Defender Agency and the Office of Public Advocacy; the administrative and deputy directors for the Alaska Court System; the executive director of the Judicial Council, the U.S. attorney, and Anchorage's police chief.

This group meets monthly to talk about long-term justice issues, as well as to resolve any inter-branch issues that come up among the many agencies and organizations that deal with aspects of Alaska's justice system.

The authors also thank Elizabeth Drake and Steve Aos of the Washington State Institute of Public Policy for developing the methods and models we used and for helping us apply them to Alaska. For more information go to www.wsipp.wa.gov.

This research summary and many other publications on a wide range of topics are available on ISER's Web site:

www.iser.uaa.alaska.edu

Editor: Linda Leask Graphics: Clemencia Merrill

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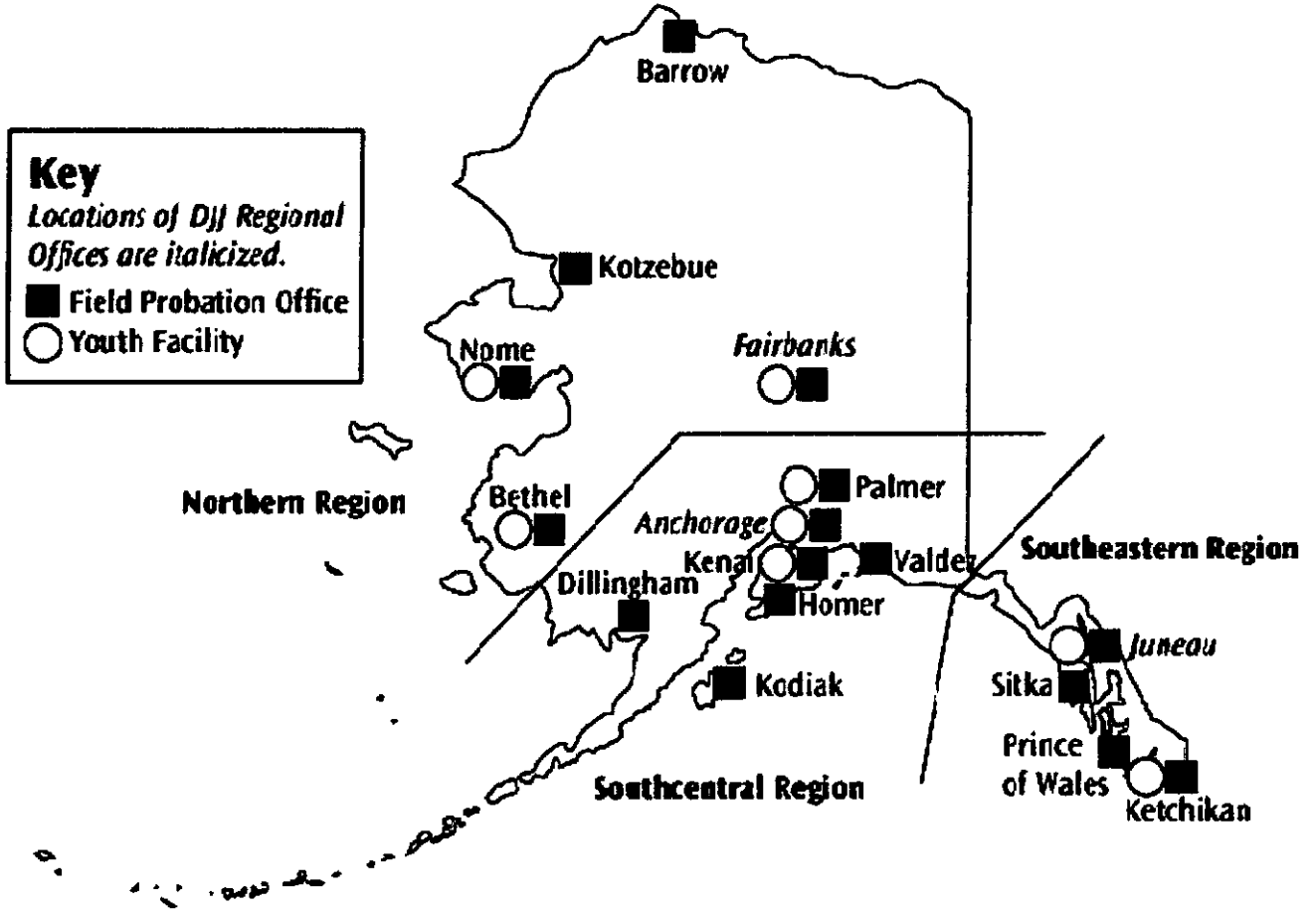
Division of Juvenile Justice

Juvenile Justice Overview

Senate Judiciary Committee

January 27, 2010

Map of DJJ Locations



Division of Juvenile Justice

- DJJ is an agency within the Department of Health & Social Services
- Our Mission is based on a Restorative Justice Philosophy:
  - Hold juvenile offenders accountable for their behavior.
  - Promote the safety and restoration of victims and communities.
  - Assist offenders and their families in developing skills to prevent crime.

Overview of what we'll cover today

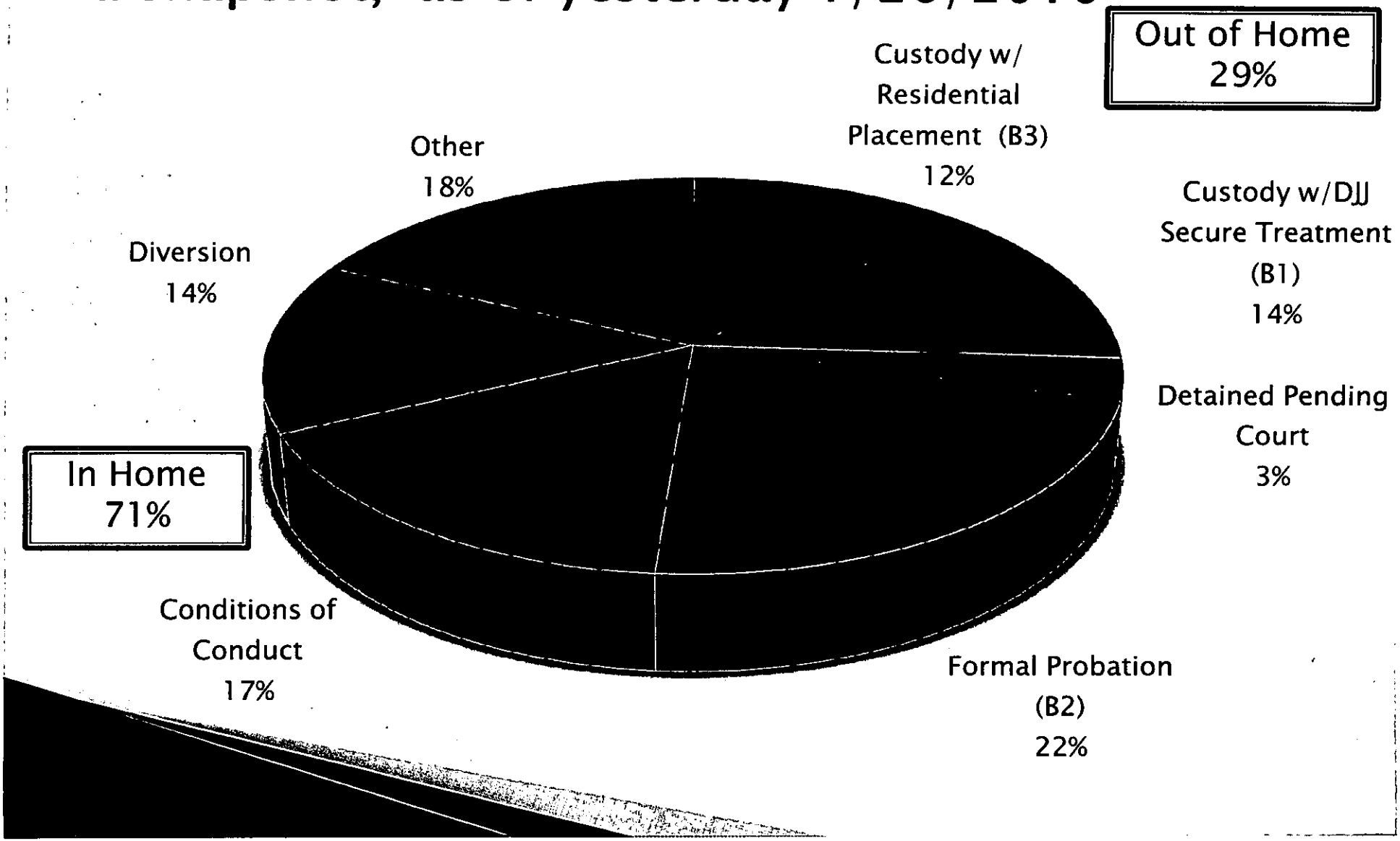
- Juvenile Delinquency Trends, Recidivism, Areas needing Focus
- Key Programs
  - YLS: Youth Level of Service / Case Management Inventory (This is the youth version of the LSI)
  - PbS: Performance-based Standards
  - ART: Aggression Replacement Training

How does a youth enter our system?

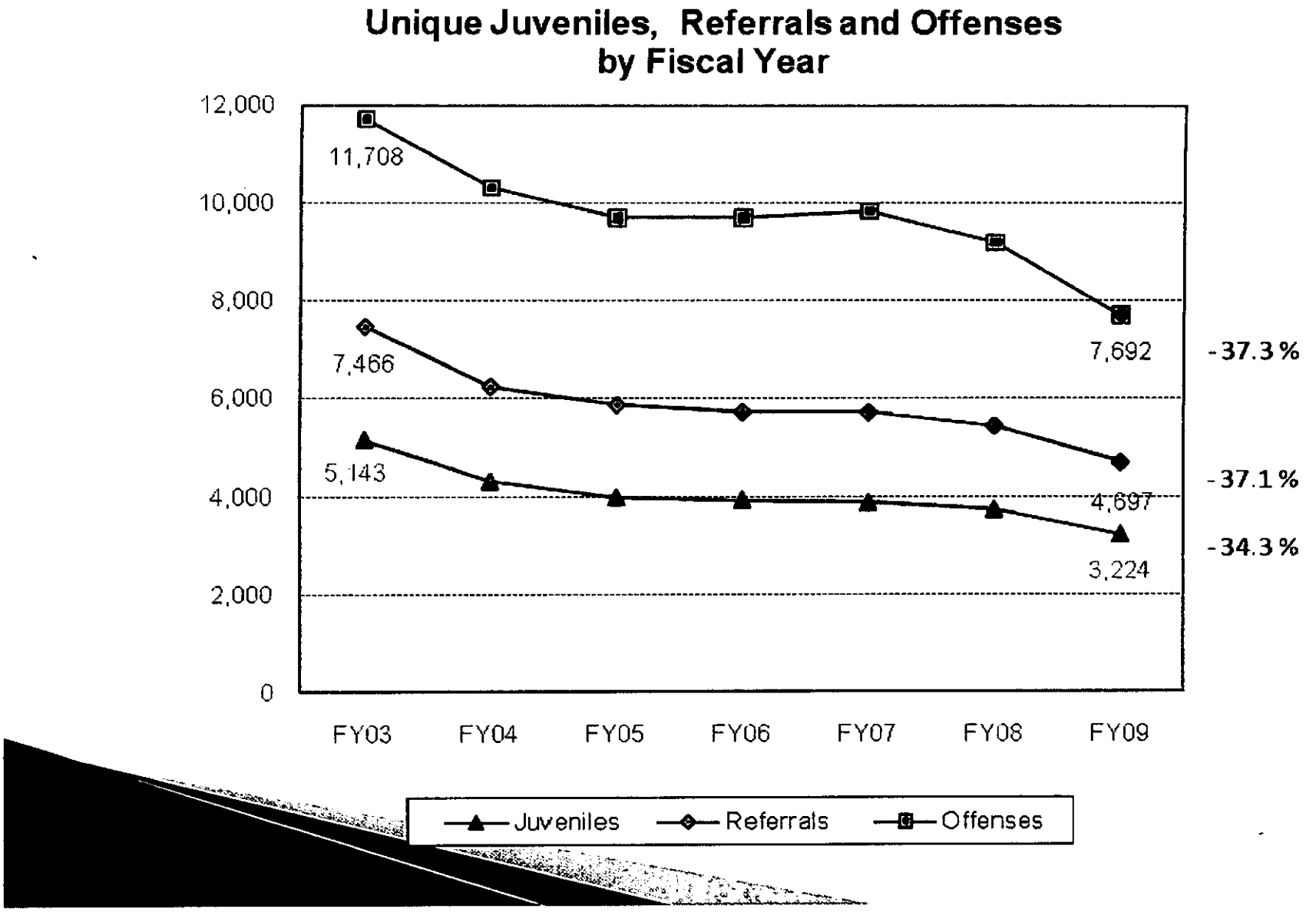
- By committing an offense that would be a crime if committed by an adult.
- Less serious offense & low risk/needs, Informal sanctions
- More serious offense & higher risk/needs, Go to Court with possible outcomes of:
  - Formal Probation
  - Custody with possible Residential Placement
  - Institutionalized DJJ Treatment (with appropriate Transitional Services)

Juveniles on Supervision

a snapshot, as of yesterday 1/26/2010

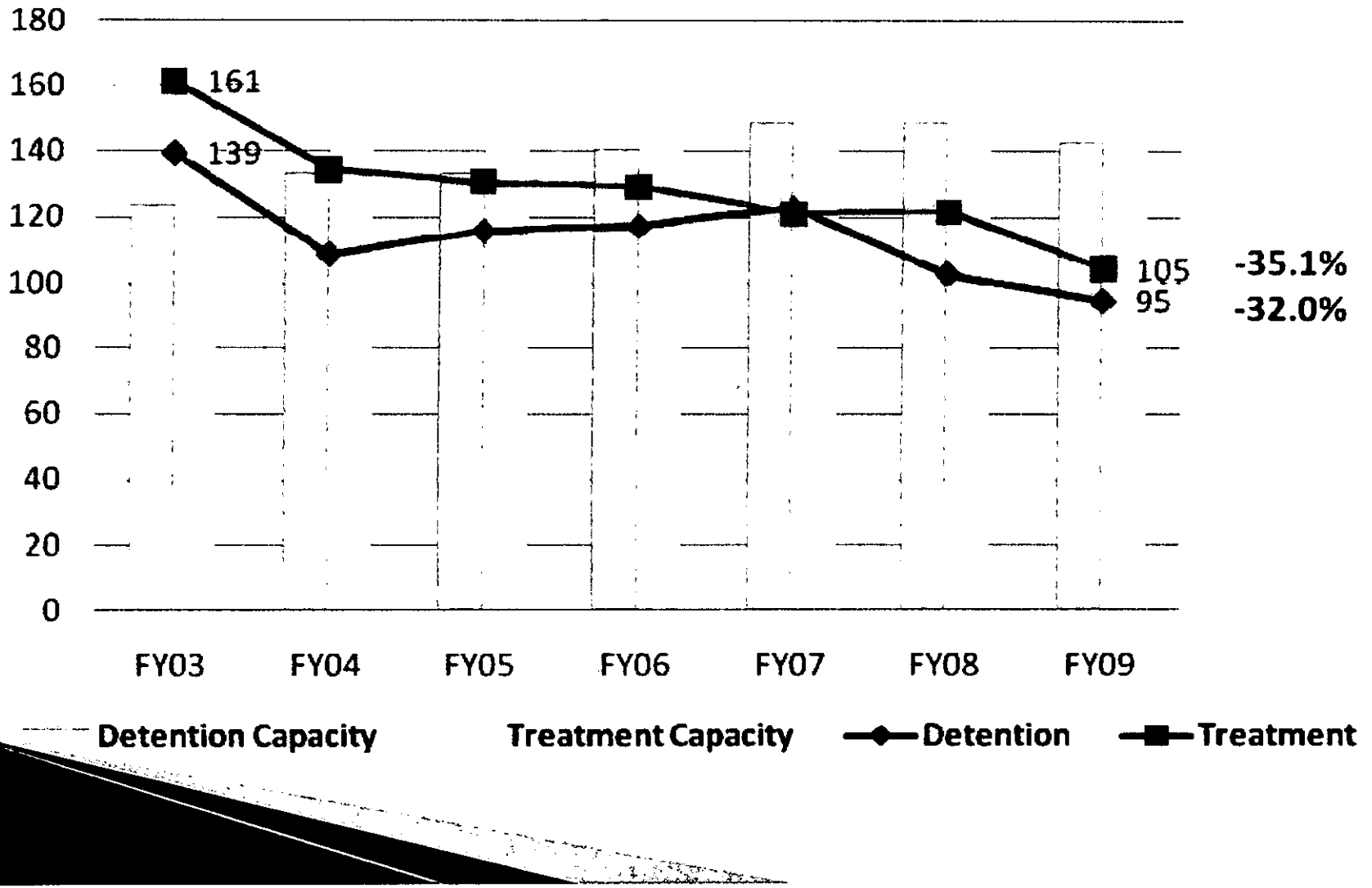


DJJ Referral Trends



Facility Utilization

DJJ Facility - Average Daily Population



Some Juvenile Demographics

RACE	Alaska Native / Native American	African American	Asian	Native Hawaiian / Pacific Islander	White / Caucasian	Mult-Racial	Other/ Unknown	Regional Count of Referrals	Hispanic (info only)
Anchorage	17%	16%	4%	5%	39%	13%	6%	*1,875*	*6%*
Northern Region	63%	4%	0%	1%	26%	3%	2%	*1,118*	*1%*
SouthCentral Region	13%	1%	2%	1%	71%	6%	6%	*1,020*	*3%*
SouthEast Region	34%	2%	2%	1%	51%	5%	6%	*684*	*2%*
Statewide %	*30%*	*8%*	*2%*	*3%*	*45%*	*8%*	*5%*		*4%*
Statewide Count	1,396	383	103	122	2,091	371	231	4,697	164

Gender of Juvenile at Referral

Male	73%
Female	27%

Age of Juvenile at Referral

Younger than 10	1%
10 - 12	6%
13 - 14	20%
15 - 17	69%
18+	4%

Percentages shown are from FY09 but are indicative of typical

FY09 total Referral count was 4697

What kind of Offenses are committed?

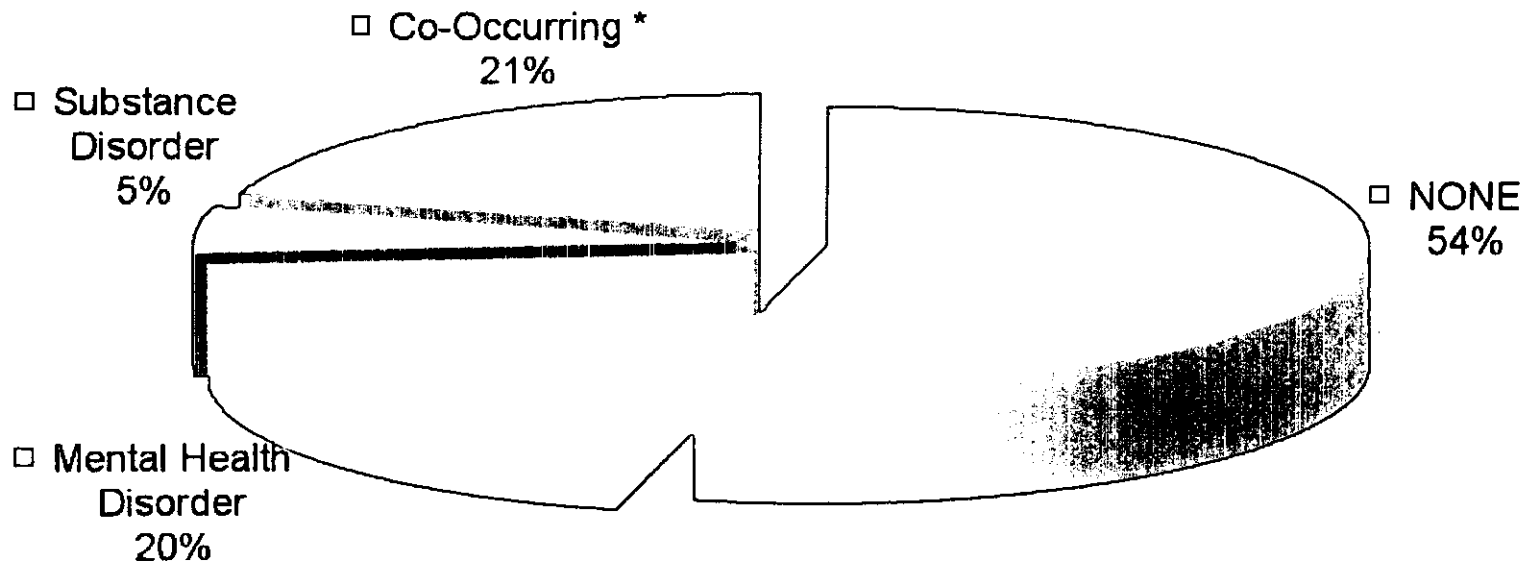
TYPES OF OFFENSES	
Against Persons	16%
Against Property	42%
Public Order	6%
Drug & Alcohol	8%
Weapon	1%
Misc. Offenses	27%

CLASS OF OFFENSES	
Felony	24%
Misdemeanor	49%
Violation/Other	1%
Conduct/Probation Violation	26%

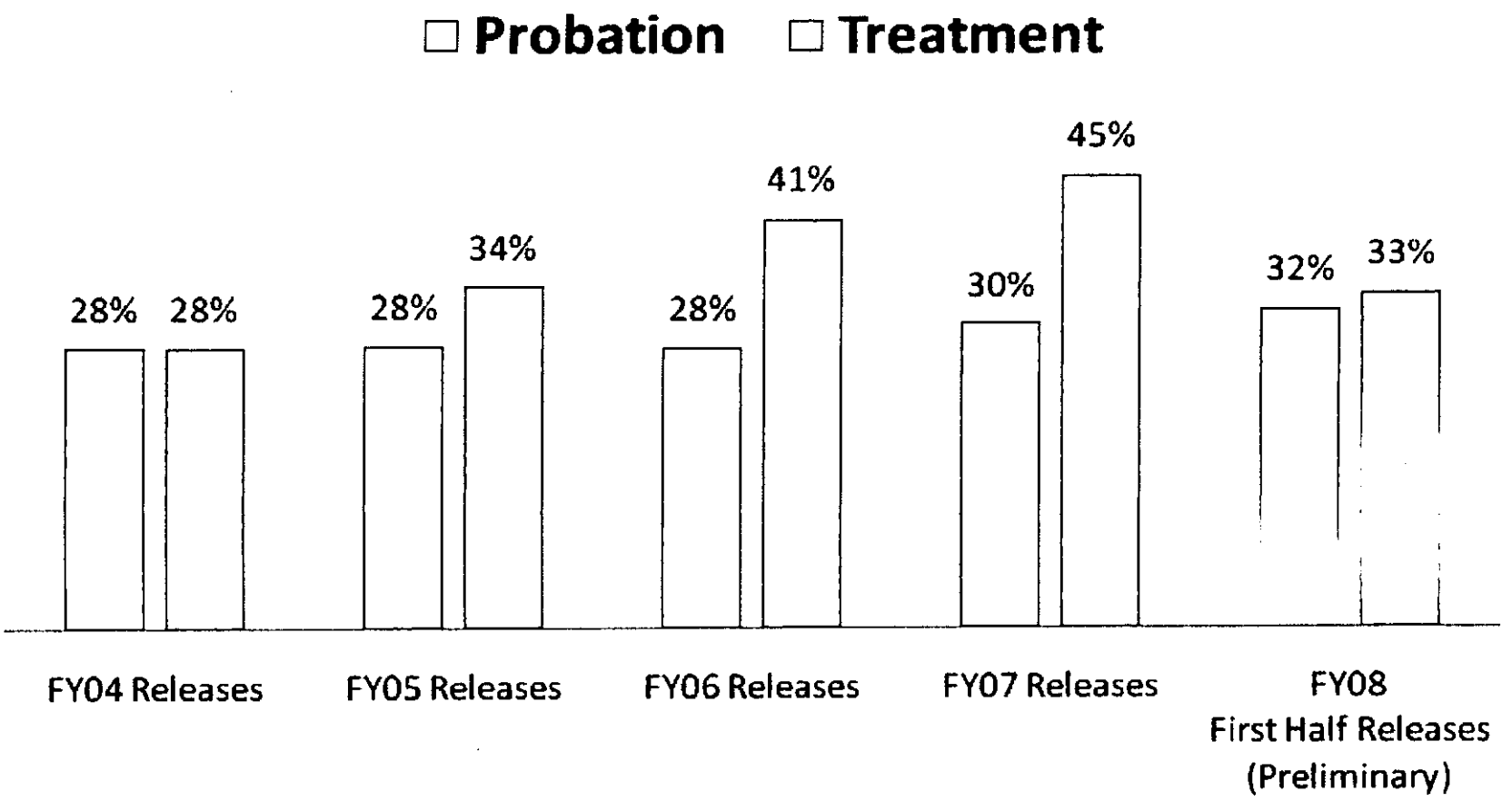
Percentages shown are from FY09 but are indicative of typical

DJJ Youth with Behavioral Health Diagnoses (DSM IV)

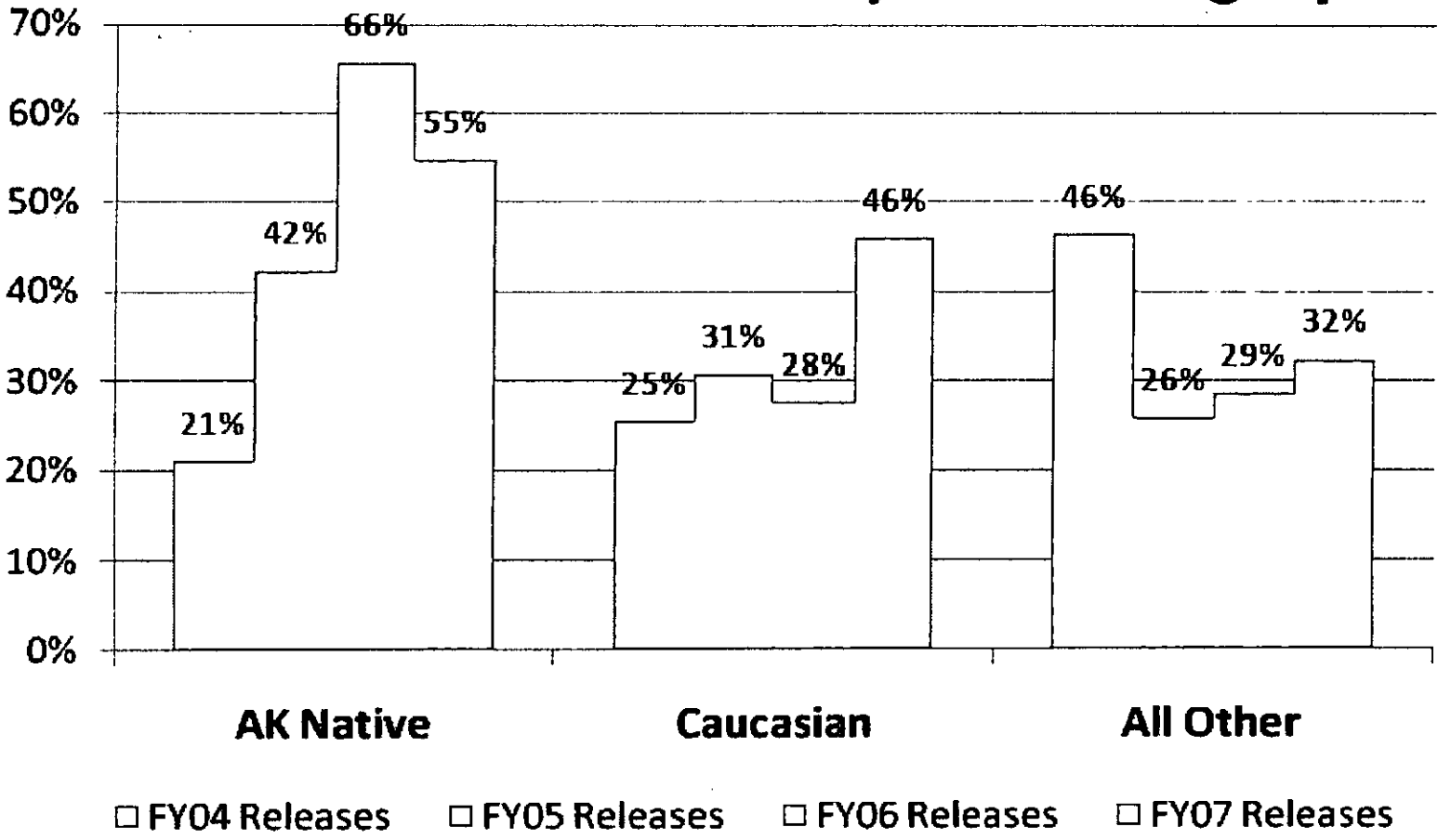
FY09 Clients - Type of Diagnosis



DJJ Recidivism



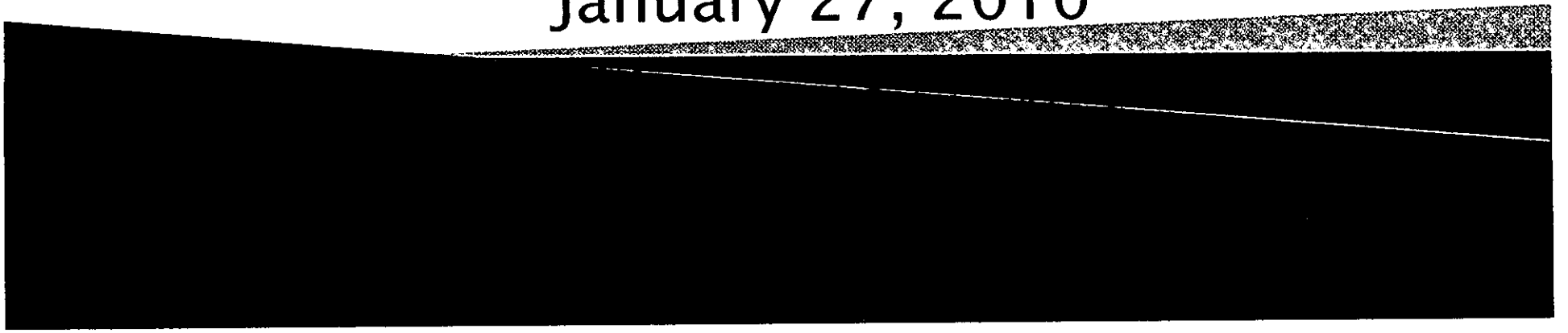
Treatment Recidivism by Race Category



The Youth Level of Service/ Case Management Inventory

"The YLS"

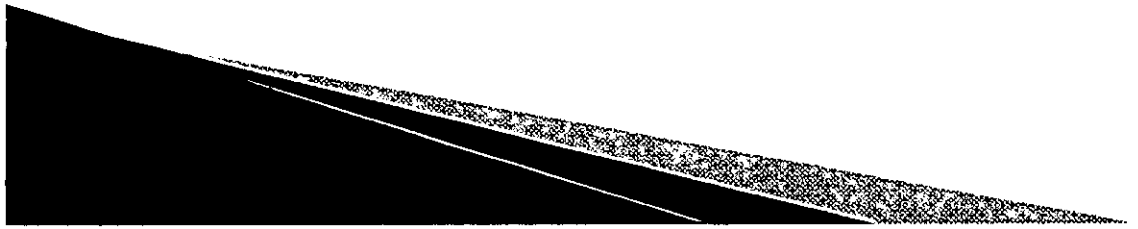
Juvenile Justice Overview
Senate Judiciary Committee
January 27, 2010



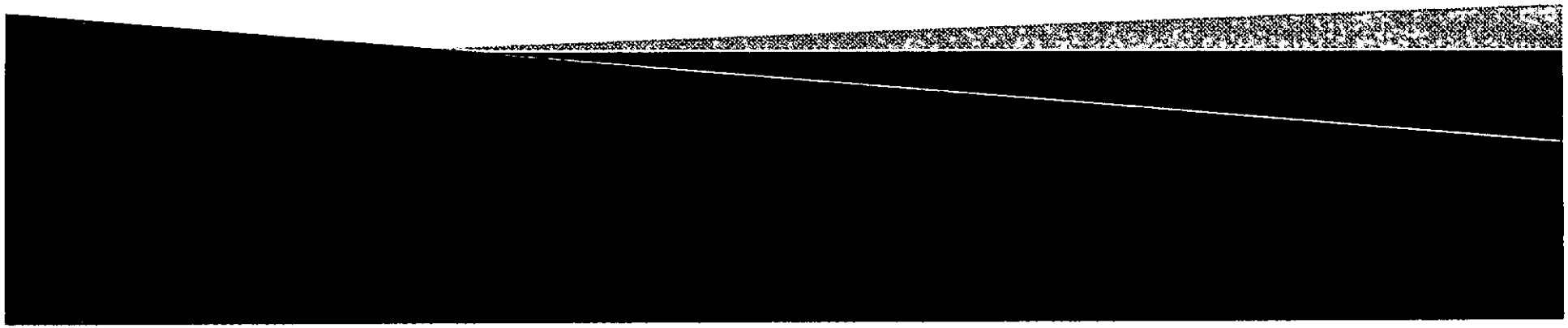
Objective:

To emphasize:

- The importance and value of effective assessment of juveniles
- The potential that the YLS holds for Alaska



What puts a youth at increased risk for delinquent behavior?



These are strong risk factors for delinquent behavior:

- A history of offending
- Challenging family circumstances
- Difficulties in education, employment
- Poor peer relations
- Substance abuse
- Few leisure activities, interests
- Pro-criminal behavior or personality
- Pro-criminal attitudes

These are NOT strong risk factors for delinquent behavior:

Socio-economic status

Personal distress

Mental illness

Family structure

- Learning disabilities
- Abusive parents
- Low self-esteem

Risk factors for delinquency are both STATIC and DYNAMIC

A youth CAN'T change his offense history, and previous educational failures

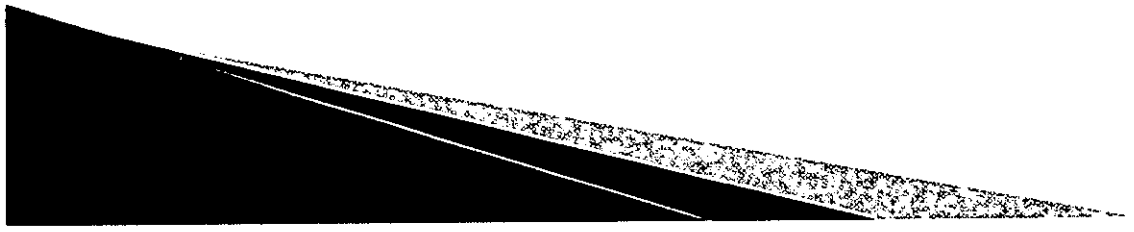
But MAY be able to change some family circumstances, his educational goals, friendships, substance abuse habits, etc.

Appropriate Assessment of Juveniles:

- Reduces bias in determining risk
- Helps better utilize resources
  - Guides decision making
  - Improves placement of offenders
- Can lead to enhanced public safety

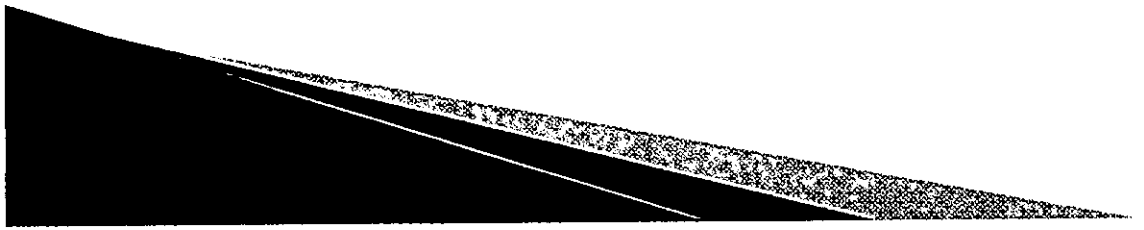
Why the Youth Level of Service/Case Management Inventory (YLS)?

- Measures the major risk and need factors for delinquency
- Extensive validation studies
- Case management flows from results



Features of the YLS

- Completed after In-Depth Interviews with Youth, Parents, and others familiar with youth
- 42 Questions on the Major Risk Factors
- Strict scoring criteria to limit subjectivity
- Allows professional discretion to adjust final risk/need level

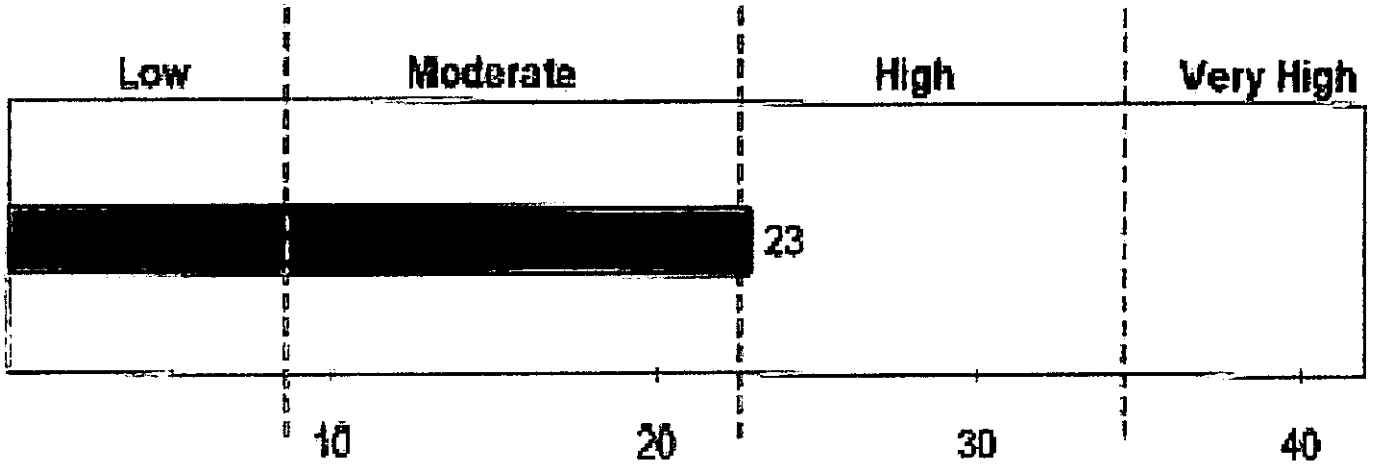


The YLS in Alaska

- Introduced in 2005 Statewide
- Youth are assessed with the YLS if they've been adjudicated delinquent in Court and are at least 12 years old.
- Youth are RE-assessed every 6 months that they remain on probation supervision or following release from a secure or non-secure residential program.

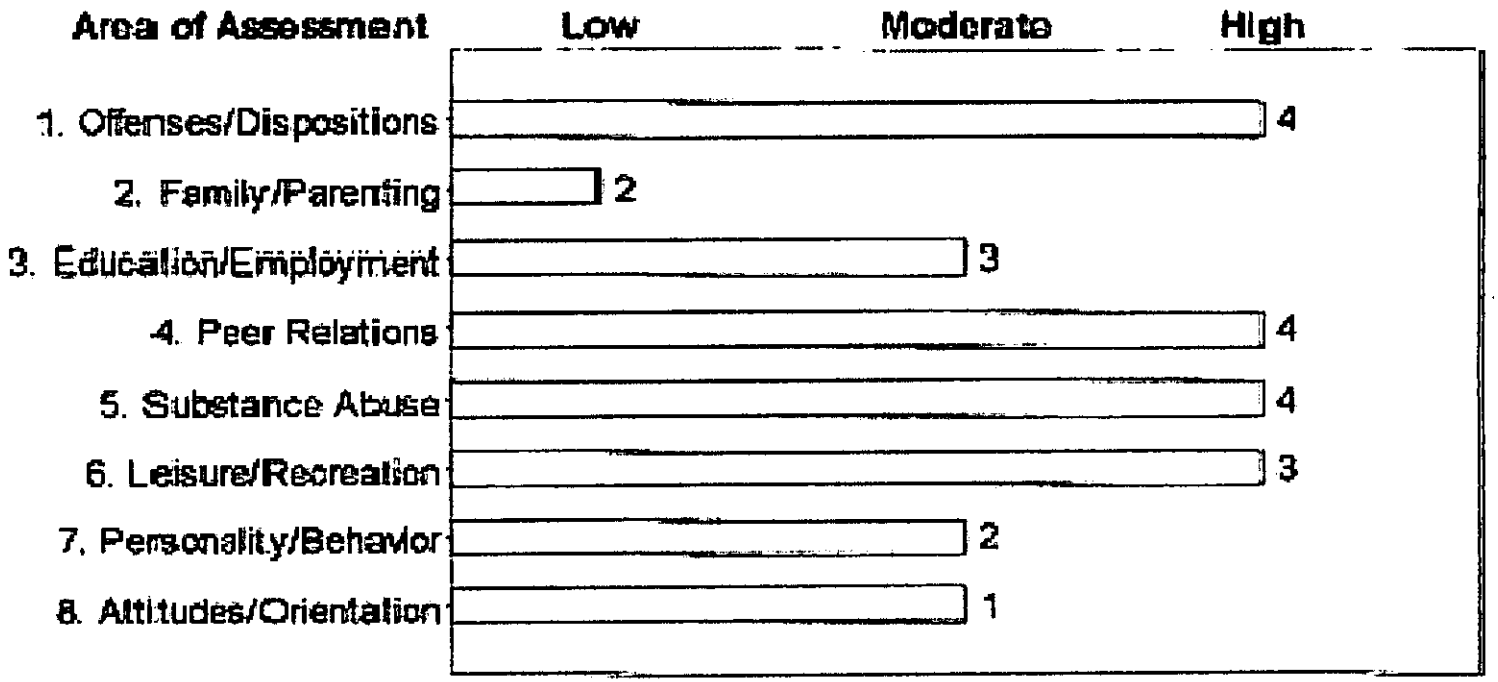
Overall Assessment Based on YLS/CMI Total Risk/Need Level

The graph below displays the YLS/CMI Total Score and indicates the classification level associated with that score (using standard cut-off scores).

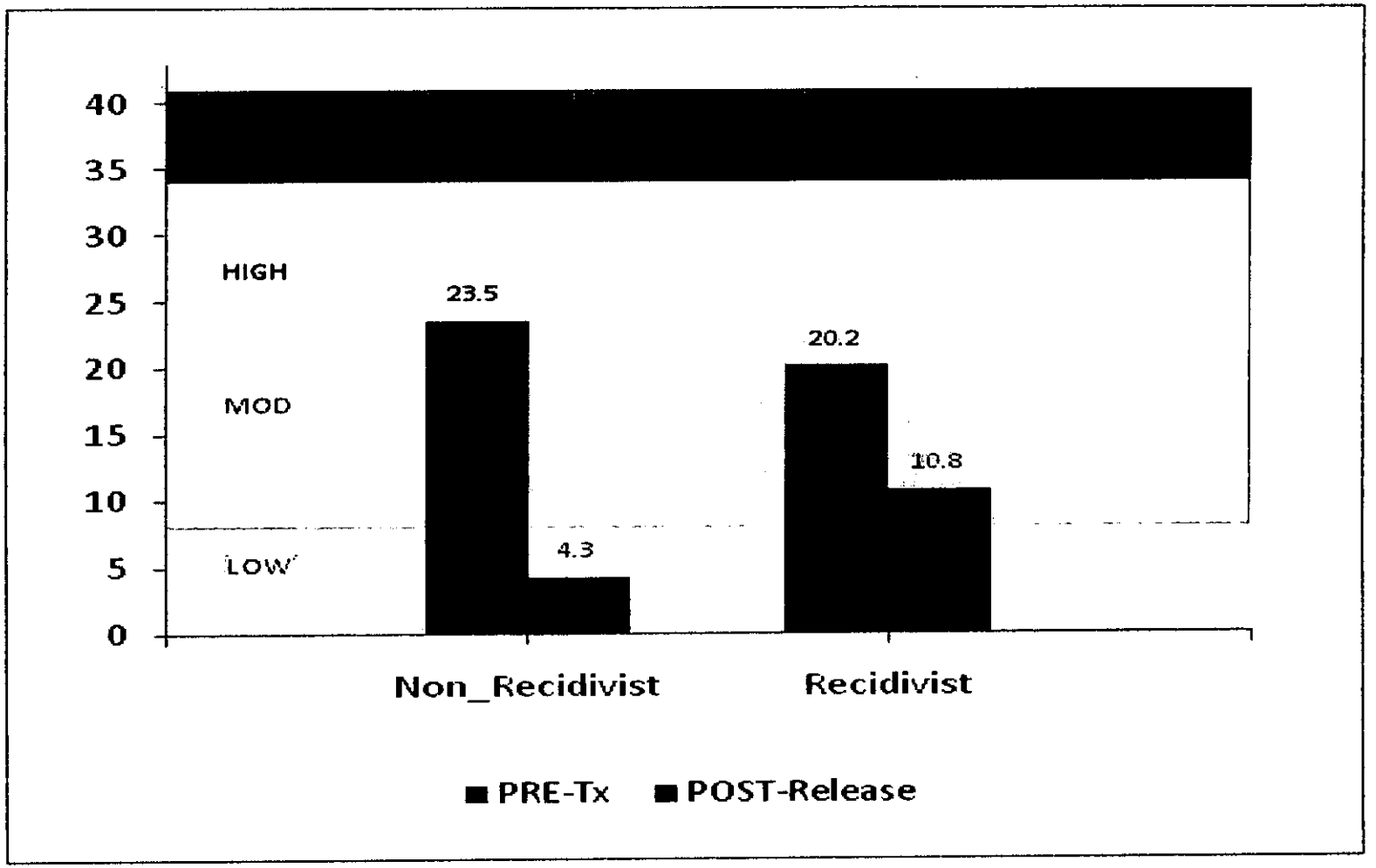


Assessment of Risks and Needs

The graph below displays the risk level for each area of assessment (using standard cut-off scores).

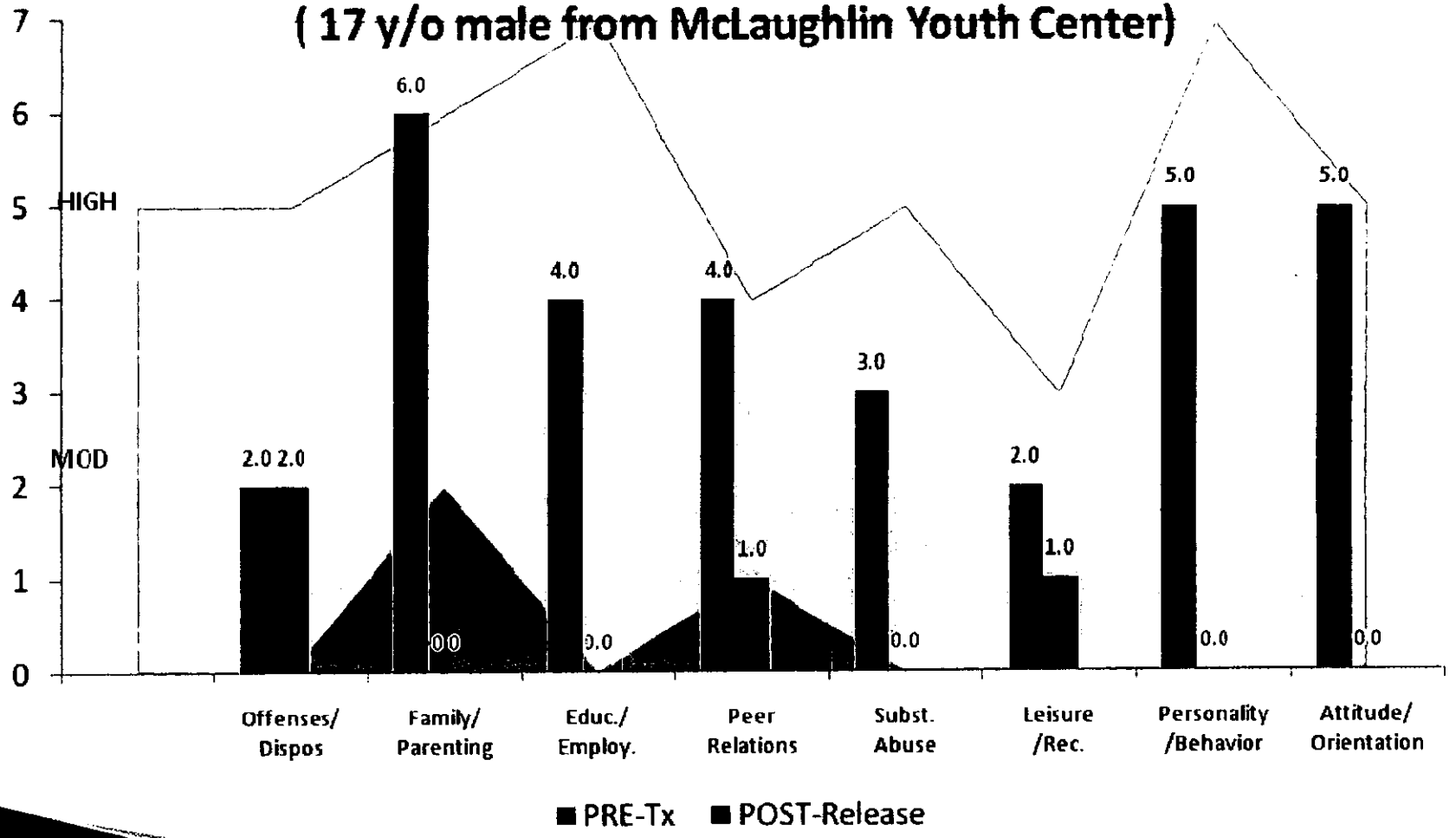


Average TOTAL Scores Pre-Treatment and Post-Release



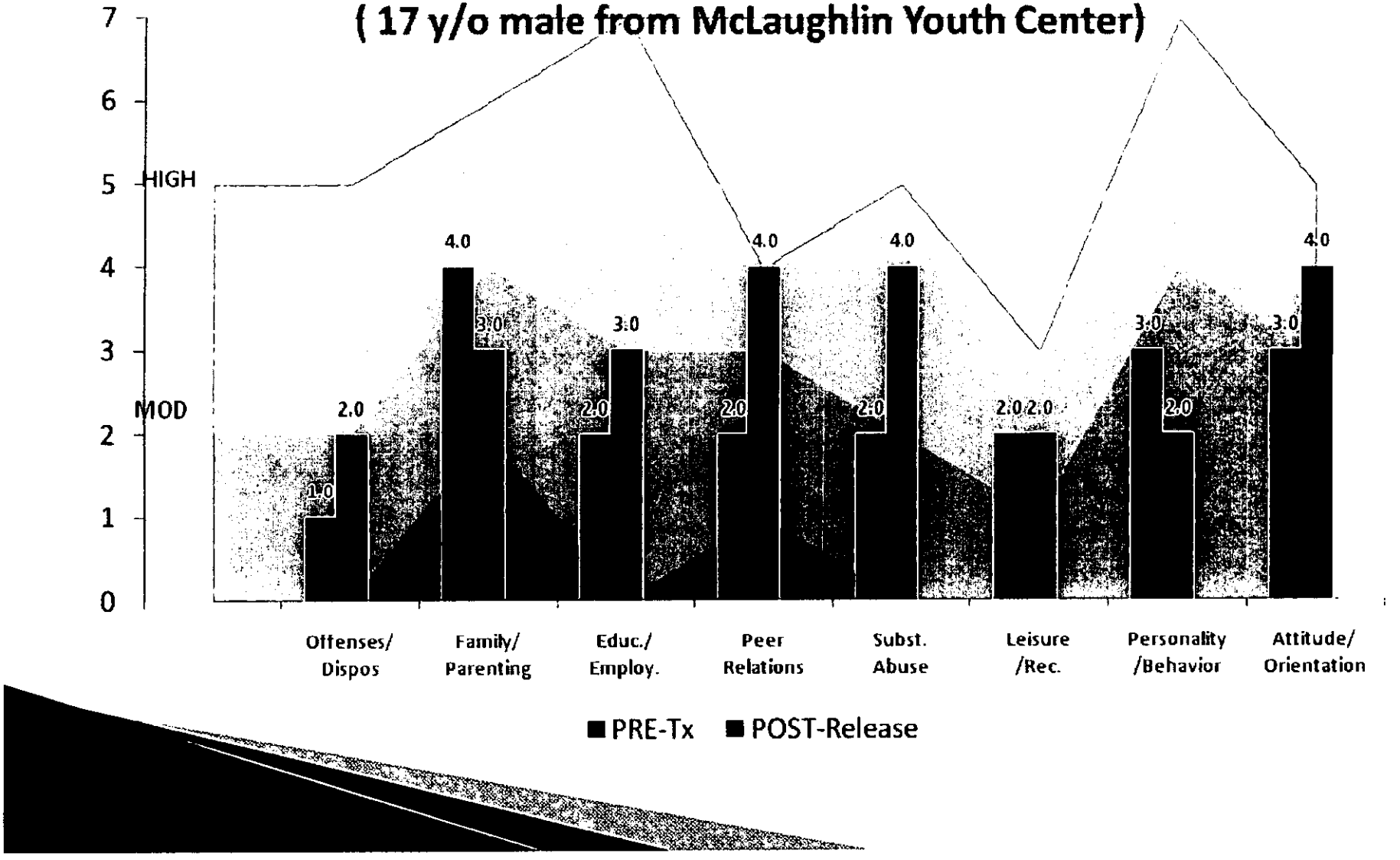
Non-RECIDIVIST

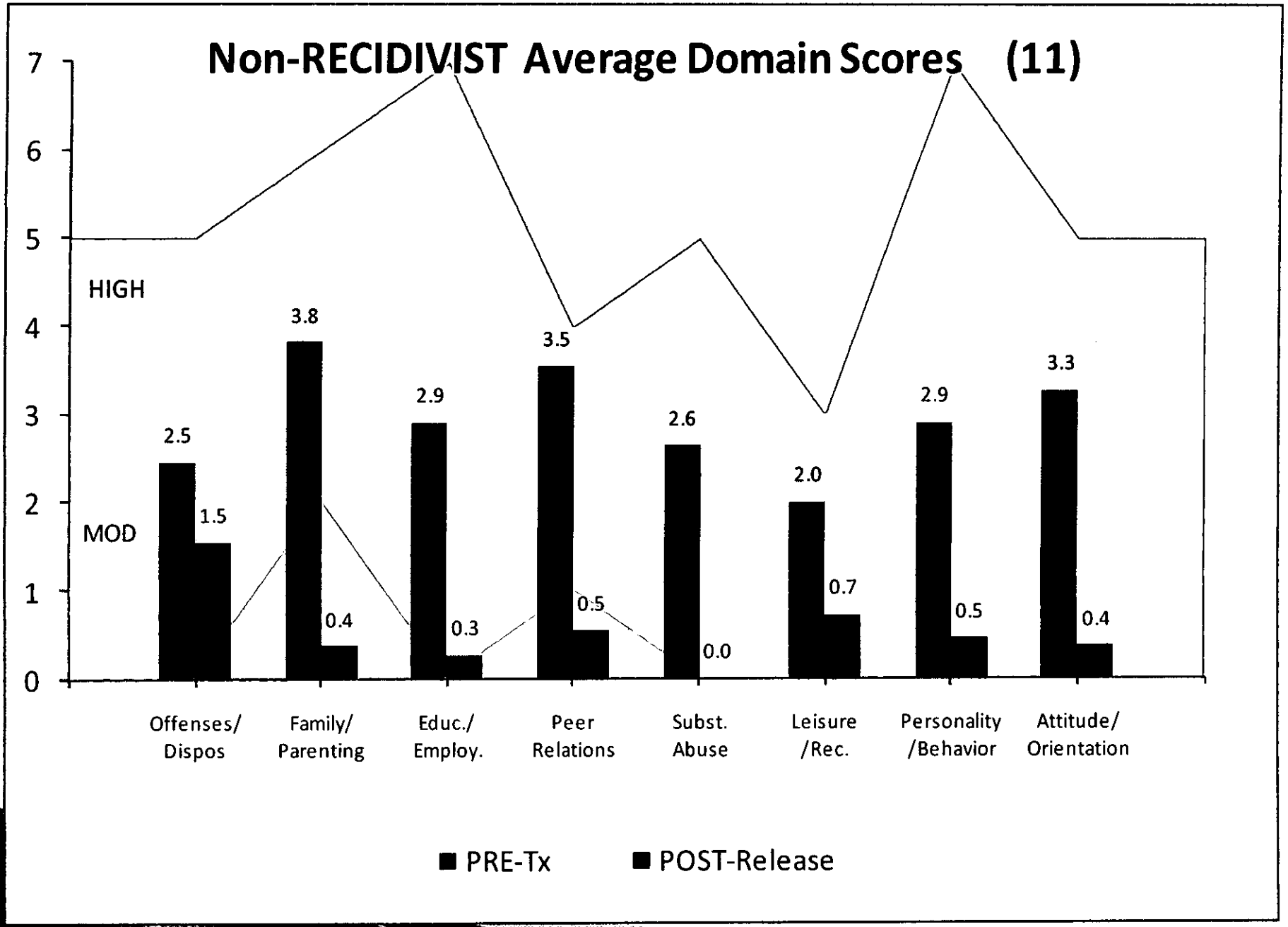
(17 y/o male from McLaughlin Youth Center)

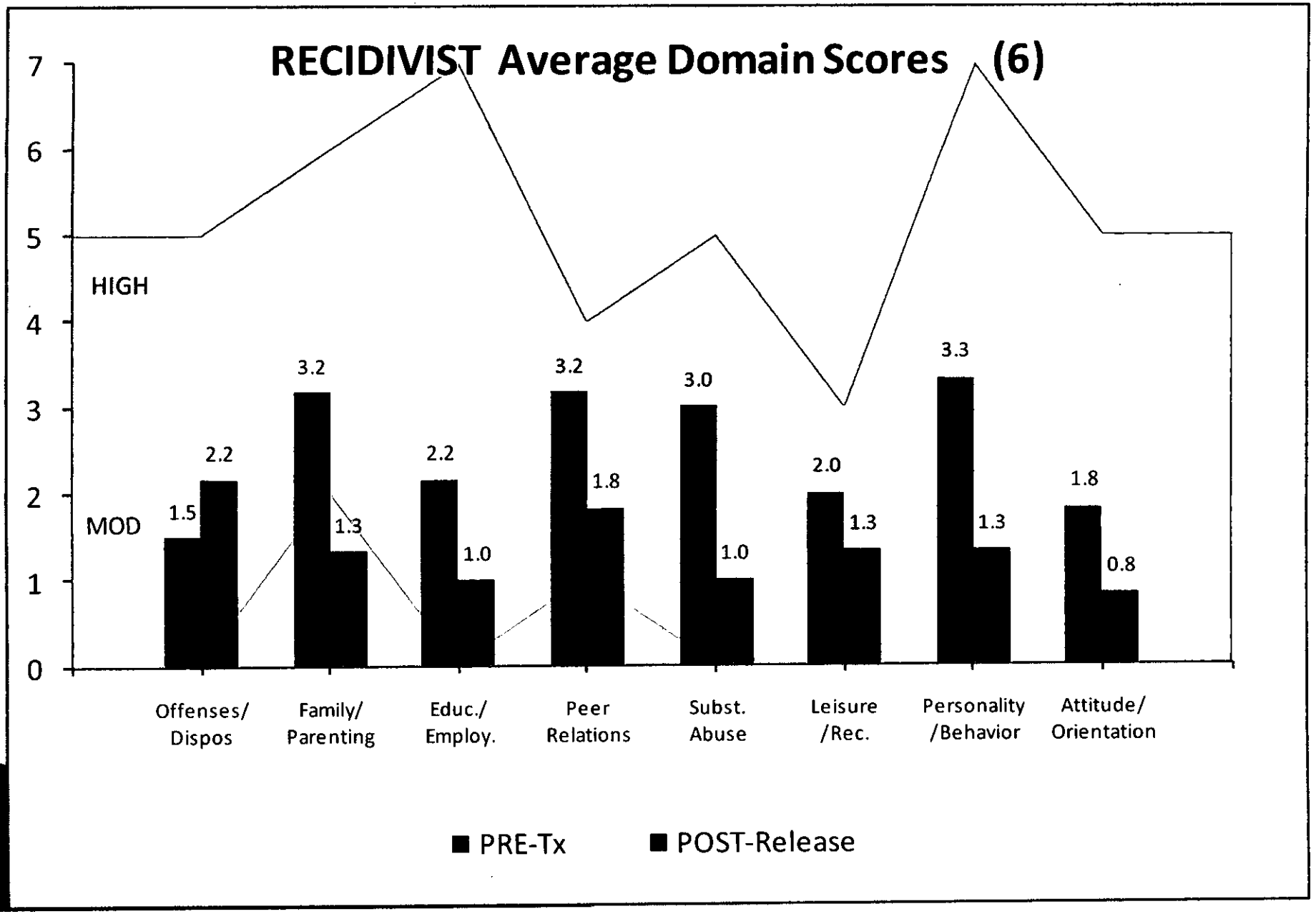


RECIDIVIST

(17 y/o male from McLaughlin Youth Center)



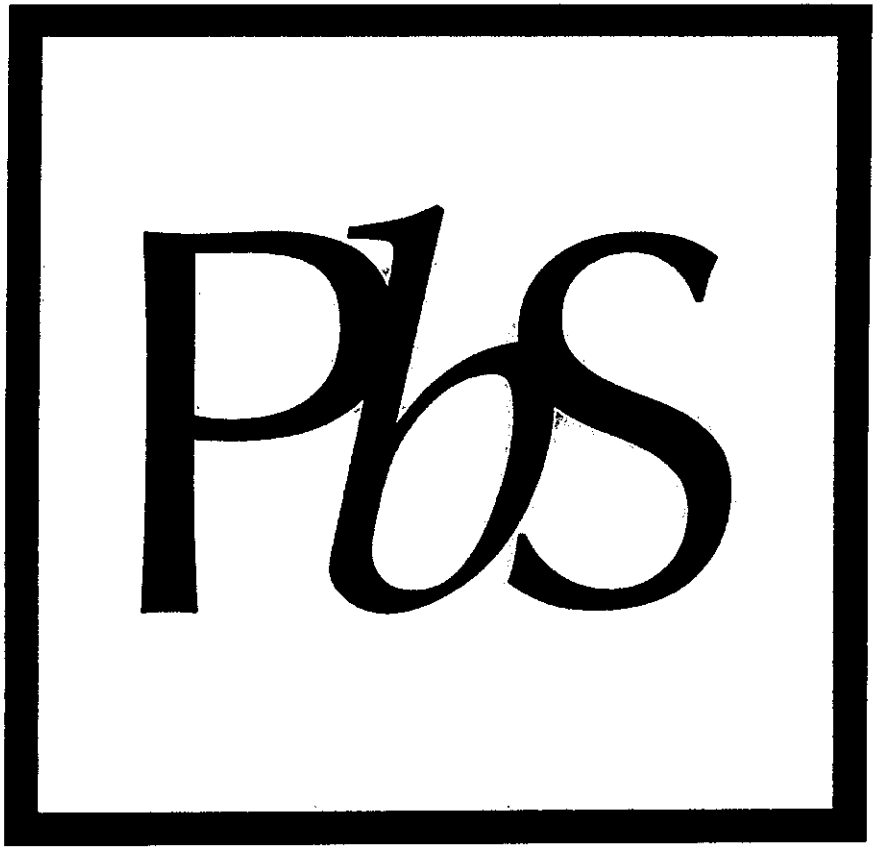

Non-RECIDIVIST Average Domain Scores (11)
7
6
5
4
3
2
1
0
HIGH
MOD
2.5
1.5
3.8
0.4
2.9
0.3
3.5
0.5
2.6
0.0
2.0
0.7
2.9
0.5
3.3
0.4
Offenses/ Dispos
Family/ Parenting
Educ./ Employ.
Peer Relations
Subst. Abuse
Leisure /Rec.
Personality /Behavior
Attitude/ Orientation
PRE-Tx
POST-Release


RECIDIVIST Average Domain Scores (6)
7
6
5
4
3
2
1
0
HIGH
MOD
1.5
2.2
3.2
1.3
2.2
1.0
3.2
1.8
3.0
1.0
2.0
1.3
3.3
1.3
1.8
0.8
Offenses/ Dispos
Family/ Parenting
Educ./ Employ.
Peer Relations
Subst. Abuse
Leisure /Rec.
Personality /Behavior
Attitude/ Orientation
PRE-Tx
POST-Release

YLS: Next Steps

- Quality Assurance Needs
  - Is it being performed correctly?
  - Is it being performed according to policy?
  - Would two assessors score the same youth the same way?
  - Are staff adequately trained?

- What more can the YLS tell us about:
  - The differences between youth who reoffend and those that don't?
  - The programs that Alaska may need to decrease recidivism?



Performance-based Standards

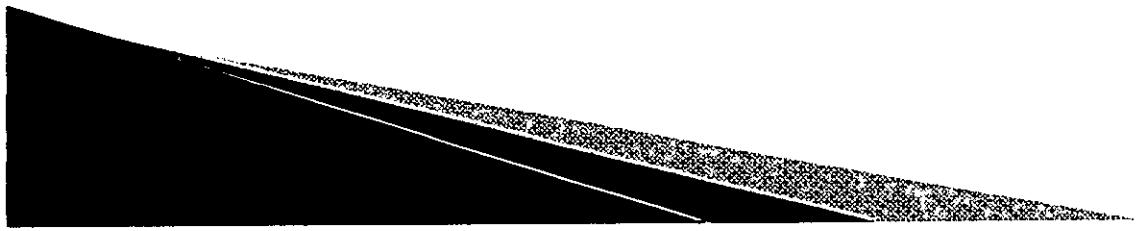
Safety and Accountability for Juvenile Corrections and Detention Facilities

PbS Timeline:

1994 - Conditions of Confinement Study

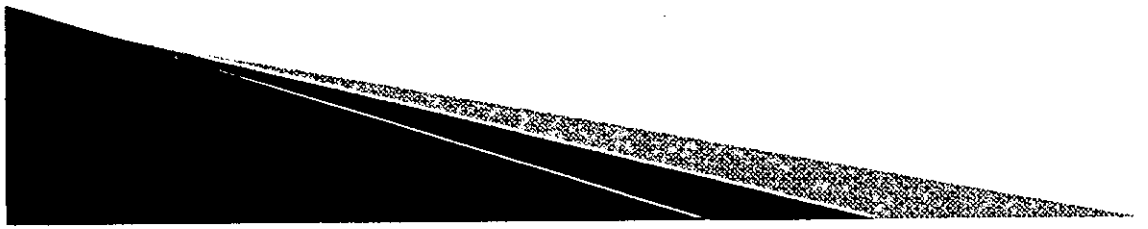
1998 - Office of Juvenile Justice and Delinquency Prevention (OJJDP) developed Performance-based Standards (PbS) - a nationally-recognized improvement program

2004 - Alaska joins PbS



PbS outcome measures

- Safety
- Security
- Order
- Health and Mental Health Services
- Justice and Legal Rights
- Programming
- Reintegration Planning



A Three-step Continuous Improvement Process

1. Data Collection

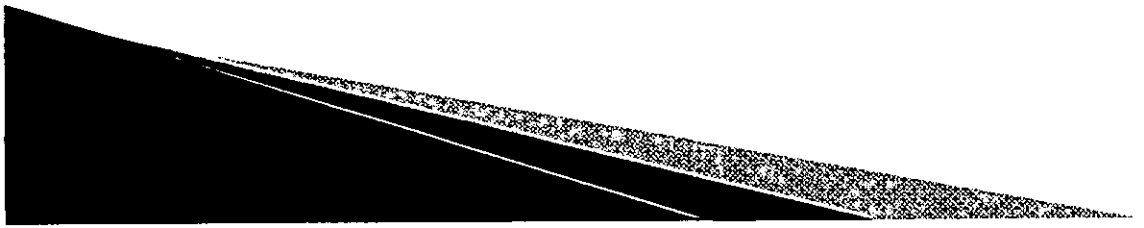
- Youth Records
- Surveys
- Incident Reports

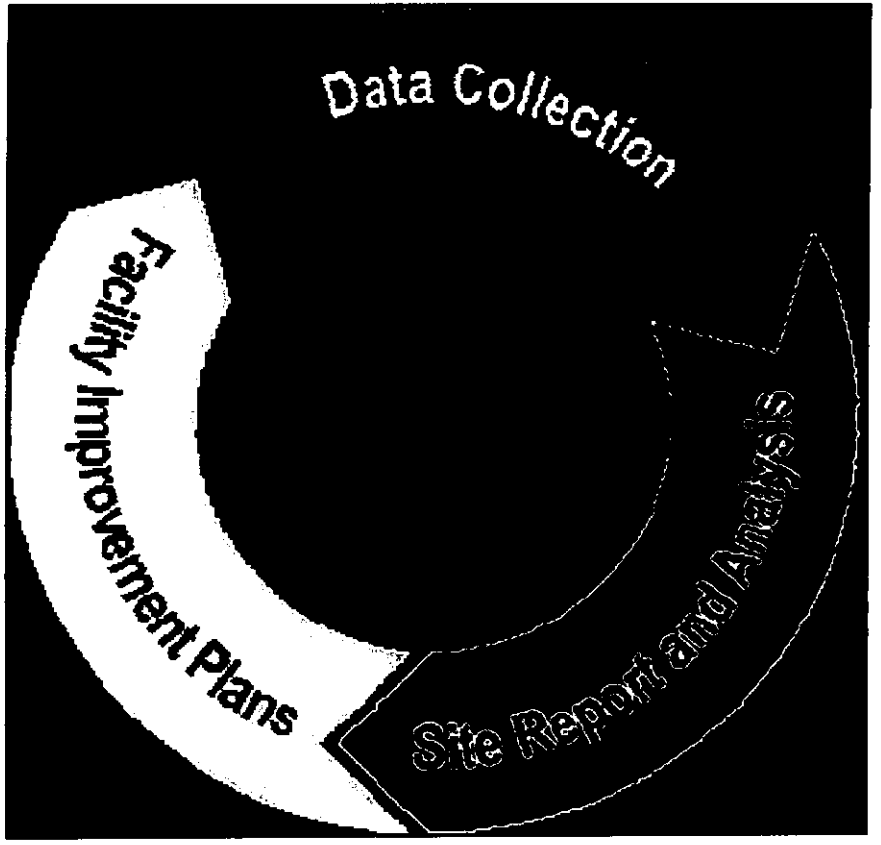
2. Performance Reports

- Bar Graphs and Summary Reports

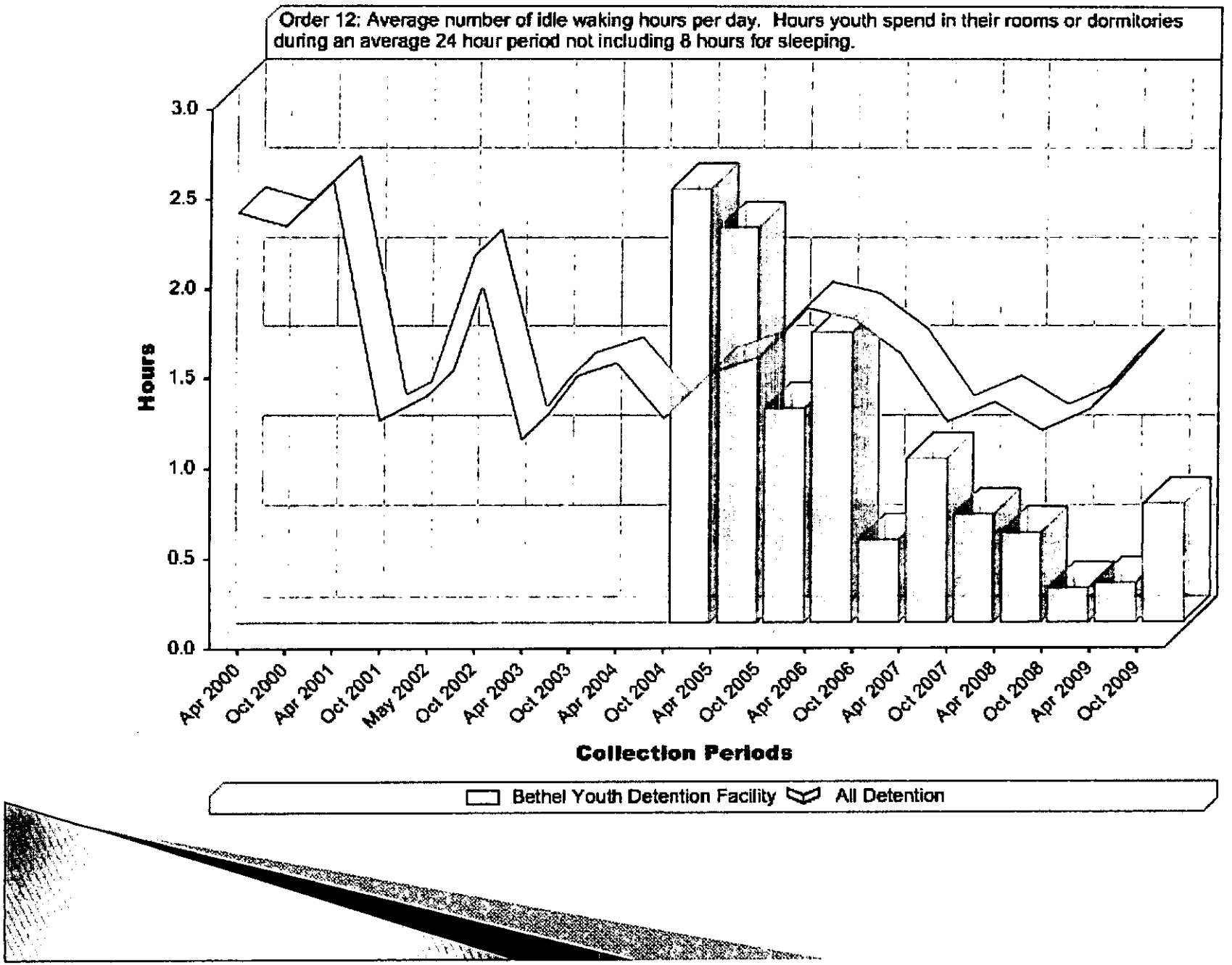
3. Facility Improvement Process

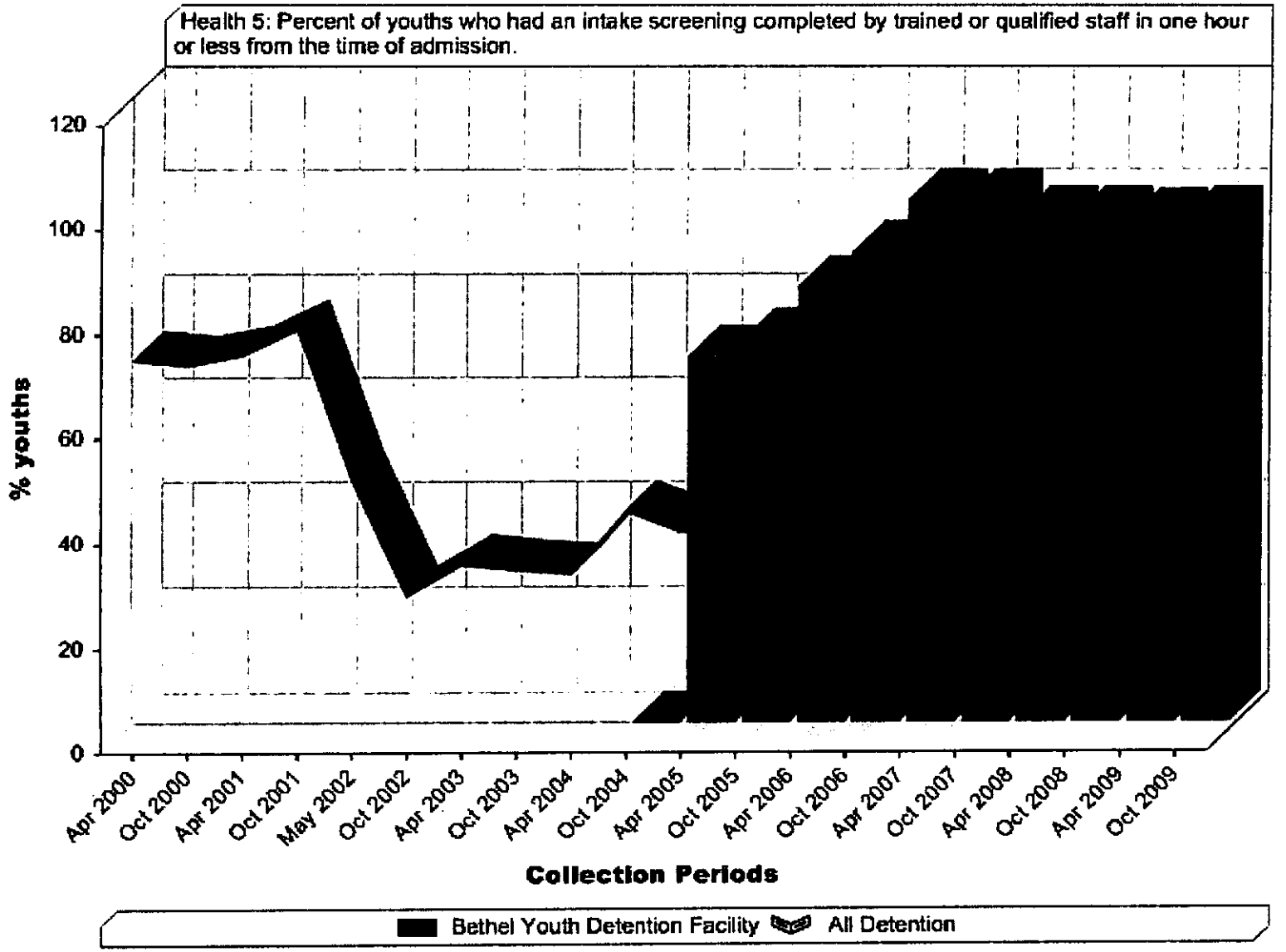
- Facility Improvement Plan (FIP)
- Web site

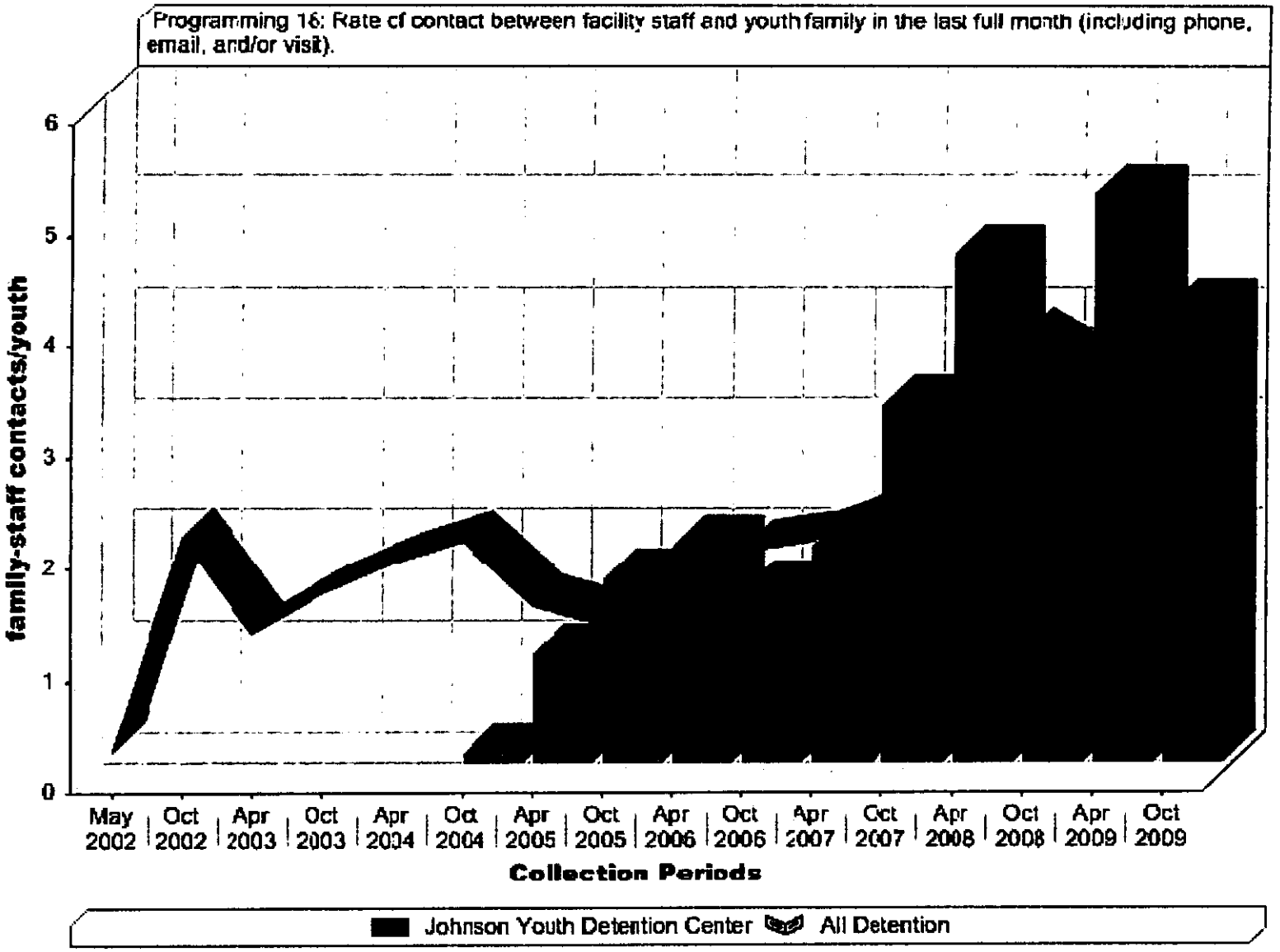


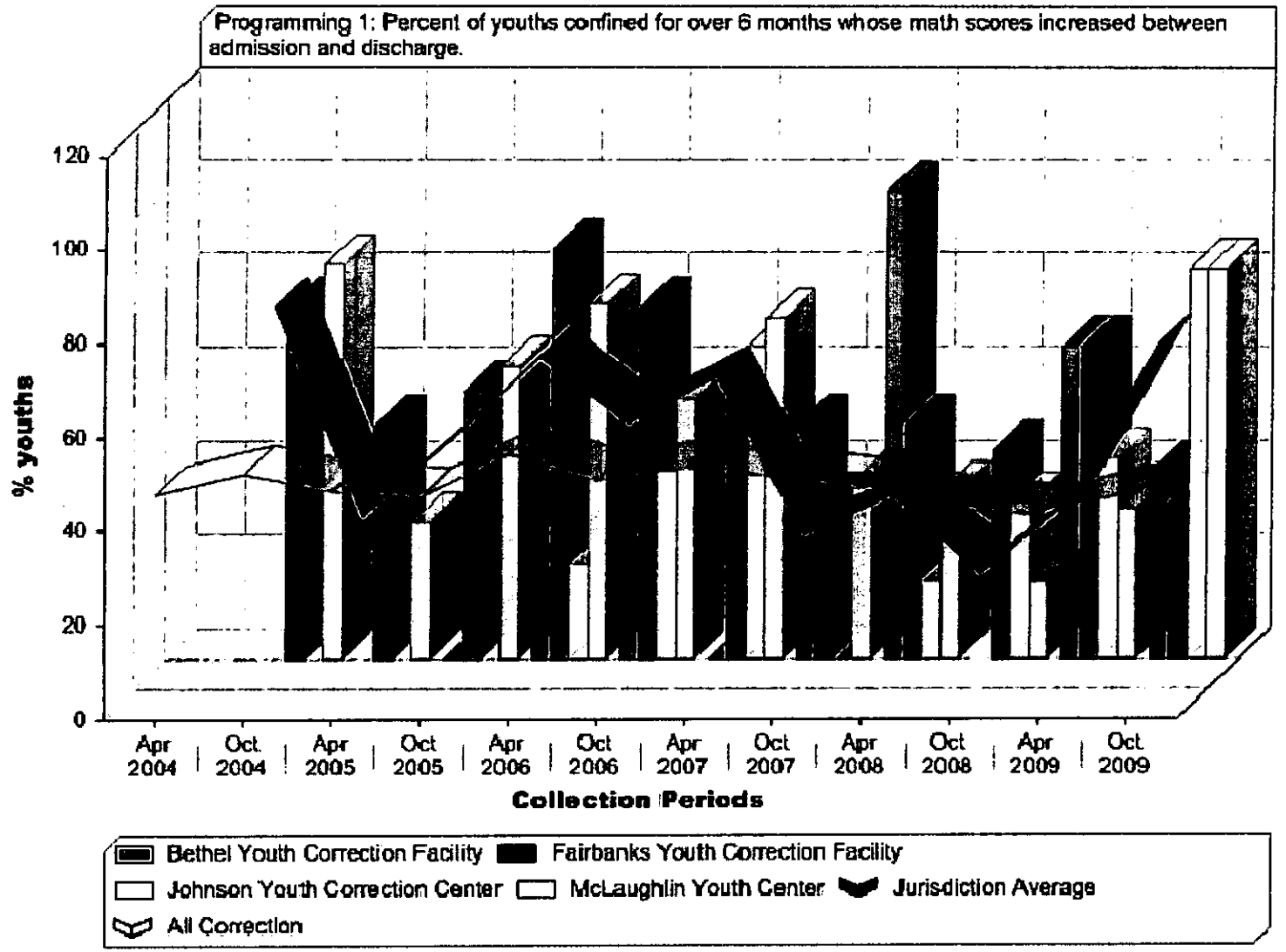


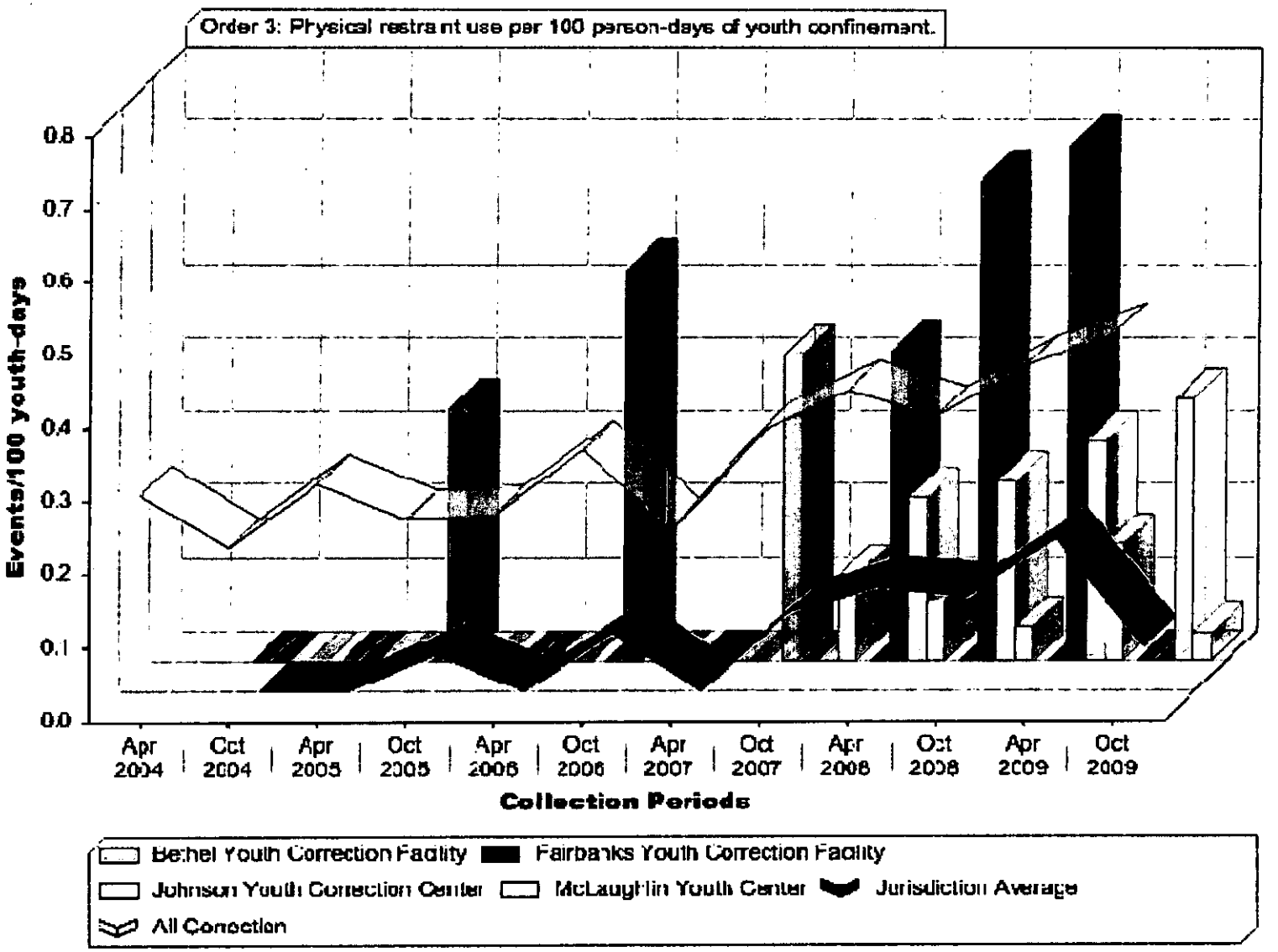
The PbS six-month data collection and improvement cycle


Order 12: Average number of idle waking hours per day. Hours youth spend in their rooms or dormitories during an average 24 hour period not including 8 hours for sleeping.
3.0
2.5
2.0
1.5
1.0
0.5
0.0
Hours
Apr 2000
Oct 2000
Apr 2001
Oct 2001
May 2002
Oct 2002
Apr 2003
Oct 2003
Apr 2004
Oct 2004
Apr 2005
Oct 2005
Apr 2006
Oct 2006
Apr 2007
Oct 2007
Apr 2008
Oct 2008
Apr 2009
Oct 2009
Collection Periods
Bethel Youth Detention Facility
All Detention


Health 5: Percent of youths who had an intake screening completed by trained or qualified staff in one hour or less from the time of admission.
120
100
80
60
40
20
0
% youths
Apr 2000
Oct 2000
Apr 2001
Oct 2001
May 2002
Oct 2002
Apr 2003
Oct 2003
Apr 2004
Oct 2004
Apr 2005
Oct 2005
Apr 2006
Oct 2006
Apr 2007
Oct 2007
Apr 2008
Oct 2008
Apr 2009
Oct 2009
Collection Periods
Bethel Youth Detention Facility
All Detention

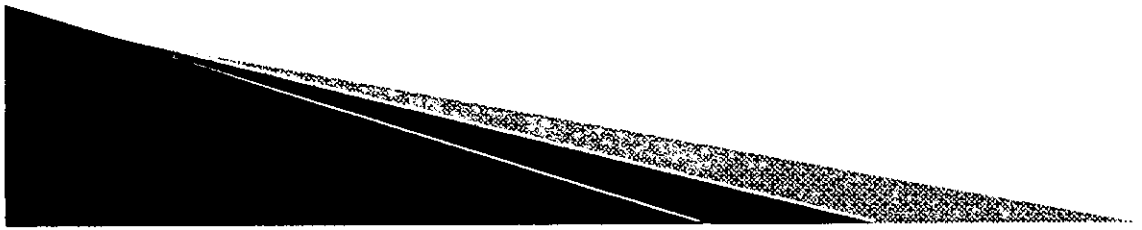

Programming 16: Rate of contact between facility staff and youth family in the last full month (including phone, email, and/or visit).
family-staff contacts/youth
0
1
2
3
4
5
6
May 2002
Oct 2002
Apr 2003
Oct 2003
Apr 2004
Oct 2004
Apr 2005
Oct 2005
Apr 2006
Oct 2006
Apr 2007
Oct 2007
Apr 2008
Oct 2008
Apr 2009
Oct 2009
Collection Periods
Johnson Youth Detention Center
All Detention


Programming 1: Percent of youths confined for over 6 months whose math scores increased between admission and discharge.
120
100
80
60
40
20
0
% youths
Apr 2004
Oct 2004
Apr 2005
Oct 2005
Apr 2006
Oct 2006
Apr 2007
Oct 2007
Apr 2008
Oct 2008
Apr 2009
Oct 2009
Collection Periods
Bethel Youth Correction Facility
Fairbanks Youth Correction Facility
Johnson Youth Correction Center
McLaughlin Youth Center
Jurisdiction Average
All Correction


Order 3: Physical restraint use per 100 person-days of youth confinement.
Events/100 youth-days
0.0
0.1
0.2
0.3
0.4
0.5
0.6
0.7
0.8
Apr 2004
Oct 2004
Apr 2005
Oct 2005
Apr 2006
Oct 2006
Apr 2007
Oct 2007
Apr 2008
Oct 2008
Apr 2009
Oct 2009
Collection Periods
Bethel Youth Correction Facility
Fairbanks Youth Correction Facility
Johnson Youth Correction Center
McLaughlin Youth Center
Jurisdiction Average
All Correction

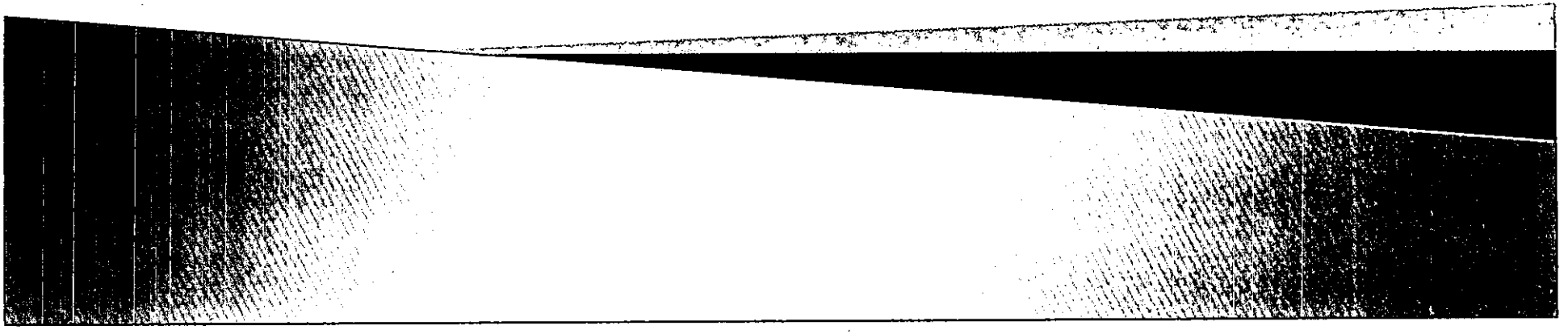
Alaska notes:

- Nome Youth Facility – PbS newsletter
- Bethel Youth Facility – award for excellence
- Fairbanks Youth Facility – Level 4 status
- 5 of 12 Alaska sites achieved L3 status on 2009
- Recognition of Alaska's FIP process for suicide policy and intake screening



Welcome

Introduction to AGGRESSION REPLACEMENT TRAINING®



What is Aggression Replacement Training ®

- ART ® is a cognitive behavioral, multi-modal curriculum comprised of three interdependent components:
  - Structured Learning Training (SLT)
  - Anger Control Training (ACT)
  - Moral Reasoning (MR)

Research on effectiveness

- ART® is a model program as rated by The Office of Juvenile Justice and Delinquency Prevention (OJJDP).
  http://ojjdp.ncjrs.org/programs/mpg.html

- Washington State Institute for Public Policy
  www.wsipp.wa.gov

Washington State outcomes

When competently delivered, Aggression Replacement Training (ART) has positive outcomes with estimated reductions in 18-month felony recidivism of 24 percent and a benefit to cost ratio of $11.66.

Alaska Juvenile Justice

Began training ART ® facilitators in 2004

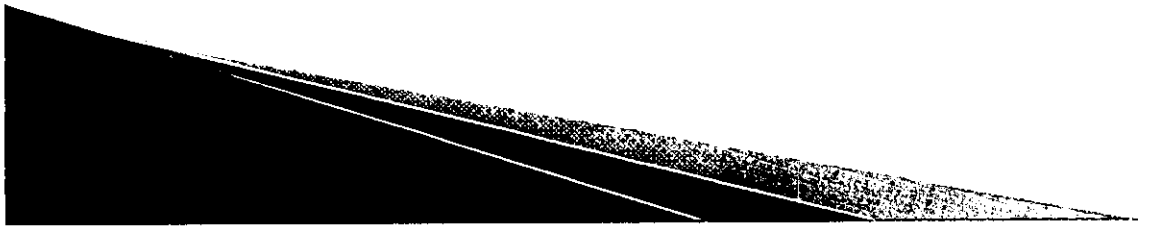
Have since trained more that 80 facilitators

Classes have been attended by more than 400 youth

Classes are offered to youth in DJJ care in Nome, Fairbanks, Bethel, Anchorage, Ketchikan and Juneau.

Aggression Replacement Training® (ART®)

- STRUCTURED LEARNING TRAINING (SLT) (Behavioral Component)
- ANGER CONTROL TRAINING (ACT)
- (Affective Component)
- MORAL REASONING (MR) (Values Component)

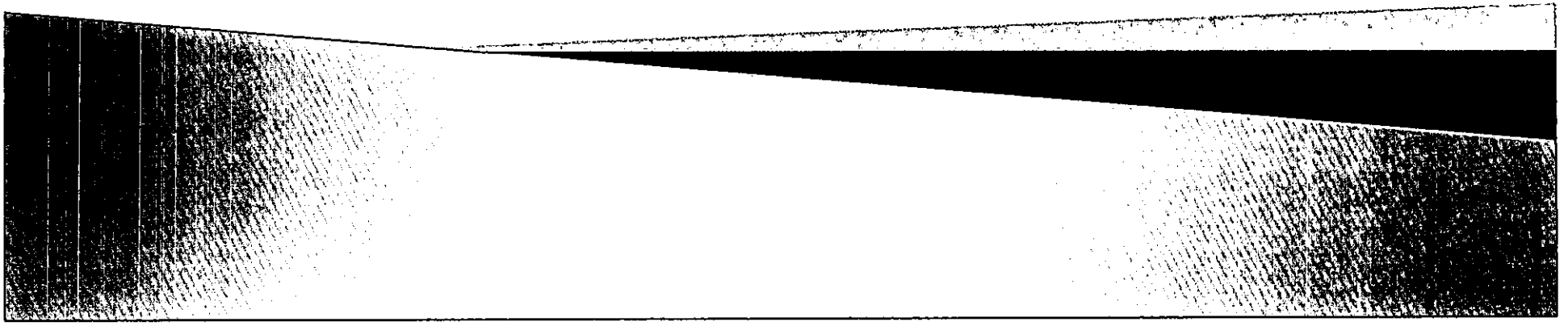


Aggression Replacement Training® Classes

- 10 weeks
- 3 classes per week
- 8 to 12 participants
- Closed classes
- Interactive
- Prescriptive Program for aggressive and violent youth

Structured Learning Training

The Behavioral Component of ART®

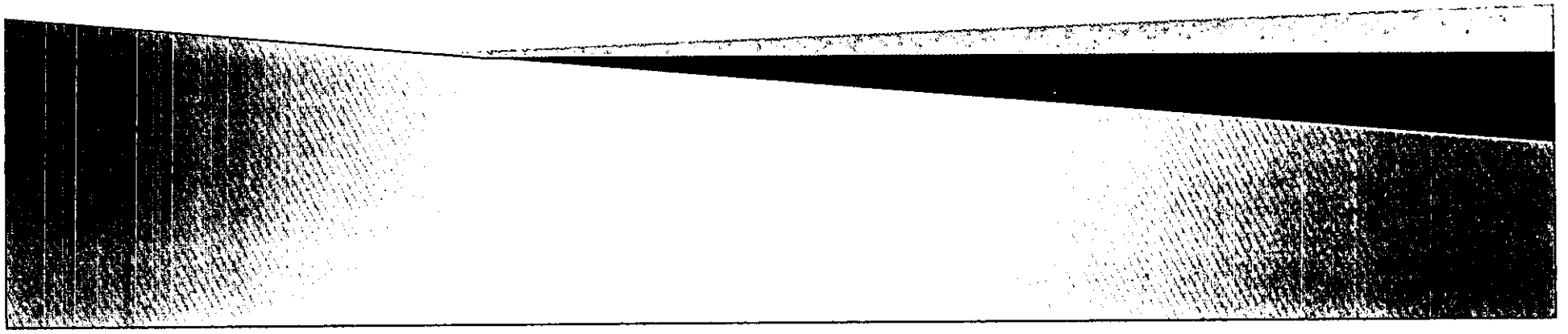


STRUCTURED LEARNING CURRICULUM

- Making a complaint
- Understanding the feelings of others
- Getting ready for a difficult conversation
- Dealing with someone else's anger
- Keeping out of fights
- Helping others
- Dealing with an accusation
- Dealing with group pressure
- Expressing affection
- Responding to failure

Anger Control Training

The Affective (Emotional) Component of ART®

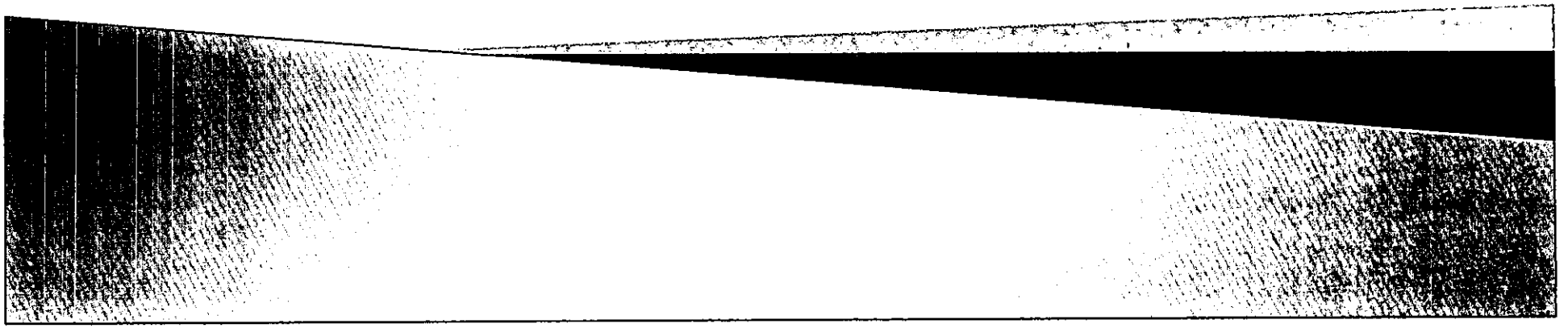


Goals and Objectives of ACT

- To help make the arousal of anger in chronically aggressive clients a less frequent occurrence.
- To provide clients with the means to learn self-control when their anger is aroused. (Whereas SLT teaches clients what to do in angry producing situations...ACT teaches them what *not* to do.)

Moral Reasoning

The Cognitive Component of ART®



Moral Reasoning

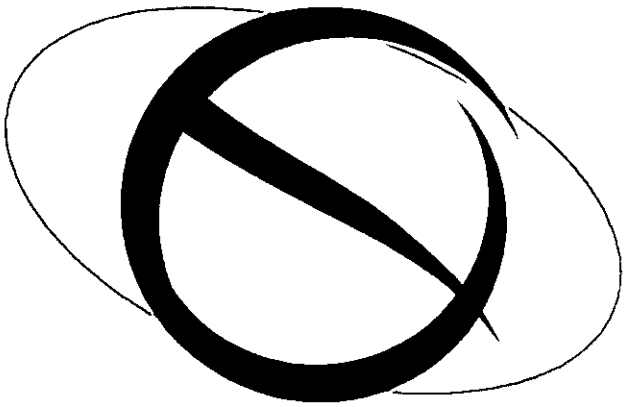
The Social Decision-Making Meeting

- The goal of the meeting is to facilitate the natural adolescent growth of moral-cognitive development so youth will make more mature decisions in social situations.

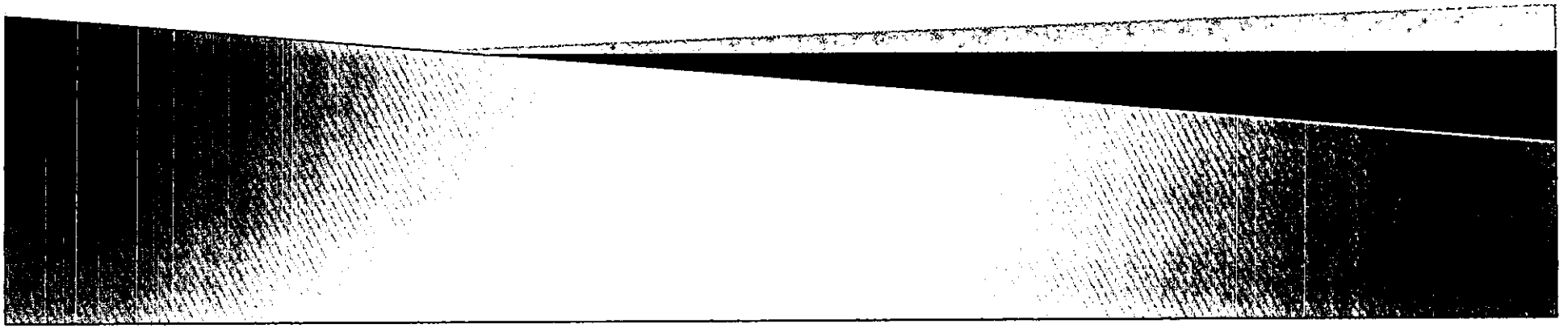
- The purpose is not to teach morality or values.

What ART® is NOT

- Traditional Psychotherapy
- Group Guidance or Advice Giving
- Values Training or Clarification
- Content Specific Education



Implementation

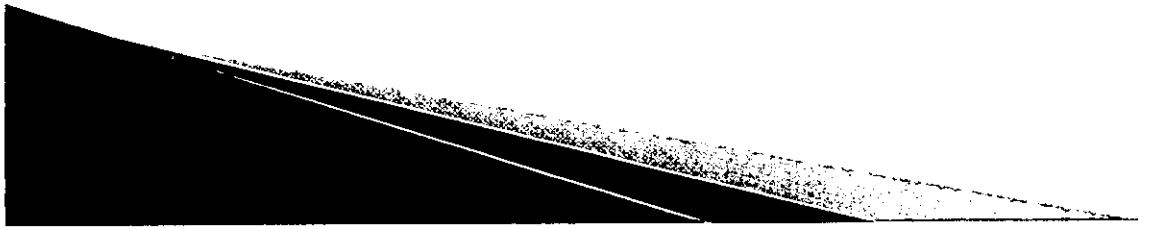


Facilitator Training

- ART® Institute is a 5 day training.
- Participants are certified to teach ART® and any of the three components.
- Annual Refresher Training for Facilitators
- Quality Assurance

Quality Assurance for ART®

- Provide all three ART® Components
- Complete Program
- Trained ART® Facilitators
- Observe Groups
- Provide Feedback



QUALITY ASSURANCE EFFORTS

- The key to reducing recidivism is to deliver the research-based program competently
  - Pick the best people to facilitate the program
  - Ensure proper training
  - Referring appropriate youth
  - Ensure the program is delivered with fidelity to the model
    - Assessment of facilitators skills
    - Providing statewide guidelines for the Program

2/3/10 OVERVIEW: U.S. SUPREME COURT DECISION

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

To: Kathryn Kurtz and Alpheus Bullard
Legislative Legal Services

FROM: Senator Hollis French

RE: Hearing on February 3 regarding Citizens Untied v. Federal Election Commission

I wanted to provide some of the questions that committee members may be thinking about for your information as we get ready for Wednesday's hearing. I look forward to seeing you then!

Does this decision apply to state laws? Which state laws does it apply to?
Do the changes take effect immediately?
Are the statutes invalidated? Taken off the books?
Which corporations and unions are now authorized to spend money directly advocating for the election of candidates?
Must a corporation spending money in what used to be a prohibited period be authorized to do business in Alaska?
Are corporations creatures of state or federal law?
Did the decision draw any distinction between foreign and domestic corporations?
Where does the 'corporate personhood' idea come from?
Must a company do business in Alaska in order to spend money influencing elections?
What disclosure requirements currently exist for corporations - or PACs – that wish to advocate for the direct election of candidates?
Do those disclosure laws cover the time period immediately preceding an election?
Must we write laws to cover that period?
How far can the state go in requiring disclosure regarding corporate (or union) money spend advocating for or against candidates (by disclosure I mean the source and amount of contributions)
Daily disclosure to APOC allowable? On-line disclosure?
Disclosure in each advertisement?

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM January 25, 2010

SUBJECT: Citizens United v. Federal Election Commission
(Work Order No. 26-LS1367)

TO: Representative Jay Ramras
Attn: Jane Pierson

FROM: Alpheus Bullard
Legislative Counsel

You requested a legal analysis of the United States Supreme Court's ruling in Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. ___ (January 21, 2010), and its effect on Alaska law.

WHAT IS MOST SIGNIFICANT

The Court held that the government cannot suppress political speech on the basis of the speaker's corporate identity.

WHAT THE DECISION DOES NOT DO

This is a case about independent election campaign expenditures made by corporations. Because one of the statutes involved in this case and considered by the Court concerned labor unions, it also, arguably, is a case about independent election campaign expenditures made by labor unions, though that is not made explicit in the opinion. Laws regulating corporate and union contributions to candidates, party committees, and political action committees, whether direct or in-kind, are not directly affected by the ruling. Disclosure and disclaimer requirements for communications relating to elections for public office and laws requiring corporations and unions to identify the sources of money for their political activities are also unaffected.

FACTS AND PROCEDURAL POSTURE

The case involved a documentary critical of the then potential presidential candidacy of Hillary Clinton. The documentary, "Hillary: The Movie," was produced by Citizens United, a nonprofit corporation. Anticipating that it would make the documentary available within a time period prohibited under the Bipartisan Campaign Reform Act of 2002 (BCRA),[1] Citizens United sought declaratory and injunctive relief in the United

[1] 2 U.S.C. § 431 *et seq.* (also known as the McCain-Feingold Act (Pub. L. No. 107-155, 116 Stat. 81)).

States District Court for the District of Columbia seeking to prevent the Federal Election Commission (FEC) from enforcing provisions of the BCRA.[2] Citizens United argued that § 203 of the BCRA[3] violated the First Amendment on its face and as applied to the documentary and its related advertisements, and that §§ 201[4] and 311[5] of the Act, relating to disclosure, disclaimer, and reporting requirements were, as applied to the documentary, also unconstitutional.

The United States District Court denied the injunction, holding that under § 203 of the BCRA the documentary could not be shown on television in the 30 day period preceding the 2008 Democratic primaries. The court held that the BCRA prohibitions against corporate independent expenditures were constitutional, reasoning that the question had been answered by the Supreme Court in McConnell v. Federal Election Commission, 540 U.S. 93 (2003).[6] The United States District Court held that the documentary had no other purpose than to discredit Hillary Clinton and inform viewers that she was unfit for public office, and thus the provision of the BCRA relating to electioneering communications

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[2] Citizens United v. Fed. Election Commission, 530 F. Supp. 2d 274 (D.D.C. 2008).

[3] Section 203 of the BCRA regulates "electioneering communications." Generally, these are broadcast, cable, or satellite communications made within 60 days of a general election or 30 days of a primary election. 2 U.S.C. § 434(f)(3)(A)(i). Section 203 restricts corporations (other than media corporations) and labor organizations from funding electioneering communications from their general funds except under certain specific circumstances, e.g., get-out-the-vote campaigns. 2 U.S.C. § 441b(b)(2).

[4] Under § 201 of the BCRA, persons who disburse an aggregate of $10,000 or more a year for the production and airing of electioneering communications are required to file a statement with the Federal Election Commission (FEC) that includes the names and addresses of persons who have contributed in excess of $1,000 to accounts funding the communication. See 2 U.S.C. § 434(f)(1) and (2).

[5] Under the BCRA's § 311, the entity paying for a communication that is not authorized by a candidate or the candidate's political committee, must include in the communication a statement that the organization "is responsible for the content of this advertising." See 2 U.S.C. § 441d.

[6] In McConnell, the United States Supreme Court upheld § 203 as facially constitutional, reasoning that the justifications for regulating independent corporate expenditures constituting express advocacy "apply equally" to ads that are "the functional equivalent of express advocacy." Id. at 206. The Court held that the regulation of such independent expenditures was acceptable because the government has a compelling interest in countering the kind of "corrosive and distorting effect" identified in Austin. Id. at 205.

was not unconstitutionally applied. Lastly, the court ruled that the Act's disclosure, disclaimer, and reporting requirements were not unconstitutional as applied to the documentary or its advertisements.

Citizens United appealed the decision and the Supreme Court docketed the case on August 18, 2008,[7] hearing oral arguments on March 24, 2009. However, on June 29, 2009, the Supreme Court ordered the parties to reargue the case on September 9 after submitting briefs on the larger questions of whether the Court should overrule Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990)[8], that portion of McConnell 540 U.S. 93 (2003) that found § 203 of the BCRA to be facially valid, or both.

ANALYSIS

In Citizens United, 558 U.S. ___ (January 21, 2010), the Supreme Court considered (1) the validity of § 203 of the BCRA, which prohibits corporations and unions from using their general treasury funds to make independent expenditures for speech that is an "electioneering communication"; (2) the Court's prior holding in Austin that political speech may be banned based on the speaker's corporate identity; and (3) whether §§ 201 and 311 of the BCRA, which mandate disclaimer and disclosure requirements for Citizens United's ads, were constitutionally invalid.

Prohibitions on Independent Expenditures

The Court held that § 203 of the BCRA, which prohibits certain corporations and unions from using funds from their general treasuries[9] for certain independent expenditures made to influence the outcomes of elections for federal public office, was unconstitutional.[10] It

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[7] Under § 403(a)(3) of the BCRA, the final decision of the district court in this case is "reviewable only by appeal directly to the Supreme Court of the United States."

[8] In Austin, the Court upheld a Michigan law that barred corporations from using their general treasury funds to support or oppose any state candidate, even though the spending occurred independently of that candidate's campaign operation.

[9] Prior to the ruling, to spend money on "electioneering communications" under federal law, corporations and unions were required to establish political action committees (PACS) that had a separate legal identity from the corporation or union. PACS could receive limited donations from employees, shareholders, or organization members. Now, after the Citizens United decision, corporations and unions may spend money directly from their treasuries on independent expenditures to influence elections for public office.

[10] While § 203 of the BCRA applied equally to corporations and unions, independent expenditures made by unions were not an issue before the Court, and it is not explicit in the ruling that the BCRA's independent expenditure prohibition is lifted for unions.

determined that prohibitions on corporate independent expenditures are an impermissible "ban on speech," id. at 22, and that political speech does not lose First Amendment protection "simply because its source is a corporation," id. at 26.[11]

The Court held that the case could not be decided in an examination of the relevant provisions of the BCRA alone, because the fundamental legal rationale underlying the challenged provisions of the Act was itself unjustified by a sufficient governmental interest.[12] The Court held that this rationale, identified in Austin, the prevention of "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form that have little or no correlation to the public's support for the corporation's political ideas," id. at 660, is inconsistent with the protections offered speech and speakers by the First Amendment.[13]

Precedent Overturned

The Court overruled Austin, and those portions of McConnell that upheld the BCRA's restrictions on independent expenditures made by corporations and labor organizations. It did so holding that "no sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations[,]" and "[g]overnment may not suppress political speech on the basis of the speaker's corporate identity." Citizens United, 558 U.S. at 50.[14]

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[11] Of less immediate consequence, in the absence of acknowledgement by the Court of any permissible First Amendment distinctions between corporate and natural persons, the case raises questions relating to whether corporations' newly realized equality under the First Amendment will affect (1) the constitutionality of existing prohibitions against corporate contributions to candidates in elections for public office and (2) other corporate related constitutional jurisprudence. These remain for future litigation.

[12] "When constitutional questions are 'indispensably necessary' to resolving the case at hand, 'the court must meet and decide them.'" Citizens United v. Federal Election Commission, 558 U.S. at 4 of Roberts, C.J. (concurring opinion), quoting Ex parte Randolph, 20 F. Cas. 242, 254 (No. 11, 558) (CC Va. 1833) (Marshall, C.J.).

[13] The First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech . . . ."

Given the Court's interpretation of the requirements of the First Amendment, existing distinctions between "express advocacy" versus "issue advocacy" and "independent expenditures" versus contributions to candidates are less clear. Citizens United does not address these distinctions, but the logic underlying the decision suggests that they may soon be revisited.

[14] In addition to overturning Austin, the Court dismissed arguments that independent corporate expenditures in elections for federal office give rise to corruption or its appearance (Citizens United at 41 - 45) and that the government has a compelling interest

Disclosure and Disclaimer Requirements
The Court upheld the BCRA's disclosure and disclaimer requirements which were applied to the documentary (§§ 201 and 311 of the Act), holding that such requirements "may burden the ability to speak, but they 'impose no ceiling on campaign-related activities,' [Buckley v. Valeo, 424 U.S. 1, 64 (1976)] and 'do not prevent anyone from speaking,' McConnell, [540 U.S.] at 201." Citizens United, 558 U.S. at 51. Citing Buckley and McConnell, the Court held that these requirements bear a substantial relation to the government's interest in ensuring that the electorate is able to evaluate the arguments to which it is being subjected, and that Citizens United did not demonstrate that the requirements imposed a chill on the organization's (or the organization's members') speech or expression. Id. at 51 - 56.

EFFECT ON ALASKA LAW
1. Under existing AS 15.13.067 (who may make expenditures in an election for candidates for elective office) and AS 15.13.135 (independent expenditures for or against candidates), only individuals, groups, and nongroup entities, as these terms are defined under AS 15.13.400, are permitted to make independent expenditures supporting or opposing candidates in elections under AS 15.13.[15] The terms "individual," "group," and "nongroup entity" are defined at AS 15.13.400. Together, these provisions effectively prohibit independent expenditures by for-profit corporations, and are likely to be interpreted by a court as unconstitutional in light of this decision.[16]

2. For-profit corporations are currently prohibited from making independent expenditures for or against candidates in elections under AS 15.13. Because of that, existing state statutes relating to (1) disclosure of expenditures, (2) limitations on expenditures, (3) identification of communications, and (4) filing of reports[17] under AS 15.13 do not currently account for independent expenditures and communications by for-profit corporations. Given the silence of our state statutes, and the likelihood that our existing

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in regulating corporations' independent expenditures to protect dissenting shareholders from being compelled to fund corporate political speech. (Citizens United at 46 - 47).

[15] Under AS 15.13.010(a), AS 15.13 applies to elections for governor, lieutenant governor, a member of the state legislature, a delegate to a constitutional convention, and a judge seeking judicial retention, and to elections for municipal office in municipalities with a population of more than 1,000 inhabitants unless the municipality has exempted itself from the provisions of the chapter.

[16] These statutes remain the law for the State of Alaska. If left unchanged, will they be enforced? The state could attempt to enforce them; however, enforcement would likely be quickly curtailed once the aggrieved party petitioned the state's courts.

[17] See AS 15.13.040, AS 15.13.082, AS 15.13.090, and AS 15.13.110.

statutes will not be enforced following the Court's holding in Citizens United, there are now no limits on independent expenditures made by for-profit corporations and no statutory disclosure, identification, or reporting requirements for these expenditures.

If I may be of further assistance, please advise.

TLAB:plm
10-035.plm

ALASKA STATE STATUTES

CAMPAIGN DISCLOSURE LAW

AS 15.13

Revised
December 11, 2008

Created 12/11/2008 10:42 AM

CHAPTER 15.13 STATE ELECTION CAMPAIGNS

Section		Section	
10.	Applicability	100.	Expenditures before filing
20.	Alaska Public Offices Commission	110.	Filing of reports
30.	Duties of the commission	111.	Preservation of Records [Effective January 1, 2009.]
40.	Contributions, expenditures, and supplying of services to be reported	112.	Uses of campaign contributions held by candidate or group
45.	Investigations, hearings	114.	Disposition of prohibited contributions
50.	Registration before expenditure	116.	Disbursement of campaign assets after election
60.	Campaign treasurers	135.	Independent expenditures for or against candidates
65.	Contributions	140.	Independent expenditures for or against ballot proposition or question
67.	Who may make expenditures	145.	Money of the state and its political subdivisions
70.	Limitations on amount of political contributions	150.	Election educational activities not prohibited
72.	Restrictions on solicitation and acceptance of contributions	155.	Restrictions on earned income and honoraria
74.	Prohibited contributions	374.	Advisory opinion
76.	Authorized recipients of contributions	380.	Violations; limitations on actions
78.	Contributions and loans from the candidate	385.	Legal counsel
82.	Limitations on expenditures	390.	Civil penalty; late filing of required reports
84.	Prohibited expenditures	400.	Definitions
86.	Authorized makers of expenditures		
90.	Identification of communication		
95.	False statements in telephone polling and calls to convince		

Cross references. – For legislative findings and purpose concerning the 1996 amendments made by ch 48, SLA 1996 that relate to this chapter, see § 1, ch 48, SLA 1996 in the Temporary and Special Acts. For construction of the 1996 amendments, see § 29, ch. 48, SLA 1996 in the Temporary and Special Acts. For severability of the provisions of ch. 48, SLA 1996, see § 31, ch. 48, SLA 1996 in the Temporary and Special Acts. For provisions relating to certain persons holding unused campaign contributions on January 1, 1997, see § 32, ch. 48, SLA 1996 in the Temporary and Special Acts.

Administrative Code. – For Alaska Public Offices Commission: conflict of interest, campaign disclosure, legislative financial disclosure, and regulation of lobbying, see 2 AAC 50.

Legislative history reports. – For governor's transmittal letter for chapter 108, SLA 2003 (Senate Bill 119), which added or amended various provisions in this chapter, see 2003 Senate Journal 407 – 408. For governor's transmittal letter for ch. 47 SLA 2007 (HB 109), which amended various provisions of this chapter, see 2007 House Journal 109 – 110.

Collateral references. – 25 Am. Jur. 2d, Elections, § 1 et seq.
29 C.J.S., Elections, §§ 2-4, 6, 118(7), 216(1)-216(5).

Sec. 15.13.010. Applicability. (a) This chapter applies

(1) in every election for governor, lieutenant governor, a member of the state legislature, a delegate to a constitutional convention, or judge seeking judicial retention;

(2) to every candidate for election to a municipal office in a municipality with a population of more than 1,000 inhabitants according to the latest United States census figures or estimates of population certified as correct for administrative purposes by the Department of Commerce, Community, and Economic Development unless the municipality has exempted itself from the provisions of this chapter; a municipality may exempt its elected municipal officers from the requirements of this chapter if a majority of the voters voting on the question at a regular election, as defined by AS 29.71.800 (20), or a special municipality-wide election called for that purpose, votes to exempt its elected municipal officers from the requirements of this chapter; the question of exemption from the requirements of this chapter may be submitted by the governing body by ordinance or by initiative election.

(b) Except as otherwise provided, this chapter applies to contributions, expenditures and communications made by a candidate, group, nongroup entity, municipality or individual for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate.

(c) This chapter does not prohibit a municipality from regulating by ordinance election campaign contributions and expenditures in municipal elections, or from regulating those campaign contributions and expenditures more strictly than provided in this chapter.

(d) This chapter does not limit the authority of a person to make contributions to influence the outcome of a voter proposition submitted to the public for a vote at a municipal election. In this subsection, in addition to its meaning under AS 15.13.065 (c), "proposition" means a municipal reclassification, proposal to adopt or amend a home rule charter, a unification proposal, a boundary change proposal, or the approval of an ordinance when approval by public vote is a requirement for the ordinance. (§ 1 ch 76 SLA 1974; am §§ 1, 2 ch 189 SLA 1975; am § 32 ch 74 SLA 1985; am §§ 3, 4 ch 48 SLA 1996; am § 2 ch 1 SLA 2002)

Revisor's notes. – In 1999, in paragraph (a)(2) of this section, "Department of Community and Economic Development" was substituted for "Department of Community and Regional Affairs" in accordance with § 91(a)(3), ch. 58, SLA 1999.

Effect of amendments. – The 1996 amendment, effective January 1, 1997, in subsection (a), added paragraph designations, rewrote paragraph (2) and made related stylistic changes and added subsections (c) and (d).

The 2002 amendment, effective April 16, 2002 inserted "nongroup entity" in subsection (b).

The 2008 amendment, effective May 23, 2008, substituted "judicial retention" for "electoral confirmation" in paragraph (a)(1).

NOTES TO DECISIONS

Constitutionality. – In the case of First Nat'l Bank v. Bellotti, 435 U.S. 765, 98 S. Ct. 1407, 55 L. Ed. 2d 707, rehearing denied, 438 U.S. 907, 98 S. Ct. 3126, 57 L. Ed. 2d 1150 (1978), the supreme court of the United States has indicated in unmistakable terms that state disclosure laws pertaining to ballot issues are constitutional. Messerli v. State, 626 P.2d 81 (Alaska 1980).

When there is no showing that an individual must remain anonymous with respect to advertising as to ballot propositions because of the possibility of being subject to reprisals, economic or otherwise, the state campaign disclosure laws are not unconstitutional as applied to a contributor hoping to influence the outcome of a ballot issue, because the objective of an informed electorate is sufficiently compelling to overcome an interest in anonymous political expression. Messerli v. State, 626 P.2d 81 (Alaska 1980).

Initiative substantially similar to ch. 76, SLA 1974, correctly withheld from ballot. Substantial similarity existed between ch. 76, SLA 1974, which enacted this chapter, relating to election campaigns, and an initiative relating to campaign contributions and expenditures, which was filed with the lieutenant governor prior to the regular 1974 session of the legislature. The act effectively displaced the initiative, and the lieutenant governor was correct in withholding the initiative from the ballot. Warren v. Boucher, 543 P.2d 731 (Alaska 1975).

For comparison of ch. 76, SLA 1974, and the initiative, see Warren v. Boucher, 543 P.2d 731 (Alaska 1975).

Cited in Libertarian Party of Alaska, Inc. v. State, 101 P.3d 616 (Alaska 2004)

Collateral references. – Propriety of using census data as basis for governmental regulations or activities. 56 ALR5th 171.

Sec. 15.13.011. Inapplicability to presidential primary. [Repealed, Sec. 1 ch 2 SLA 1984].

Sec. 15.13.020. Alaska Public Offices Commission. (a) There is created in the Department of Administration the Alaska Public Offices Commission consisting of five members. The governor shall appoint all members of the commission in the manner prescribed in (b) and (c) of this section, subject to confirmation by a majority of the legislature meeting in joint session.

(b) The governor shall appoint two members of each of the two political parties whose candidate for governor received the highest number of votes in the most recent preceding general election at which a governor was elected. The two appointees from each of these two parties shall be chosen from a list of four names to be submitted by the central committee of each party.

(c) The four members selected under (b) of this section shall, by a majority vote, nominate to the governor an individual to serve as the fifth member of the commission. The governor shall either appoint the nominee to the commission, or shall reject the nominee and request those four members to nominate another individual to serve as the fifth member of the commission.

(d) Members of the commission serve staggered terms of five years, or until a successor is appointed and qualifies. The terms of no two members who are members of the same political party may expire in consecutive years. A member may not serve more than one term. However, a person appointed to fill the unexpired term of a predecessor may be appointed to a successive full five-year term.

(e) A member of the commission, during tenure, may not

(1) hold or campaign for elective office;

(2) be an officer of a political party, political committee, or group;

(3) permit the member's name to be used, or make any contributions whatsoever, in support of or in opposition to a candidate or proposition or question that appears on any ballot in the state including but not limited to that of a municipality; however, contributions may be made to a candidate for the office of President of the United States;

(4) participate in any way in an election campaign or participate in or contribute to any political party; or

(5) lobby, employ or assist a lobbyist.

(f) Members of the commission shall receive compensation of $50 a day while attending commission meetings and shall be entitled to travel expenses and per diem authorized by law for members of other boards and commissions.

(g) The members shall elect a chairperson. Three members of the commission constitute a quorum. A vacancy does not impair the powers of the remaining members to exercise all of the powers of the commission.

(h) A vacancy on the commission shall be filled through the appropriate appointing method for the position within 30 days after the occurrence of the vacancy. Except as provided in AS 39.05.080 (4), the appointee shall serve for the remaining term of the appointee's predecessor.

(i) The commission may employ an executive director and other employees it considers necessary. Neither the executive director nor an employee may have a vote.

(j) The commission shall establish an office, which may be called a regional office, in each senate district in the state to keep on file for public inspection copies of all reports filed with the commission by candidates for statewide office and by candidates for legislative office in that district; however, where one municipality contains more than one house district, only one commission office shall be established in that municipality. The regional office shall make all forms and pertinent material available to candidates. All reports shall be filed by candidates, groups, and individuals directly with the commission's central district office. The commission shall ensure that copies of all reports by statewide and legislative candidates in each senate district are forwarded promptly to that district or regional office.

(k) The commission shall ensure that copies of reports filed by candidates for municipal office are made available for public inspection in the appropriate municipality. (§ 1 ch 76 SLA 1974; am § 23 ch 25 SLA 1975; am §§ 3-10 ch 189 SLA 1975; am E.O. No. 41 § 2 (1980); am § 24 ch 85 SLA 1988; am §§ 1-3 ch 14 SLA 1989; am § 7 ch 80 SLA 1996; am § 38 ch 21 SLA 2000)

Revisor's notes. – In 2000, in (g) of this section, "chairperson" was substituted for "chairman" in accordance with sec. 95(3), ch 82, SLA 2000.

Effect of amendments. – The 1996 amendment, effective January 1, 1997, in subsection (h), in the second sentence, added "Except as provided in AS 39.05.080(4)," at the beginning and made a related stylistic change.

The 2000 amendment, effective April 28, 2000, substituted "house district" for "election district" in the first sentence in subsection (j).

NOTES TO DECISIONS

Subsection (j) requires forms to be made available in a regional office in each senate district. Silides v. Thomas, 559 P.2d 80 (Alaska 1977).

Furnishing forms to Nome regional office constituted compliance with law. – Nome is designated center for forms pursuant to both subsection (j) and AS 15.10.110, and since Nome is the central office for Senate District P, which encompasses House District 21 and therefore Kotzebue, the lieutenant governor complied with the law by virtue of furnishing forms to the Nome regional office, even though such forms were not available in Kotzebue. Silides v. Thomas, 559 P.2d 80 (Alaska 1977).

Sec. 15.13.030. Duties of the commission. The commission shall

(1) develop and provide all forms for the reports and statements required to be made under this chapter, AS 24.45, and AS 39.50;

(2) prepare and publish a manual setting out uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter and otherwise assist candidates, groups, and individuals in complying with the requirements of this chapter;

(3) receive and hold open for public inspection reports and statements required to be made under this chapter and, upon request, furnish copies at cost to interested persons;

(4) compile and maintain a current list of all filed reports and statements;

(5) prepare a summary of each report filed under AS 15.13.110 and make copies of this summary available to interested persons at their actual cost;

(6) notify, by registered or certified mail, all persons who are delinquent in filing reports and statements required to be made under this chapter;

(7) examine, investigate, and compare all reports, statements, and actions required by this chapter, AS 24.45, and AS 39.50;

(8) prepare and publish a biennial report concerning the activities of the commission, the effectiveness of this chapter, its enforcement by the attorney general's office, and recommendations and proposals for change; the commission shall notify the legislature that the report is available;

(9) adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50, and this chapter, subject to the provisions of AS 44.62 (Administrative Procedure Act); and

(10) consider a written request for an advisory opinion concerning the application of this chapter, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50. (§ 1 ch 76 SLA 1974; am § 24 ch 25 SLA 1975; am §§ 11, 12 ch 189 SLA 1975; am §§ 3-5 ch 167 SLA 1976; am § 2 ch 134 SLA 1990; am § 16 ch 21 SLA 1995; am § 5 ch 6 SLA 1998; am §1 ch 108 SLA 2003)

Cross references. – For transitional provision applicable to development of regulations under paragraph (9) of this section to implement the amendments made by ch. 108 SLA 2003, see § 42, ch. 108, SLA 2003, in the 2003 Temporary and Special Acts. For provision adding an obligation for the commission to analyze the effect of ch. 108, SLA 2003, on the 2004 elections and provide a written report to legislative leaders by January 15, 2005, see § 43, ch. 108, SLA 2003 Temporary and Special Acts.

Effect of amendments. – The 1998 amendment, effective June 28, 1998, rewrote paragraphs (7)-(9).

The 2003 amendment, effective September 14, 2003, added paragraph (10) and made a related stylistic change.

NOTES TO DECISIONS

I. General Consideration.
II. Regulations

I. GENERAL CONSIDERATION.

Duty-to-notify requirement only applies to groups which have registered with commission pursuant to AS 15.13.050. VECO Int'l Inc. v. Alaska Pub. Offices Comm'n, 753 p.2d 703 (Alaska 1988), appeal dismissed, 488 U.S. 919, 109 S. Ct. 298, 102, L. Ed. 2d 317 (1988).

Applied in Messerli v. State, 626 P.2d 81 (Alaska 1980).

II. REGULATIONS.

No regulations were necessary to implement the mandatory provisions for filing an appointment of campaign treasurer established by AS 15.13.060(c). Silides v. Thomas, 559 P.2d 80 (Alaska 1977).

Sec. 15.13.040. Contributions, expenditures, and supplying of services to be reported. (a) **[See delayed amendment note]**. Except as provided in (g) and (l) of this section, each candidate shall make a full report, upon a form prescribed by the commission,

(1) listing

(A) the date and amount of all expenditures made by the candidate;

(B) the total amount of all contributions, including all funds contributed by the candidate;

(C) the name, address, date, and amount contributed by each contributor; and

(D) for contributions in excess of $50 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

(2) filed in accordance with AS 15.13.110 and certified correct by the candidate or campaign treasurer.

(b) Each group shall make a full report upon a form prescribed by the commission, listing

(1) the name and address of each officer and director;

(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of $100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; for purposes of this paragraph, "contributor" means the true source of the funds, property, or services being contributed; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred, or authorized by it.

(c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer.

(d) Every individual, person, nongroup entity, or group making an expenditure shall make a full report of expenditures, upon a form prescribed by the commission, unless exempt from reporting.

(e) The report required under (d) of this section must contain the name, address, principal occupation, and employer of the individual filing the report, and an itemized list of expenditures. The report shall be filed with the commission no later than 10 days after the expenditure is made.

(f) During each year in which an election occurs, all businesses, persons, or groups that furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. Records of provision of services, facilities, or supplies shall be available for inspection by the commission.

(g) The provisions of (a) and (l) of this section do not apply to a delegate to a constitutional convention, a judge seeking judicial retention, or a candidate for election to a municipal office under AS 15.13.010 , if that delegate, judge, or candidate

(1) indicates, on a form prescribed by the commission, an intent not to raise and not to expend more than $5,000 in seeking election to office, including both the primary and general elections;

(2) accepts contributions totaling not more than $5,000 in seeking election to office, including both the primary and general elections; and

(3) makes expenditures totaling not more than $5,000 in seeking election to office, including both the primary and general elections.

(h) The provisions of (d) of this section do not apply to one or more expenditures made by an individual acting independently of any group or nongroup entity and independently of any other individual if the expenditures

(1) cumulatively do not exceed $500 during a calendar year; and

(2) are made only for billboards, signs, or printed material concerning a ballot proposition as that term is defined by AS 15.13.065(c).

(i) The permission of the owner of real or personal property to post political signs, including bumper stickers, or to use space for an event or to store campaign-related materials is not considered to be a contribution to a candidate under this chapter unless the owner customarily charges a fee or receives payment for that activity. The fact that the owner customarily charges a fee or receives payment for posting signs that are not political signs is not determinative of whether the owner customarily does so for political signs.

(j) Except as provided in (l) of this section, each nongroup entity shall make a full report in accordance with AS 15.13.110 upon a form prescribed by the commission and certified by the nongroup entity's treasurer, listing

(1) the name and address of each officer and director of the nongroup entity;

(2) the aggregate amount of all contributions made to the nongroup entity for the purpose of influencing the outcome of an election;

(3) for all contributions described in (2) of this subsection, the name, address, date, and amount contributed by each contributor and, for all contributions described in (2) of this subsection in excess of $250 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

(4) the date and amount of all contributions made by the nongroup entity, and, except as provided for certain independent expenditures in AS 15.13.135 (a), all expenditures made, incurred, or authorized by the nongroup entity, for the purpose of influencing the outcome of an election; a nongroup entity shall report contributions made to a different nongroup entity for the purpose of influencing the outcome of an election and expenditures made on behalf of a different nongroup entity for the purpose of influencing the outcome of an election as soon as the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election reach $500 in a year and for all subsequent contributions and expenditures to that nongroup entity in a year whenever the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election that have not been reported under this paragraph reach $500.

(k) Every individual, person, nongroup entity, or group contributing a total of $500 or more to a group organized for the principal purpose of influencing the outcome of a proposition shall report the contribution or contributions on a form prescribed by the commission not later than 30 days after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that group by that individual, person, nongroup entity, or group during the calendar year.

(l) Notwithstanding (a), (b), and (j) of this section, for any fund-raising activity in which contributions are in amounts or values that do not exceed $50 a person, the

candidate, group, or nongroup entity shall report contributions and expenditures and supplying of services under this subsection as follows:

(1) a report under this subsection must

(A) describe the fund-raising activity;

(B) include the number of persons making contributions and the total proceeds from the activity;

(C) report all contributions made for the fund-raising activity that do not exceed $50 a person in amount or value; if a contribution for the fund-raising activity exceeds $50, the contribution shall be reported under (a), (b), and (j) of this section;

(2) for purposes of this subsection,

(A) "contribution" means a cash donation, a purchase such as the purchase of a ticket, the purchase of goods or services offered for sale at a fund-raising activity, or a donation of goods or services for the fund-raising activity;

(B) "fund-raising activity" means an activity, event, or sale of goods undertaken by a candidate, group, or nongroup entity in which contributions are $50 a person or less in amount or value.

(m) **[See delayed amendment note]**. Information required under this chapter shall be submitted to the commission electronically, except that the following information may be submitted in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the commission or on forms provided by the commission:

(1) information submitted by

(A) a candidate for election to a borough or city office of mayor, membership on a borough assembly, city council, or school board, or any state office, who meets the requirements of (g)(1) - (3) of this section; or

(B) a candidate for municipal office for a municipality with a population of less than 15,000; in this subparagraph, "municipal office" means the office of an elected borough or city

(i) mayor; or

(ii) assembly, council, or school board member;

(2) any information if the commission determines that circumstances warrant an exception to the electronic submission requirement.

(n) The commission shall print the forms to be provided under this chapter so that the front and back of each page have the same orientation when the page is rotated on the vertical axis of the page.

(o) Information required by this chapter that is submitted to the commission on paper and not electronically shall be electronically scanned and published on the Internet by the commission, in a format accessible to the general public, within two working days after the commission receives the information.

(p) For purposes of (b) and (j) of this section, "contributor" means the true source of the funds, property, or services being contributed (§ 1 ch 76 SLA 1974; am § 13 ch 189 SLA 1975; am § 33 ch 50 SLA 1989; am § 4 ch 126 SLA 1994; am §§ 5-7 ch 48 SLA 1996; am §§ 6, 7 ch 6 SLA 1998; am § 1 ch 74 SLA 1998; am §§ 3-6 ch 1 SLA 2002; am §§ 1-4 ch 1 TSSLA 2002; am §§ 2-7 ch 108 SLA 2003; am § 9 ch 99 SLA 2004; am §§ 1, 2 ch 155 SLA 2004; am § 3,2006 Primary Election Ballot Measure No. 1; am §§ 6 – 9 ch 47 SLA 2007; am § 1 ch 95 SLA 2008)

Delayed amendment of subsection (a). – Until January 1, 2009, subsection (a) of this section reads as follows: "(a) Except as provided in (g) and (l) of this section, each candidate shall make a full report, upon a form prescribed by the commission,

"(1) listing

"(A) the date and amount of all expenditures made by the candidate;

"(B) the total amount of all contributions, including all funds contributed by the candidate;

"(C) the name, address, date and amount contributed by each contributor; and

"(D) for contributions in excess of $250 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

"(2) filed in accordance with AS 15.13.110 and certified correct by the candidate or campaign treasurer."

Delayed amendment of subsection (m). – Until January 1, 2009, (m) of this section reads as follows:

"(m) Information required under this chapter shall be submitted to the commission electronically, except that the following information may be submitted in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the commission or on forms provided by the commission:

"(1) information submitted by a candidate for municipal office; in this paragraph, "municipal office" means the office of an elected borough or city

"(A) mayor; or

"(B) assembly, council, or school board member;

"(2) any information if the commission determines that circumstances warrant an exception to the electronic submission requirement;

"(3) information submitted by a candidate for election to state office other than the legislature who meets the requirements of (g)(1) – (3) of this section;

"(4) information submitted before January 1, 2009, by a candidate for the legislature."

Revisor's notes. – Subsection (n) was enacted as subsection (o). Relettered in 2004, at which time former subsection (n) was relettered as subsection (o). Subsection (o) was enacted as (p) and relettered in 2007, at which time former subsection (o) was relettered as (p).

Effect of amendments. – The 1996 amendment, effective January 1, 1997, in subsection (a), added the exception at the beginning of the first sentence and made a related stylistic change; in subsection (d), in paragraph (2), added "unless exempted from reporting by (h) of this section," and inserted " or other periodicals" and made minor stylistic changes and added subsections (g) and (h).

The first 1998 amendment, effective June 28, 1998, rewrote paragraph (d)(1) and the second and third sentences in subsection (f).

The second 1998 amendment, effective June 4, 1998, added subsection (i).

The first 2002 amendment, effective April 16, 2002, in subsection (b) added the language beginning "for purposes of this paragraph" to the end of paragraph (2); in the introductory language of subsections (d) and (h) inserted references to nongroup entities; added subsection (j); and made a minor stylistic change.

The second 2002 amendment, effective June 26, 2002, rewrote subsection (d); in subsection (e) deleted "by the contributor" following "commission" and "contribution or" preceding "expenditure" in the second sentence and deleted the former third sentence, which read "A copy of the report shall be furnished to the candidate, campaign treasurer, or deputy campaign treasurer at the time the contribution is made"; updated an internal reference in subsection (h); and added subsection (k).

The 2003 amendment, effective September 14, 2003, rewrote subsections (a) and (b); in subsection (g) inserted "and (*l*)" in the introductory language and substituted "$5,000" for "2,500" in three places; in paragraph (h)(1) substituted "$500" for "250"; in subsection (j) added "Except as provided in (*l*) of this section," at the beginning, added the paragraph (3) and (4) designations, and rewrote paragraph (3); and added subsections (*l*), (m), and (o) [formerly (n), now (p)].

The first 2004 amendment, effective June 26, 2004, deleted "and principal occupation of the contributor and the" following address in paragraph (j)(3), and inserted "principal occupation and" in that paragraph.

The second 2004 amendment, effective October 1, 2004, rewrote subsection (m), and added subsection (o) [now (n)].

The 2006 amendment, effective December 17, 2006, rewrote subsection (b).

The 2007 amendment, effective July 10, 2007, substituted "to a delegate to a constitutional convention, a judge seeking judicial retention, or a candidate for election to a municipal office under As 15.13.010, if that delegate, judge, or" for "if a" in the introductory language of subsection (g), repealed and reenacted subsection (m), and added subsection (p) [now(o)].

The 2008 amendment, effective January 1, 2009, substituted "$50" for $250" in subparagraph (a)(1)(D).

Editor's notes. – From April 16, 2002, through June 25, 2002, the reference in subsection (h) to "(d) of this section" reads "to (d)(2) of this section" and subsection (d) reads as follows: "(d) Every individual, person, nongroup entity, or group making a contribution or expenditure shall make a full report, upon a form prescribed by the commission, of

"(1) contributions made to a candidate or group and expenditures made on behalf of a candidate or group

"(A) as soon as the total contributions and expenditures to that candidate or group reaches $500 in a year; and

"(B) for all subsequent contributions and expenditures to that candidate or group that have not been reported under this paragraph reaches $500;

"(2) unless exempted from reporting by (h) of this section, any expenditure whatsoever for advertising in newspapers or other periodicals, on radio, or on television; or for publication, distribution, or circulation of brochures, flyers, or other campaign material for any candidate or ballot proposition or question."

NOTES TO DECISIONS

Constitutionality. – In the case of First Nat'l Bank v. Bellotti, 435 U.S. 765, 98 S. Ct. 1407, 55 L. Ed. 2d 707, rehearing denied, 438 U.S. 907, 98 S. Ct. 3126, 57 L. Ed. 2d 1150 (1978), the supreme court of the United States has indicated in unmistakable terms that state disclosure laws pertaining to ballot issues are constitutional. Messerli v. State, 626 P.2d 81 (Alaska 1980).

When there is no showing that an individual must remain anonymous with respect to advertising as to ballot propositions because of the possibility of being subject to reprisals, economic or otherwise, the state campaign disclosure laws are not unconstitutional as applied to a contributor hoping to influence the outcome of a ballot issue, because the objective of an informed electorate is sufficiently compelling to overcome an interest in anonymous political expression. Messerli v. State, 626 P.2d 81 (Alaska 1980).

The disclosure requirements of this chapter are not unconstitutionally vague or overbroad, nor do they violate the constitutional right of the people to privacy. VECO Int'l, Inc. v. Alaska Pub. Offices Comm'n, 753 P.2d 703 (Alaska 1988), appeal dismissed, 488 U.S. 919, 109 S. Ct. 298, 102 L. Ed. 2d 317 (1988).

Reporting provisions of this section and AS 15.13.074(i), 15.13.082(b), 15.13.110, and 15.13.135(a) survive strict scrutiny because the state's interest in regulating campaign contributions and expenditures is significant and the requirements are not particularly onerous. Alaska Right to Life Comm. v. Miles, 441 F.3rd 773 (9th Cir. 2006).

Cited in Libertarian Party of Alaska, Inc. v. State, 101 P.3rd 616 (Alaska 2004).

Sec. 15.13.045. Investigations, hearings. (a) The commission may issue subpoenas, administer oaths, hold hearings, and conduct investigations.

(b) In conjunction with (a) of this section, the commission may compel the attendance of witnesses and production of papers, books, records, accounts, documents, and testimony, and may have the deposition of witnesses taken in a manner prescribed by court rule or law for the taking of depositions in civil actions when consistent with the powers and duties assigned to the commission by this chapter.

(c) The commission may examine the papers, books, records, accounts, and documents of any person subject to this chapter to ascertain the correctness of a report filed with the commission, or in conjunction with an investigation or inspection conducted under (a) of this section.

(d) Subpoenas may be issued and shall be served in the manner prescribed by AS 44.62.430 and court rule. The failure, refusal, or neglect to obey a subpoena is punishable as contempt in the manner prescribed by law or court rule. The superior court may compel obedience to the commission's subpoena in the same manner as prescribed for obedience to a subpoena issued by the court. (§ 14 ch 189 SLA 1975).

NOTES TO DECISIONS

Cited in Silides v. Thomas, 559 P.2d 80 (Alaska 1977).

Sec. 15.13.050. Registration before expenditure. (a) Before making an expenditure in support of or in opposition to a candidate or before making an expenditure in support of or in opposition to a ballot proposition or question, each person other than an individual shall register, on forms provided by the commission, with the commission.

(b) If a group intends to support only one candidate or to contribute to or expend on behalf of one candidate 33 1/3 percent or more of its funds, the name of the candidate shall be a part of the name of the group. If the group intends to oppose only one candidate or to contribute its funds in opposition to or make expenditures in opposition to a candidate, the group's name must clearly state that it opposes that candidate by using a word such as "opposes," "opposing," "in opposition to," or "against" in the group's name. Promptly upon receiving the registration, the commission shall notify the candidate of the group's organization and intent. A candidate may register more than one group to support the candidate; however, multiple groups controlled by a single candidate shall be treated as a single group for purposes of the contribution limit in AS 15.13.070 (b)(1). (§ 1 ch 76 SLA 1974; am § 15 ch 189 SLA 1975; am § 8 ch 48 SLA 1996; am § 1 ch 3 SLA 2002)

Effect of amendments. – The 1996 amendment, effective January 1, 1997, rewrote this section.

The 2002 amendment, effective April 16, 2002, in subsection (b) added the last sentence and made minor stylistic changes.

NOTES TO DECISIONS

Disclosure requirements constitutional. – The disclosure requirements of this chapter are not unconstitutionally vague or overbroad, nor do they violate the constitutional right of the people to privacy. VECO Int'l, Inc. v. Alaska Pub. Offices Comm'n, 753 P.2d 703 (Alaska 1988), appeal dismissed, 488 U.S. 919, 109 S. Ct. 298, 102 L. Ed. 2d 317 (1988).

Cited in Alaska Right to Life Comm. v. Miles, 441 F.3rd 773 (9th Cir. 2006).

Sec. 15.13.060. Campaign treasurers. (a) Each candidate and group shall appoint a campaign treasurer who is responsible for receiving, holding, and disbursing all contributions and expenditures, and for filing all reports and statements required by law. A candidate may be a campaign treasurer.

(b) Each group shall file the name and address of its campaign treasurer with the commission at the time it registers with the commission under AS 15.13.050 .

(c) Each candidate for state office shall file the name and address of the campaign treasurer with the commission, or submit, in writing, the name and address of the campaign treasurer to the director for filing with the commission, no later than 15 days after the date of filing the declaration of candidacy or the nominating petition. Each candidate for municipal office shall file the name and address of the campaign treasurer with the commission no later than seven days after the date of filing the declaration of candidacy or the nominating petition. If the candidate does not designate a campaign treasurer, the candidate is the campaign treasurer.

(d) In the case of the death, resignation, or removal of a campaign treasurer, the candidate shall appoint a successor as soon as practicable and file the successor's name and address with the commission within 48 hours of the appointment. The candidate is disqualified if found to have been in wilful violation of this subsection.

(e) A campaign treasurer may appoint as many deputy campaign treasurers as necessary. The candidate shall file the names and addresses of the deputy campaign treasurers with the commission.

(f) The candidate is responsible for the performance of the campaign treasurer, and any default or violation by the treasurer also shall be considered a default or violation by the candidate if the candidate knew or had reason to know of the default or violation. (§ 1 ch 76 SLA 1974; am §§ 16 –19 ch 189 SLA 1975; am § 1 ch 133 SLA 1977; am § 35 ch 59 SLA 1982)

NOTES TO DECISIONS

I. General Consideration.
II. Subsection (C).

I. GENERAL CONSIDERATION.

Cited in State, Alaska Pub. Offices Comm'n v. Marshall, 633 P.2d 227 (Alaska 1981); Black v State, 76 P. 3d 417 (Alaska Ct. App. 2003).

II. SUBSECTION (C).

Annotator's notes. –Silides v. Thomas, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977), cited in the notes below, was decided under subsection (c) as it existed before the 1977 amendment. Prior to that amendment, subsection (c) read: "Each candidate shall file the name and address of the campaign treasurer with the commission no later than seven days after the date of filing his declaration of candidacy or his nominating petition. The name of the candidate may be placed on the ballot by the lieutenant governor or municipal clerk only if the candidate has complied with this subsection."

This section is not unconstitutional in that it sets up "invalid class legislation." Silides v. Thomas, 559 P.2d 80 (Alaska 1977).

The two groups classified by virtue of this section are those candidates who have complied with the law and those who have not; the failure to adhere to this section is the dividing line. Therefore, under any possible equal protection test this section passes constitutional muster. Silides v. Thomas, 559 P.2d 80 (Alaska 1977).

Statutory requirement that a candidate's designation of treasurer be filed by a specified due date is not constitutionally unreasonable. Silides v. Thomas, 559 P.2d 80 (Alaska 1977).

Subsection (c) should be strictly enforced. – Silides v. Thomas, 559 P.2d 80 (Alaska 1977).

Effect of unequal enforcement of AS 39.50.020 on enforcement of subsection (c). –Unequal enforcement of AS 39.50.020, which requires candidates to file a financial disclosure statement, did not require the conclusion that a candidate had in fact substantially complied with the filing requirements of subsection (c) where the record did not show any intentional or purposeful discrimination against the candidate. Silides v. Thomas, 559 P.2d 80 (Alaska 1977).

Subsection (c) requires candidates to "file" campaign treasurer statements within a specified time limit. Silides v. Thomas, 559 P.2d 80 (Alaska 1977).

The definition of "file" is well established in the law. It has been consistently held that a document is filed only when the proper officer has received it, and that it is not considered filed when it is deposited in the mails. Silides v. Thomas, 559 P.2d 80 (Alaska 1977).

Telephone conversation not appropriate filing. – Given the text of subsection (c), the legal meaning of the term "file" and the supreme court's adoption of the doctrine that statutory election deadlines are to be strictly enforced, a telephone conversation between the candidate's treasurer and the Alaska Public Offices Commission seven days after the declaration of candidacy was filed cannot be deemed an appropriate filing within the intendment of subsection (c). Silides v. Thomas, 559 P.2d 80 (Alaska 1977).

No regulations were necessary to implement the mandatory provisions for filing an appointment of campaign treasurer established by subsection (c) of this section. Silides v. Thomas, 559 P.2d 80 (Alaska 1977).

Sec. 15.13.065. Contributions. (a) Individuals, groups, nongroup entities, and political parties may make contributions to a candidate. An individual, group, or nongroup entity may make a contribution to a group, to a nongroup entity, or to a political party.

(b) A political party may contribute to a subordinate unit of the political party, and a subordinate unit of a political party may contribute to the political party of which it is a subordinate unit.

(c) Except for reports required by AS 15.13.040 and 15.13.110 and except for the requirements of AS 15.13.050, 15.13.060, and 15.13.112 - 15.13.114, the provisions of AS 15.13.010 - 15.13.116 do not apply to limit the authority of a person to make contributions to influence the outcome of a ballot proposition. In this subsection, in addition to its meaning in AS 15.60.010, "proposition" includes an issue placed on a ballot to determine whether

(1) a constitutional convention shall be called;

(2) a debt shall be contracted;

(3) an advisory question shall be approved or rejected; or

(4) a municipality shall be incorporated. (§ 9 ch 48 SLA 1996; am § 7 ch 1 SLA 2002)

Effect of amendments. – The 2002 amendment, effective April 16, 2002, inserted references to nongroup entities in three places in subsection (a) and made minor stylistic changes.

Sec. 15.13.067. Who may make expenditures. Only the following may make an expenditure in an election for candidates for elective office:

(1) the candidate;

(2) an individual;

(3) a group that has registered under AS 15.13.050 ; and

(4) a nongroup entity that has registered under AS 15.13.050 . (§ 9 ch 48 SLA 1996; am § 8 ch 1 SLA 2002)

Effect of amendments. – The 2002 amendment, effective April 16, 2002, added paragraph (4) and made related stylistic changes.

NOTES TO DECISIONS

Cited in Alaska Right to Life Comm. v. Miles. 441 F .3d 773 (9th Cir. 2006)

Sec. 15.13.070. Limitations on amount of political contributions. (a) An individual or group may make contributions, subject only to the limitations of this chapter and AS 24.45, including the limitations on the maximum amounts set out in this section.

(b) An individual may contribute not more than

(1) $500 per year to a nongroup entity for the purpose of influencing the nomination or election of a candidate, to a candidate, to an individual who conducts a write-in campaign as a candidate, or to a group that is not a political party;

(2) $5,000 per year to a political party.

(c) A group that is not a political party may contribute not more than $1,000 per year

(1) to a candidate, or to an individual who conducts a write-in campaign as a candidate;

(2) to another group, to a nongroup entity, or to a political party.

(d) A political party may contribute to a candidate, or to an individual who conducts a write-in campaign, for the following offices an amount not to exceed

(1) $100,000 per year, if the election is for governor or lieutenant governor;

(2) $15,000 per year, if the election is for the state senate;

(3) $10,000 per year, if the election is for the state house of representatives; and

(4) $5,000 per year, if the election is for

(A) delegate to a constitutional convention;

(B) judge seeking retention; or

(C) municipal office.

(e) This section does not prohibit a candidate from using up to a total of $1,000 from campaign contributions in a year to pay the cost of

(1) attendance by a candidate or guests of the candidate at an event or other function sponsored by a political party or by a subordinate unit of a political party;

(2) membership in a political party, subordinate unit of a political party, or other entity within a political party, or subscription to a publication from a political party; or

(3) co-sponsorship of an event or other function sponsored by a political party or by a subordinate unit of a political party.

(f) A nongroup entity may contribute not more than $1,000 a year to another nongroup entity for the purpose of influencing the nomination or election of a candidate, to a candidate, to an individual who conducts a write-in campaign as a candidate, to a group, or to a political party. (§ 1 ch 76 SLA 1974; am §§ 20, 21 ch 189 SLA 1975; am § 45 ch 85 SLA 1986; am § 10 ch 48 SLA 1996; am § 2 ch 74 SLA 1998; am §§ 9-11 ch 1 SLA 2002; am § 2 ch 3 SLA 2002; am §§ 8-10 ch 108 SLA 2003; am §§ 1, 2, 2006 Primary Election Ballot Measure No. 1)

Cross references. – For prohibition against certain campaign fund-raising by legislators, see AS 24.60.030.

Effect of amendments. – The 1996 amendment, effective January 1, 1997, rewrote this section.

The 1998 amendment, effective June 4, 1998, added subsection (e).

The first 2002 amendment, effective April 16, 2002, in subsection (b) inserted the language beginning "to a nongroup" and ending "of a candidate" in paragraph (1); in subsection (c) inserted ", a nongroup entity," in paragraph (2); and added subsection (f).

The second 2002 amendment, effective April 16, 2002, in subsection (b) added "for the purpose of influencing the nomination or election of a candidate or candidates" at the end of paragraph (2).

The 2003 amendment, effective September 14, 2003, increased the allowed contributions in subsections (b), (c), and (f) and made stylistic changes.

The 2006 amendment effective December 17, 2006 rewrote subsections (b) and (c).

Opinions of attorney general. – There seems to be no difference between § 608(c) of the Federal Elections Campaign Act of 1971, former 18 U.S.C. § 608(c), and subsection (f) of this section; accordingly, based on the reasons stated in Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976), for finding unconstitutional § 608(c) of the federal act, subsection (f) of this section is invalid as a violation of the rights and privileges protected by the 1st amendment. May 13, 1976 Op. Att'y Gen (decided prior to the 1986 repeal of subsection (f)).

The Public Offices Commission should not undertake investigations of violations of subsection (f) of this section, and candidates or others may be advised that no implementation or enforcement of subsection (f) of this section is planned by the office of the attorney general. May 13, 1976 Op. Att'y Gen. (decided prior to the 1986 repeal of subsection (f)).

The $1000 statutory limit under this section is applicable to "control groups" under former AS 15.13.130(4). Exempting such groups from the contribution limit

would seriously undermine the statute's primary purpose of deterring the buying of elections and the undue influence of large contributors. June 15, 1987, Op. Att'y Gen.

NOTES TO DECISIONS

Constitutionality. – The $500 limitation on individual contributions for electoral campaigns in Alaska set forth in subsection (b) is justified by evidence that contribution limits do not place a substantial burden on the ability of candidates to run competitive local or state election campaigns. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

Limits on individuals' contributions to groups and political parties are reasonable; preventing individuals from channeling their contributions through a group or a party, and thus avoiding the limit on individuals' contributions to candidates, is a valid purpose. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

The limitation in subsection (c), that a "group" that is not a political party may not contribute more than $1000 per year to a candidate, another group, or a political party, is reasonable. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

The graduated limits for political parties' contributions to candidates set forth in subsection (d) serve the State's legitimate governmental interest, and are upheld. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

The limitations in former AS 15.13.070(b)(2) on individuals' soft money contributions to political parties were constitutional under the First Amendment. Jacobus v. Alaska, 338 F.3d 1095 (9th Cir. 2003)

Implementation by regulations. – Alaska Admin. Code tit. 2 § 50.327, which was legally promulgated and requires that political parties report soft money contributions and expenditures, implements the Campaign Disclosure Act. Libertarian Party of Alaska, Inc. v. State, 101 P.3d 616 (Alaska 2004).

Applied in Vogler v. Miller, 660 P.2d 1192 (Alaska 1983).

Cited in State, Alaska Pub. Offices Comm'n v. Marshall, 633 P.2d 227 (Alaska 1981).

Collateral references. – Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944.

Sec. 15.13.072. Restrictions on solicitation and acceptance of contributions. (a) A candidate or an individual who has filed with the commission the document necessary to permit that individual to incur election-related expenses under AS 15.13.100 may not solicit or accept a contribution from

(1) a person not authorized by law to make a contribution;

(2) an individual who is not a resident of the state at the time the contribution is made, except as provided in (e) of this section;

(3) a group organized under the laws of another state, resident in another state, or whose participants are not residents of this state at the time the contribution is made; or

(4) a person registered as a lobbyist if the contribution violates AS 15.13.074(g) or AS 24.45.121 (a)(8).

(b) A candidate or an individual who has filed with the commission the document necessary to permit the individual to incur election-related expenses under AS 15.13.100 , or a group, may not solicit or accept a cash contribution that exceeds $100.

(c) An individual, or one acting directly or indirectly on behalf of that individual, may not solicit or accept a contribution

(1) before the date for which contributions may be made as determined under AS 15.13.074 (c); or

(2) later than the day after which contributions may not be made as determined under AS 15.13.074 (c).

(d) While the legislature is convened in a regular or special legislative session, a legislator or legislative employee may not solicit or accept a contribution to be used for the purpose of influencing the outcome of an election under this chapter unless

(1) it is an election in which the legislator or legislative employee is a candidate and the contribution is for that legislator's or legislative employee's campaign;

(2) the solicitation or acceptance occurs during the 90 days immediately preceding that election; and

(3) the solicitation or acceptance occurs in a place other than the capital city or a municipality in which the legislature is convened in special session if the legislature is convened in a municipality other than the capital city.

(e) A candidate or an individual who has filed with the commission the document necessary to permit that individual to incur election-related expenses under AS 15.13.100 may solicit or accept contributions from an individual who is not a resident of the state at the time the contribution is made if the amounts contributed by individuals who are not residents do not exceed

(1) $20,000 a calendar year, if the candidate or individual is seeking the office of governor or lieutenant governor;

(2) $5,000 a calendar year, if the candidate or individual is seeking the office of state senator;

(3) $3,000 a calendar year, if the candidate or individual is seeking the office of state representative or municipal or other office.

(f) A group or political party may solicit or accept contributions from an individual who is not a resident of the state at the time the contribution is made, but the amounts accepted from individuals who are not residents may not exceed 10 percent of total contributions made to the group or political party during the calendar or group year in which the contributions are received.

(g) A candidate or an individual who has filed with the commission the document necessary to permit that individual to incur election-related expenses under AS 15.13.100 for election or reelection to the office of governor or lieutenant governor may not solicit or accept a contribution in the capital city while the legislature is convened in a regular or special legislative session.

(h) A nongroup entity may solicit or accept contributions for the purpose of influencing the nomination or election of a candidate from an individual who is not a resident of the state at the time the contribution is made or from an entity organized under the laws of another state, resident in another state, or whose participants are not residents of this state at the time the contribution is made. The amounts accepted by the nongroup entity from these individuals and entities for the purpose of influencing the nomination or election of a candidate may not exceed 10 percent of total contributions made to the nongroup entity for the purpose of influencing the nomination or election of a candidate during the calendar year in which the contributions are received. (§ 11 ch 48 SLA 1996; am § 1 ch 14 SLA 1998; am §§ 3, 4 ch 74 SLA 1998; am § 12 ch 1 SLA 2002; am § 11 ch 108 SLA 2003; am § 1 ch 106 SLA 2008))

Effect of amendments. – The first 1998 amendment, effective April 21, 1998, rewrote subsection (d).

The second 1998 amendment, effective June 4, 1998, in subsection (d) added the paragraph (a) designation, added paragraph (2), and made minor stylistic changes; and added subsection (g).

The 2002 amendment, effective April 16, 2002, added subsection (h).

The 2003 amendment, effective September 14, 2003, in subsection (e) inserted "a calendar year" in three places.

The 2008 amendment, effective June 21, 2008, rewrote subsection (d).

NOTES TO DECISIONS

Constitutionality. – Attempting to limit outside influences in Alaska politics is a sufficiently compelling state interest to justify the restrictions on contributions by nonresidents set forth in subsections (a), (e), and (f). State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999) cert. denied, U.S. 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

Sec. 15.13.074. Prohibited contributions. (a) A person, group, or nongroup entity may not make a contribution if the making of the contribution would violate this chapter.

(b) A person or group may not make a contribution anonymously, using a fictitious name, or using the name of another.

(c) A person or group may not make a contribution

(1) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 when the office is to be filled at a general election before the date that is 18 months before the general election;

(2) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 for an office that is to be filled at a special election or municipal election before the date that is 18 months before the date of the regular municipal election or that is before the date of the proclamation of the special election at which the candidate or individual seeks election to public office; or

(3) to any candidate later than the 45th day

(A) after the date of the primary election if the candidate was not nominated at the primary election; or

(B) after the date of the general election, or after the date of a municipal or municipal runoff election.

(d) A person or group may not make a contribution to a candidate or a person or group who is prohibited by AS 15.13.072 (c) from accepting it.

(e) A person or group may not make a cash contribution that exceeds $100.

(f) A corporation, company, partnership, firm, association, entity recognized as tax-exempt under 26 U.S.C. 501(c)(3) (Internal Revenue Code), organization, business trust or surety, labor union, or publicly funded entity that does not satisfy the definition of group or nongroup entity in AS 15.13.400 may not make a contribution to a candidate, group, or nongroup entity.

(g) An individual required to register as a lobbyist under AS 24.45 may not make a contribution to a candidate for the legislature at any time the individual is subject to the registration requirement under AS 24.45 and for one year after the date of the individual's initial registration or its renewal. However, the individual may make a contribution under this section to a candidate for the legislature in a district in which the individual is

eligible to vote or will be eligible to vote on the date of the election. An individual who is subject to the restrictions of this subsection shall report to the commission, on a form provided by the commission, each contribution made while required to register as a lobbyist under AS 24.45. Upon request of the commission, the information required under this subsection shall be submitted electronically. This subsection does not apply to a representational lobbyist as defined in regulations of the commission.

(h) Notwithstanding AS 15.13.070, a candidate for governor or lieutenant governor and a group that is not a political party and that, under the definition of the term "group," is presumed to be controlled by a candidate for governor or lieutenant governor, may not make a contribution to a candidate for another office, to a person who conducts a write-in campaign as a candidate for other office, or to another group of amounts received by that candidate or controlled group as contributions between January 1 and the date of the general election of the year of a general election for an election for governor and lieutenant governor. This subsection does not prohibit

(1) the group described in this subsection from making contributions to the candidates for governor and lieutenant governor whom the group supports; or

(2) the governor or lieutenant governor, or the group described in this subsection, from making contributions under AS 15.13.116 (a)(2)(A).

(i) A nongroup entity may not solicit or accept a contribution to be used for the purpose of influencing the outcome of an election unless the potential contributor is notified that the contribution may be used for that purpose. (§ 11 ch 48 SLA 1996; am § 12 ch 48 SLA 1996; am § 2 ch 14 SLA 1998; am §5 ch 74 SLA 1998; am § 8 ch 33 SLA 1999; am §§ 13-15 ch 1 SLA 2002; am §§12, 13 ch 108 SLA 2003)

Revisor's notes. – The amendment to (c) of this section made by § 12, ch. 48, SLA 1996 took effect July 16, 1999 under §§ 33(b) and 34, ch. 48, SLA 1996. The contingency described in § 33(b), ch. 48, SLA 1996 occurred 90 days after the date of the decision in State of Alaska v. Alaska Civil Liberties Union 978 P.2d 597 (Alaska Opin. No. 5108, April 16, 1999). The 90 day period represents the time during which a petition for certiorari could have been filed with the U.S. Supreme Court. The State did not file a petition for certiorari, and therefore that part of the decision declaring AS 15.13.074(c) (as enacted in § 11, ch. 48, SLA 1996) unconstitutional became final at the close of business July 15, 1999. Under § 34, ch. 48, SLA 1996, the amendment to (c) of this section made by § 12, ch. 48, SLA 1996, became effective the next day, July 16, 1999. Because it appeared to the revisor that the intervening amendments made to subsection (c) by § 2, ch. 14, SLA 1998 and § 5, ch. 74, SLA 1998 were inconsistent with the repeal and reenactment of subsection (c) under § 12, ch. 48, SLA 1996, those 1998 amendments were not retained.

Effect of amendments. – The 1996 amendment, effective July 16, 1999, rewrote subsection (c).

The first 1998 amendment, effective April 21, 1998, in subsection (c), deleted "when the office is to be filled at a general election," preceding "before the later" in the introductory language of paragraph (1), deleted "general" preceding "election" in subparagraphs (1)(B) and (2)(B), rewrote paragraph (2), deleted "special election or" preceding "municipal election" in the introductory language of paragraph (3), and rewrote subparagraph (3)(B).

The second 1998 amendment, effective June 4, 1998, in subsection (c) added "when the office is to be filled at a general election; or" at the end of subparagraph (1)(B) and added subparagraph (1)(C), inserted "in a place other than the capital city" in the introductory language in paragraph (2), added "the date that" at the beginning of subparagraph (4), added paragraph (5), and made minor stylistic changes.

The 1999 amendment, effective May 28, 1999, made a section reference substitution at the end of paragraph (h)(2).

The 2002 amendment, effective April 16, 2002, in subsections (a) and (f) inserted references to nongroup entities; in subsection (f) inserted "entity recognized as tax-exempt under 26 U.S.C. 501(c)(3) (Internal Revenue Code)"; added subsection (I); and made related stylistic changes.

The 2003 amendment, effective September 14, 2003, rewrote paragraph (c)(3) and added the next-to-last sentence in subsection (g).

NOTES TO DECISION

Constitutionality. – Alaska has a substantial governmental interest in campaign finance reform that justifies some restriction on First Amendment freedoms, including the ban on contributions by a corporation, company, partnership, firm, association, organization, business trust, surety, or labor union in subsection (f). State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, U.S., 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

The restrictions on contributions and expenditures by corporations and labor unions, considered together, are not so extreme as to constitute bans on issue advocacy. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, U.S., 120 S. Ct. 1156, 145 L. Ed 2d 1069 (2000).

The ban on out-of-district lobbyist contributions in subsection (g) is narrowly tailored to further the State's compelling interest, and the restraint does not foreclose lobbyists from engaging in political speech. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, U.S., 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

The post-election contribution limits of paragraph (c)(4) comprise a narrowly-tailored impact on associational rights to further compelling state interests, and are upheld. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, U.S., 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000)

AS 15.13.074(f) is constitutional to the extend that it prohibits a corporation, company, partnership, firm association, organization, business trust or surety, labor union, or publicly funded entity from making a contribution to a political party for the purpose of nominating or electing a candidate. The provision does not prohibit, and is unconstitutional to the extent that it prohibits, contributions by these entities to a political party for a purpose other than influencing the nomination or election of a candidate. Jacobus v. Alaska, 182 F. Supp. 2d 893 (D. Alaska 2001).

Soft money ban on corporate contributions to political parties under AS 15.13.074(f) is constitutional under the First Amendment. Jacobus v. Alaska, 338 F.3d 1095 (9th Cir. 2003).

Reporting provisions of this section and AS 15.13.040(d), (e) and (j), 15.13. 082(b), 15.13.110, and 15.13.135(a) survive strict scrutiny because the state's interest in regulating campaign contributions

Pre-election contribution limits invalid. - The pre-election contribution limits or paragraphs (c)(1), (2), and (3) are invalid, and the eighteen-month contingent pre-election time limits in ch. 48 § 12, SLA 1996 are effective. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, U.S., 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

Prohibition on contributions during legislative session invalid. - The prohibition against making contributions to legislative candidates, including both challengers and incumbents, during a regular legislative session, set forth in paragraph (c)(2), is not narrowly tailored to the State's compelling interest of preventing corruption or its appearance, and is therefore, invalid. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, U.S., 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

Severability. – Chapter 48, SLA 1996, which revised Alaska's election campaign finance laws, provides both a severability clause and contingent provisions to become effective if parts of the act are held invalid; thus, invalidation of some parts of the act does not undermine the structure of the whole, and legal effect can be given to the remaining provisions. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, U.S., 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

Sec. 15.13.076. Authorized recipients of contributions. A contribution to a

(1) candidate may be received only by

(A) the candidate; or

(B) the candidate's campaign treasurer or a deputy campaign treasurer;

(2) group may be received only by the group's campaign treasurer or a deputy treasurer. (§ 11 ch 48 SLA 1996)

Sec. 15.13.078. Contributions and loans from the candidate. (a) The provisions of this chapter do not prohibit the individual who is a candidate from giving any amount of the candidate's own money or other thing of value to the campaign of the candidate. Donations made by the candidate to the candidate's own campaign shall be reported as contributions in accordance with AS 15.13.040 and 15.13.110.

(b) The provisions of this chapter do not prohibit the individual who is a candidate from lending any amount to the campaign of the candidate. Loans made by the candidate shall be reported as contributions in accordance with AS 15.13.040 and 15.13.110. However, the candidate may not

(1) recover, under this section and AS 15.13.116 (a)(4), the amount of a loan made by the candidate to the candidate's own campaign that exceeds

(A) $25,000, if the candidate ran for governor or lieutenant governor;

(B) $10,000, if the candidate ran for

(i) the legislature; or

(ii) delegate to a constitutional convention;

(C) $10,000, if the candidate was a judge seeking retention;

(D) $5,000, if the candidate ran in a municipal election; or

(2) repay a loan that the candidate has made to the candidate's own campaign unless, within five days of making the loan, the candidate notifies the commission, on a form provided by the commission, of the candidate's intention to repay the loan under AS 15.13.116 (a)(4).

(c) On and after the date determined under AS 15.13.110 as the last day of the period ending three days before the due date of the report required to be filed under AS 15.13.110 (a)(1) and until the date of the election for which the report is filed, a candidate may not give or loan to the candidate's campaign the candidate's money or other thing of value of the candidate in an amount that exceeds $5,000.

(d) The provisions of this section apply only to the individual who is a candidate, as that term is defined by AS 15.13.400 (1)(A), and do not apply to authorize a contribution or loan under this section by an individual described in the definition of the term "candidate" under AS 15.13.400 (1)(B). (§ 11 ch 48 SLA 1996; am § 9 ch 33 SLA 1999)

Effect of amendments. – The 1999 amendment, effective May 28, 1999, made section reference substitutions in paragraphs (b)(1) and (b)(2).

Sec. 15.13.080. Statement by or on behalf of contributor. [Repealed, Sec. 11 ch 1 TSSLA 2002].

Revisor's notes. – From April 16, 2002, until the repeal of this section on June 26, 2002, AS 15.13.080(a) read as follows:"(a) An individual who contributes $500, or goods or services with a value of $500, to a candidate shall file a contributor's statement as required by this section. A candidate who receives $500, or goods or services of a value of $500, may file a contributor's statement as required under this section on behalf of the contributor."

Sec. 15.13.082. Limitations on expenditures. (a) A candidate or group may not make an expenditure in cash that exceeds $100 unless the candidate, or the campaign treasurer or deputy campaign treasurer, obtains a written receipt from the person to whom the expenditure is made.

(b) A candidate, group, or nongroup entity may not make an expenditure unless the source of the expenditure has been disclosed as required by this chapter.

(c) If a candidate receives a contribution in the form of cash, check, money order, or other negotiable instrument and is subject to being reported to the commission under this chapter, the candidate may neither expend the contribution nor, in the case of a negotiable instrument, convert it to cash unless the candidate, campaign treasurer, or deputy campaign treasurer first records the following information for disclosure to the commission:

(1) the name, address, principal occupation, and employer of the contributor; and

(2) the date and amount of the contribution. (§ 14 ch 48 SLA 1996; am § 16 ch 1 SLA 2002)

Effect of amendments. – The 2002 amendment, effective April 16, 2002, in subsection (b) inserted "or nongroup entity" and made a related stylistic change.

NOTES TO DECISIONS

Constitutionality. – Reporting provisions of this section and AS 15.13.040(d), (e) and (j), 15.13.074(i), 15.13.110, and 15.13.135(a) survive strict scrutiny because the state's interest in regulating campaign contributions and expenditures is significant and the requirements are not particularly onerous. Alaska Right to Life Comm. v. Miles, 441 F. 3d 773 (9th Cir 2006).

Sec. 15.13.084. Prohibited expenditures. A person may not make an expenditure

(1) anonymously, unless the expenditure is

(A) paid for by an individual acting independently of any group or nongroup entity and independently of any other individual;

(B) made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065 (c); and

(C) made for

(i) a billboard or sign; or

(ii) printed material, other than an advertisement made in a newspaper or other periodical;

(2) using a fictitious name or using the name of another. (§ 14 ch 48 SLA 1996; am §17 ch 1 SLA 2002)

Effect of amendments. – The 2002 amendment, effective April 16, 2002, in paragraph (1) inserted "or nongroup entity" in subparagraph (A).

Sec. 15.13.086. Authorized makers of expenditures. An expenditure

(1) authorized by or in behalf of a candidate may be made only by

(A) the candidate; or

(B) the candidate's campaign treasurer or a deputy campaign treasurer;

(2) authorized by AS 15.13.067 (3) by or in behalf of a group may be made only by the group's campaign treasurer. (§ 14 ch 48 SLA 1996)

Sec. 15.13.090. Identification of communication. (a) All communications shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group, nongroup entity, or individual paying for the communication. In addition, candidates and groups may identify the name of their campaign chairperson.

(b) The provisions of (a) of this section do not apply when the communication

(1) is paid for by an individual acting independently of any group or nongroup entity and independently of any other individual;

(2) is made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065 (c); and

(3) is made for

(A) a billboard or sign; or

(B) printed material other than an advertisement made in a newspaper or other periodical. (§ 1 ch 76 SLA 1974; am § 22 ch 189 SLA 1975; am § 36 ch 100 SLA 1980; am § 15 ch 48 SLA 1996; am §§ 18, 19 ch 1 SLA 2002; am §5 ch 1 TSSLA 2002)

Revisor's notes. – In 2000, "chairperson" was substituted for "chairman" in (a) of this section in accordance with sec. 95(3), ch. 82, SLA 2000.

Effect of amendments. – The 1996 amendment, effective January 1, 1997, added subsection (b).

The first 2002 amendment, effective April 16, 2002, in subsection (a) and paragraph (b)(1) inserted references to nongroup entities.

The second 2002 amendment, effective June 26, 2002, rewrote subsection (a) and substituted "communication" for "advertisement" in the introductory language of subsection (b).

Editor's notes. – From April 16, 2002 through June 25, 2002, this section read as follows: "Identification of communication. (a) All advertisements, billboards, handbills, paid-for television and radio announcements, and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group, nongroup entity, or individual paying for the advertising. In addition, candidates and groups must identify the name of their campaign chairperson.

"(b) The provisions of (a) of this section do not apply when the advertisement

"(1) is paid for by an individual acting independently of any group or nongroup entity and independently of any other individual;

"(2) is made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065(c); and

"(3) is made for

"(A) a billboard or sign; or

"(B) printed material other than an advertisement made in a newspaper or other periodical."

Collateral references. – Validity and construction of state statute prohibiting anonymous political advertising. 4 ALR4th 741.

NOTES TO DECISIONS

Applicability to non-group entities – Compelling state interests of providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions, justifies the application of this section and AS 15.13.135 to non-group entities. Alaska Right to Life Comm. v. Miles, 44 F.3d 773 (9th Cir. 2006)

Sec. 15.13.095. False statements in telephone polling and calls to convince. (a) A candidate who is damaged as the result of a false statement about the candidate made with knowledge that it was false, or with reckless disregard for whether it was false or not, made as part of a telephone poll or an organized series of calls, and made with the intent to convince potential voters concerning the outcome of an election in which the candidate is running may recover damages in an action in superior court under this section against the individual who made the telephone call, the individual's employer, and the person who contracted for or authorized the poll or calls to convince. However, the employer of the individual or the person who contracted for or authorized the poll or calls to convince is liable to the defamed candidate only if the employer or person authorized the statement to be made, knowing that it was false or with reckless disregard for whether it was false or not, as part of the poll or calls to convince.

(b) The court may award damages, including punitive damages. If the court finds that the result of the statement places the integrity of the election process in substantial doubt, the eligibility of the successful candidate to hold the office to which elected shall be determined as provided in AS 15.56.110 (b) or, in the case of a candidate for governor or lieutenant governor, by impeachment under art. II, sec. 20, Constitution of the State of Alaska. (§ 1 ch 142 SLA 1996)

Sec. 15.13.100. Expenditures before filing. A political campaign expenditure may not be made or incurred by a person in an election or by a person or group with the person's knowledge and on the person's behalf before the date upon which the person files for nomination for the office which the person seeks, except for personal travel expenses or for opinion surveys or polls. These expenditures must be included in the first report required under this chapter after filing for office. (§ 1 ch 76 SLA 1974; am § 23 ch 189 SLA 1975; am § 25 ch 14 SLA 1987)

Sec. 15.13.110. Filing of reports. (a) Each candidate, group, and nongroup entity shall make a full report in accordance with AS 15.13.040 for the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report. If the report is a first report, it must cover the period from the beginning of the campaign to the date three days before the due date of the report. If the report is a report due February 15, it must cover the period beginning on the last day covered by the most recent previous report or on the day that the campaign started, whichever is later, and ending on February 1 of that year. The report shall be filed

(1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;

(2) one week before the election;

(3) 105 days after a special election; and

(4) February 15 for expenditures made and contributions received that were not reported previously, including, if applicable, all amounts expended from a public office expense term account established under AS 15.13.116(a)(8) and all amounts expended from a municipal office account under AS 15.13.116 (a)(9), or when expenditures were not made or contributions were not received during the previous year.

(b) Each contribution that exceeds $250 and that is made within nine days of the election shall be reported to the commission by date, amount, and contributor within 24 hours of receipt by the candidate, group, campaign treasurer, or deputy campaign treasurer. Each contribution to a nongroup entity for the purpose of influencing the outcome of an election that exceeds $250 and that is made within nine days of the election shall be reported to the commission by date, amount, and contributor within 24 hours of receipt by the nongroup entity.

(c) All reports required by this chapter shall be filed with the commission's central office and shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

(d) *[Repealed, Sec. 35 ch 126 SLA 1994].*

(e) A group formed to sponsor an initiative, a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section.

(f) During the year in which the election is scheduled, each of the following shall file the campaign disclosure reports in the manner and at the times required by this section:

(1) a person who, under the regulations adopted by the commission to implement AS 15.13.100, indicates an intention to become a candidate for elective state executive or legislative office;

(2) a person who has filed a nominating petition under AS 15.25.140 - 15.25.200 to become a candidate at the general election for elective state executive or legislative office;

(3) a person who campaigns as a write-in candidate for elective state executive or legislative office at the general election; and

(4) a group or nongroup entity that receives contributions or makes expenditures on behalf of or in opposition to a person described in (1) - (3) of this subsection, except as provided for certain independent expenditures by nongroup entities in AS 15.13.135 (a). (§ 1 ch 76 SLA 1974; am § 24 ch 189 SLA 1975; am § 2 ch 133 SLA 1977; am §§ 1, 2 ch 49 SLA 1993; am §35 ch 126 SLA 1994; am § 2 ch 59 SLA 1995; am § 13 ch 30 SLA 1996; am §§ 16-18 ch 48 SLA 1996; am § 6 ch 74 SLA 1998; am § 2 ch 103 SLA 2001; am §§ 20-22 ch 1 SLA 2002; am § 14 ch 108 SLA 2003; am § 10 ch 99 SLA 2004)

Cross references. – For legislative purpose in enacting subsection (f), see § 1, ch. 59, SLA 1995 in the Temporary and Special Acts.

Effect of amendments. – The 1995 amendment, effective August 29, 1995, added subsection (f).

The second 1996 amendment, effective January 1, 1997, in subsection (a), inserted ", including, if applicable, all amounts expended from a legislative office account established under AS 15.13.116(a)(9) and all amounts expended from a municipal office account under AS 15.13.116(a)(10)," rewrote subsection (b), and, in subsection (c), deleted the former first sentence which read "the reports of candidates shall be filed with the commission's central office" and inserted "shall be filed with the commission's central office and."

The 1998 amendment, effective June 4, 1998, substituted "a public office expense term account" for "a legislative office account" and made two section reference substitutions in paragraph (a)(4).

The 2001 amendment, effective July 14, 2001, substituted "general election" for "primary election" in paragraph (f)(2).

The 2002 amendment, effective April 16, 2002, in subsection (a) and paragraph (f)(4) inserted references to nongroup entities; in subsection (b) added the second sentence; in paragraph (f)(4) added the exception at the end; and made a stylistic change.

The 2003 amendment, effective September 14, 2003, in subsection (a) substituted "must" for "shall" in two places and "on February 1 of that year" for "on December 31 of the prior year" at the end of the next-to-last sentence in the introductory language, rewrote paragraph (3), which read "10 days after the election; and," and in paragraph (4) substituted "reported previously" for "reported during the previous year."

The 2004 amendment, effective June 26, 2004 substituted "general" for "primary" in paragraph (f)(2).

Editor's notes. – Under § 4, ch. 59, SLA 1995, the provisions of (f)(1) of this section "are intended to apply to a person who indicates an intention to become a candidate for elective state executive or legislative office under a letter of intent authorized by 2 AAC 50.380 and who makes or incurs campaign expenditures by initiating early campaigning for the office."

NOTES TO DECISIONS

Disclosure requirements constitutional. – The disclosure requirements of this chapter are not unconstitutionally vague or overbroad, nor do they violate the constitutional right of the people to privacy. VECO Int'l, Inc. v. Alaska Pub. Offices Comm'n, 753, P.2d 703 (Alaska 1988), appeal dismissed, 488 U.S. 919, 109 S. Ct. 298, 102 L. Ed. 2d 317 (1988).

Stated in State, Alaska Pub. Offices Comm'n v. Marshall, 633, P.2d 227 (Alaska 1981).

Sec. 15.13.111. Preservation of records. [Effective January 1, 2009]. (a) Each candidate, group, nongroup entity, or person required to report under this chapter shall preserve all records necessary to substantiate information required to be reported under this chapter for a period of six years from the date of the election for which the information was required to be reported, unless the records have been submitted to the commission under (c) of this section.

(b) Information preserved under (a) of this section must be made available for inspection by the commission.

(c) A candidate for state elected office who was not elected or a person who has left state elected office may submit the records required to be preserved under (a) of this section to the commission electronically. Records submitted under this subsection shall be preserved by the commission for a period of six years from the date of the election for which the information was required to be reported. (§ 2 ch 95 SLA 2008)

Effective dates. – Section 16, ch. 95 SLA 2008, makes this section effective January 1, 2009.

Editor's notes. – Section 13(a), ch. 95, SLA 2008 provides that this section applies to records for elections on or after January 1, 2009.

Sec. 15.13.112. Uses of campaign contributions held by candidate or group. (a) Except as otherwise provided, campaign contributions held by a candidate or group may be used only to pay the expenses of the candidate or group, and the campaign expenses incurred by the candidate or group, that reasonably relate to election campaign activities, and in those cases only as authorized by this chapter.

(b) Campaign contributions held by a candidate or group may not be

(1) used to give a personal benefit to the candidate or to another person;

(2) converted to personal income of the candidate;

(3) loaned to a person;

(4) knowingly used to pay more than the fair market value for goods or services purchased for the campaign;

(5) used to pay a criminal fine;

(6) used to pay civil penalties; however, campaign contributions held by a candidate or group may be used to pay a civil penalty assessed under this chapter if authorized by the commission or a court after it first determines that

(A) the candidate, campaign treasurer, and deputy campaign treasurer did not cause or participate in the violation for which the civil penalty is imposed and exercised a reasonable level of oversight over the campaign; and

(B) the candidate, campaign treasurer, and deputy campaign treasurer cooperated in the revelation of the violation and in its immediate correction; or

(7) used to make contributions to another candidate or to a group; however, it is not a violation of this paragraph if, in circumstances in which a candidate or group participates in a shared campaign activity, the candidate or group participating in the activity

(A) uses campaign contributions of the candidate or group for payment of

(i) all of the shared campaign activity expense; or

(ii) more than the candidate's or group's pro rata share of the activity expense; and

(B) receives, within seven days after payment of the expense, complete reimbursement of the amount of campaign contributions used for payments made on behalf of another candidate or group participating in the activity.

(c) A candidate may use up to a total of $1,000 in campaign contributions in a year to pay the cost of

(1) attending, or paying the cost for guests of the candidate to attend, an event or other function sponsored by a political party or subordinate unit of a political party;

(2) membership in a political party, subordinate unit of a political party, or other entity within a political party, or subscription to a publication from a political party; and

(3) co-sponsorship of an event or other function sponsored by a political party or by a subordinate unit of a political party. (§ 19 ch 48 SLA 1996; am § 7 ch 74 SLA 1998; am § 1 ch 90 SLA 2006)

Effect of amendments. – The 1998 amendment, effective June 4, 1998, added subsection (c).

The 2006 amendment, effective October 11, 2006, added language to paragraph (b)(7) beginning "however, it is not a violation" through the end of the paragraph.

NOTES TO DECISIONS

Constitutionality. – Because the State has a compelling interest in enforcing contribution limits, and because candidates still retain the right to make contributions from personal funds, the ban on inter-candidate contributions in paragraph (b)(7) is constitutional. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

Sec. 15.13.114. Disposition of prohibited contributions. (a) A candidate, group, or nongroup entity that receives and accepts a contribution given in violation of AS 15.13.072 or 15.13.074 shall immediately, upon discovery that the contribution is prohibited, return it to the contributor. A candidate, group, or nongroup entity that receives and accepts a contribution in excess of the limitation on contributions set out in AS 15.13.070 shall immediately, upon discovery of the prohibited excess contribution, return the excess to the contributor. If the contribution or excess amount cannot be returned in the same form, the equivalent value of the contribution or excess amount shall be returned.

(b) An anonymous contribution is forfeited to the state unless the contributor is identified within five days of its receipt. Money that forfeits to the state under this subsection shall be delivered immediately to the Department of Revenue for deposit in the general fund. (§ 19 ch 48 SLA 1996; am § 23 ch 1 SLA 2002)

Effect of amendments. – The 2002 amendment, effective April 16, 2002, in two places. In subsection (a) inserted ", or nongroup entity": and made related stylistic changes

Sec. 15.13.116. Disbursement of campaign assets after election. (a) A candidate who, after the date of the general, special, municipal, or municipal runoff election or after the date the candidate withdraws as a candidate, whichever comes first, holds unused campaign contributions shall distribute the amount held on February 1 for a general election or within 90 days after a special election. The distribution may only be made to

(1) pay bills incurred for expenditures reasonably related to the campaign and the winding up of the affairs of the campaign, including a victory or thank you party, thank you advertisements, and thank you gifts to campaign employees and volunteers, and to pay expenditures associated with post-election fund raising that may be needed to raise funds to pay off campaign debts;

(2) make donations, without condition, to

(A) a political party;

(B) the state's general fund;

(C) a municipality of the state; or

(D) the federal government;

(3) make donations, without condition, to organizations qualified as charitable organizations under 26 U.S.C. 501(c)(3) if the organization is not controlled by the candidate or a member of the candidate's immediate family;

(4) repay loans from the candidate to the candidate's own campaign under AS 15.13.078 (b);

(5) repay contributions to contributors, but only if repayment of the contribution is made pro rata in approximate proportion to the contributions made using one of the following, as the candidate determines:

(A) to all contributors;

(B) to contributors who have contributed most recently; or

(C) to contributors who have made larger contributions;

(6) establish a fund for, and from that fund to pay, attorney fees or costs incurred in the prosecution or defense of an administrative or civil judicial action that directly concerns a challenge to the victory or defeat of the candidate in the election;

(7) transfer all or a portion of the unused campaign contributions to an account for a future election campaign; a transfer under this paragraph is limited to

(A) $50,000, if the transfer is made by a candidate for governor or lieutenant governor;

(B) $10,000, if the transfer is made by a candidate for the state senate;

(C) $5,000, if the transfer is made by a candidate for the state house of representatives; and

(D) $5,000, if the transfer is made by a candidate for an office not described in (A) - (C) of this paragraph;

(8) transfer all or a portion of the unused campaign contributions to a public office expense term account or to a public office expense term account reserve in accordance with (d) of this section; a transfer under this paragraph is subject to the following:

(A) the authority to transfer is limited to candidates who are elected to the state legislature;

(B) the public office expense term account established under this paragraph may be used only for expenses associated with the candidate's serving as a member of the legislature;

(C) all amounts expended from the public office expense term account shall be annually accounted for under AS 15.13.110 (a)(4); and

(D) a transfer under this paragraph is limited to $5,000 multiplied by the number of years in the term to which the candidate is elected plus any accumulated interest; and

(9) transfer all or a portion of the unused campaign contributions to a municipal office account; a transfer under this paragraph is subject to the following:

(A) the authority to transfer is limited to candidates who are elected to municipal office, including a municipal school board;

(B) the municipal office account established under this paragraph may be used only for expenses associated with the candidate's serving as mayor or as a member of the assembly, city council, or school board;

(C) all amounts expended from the municipal office account shall be annually accounted for under AS 15.13.110 (a)(4); and

(D) a transfer under this paragraph is limited to $5,000.

(b) After a general, special, municipal, or municipal runoff election, a candidate may retain the ownership of one computer and one printer and of personal property, except money, that was acquired by and for use in the campaign. The current fair market value of the property retained, exclusive of the computer and printer, may not exceed $5,000. All other property shall be disposed of, or sold and the sale proceeds disposed of, in accordance with (a) or (c) of this section. Notwithstanding any other provision of this chapter,

(1) a candidate may (A) retain a bulk mailing permit that was paid for with campaign funds, and (B) use personal funds, campaign funds, or unused campaign contributions transferred to a public office expense term account under (a)(8) of this section to pay the continuing charges for the permit after the election; money used to continue the life of the permit is not considered to be a contribution under this chapter; in addition to any other use permitted under this chapter, during the candidate's term of office, the candidate may use the bulk mailing permit for mailings associated with service in the office to which the candidate was elected; during the candidate's term of office, if the candidate files a declaration of candidacy or the document necessary to permit the candidate to incur election-related expenses under AS 15.13.100 for the same or a different elective office, the candidate may also use the bulk mailing permit in that election campaign;

(2) a candidate may retain campaign photographs and use the photographs for any purpose associated with service in the office to which the candidate was elected;

(3) a candidate may retain seasonal greeting cards purchased with campaign funds; and

(4) campaign signs prepared for an election that has already taken place have no monetary value and may be retained or disposed of at the candidate's discretion.

(c) Property remaining after disbursements are made under (a) - (b) of this section is forfeited to the state. Within 30 days, the candidate shall deliver the property to the Department of Revenue. The Department of Revenue shall deposit any money received into the general fund and dispose of any other property in accordance with law.

(d) After a general or special election, a candidate for the state legislature who has been elected to the state legislature in that election may, from the amount retained in the public office expense term account reserve under this subsection, transfer to a public office expense term account not more than $5,000 each calendar year for use only for expenses associated with the candidate's serving as a member of the legislature, except that a senator serving a two-year term may transfer not more than $10,000 each calendar year. A candidate for the senate may transfer up to $20,000 from unused campaign contributions to a public office expense term account reserve. A candidate for the house of representatives may transfer up to $10,000 from unused campaign contributions to a public office expense term account reserve. The public office expense term account reserve may only be used to make transfers to the public office expense term account. At the end of the candidate's term of office, a balance in the public office expense term account reserve must be disposed of as provided in (a) of this section but may not be disposed of as provided in (a)(1), (4), or (6) - (9) of this section. All amounts expended under this subsection shall be annually accounted for under AS 15.13.110 (a)(4). (§ 19 ch 48 SLA 1996; am §§ 8, 9, 10 ch 74 SLA 1998; am §§ 4-6 ch 3 SLA 2002; am § 15 ch 108 SLA 2003)

Cross references. – For provisions relating to certain persons holding unused campaign contributions on January 1, 1997, see § 32, ch. 48, SLA 1996 in the Temporary and Special Acts.

For provisions relating to the applicability of subsection (d) to certain contributions held by certain legislators, see § 104, ch. 74, SLA 1998 in the 1998 Temporary and Special Acts.

Effect of amendments. – The 1998 amendment, effective June 4, 1998, rewrote subsection (a); added the last four sentences in subsection (b); and added subsection (d).

The 2002 amendment, effective April 16, 2002, in subsection (a) inserted ", thank you advertisements," in paragraph (1), in paragraph (8) inserted "plus any accumulated interest" in subparagraph (D); in subsection (b) substituted "$5,000" for "$2,500" in the introductory language, added the subparagraph (1) designation, in subparagraph (1) substituted "the document necessary to permit the candidate to incur election-related expenses under AS 15.13.100" for "A letter of intent to become a candidate" near the end and added subparagraphs (2)-(4); in subsection (d) added the exception at the end of the first sentence; and made stylistic changes.

The 2003 amendment, effective September 14, 2003, in subsection (a) inserted "on February 1 for a general election or" and "after a special election" in the introductory language and made a stylistic change.

Editor's notes. – Section 106, ch. 105, SLA 1998 makes the 1998 amendments to subsections (a) and (b), the 1998 enactment of subsection (d), and the related provisions in § 104, ch. 74, SLA 1998 in the 1998 Temporary and Special Acts all retroactive to December 31, 1996.

NOTES TO DECISIONS

Constitutionality. – The State's interest in preventing avoidance of valid contribution limits by use of carry-forwards in both compelling and served by the restriction set forth in this section, which is narrowly tailored to accomplish this interest, and justifies its burden on speech. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

Sec. 15.13.120. [Renumbered as AS 15.13.380].

Repealed or Renumbered

Sec. 15.13.122. [Renumbered as AS 15.13.385].

Repealed or Renumbered

Sec. 15.13.125. [Renumbered as AS 15.13.390].

Repealed or Renumbered

Sec. 15.13.130. Definitions. [Repealed, ch 48 Sec. 28 SLA 1996].

Repealed or Renumbered

Sec. 15.13.135. Independent expenditures for or against candidates. (a) Only an individual, group, or nongroup entity may make an independent expenditure supporting or opposing a candidate for election to public office. An independent expenditure supporting or opposing a candidate for election to public office, except an independent expenditure made by a nongroup entity with an annual operating budget of $250 or less, shall be reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other requirements of this chapter.

(b) An individual, group, or nongroup entity who makes independent expenditures for a mass mailing, for distribution of campaign literature of any sort, for a television, radio, newspaper, or magazine advertisement, or any other communication that supports or opposes a candidate for election to public office

(1) shall comply with AS 15.13.090 ; and

(2) shall place the following statement in the mailing, literature, advertisement, or other communication so that it is readily and easily discernible:

This NOTICE TO VOTERS is required by Alaska law. (I/we) certify that this (mailing/literature/advertisement) is not authorized, paid for, or approved by the candidate. (§ 24 ch 48 SLA 1996; am § 24 ch 1 SLA 2002)

Effect of Amendments. – The 2002 amendment, effective April 16, 2002, in subsection (a) and (b) inserted ", or nongroup entity: and made related stylistic changes; in subsection (a) inserted ", except an independent expenditure made by a nongroup entity with an annual operating budget of $250 or less,"; and made stylistic changes.

NOTES TO DECISIONS

Constitutionality. – The State has a compelling interest that justifies applying the section to business corporations and labor unions. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

The restrictions on contributions and expenditures by corporations and labor unions, considered together, are not so extreme as to constitute bans on issue advocacy. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

This section as written embraces "nongroup" entities whose speech may not be permissibly restricted by an expenditure prohibition, and the section must be read narrowly to prevent it from applying to such "nongroup" entities; thus, entities must be exempted from this section's ban if: (1) They cannot participate in business activities, (2) they have no shareholders who have a claim on corporate earnings, and (3) they are independent from the influence of business corporations. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

Reporting provisions of as 15.13.040(d), (e) and (j), 15.13.074(i), 15.13.082(b), 15.13.110, and this section survive strict scrutiny because the state's interest in regulating campaign contributions and expenditures is significant and the requirements are not particularly onerous. Alaska Right to Life Comm. v. Miles, 441 F.3d 773 (9th Cir. 2006).

Applicability to non-group entities. – Compelling state interests of providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions justified the application of AS 15.13.090 and this section to non-group entities. Alaska Right to Life Comm. v. Miles, 441 F.3d 773 (9th Cir. 2006).

Permissible acts by nongroup entities. – Nothing prevents individual organizers of nongroup entities from either forming a "group" to collect contributions and make expenditures, or soliciting individual contributions from other members without relying on treasury funds; further, nongroup entities may communicate their endorsements to their employees or members. State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

Sec. 15.13.140. Independent expenditures for or against ballot proposition or question. (a) This chapter does not prohibit a person from making independent expenditures in support of or in opposition to a ballot proposition or question.

(b) An independent expenditure for or against a ballot proposition or question

(1) shall be reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other requirements of this chapter; and

(2) may not be made if the expenditure is prohibited by AS 15.13.145 . (§ 24 ch 48 SLA 1996)

Sec. 15.13.145. Money of the state and its political subdivisions. (a) Except as provided in (b) and (c) of this section, each of the following may not use money held by the entity to influence the outcome of the election of a candidate to a state or municipal office:

(1) the state, its agencies, and its corporations;

(2) the University of Alaska and its Board of Regents;

(3) municipalities, school districts, and regional educational attendance areas, or another political subdivision of the state; and

(4) an officer or employee of an entity identified in (1) - (3) of this subsection.

(b) Money held by an entity identified in (a)(1) - (3) of this section may be used to influence the outcome of an election concerning a ballot proposition or question, but only if the funds have been specifically appropriated for that purpose by a state law or a municipal ordinance.

(c) Money held by an entity identified in (a)(1) - (3) of this section may be used

(1) to disseminate information about the time and place of an election and to hold an election;

(2) to provide the public with nonpartisan information about a ballot proposition or question or about all the candidates seeking election to a particular public office.

(d) When expenditure of money is authorized by (b) or (c) of this section and is used to influence the outcome of an election, the expenditures shall be reported to the commission in the same manner as an individual is required to report under AS 15.13.040 .(§ 24 ch 48 SLA 1996)

Sec. 15.13.150. Election educational activities not prohibited. This chapter does not prohibit a person from engaging in educational election-related communications and activities, including

(1) the publication of the date and location of an election;

(2) the education of students about voting and elections;

(3) the sponsorship of open candidate debate forums;

(4) participation in get-out-the-vote or voter registration drives that do not favor a particular candidate, political party, or political position;

(5) the dissemination of the views of all candidates running for a particular office. (§ 24 ch 48 SLA 1996)

Sec. 15.13.155. Restrictions on earned income and honoraria. (a) A candidate for the state legislature, for governor, or for lieutenant governor, including an individual campaigning as a write-in candidate for the office, may not

(1) seek or accept compensation for personal services that involves payments that are not commensurate with the services rendered taking into account the higher rates generally charged by specialists in a profession; or

(2) accept a payment of anything of value, except for actual and necessarily incurred travel expenses, for an appearance or speech; this paragraph does not apply to the salary paid to the candidate for making an appearance or speech as part of the candidate's normal course of employment.

(b) Notwithstanding (a) of this section, a candidate for the state legislature, for governor, or for lieutenant governor, including an individual campaigning as a write-in candidate for the office, may accept a payment for an appearance or speech if the appearance or speech is not connected with the individual's status as a state official or as a candidate. (§ 24 ch 48 SLA 1996)

Sec. 15.13.374. Advisory opinion. (a) Any person may request an advisory opinion from the commission concerning this chapter, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50.

(b) A request for an advisory opinion

(1) must be in writing or contained in a message submitted by electronic mail;

(2) must describe a specific transaction or activity that the requesting person is presently engaged in or intends to undertake in the future;

(3) must include a description of all relevant facts, including the identity of the person requesting the advisory opinion; and

(4) may not concern a hypothetical situation or the activity of a third party.

(c) Within seven days after receiving a request satisfying the requirements of (b) of this section, the executive director of the commission shall recommend a draft advisory opinion for the commission to consider at its next meeting.

(d) The approval of a draft advisory opinion requires the affirmative vote of four members of the commission. A draft advisory opinion failing to receive four affirmative votes of the members of the commission is disapproved.

(e) A complaint under AS 15.13.380 may not be considered about a person involved in a transaction or activity that

(1) was described in an advisory opinion approved under (d) of this section;

(2) is indistinguishable from the description of an activity that was approved in an advisory opinion approved under (d) of this section; or

(3) was undertaken after the executive director of the commission recommended a draft advisory opinion under (c) of this section and before the commission acted on the draft advisory opinion under (d) of this section, if

(A) the draft advisory opinion would have approved the transaction or activity described; and

(B) the commission disapproved the draft advisory opinion.

(f) Advisory opinion requests and advisory opinions are public records subject to inspection and copying under AS 40.25. (§16 ch 108 SLA 2003)

Effective dates. – Section 16, ch. 108, SLA 2003, which enacted this section took effect on September 14, 2003.

Sec. 15.13.380. Violations; limitations on actions. (a) Promptly after the final date for filing statements and reports under this chapter, the commission shall notify all persons who have become delinquent in filing them, including contributors who failed to file a statement in accordance with AS 15.13.040 , and shall make available a list of those delinquent filers for public inspection. The commission shall also report to the attorney general the names of all candidates in an election whose campaign treasurers have failed to file the reports required by this chapter.

(b) **[See delayed amendment note]**. A person who believes a violation of this chapter or a regulation adopted under this chapter has occurred or is occurring may file an administrative complaint with the commission within five years after the date of the alleged violation. If a member of the commission has filed the complaint, that member may not participate as a commissioner in any proceeding of the commission with respect to the complaint. The commission may consider a complaint on an expedited basis or a regular basis.

(c) The complainant or the respondent to the complaint may request in writing that the commission expedite consideration of the complaint. A request for expedited consideration must be accompanied by evidence to support expedited consideration and be served on the opposing party. The commission shall grant or deny the request within two days after receiving it. In deciding whether to expedite consideration, the commission shall consider such factors as whether the alleged violation, if not

immediately restrained, could materially affect the outcome of an election or other impending event; whether the alleged violation could cause irreparable harm that penalties could not adequately remedy; and whether there is reasonable cause to believe that a violation has occurred or will occur. Notwithstanding the absence of a request to expedite consideration, the commission may independently expedite consideration of the complaint if the commission finds that the standards for expedited consideration set out in this subsection have been met.

(d) If the commission expedites consideration, the commission shall hold a hearing on the complaint within two days after granting expedited consideration. Not later than one day after affording the respondent notice and an opportunity to be heard, the commission shall

(1) enter an emergency order requiring the violation to be ceased or to be remedied and assess civil penalties under AS 15.13.390 if the commission finds that the respondent has engaged in or is about to engage in an act or practice that constitutes or will constitute a violation of this chapter or a regulation adopted under this chapter;

(2) enter an emergency order dismissing the complaint if the commission finds that the respondent has not or is not about to engage in an act or practice that constitutes or will constitute a violation of this chapter or a regulation adopted under this chapter; or

(3) remand the complaint to the executive director of the commission for consideration by the commission on a regular rather than an expedited basis.

(e) If the commission accepts the complaint for consideration on a regular rather than an expedited basis, the commission shall notify the respondent within seven days after receiving the complaint and shall investigate the complaint. The respondent may answer the complaint by filing a written response with the commission within 15 days after the commission notifies the respondent of the complaint. The commission may grant the respondent additional time to respond to the complaint only for good cause. The commission shall hold a hearing on the complaint not later than 45 days after the respondent's written response is due. Not later than 10 days after the hearing, the commission shall issue its order. If the commission finds that the respondent has engaged in or is about to engage in an act or practice that constitutes or will constitute a violation of this chapter or a regulation adopted under this chapter, the commission shall enter an order requiring the violation to be ceased or to be remedied and shall assess civil penalties under AS 15.13.390 .

(f) If the complaint involves a challenge to the constitutionality of a statute or regulation, necessary witnesses that are not subject to the commission's subpoena authority, or other issues outside the commission's authority, the commission may request the attorney general to file a complaint in superior court alleging a violation of this chapter. The commission may request the attorney general to file a complaint in superior court to remedy the violation of a commission order.

(g) A commission order under (d) or (e) of this section may be appealed to the superior court by either the complainant or respondent within 30 days in accordance with the Alaska Rules of Appellate Procedure.

(h) If the commission does not complete action on an administrative complaint within 90 days after the complaint was filed, the complainant may file a complaint in superior court alleging a violation of this chapter by a respondent as described in the administrative complaint filed with the commission. The complainant shall provide copies of the complaint filed in the superior court to the commission and the attorney general. This subsection does not create a private cause of action against the commission; against the commission's members, officers, or employees; or against the state.

(i) If a person who was a successful candidate or the campaign treasurer or deputy campaign treasurer of a person who was a successful candidate is convicted of a violation of this chapter, after the candidate is sworn into office, proceedings shall be held and appropriate action taken in accordance with

(1) art. II, sec. 12, of the state constitution, if the successful candidate is a member of the state legislature;

(2) art. II, sec. 20, of the state constitution, if the successful candidate is governor or lieutenant governor;

(3) the provisions of the call for the constitutional convention, if the successful candidate is a constitutional convention delegate;

(4) art. IV, sec. 10, of the state constitution, if the successful candidate is a judge.

(j) Information developed by the commission under (b) - (e) of this section shall be considered during a proceeding under (i) of this section.

(k) If, after a successful candidate is sworn into office, the successful candidate or the campaign treasurer or deputy campaign treasurer of the person who was a successful candidate is charged with a violation of this chapter, the case shall be promptly tried and accorded a preferred position for purposes of argument and decision so as to ensure a speedy disposition of the matter. (§ 1 ch 76 SLA 1974; am § 25 ch 189 SLA 1975; am §§ 1, 6 ch 134 SLA 1982; am §§ 33 - 36 ch 74 SLA 1985; am § 26 ch 14 SLA 1987; am §§ 20, 21, 28 ch 48 SLA 1996; am § 6 ch 1 SLA 2002 TSSLA; am § 17 ch 108 SLA 2003; am § 3 ch 95 SLA 2008)

Delayed amendment of subsection (b). – Until January 1, 2009, subsection (b) reads as follows: "(b) A member of the commission, the commission's executive director, or a person who believes a violation of this chapter or a regulation adopted under this chapter has occurred or is occurring may file an administrative complaint with the commission within one year after the date of the alleged violation. If a member of the commission has filed the complaint, that member may not participate as a commissioner in any proceeding of the commission with respect to the complaint. The commission may consider a complaint on an expedited basis or a regular basis."

Revisor's notes. – Formerly AS 15.13.120 Renumbered in 2000 at which time, "AS 15.13.390" was substituted for "AS 15.13.125" in subsection (d) in order to reflect the 2000 renumbering of AS 15.13.125.

Effect of amendments. – The 1996 amendment, effective January 1, 1997, repealed subsection (a), and rewrote subsections (d) and (e).

The 2002 amendment, effective June 26, 2002, deleted ", including contributors who failed to file a statement in accordance with AS 15.13.040," following "delinquent in filing them" in the first sentence in subsection (c).

The 2003 amendment, effective September 14, 2003, rewrote this section.

The 2008 amendment, effective January 1, 2009, deleted "A member of the commission, the commission's executive director, or" at the beginning of subsection (b), and substituted "five years" for "one year" in the first sentence of that subsection.

Editor's notes. – Section 13(b), ch. 95, SLA 2008, provides that the 2008 amendment of (b) of this section "applies to administration complaints alleging violations of AS 15.13 or the regulations adopted under that chapter that occurred

"(1) within one year before January 1, 2009; or

"(2) on or after January 1, 2009."

NOTES TO DECISIONS

I. General Consideration.
II. Forfeiture Sanction.

I. GENERAL CONSIDERATION.

This section contains no scienter requirement and the court would not impose one. State, Alaska Pub. Offices Comm'n v. Marshall, 633 P.2d 227 (Alaska 1981).

Quoted in Messerli v. State, 626 P.2d 81 (Alaska 1980).

II. FORFEITURE SANCTION.

Annotator's notes. – Subsection (b), which contained a forfeiture sanction for violation AS 15.13 was repealed in 1982.

Constitutionality of forfeiture sanction. – The forfeiture sanction of subsection (b) (now repealed) does not conflict with any constitutional provision delimiting the qualifications of assembly or council members or with any provision reserving exclusive authority to determine a member's election to those local entities. State, Alaska Pub. Offices Comm'n v. Marshall 633 P.2d 227 (Alaska 1981).

Even if the forfeiture sanction of subsection (b) (now repealed) may conflict with Alaska Const., art. II, § 12, insofar as state legislative elections are concerned, it can nonetheless constitutionally apply to local elections. State, Alaska Pub. Offices Comm'n v. Marshall 633 P.2d 227 (Alaska 1981).

The forfeiture sanction is valid. State, Alaska Pub. Offices Comm'n v. Marshall, 633 P.2d 227 (Alaska 1981).

The deadlines for filing are mandatory, and the plain meaning of this section makes the forfeiture sanction applicable. State, Alaska Pub. Offices Comm'n v. Marshall, 633 P.2d 227 (Alaska 1981).

The statutory forfeiture of office provision applied to the election of a city councilman and borough assemblyman whose 1980 seven-day election pre-election report was not filed until well after the election. State, Alaska Pub. Offices Comm'n v. Marshall, 633 P.2d 227 (Alaska 1981).

The absence of regulations is not fatal to enforcement of the forfeiture sanction because they are not necessary to implement the sanction or to protect a constitutional right. State, Alaska Pub. Offices Comm'n v. Marshall, 633 P.2d 227 (Alaska 1981).

Sec. 15.13.385. Legal counsel. (a) The attorney general is legal counsel for the commission. The attorney general shall advise the commission in legal matters arising in the discharge of its duties and represent the commission in actions to which it is a party. If, in the opinion of the commission, the public interest warrants, the commission may request the chief justice of the supreme court to appoint a special prosecutor to represent the commission in a proceeding involving an alleged violation of this chapter and to prosecute that violation.

(b) When the public interest warrants, the commission may employ temporary legal counsel from time to time in matters in which the commission is involved. (§ 26 ch 189 SLA 1975)

Revisor's notes. – Formerly AS 15.13.122. Renumbered in 2000

Sec. 15.13.390. Civil penalty; late filing of required reports. (a) A person who fails to register when required by AS 15.13.050(a) or who fails to file a properly completed and certified report within the time required by AS 15.13.040 , 15.13.060(b) - (d), 15.13.110(a)(1), (3), or (4), (e), or (f) is subject to a civil penalty of not more than $50 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110 (a)(2) or 15.13.110(b) is subject to a civil penalty of not more than $500 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who violates a provision of this chapter, except a provision requiring registration or filing of a report within a time required as otherwise specified in this section, is subject to a civil penalty of not more than $50 a day for each day the violation continues as determined by the commission, subject to right of appeal to the superior court. An affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is assessed. However, the imposition of the penalties prescribed in this section or in AS 15.13.380 does not excuse that person from registering or filing reports required by this chapter.

(b) When an administrative complaint has been filed under AS 15.13.380, the commission shall give the respondent due notice and an opportunity to be heard. If, at the conclusion of the hearing, the commission determines that the respondent engaged in the alleged violation, the commission shall assess

(1) civil penalties under (a) of this section;

(2) the commission's costs of investigation and adjudication; and

(3) reasonable attorney fees.

(c) The commission's determination under (b) of this section may be appealed to the superior court under AS 44.62 (Administrative Procedure Act).

(d) When an action has been filed in the superior court under AS 15.13.380, upon proof of the violation, the court shall enter a judgment in the amount of the civil penalty authorized to be collected by (a) of this section.

(e) If the commission or superior court finds that the violation was not a repeat violation or was not part of a series or pattern of violations, was inadvertent, was quickly corrected, and had no adverse effect on the campaign of another, the commission or the court may

(1) suspend imposition of the penalties; and

(2) order the penalties set aside if the person does not engage in a similar violation for a period of one year.

(f) A party who has filed a civil action under AS 15.13.380

(1) is not entitled to trial by jury on the civil action;

(2) is not entitled to be represented by legal counsel at public expense. (§ 6 ch 167 SLA 1976; am §5 ch 126 SLA 1994; am § 3 ch 59 SLA 1995; am §§22, 23 ch 48 SLA 1996; am § 7 ch 1 SLA 2002 TSSLA)

Revisor's notes. – Formerly AS 15.13.125. Renumbered in 2000, at which time "AS 15.13.380" was substituted for "AS 15.13.120" in subsections (a), (b), (d), and (f) in order to reflect the 2000 renumbering of AS 15.13.120.

Effect of amendments. – The 1996 amendment, effective January 1, 1997, rewrote subsection (a) and added subsections (b)-(f).

The 2002 amendment, effective June 26, 2002, updated a section reference in the first sentence in subsection (a).

NOTES TO DECISION

Penalty cannot be obviously unreasonable. – The penalty cannot be so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable. The standard is one of obvious unreasonableness. VECO Int'l, Inc. v. Alaska Pub. Offices Comm'n, 753 P.2d 703 (Alaska 1988), appeal dismissed 488 U.S. 919, 109 S. Ct. 298 L. Ed. 2d 317 (1988).

Statement of reasons for maximum penalties. – A statement of reasons should be given by the commission when it imposes the maximum civil penalties under this section. VECO Int'l, Inc. v. Alaska Pub. Offices Comm'n, 753 P.2d 703 (Alaska 1988), appeal dismissed, 488 U.S. 919, 109 S. Ct. 298 L. Ed. 2d 317 (1988).

Stated in State, Alaska Pub. Offices Comm'n v. Marshall, 633 P.2d 227 (Alaska 1981).

Sec. 15.13.400. Definitions. In this chapter,

(1) "candidate"

(A) means an individual who files for election to the state legislature, for governor, for lieutenant governor, for municipal office, for retention in judicial office, or for

constitutional convention delegate, or who campaigns as a write-in candidate for any of these offices; and

(B) when used in a provision of this chapter that limits or prohibits the donation, solicitation, or acceptance of campaign contributions, or limits or prohibits an expenditure, includes

(i) a candidate's campaign treasurer and a deputy campaign treasurer;

(ii) a member of the candidate's immediate family;

(iii) a person acting as agent for the candidate;

(iv) the candidate's campaign committee; and

(v) a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of the candidate;

(2) "commission" means the Alaska Public Offices Commission;

(3) "communication" means an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing $500 or less and those that do not directly or indirectly identify a candidate or proposition, as that term is defined in AS 15.13.065(c);

(4) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made and that is made for the purpose of influencing the nomination or election of a candidate, and in AS 15.13.010(b) for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that are rendered to the candidate or political party;

(B) does not include

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;

(ii) ordinary hospitality in a home;

(iii) two or fewer mass mailings before each election by each political party describing the party's slate of candidates for election, which may include photographs, biographies, and information about the party's candidates;

(iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;

(v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party;

(5) "electioneering communication" means a communication that

(A) directly or indirectly identifies a candidate;

(B) addresses an issue of national, state, or local political importance and attributes a position on that issue to the candidate identified; and

(C) occurs within the 30 days preceding a general or municipal election;

(6) "expenditure"

(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or political party of compensation for the personal services of another person that are rendered to a candidate or political party; or

(iv) influencing the outcome of a ballot proposition or question;

(B) does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(C) includes an express communication and an electioneering communication, but does not include an issues communication;

(7) "express communication" means a communication that, when read as a whole and with limited reference to outside events, is susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate;

(8) "group" means

(A) every state and regional executive committee of a political party; and

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070 , whether or not control of the group has been disclaimed by the candidate;

(9) "immediate family" means the spouse, parents, children, including a stepchild and an adoptive child, and siblings of an individual;

(10) "independent expenditure" means an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate's campaign treasurer or deputy campaign treasurer, or another person acting as a principal or agent of the candidate;

(11) "individual" means a natural person;

(12) "issues communication" means a communication that

(A) directly or indirectly identifies a candidate; and

(B) addresses an issue of national, state, or local political importance and does not support or oppose a candidate for election to public office.

(13) "nongroup entity" means a person, other than an individual, that takes action the major purpose of which is to influence the outcome of an election, and that

(A) cannot participate in business activities;

(B) does not have shareholders who have a claim on corporate earnings; and

(C) is independent from the influence of business corporations.

(14) "person" has the meaning given in AS 01.10.060 , and includes a labor union, nongroup entity, and a group;

(15) "political party" means any group that is a political party under AS 15.60.010 and any subordinate unit of that group if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, house district, or precinct;

(16) "publicly funded entity" means a person, other than an individual, that receives half or more of the money on which it operates during a calendar year from government, including a public corporation (§ 24 ch 48 SLA 1996; am § 39 ch 21 SLA 2000; am §§25, 26 ch 1 SLA 2002; am § 7 ch 3 SLA 2002; am §§ 8, 9 ch 1 TSSLA 2002; am §§ 18, 19 ch 108 SLA 2003; am § 2 ch 90 SLA 2006)

Revisor's notes – Paragraph (13) was enacted as (12) and paragraphs (3), (5), (7), and (12) were enacted as (13) – (16). Renumbered in 2002 to retain alphabetical order.

Effect of amendments. – The 2000 amendment, effective April 28, 2000, substituted "house district" for "election district" in subparagraph (10)(B).

The first 2002 amendment, effective April 16, 2002, added paragraph (13) and in paragraph (14) inserted ", nongroup entity."

The second 2002 amendment, effective April 16, 2002, in subparagraph (4)(b), in (I) inserted "political party, " and deleted ", but it does include professional services volunteered by individuals for which they ordinarily would be paid a fee or wage;" from the end; deleted former item (ii), which read "services provided by an accountant or other person to prepare reports and statements required by this chapter; redesignated former item (iii) as item (ii); added present items (iii) to (v); and made a stylistic change.

The third 2002 amendment, effective June 26, 2002, added subparagraph (6)(C) and paragraphs (3), (5), (7) and (12).

The 2003 amendment, effective September 14, 2003, rewrote paragraphs (7) and (15).

The 2006 amendment, effective October 11, 2006, added subparagraph (4)(B)(iv) and made related stylistic changes.

Opinions of attorney general. – The statutory limit under AS 15.13.070(a) is applicable to "control groups" under former AS 15.13.130. Exempting such groups from the contribution limit would seriously undermine the statute's primary purpose of deterring the buying of elections and undue influence of large contributors. June 15, 1987, Op. Att'y Gen.

NOTES TO DECISION

Constitutionality. – Under the First Amendment, former AS 15.13.400(3)(B)(i) was unconstitutional to the extend that it limited the volunteering of professional services by individuals, but the statute was constitutional as to the ban on the provision of volunteer services by corporations. Jacobus v. Alaska, 338 F.3d 1095 (9th Cir. 2003).

Alaska's campaign finance law, AS 15.13.030 et seq., does not violate pro-life association's First Amendment rights because this section's definition of "electioneering communication" is not unconstitutionally vague or over broad either facially or as applied, and the reporting and disclosure provisions are reasonable and serve a significant state interest. Alaska Right to Life Comm.v. Miles, 441 F3d 773 (9th Cir. 2006).

Applied in Jacobus v. Alaska, 182 F. Supp. 2d 893 (D. Alaska 2001).

Quoted in State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, U.S., 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

Cited in Libertarian Party of Alaska, Inc. v. State, 101 P.3d 616 (Alaska 2004).

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CITIZENS UNITED *v.* FEDERAL ELECTION COMMISSION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 08–205. Argued March 24, 2009—Reargued September 9, 2009—Decided January 21, 2010

As amended by §203 of the Bipartisan Campaign Reform Act of 2002 (BCRA), federal law prohibits corporations and unions from using their general treasury funds to make independent expenditures for speech that is an "electioneering communication" or for speech that expressly advocates the election or defeat of a candidate. 2 U. S. C. §441b. An electioneering communication is "any broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office" and is made within 30 days of a primary election, §434(f)(3)(A), and that is "publicly distributed," 11 CFR §100.29(a)(2), which in "the case of a candidate for nomination for President . . . means" that the communication "[c]an be received by 50,000 or more persons in a State where a primary election . . . is being held within 30 days," §100.29(b)(3)(ii). Corporations and unions may establish a political action committee (PAC) for express advocacy or electioneering communications purposes. 2 U. S. C. §441b(b)(2). In *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93, 203–209, this Court upheld limits on electioneering communications in a facial challenge, relying on the holding in *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652, that political speech may be banned based on the speaker's corporate identity.

In January 2008, appellant Citizens United, a nonprofit corporation, released a documentary (hereinafter *Hillary*) critical of then-Senator Hillary Clinton, a candidate for her party's Presidential nomination. Anticipating that it would make *Hillary* available on cable television through video-on-demand within 30 days of primary elections, Citizens United produced television ads to run on broadcast

Syllabus

and cable television. Concerned about possible civil and criminal penalties for violating §441b, it sought declaratory and injunctive relief, arguing that (1) §441b is unconstitutional as applied to *Hillary;* and (2) BCRA's disclaimer, disclosure, and reporting requirements, BCRA §§201 and 311, were unconstitutional as applied to *Hillary* and the ads. The District Court denied Citizens United a preliminary injunction and granted appellee Federal Election Commission (FEC) summary judgment.

Held:

1. Because the question whether §441b applies to *Hillary* cannot be resolved on other, narrower grounds without chilling political speech, this Court must consider the continuing effect of the speech suppression upheld in *Austin.* Pp. 5–20.

(a) Citizen United's narrower arguments—that *Hillary* is not an "electioneering communication" covered by §441b because it is not "publicly distributed" under 11 CFR §100.29(a)(2); that §441b may not be applied to *Hillary* under *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449 *(WRTL),* which found §441b unconstitutional as applied to speech that was not "express advocacy or its functional equivalent," *id.,* at 481 (opinion of ROBERTS, C. J.), determining that a communication "is the functional equivalent of express advocacy only if [it] is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate," *id.,* at 469–470; that §441b should be invalidated as applied to movies shown through video-on-demand because this delivery system has a lower risk of distorting the political process than do television ads; and that there should be an exception to §441b's ban for nonprofit corporate political speech funded overwhelming by individuals—are not sustainable under a fair reading of the statute. Pp. 5–12.

(b) Thus, this case cannot be resolved on a narrower ground without chilling political speech, speech that is central to the First Amendment's meaning and purpose.. Citizens United did not waive this challenge to *Austin* when it stipulated to dismissing the facial challenge below, since (1) even if such a challenge could be waived, this Court may reconsider *Austin* and §441b's facial validity here because the District Court "passed upon" the issue, *Lebron* v. *National Railroad Passenger Corporation,* 513 U. S. 374, 379; (2) throughout the litigation, Citizens United has asserted a claim that the FEC has violated its right to free speech; and (3) the parties cannot enter into a stipulation that prevents the Court from considering remedies necessary to resolve a claim that has been preserved. Because Citizen United's narrower arguments are not sustainable, this Court must, in an exercise of its judicial responsibility, consider §441b's facial validity. Any other course would prolong the substantial, nationwide

chilling effect caused by §441b's corporate expenditure ban. This conclusion is further supported by the following: (1) the uncertainty caused by the Government's litigating position; (2) substantial time would be required to clarify §441b's application on the points raised by the Government's position in order to avoid any chilling effect caused by an improper interpretation; and (3) because speech itself is of primary importance to the integrity of the election process, any speech arguably within the reach of rules created for regulating political speech is chilled. The regulatory scheme at issue may not be a prior restraint in the strict sense. However, given its complexity and the deference courts show to administrative determinations, a speaker wishing to avoid criminal liability threats and the heavy costs of defending against FEC enforcement must ask a governmental agency for prior permission to speak. The restrictions thus function as the equivalent of a prior restraint, giving the FEC power analogous to the type of government practices that the First Amendment was drawn to prohibit. The ongoing chill on speech makes it necessary to invoke the earlier precedents that a statute that chills speech can and must be invalidated where its facial invalidity has been demonstrated. Pp. 12–20.

2. *Austin* is overruled, and thus provides no basis for allowing the Government to limit corporate independent expenditures. Hence, §441b's restrictions on such expenditures are invalid and cannot be applied to *Hillary*. Given this conclusion, the part of *McConnell* that upheld BCRA §203's extension of §441b's restrictions on independent corporate expenditures is also overruled. Pp. 20–51.

(a) Although the First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech," §441b's prohibition on corporate independent expenditures is an outright ban on speech, backed by criminal sanctions. It is a ban notwithstanding the fact that a PAC created by a corporation can still speak, for a PAC is a separate association from the corporation. Because speech is an essential mechanism of democracy—it is the means to hold officials accountable to the people—political speech must prevail against laws that would suppress it by design or inadvertence. Laws burdening such speech are subject to strict scrutiny, which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest." *WRTL*, 551 U. S., at 464. This language provides a sufficient framework for protecting the interests in this case. Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints or to distinguish among different speakers, which may be a means to control content. The Government may also commit a constitutional wrong when by law it identifies certain

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preferred speakers. There is no basis for the proposition that, in the political speech context, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead to this conclusion. Pp. 20–25.

(b) The Court has recognized that the First Amendment applies to corporations, *e.g.*, *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 778, n. 14, and extended this protection to the context of political speech, see, *e.g.*, *NAACP* v. *Button*, 371 U. S. 415, 428–429. Addressing challenges to the Federal Election Campaign Act of 1971, the *Buckley* Court upheld limits on direct contributions to candidates, 18 U. S. C. §608(b), recognizing a governmental interest in preventing *quid pro quo* corruption. 424 U. S., at 25–26. However, the Court invalidated §608(e)'s expenditure ban, which applied to individuals, corporations, and unions, because it "fail[ed] to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process," *id.*, at 47–48. While *Buckley* did not consider a separate ban on corporate and union independent expenditures found in §610, had that provision been challenged in *Buckley*'s wake, it could not have been squared with the precedent's reasoning and analysis. The *Buckley* Court did not invoke the overbreadth doctrine to suggest that §608(e)'s expenditure ban would have been constitutional had it applied to corporations and unions but not individuals. Notwithstanding this precedent, Congress soon recodified §610's corporate and union expenditure ban at 2 U. S. C. §441b, the provision at issue. Less than two years after *Buckley*, *Bellotti* reaffirmed the First Amendment principle that the Government lacks the power to restrict political speech based on the speaker's corporate identity. 435 U.S., at 784–785. Thus the law stood until *Austin* upheld a corporate independent expenditure restriction, bypassing *Buckley* and *Bellotti* by recognizing a new governmental interest in preventing "the corrosive and distorting effects of immense aggregations of [corporate] wealth . . . that have little or no correlation to the public's support for the corporation's political ideas." 494 U. S., at 660. Pp. 25–32.

(c) This Court is confronted with conflicting lines of precedent: a pre-*Austin* line forbidding speech restrictions based on the speaker's corporate identity and a post-*Austin* line permitting them. Neither *Austin*'s antidistortion rationale nor the Government's other justifications support §441b's restrictions. Pp. 32–47.

(1) The First Amendment prohibits Congress from fining or jailing citizens, or associations of citizens, for engaging in political speech, but *Austin*'s antidistortion rationale would permit the Government to ban political speech because the speaker is an association with a corporate form. Political speech is "indispensable to decision-

making in a democracy, and this is no less true because the speech comes from a corporation." *Bellotti, supra,* at 777 (footnote omitted). This protection is inconsistent with *Austin*'s rationale, which is meant to prevent corporations from obtaining " 'an unfair advantage in the political marketplace' " by using " 'resources amassed in the economic marketplace.' " 494 U. S., at 659. First Amendment protections do not depend on the speaker's "financial ability to engage in public discussion." *Buckley, supra,* at 49. These conclusions were reaffirmed when the Court invalidated a BCRA provision that increased the cap on contributions to one candidate if the opponent made certain expenditures from personal funds. *Davis* v. *Federal Election Comm'n,* 554 U. S. ___, ___. Distinguishing wealthy individuals from corporations based on the latter's special advantages of, *e.g.,* limited liability, does not suffice to allow laws prohibiting speech. It is irrelevant for First Amendment purposes that corporate funds may "have little or no correlation to the public's support for the corporation's political ideas." *Austin, supra,* at 660. All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech, and the First Amendment protects the resulting speech. Under the antidistortion rationale, Congress could also ban political speech of media corporations. Although currently exempt from §441b, they accumulate wealth with the help of their corporate form, may have aggregations of wealth, and may express views "hav[ing] little or no correlation to the public's support" for those views. Differential treatment of media corporations and other corporations cannot be squared with the First Amendment, and there is no support for the view that the Amendment's original meaning would permit suppressing media corporations' political speech. *Austin* interferes with the "open marketplace" of ideas protected by the First Amendment. *New York State Bd. of Elections* v. *Lopez Torres,* 552 U. S. 196, 208. Its censorship is vast in its reach, suppressing the speech of both for-profit and nonprofit, both small and large, corporations. Pp. 32–40.

(2) This reasoning also shows the invalidity of the Government's other arguments. It reasons that corporate political speech can be banned to prevent corruption or its appearance. The *Buckley* Court found this rationale "sufficiently important" to allow contribution limits but refused to extend that reasoning to expenditure limits, 424 U.S., at 25, and the Court does not do so here. While a single *Bellotti* footnote purported to leave the question open, 435 U. S., at 788, n. 26, this Court now concludes that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption. That speakers may have influence over or access to elected officials does not mean that those officials

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are corrupt. And the appearance of influence or access will not cause the electorate to lose faith in this democracy. *Caperton* v. *A. T. Massey Coal Co.*, 556 U. S. ___, distinguished. Pp. 40–45.

(3) The Government's asserted interest in protecting shareholders from being compelled to fund corporate speech, like the antidistortion rationale, would allow the Government to ban political speech even of media corporations. The statute is underinclusive; it only protects a dissenting shareholder's interests in certain media for 30 or 60 days before an election when such interests would be implicated in any media at any time. It is also overinclusive because it covers all corporations, including those with one shareholder. P. 46.

(4) Because §441b is not limited to corporations or associations created in foreign countries or funded predominantly by foreign shareholders, it would be overbroad even if the Court were to recognize a compelling governmental interest in limiting foreign influence over the Nation's political process. Pp. 46–47.

(d) The relevant factors in deciding whether to adhere to *stare decisis*, beyond workability—the precedent's antiquity, the reliance interests at stake, and whether the decision was well reasoned—counsel in favor of abandoning *Austin*, which itself contravened the precedents of *Buckley* and *Bellotti*. As already explained, *Austin* was not well reasoned. It is also undermined by experience since its announcement. Political speech is so ingrained in this country's culture that speakers find ways around campaign finance laws. Rapid changes in technology—and the creative dynamic inherent in the concept of free expression—counsel against upholding a law that restricts political speech in certain media or by certain speakers. In addition, no serious reliance issues are at stake. Thus, due consideration leads to the conclusion that *Austin* should be overruled. The Court returns to the principle established in *Buckley* and *Bellotti* that the Government may not suppress political speech based on the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations. Pp. 47–50.

3. BCRA §§201 and 311 are valid as applied to the ads for *Hillary* and to the movie itself. Pp. 50–57.

(a) Disclaimer and disclosure requirements may burden the ability to speak, but they "impose no ceiling on campaign-related activities," *Buckley*, 424 U. S., at 64, or "'"prevent anyone from speaking,"'" *McConnell*, *supra*, at 201. The *Buckley* Court explained that disclosure can be justified by a governmental interest in providing "the electorate with information" about election-related spending sources. The *McConnell* Court applied this interest in rejecting facial challenges to §§201 and 311. 540 U. S., at 196. However, the Court

acknowledged that as-applied challenges would be available if a group could show a "'reasonable probability'" that disclosing its contributors' names would "'subject them to threats, harassment, or reprisals from either Government officials or private parties.'" *Id.*, at 198. Pp. 50–52.

(b) The disclaimer and disclosure requirements are valid as applied to Citizens United's ads. They fall within BCRA's "electioneering communication" definition: They referred to then-Senator Clinton by name shortly before a primary and contained pejorative references to her candidacy. Section 311 disclaimers provide information to the electorate, *McConnell, supra,* at 196, and "insure that the voters are fully informed" about who is speaking, *Buckley, supra,* at 76. At the very least, they avoid confusion by making clear that the ads are not funded by a candidate or political party. Citizens United's arguments that §311 is underinclusive because it requires disclaimers for broadcast advertisements but not for print or Internet advertising and that §311 decreases the quantity and effectiveness of the group's speech were rejected in *McConnell.* This Court also rejects their contention that §201's disclosure requirements must be confined to speech that is the functional equivalent of express advocacy under *WRTL*'s test for restrictions on independent expenditures, 551 U. S., at 469–476 (opinion of ROBERTS, C.J.). Disclosure is the less-restrictive alternative to more comprehensive speech regulations. Such requirements have been upheld in *Buckley* and *McConnell.* Citizens United's argument that no informational interest justifies applying §201 to its ads is similar to the argument this Court rejected with regard to disclaimers. Citizens United finally claims that disclosure requirements can chill donations by exposing donors to retaliation, but offers no evidence that its members face the type of threats, harassment, or reprisals that might make §201 unconstitutional as applied. Pp. 52–55.

(c) For these same reasons, this Court affirms the application of the §§201 and 311 disclaimer and disclosure requirements to *Hillary.* Pp. 55–56.

Reversed in part, affirmed in part, and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA and ALITO, JJ., joined, in which THOMAS, J., joined as to all but Part IV, and in which STEVENS, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined as to Part IV. ROBERTS, C. J., filed a concurring opinion, in which ALITO, J., joined. SCALIA, J., filed a concurring opinion, in which ALITO, J., joined, and in which THOMAS, J., joined in part. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. THOMAS, J., filed an opinion concurring in part and dissenting in part.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 08–205

CITIZENS UNITED, APPELLANT *v.* FEDERAL ELECTION COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[January 21, 2010]

JUSTICE KENNEDY delivered the opinion of the Court.

Federal law prohibits corporations and unions from using their general treasury funds to make independent expenditures for speech defined as an "electioneering communication" or for speech expressly advocating the election or defeat of a candidate. 2 U. S. C. §441b. Limits on electioneering communications were upheld in *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93, 203–209 (2003). The holding of *McConnell* rested to a large extent on an earlier case, *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652 (1990). *Austin* had held that political speech may be banned based on the speaker's corporate identity.

In this case we are asked to reconsider *Austin* and, in effect, *McConnell*. It has been noted that "*Austin* was a significant departure from ancient First Amendment principles," *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449, 490 (2007) *(WRTL)* (SCALIA, J., concurring in part and concurring in judgment). We agree with that conclusion and hold that *stare decisis* does not compel the continued acceptance of *Austin*. The Govern-

ment may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether. We turn to the case now before us.

I

A

Citizens United is a nonprofit corporation. It brought this action in the United States District Court for the District of Columbia. A three-judge court later convened to hear the cause. The resulting judgment gives rise to this appeal.

Citizens United has an annual budget of about $12 million. Most of its funds are from donations by individuals; but, in addition, it accepts a small portion of its funds from for-profit corporations.

In January 2008, Citizens United released a film entitled *Hillary: The Movie.* We refer to the film as *Hillary.* It is a 90-minute documentary about then-Senator Hillary Clinton, who was a candidate in the Democratic Party's 2008 Presidential primary elections. *Hillary* mentions Senator Clinton by name and depicts interviews with political commentators and other persons, most of them quite critical of Senator Clinton. *Hillary* was released in theaters and on DVD, but Citizens United wanted to increase distribution by making it available through video-on-demand.

Video-on-demand allows digital cable subscribers to select programming from various menus, including movies, television shows, sports, news, and music. The viewer can watch the program at any time and can elect to rewind or pause the program. In December 2007, a cable company offered, for a payment of $1.2 million, to make *Hillary* available on a video-on-demand channel called "Elections '08." App. 255a–257a. Some video-on-demand services require viewers to pay a small fee to view a se-

lected program, but here the proposal was to make *Hillary* available to viewers free of charge.

To implement the proposal, Citizens United was prepared to pay for the video-on-demand; and to promote the film, it produced two 10-second ads and one 30-second ad for *Hillary*. Each ad includes a short (and, in our view, pejorative) statement about Senator Clinton, followed by the name of the movie and the movie's Website address. *Id.*, at 26a–27a. Citizens United desired to promote the video-on-demand offering by running advertisements on broadcast and cable television.

B

Before the Bipartisan Campaign Reform Act of 2002 (BCRA), federal law prohibited—and still does prohibit—corporations and unions from using general treasury funds to make direct contributions to candidates or independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections. 2 U. S. C. §441b (2000 ed.); see *McConnell, supra,* at 204, and n. 87; *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238, 249 (1986) *(MCFL).* BCRA §203 amended §441b to prohibit any "electioneering communication" as well. 2 U. S. C. §441b(b)(2) (2006 ed.). An electioneering communication is defined as "any broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office" and is made within 30 days of a primary or 60 days of a general election. §434(f)(3)(A). The Federal Election Commission's (FEC) regulations further define an electioneering communication as a communication that is "publicly distributed." 11 CFR §100.29(a)(2) (2009). "In the case of a candidate for nomination for President . . . *publicly distributed* means" that the communication "[c]an be received by 50,000 or more persons in a State where a primary

election . . . is being held within 30 days." §100.29(b)(3)(ii). Corporations and unions are barred from using their general treasury funds for express advocacy or electioneering communications. They may establish, however, a "separate segregated fund" (known as a political action committee, or PAC) for these purposes. 2 U. S. C. §441b(b)(2). The moneys received by the segregated fund are limited to donations from stockholders and employees of the corporation or, in the case of unions, members of the union. *Ibid.*

C

Citizens United wanted to make *Hillary* available through video-on-demand within 30 days of the 2008 primary elections. It feared, however, that both the film and the ads would be covered by §441b's ban on corporate-funded independent expenditures, thus subjecting the corporation to civil and criminal penalties under §437g. In December 2007, Citizens United sought declaratory and injunctive relief against the FEC. It argued that (1) §441b is unconstitutional as applied to *Hillary;* and (2) BCRA's disclaimer and disclosure requirements, BCRA §§201 and 311, are unconstitutional as applied to *Hillary* and to the three ads for the movie.

The District Court denied Citizens United's motion for a preliminary injunction, 530 F. Supp. 2d 274 (DC 2008) *(per curiam),* and then granted the FEC's motion for summary judgment, App. 261a–262a. See *id.,* at 261a ("Based on the reasoning of our prior opinion, we find that the [FEC] is entitled to judgment as a matter of law. *See Citizen[s] United v. FEC,* 530 F. Supp. 2d 274 (D.D.C. 2008) (denying Citizens United's request for a preliminary injunction)"). The court held that §441b was facially constitutional under *McConnell,* and that §441b was constitutional as applied to *Hillary* because it was "susceptible of no other interpretation than to inform the

electorate that Senator Clinton is unfit for office, that the United States would be a dangerous place in a President Hillary Clinton world, and that viewers should vote against her." 530 F. Supp. 2d, at 279. The court also rejected Citizens United's challenge to BCRA's disclaimer and disclosure requirements. It noted that "the Supreme Court has written approvingly of disclosure provisions triggered by political speech even though the speech itself was constitutionally protected under the First Amendment." *Id.*, at 281.

We noted probable jurisdiction. 555 U. S. ___ (2008). The case was reargued in this Court after the Court asked the parties to file supplemental briefs addressing whether we should overrule either or both *Austin* and the part of *McConnell* which addresses the facial validity of 2 U. S. C. §441b. See 557 U. S. ___ (2009).

II

Before considering whether *Austin* should be overruled, we first address whether Citizens United's claim that §441b cannot be applied to *Hillary* may be resolved on other, narrower grounds.

A

Citizens United contends that §441b does not cover *Hillary*, as a matter of statutory interpretation, because the film does not qualify as an "electioneering communication." §441b(b)(2). Citizens United raises this issue for the first time before us, but we consider the issue because "it was addressed by the court below." *Lebron* v. *National Railroad Passenger Corporation*, 513 U. S. 374, 379 (1995); see 530 F. Supp. 2d, at 277, n. 6. Under the definition of electioneering communication, the video-on-demand showing of *Hillary* on cable television would have been a "cable . . . communication" that "refer[red] to a clearly identified candidate for Federal office" and that was made within 30

days of a primary election. 2 U. S. C. §434(f)(3)(A)(i). Citizens United, however, argues that *Hillary* was not "publicly distributed," because a single video-on-demand transmission is sent only to a requesting cable converter box and each separate transmission, in most instances, will be seen by just one household—not 50,000 or more persons. 11 CFR §100.29(a)(2); see §100.29(b)(3)(ii).

This argument ignores the regulation's instruction on how to determine whether a cable transmission "[c]an be received by 50,000 or more persons." §100.29(b)(3)(ii). The regulation provides that the number of people who can receive a cable transmission is determined by the number of cable subscribers in the relevant area. §§100.29(b)(7)(i)(G), (ii). Here, Citizens United wanted to use a cable video-on-demand system that had 34.5 million subscribers nationwide. App. 256a. Thus, *Hillary* could have been received by 50,000 persons or more.

One *amici* brief asks us, alternatively, to construe the condition that the communication "[c]an be received by 50,000 or more persons," §100.29(b)(3)(ii)(A), to require "a plausible likelihood that the communication will be viewed by 50,000 or more potential voters"—as opposed to requiring only that the communication is "technologically capable" of being seen by that many people, Brief for Former Officials of the American Civil Liberties Union as *Amici Curiae* 5. Whether the population and demographic statistics in a proposed viewing area consisted of 50,000 registered voters—but not "infants, pre-teens, or otherwise electorally ineligible recipients"—would be a required determination, subject to judicial challenge and review, in any case where the issue was in doubt. *Id.*, at 6.

In our view the statute cannot be saved by limiting the reach of 2 U. S. C. §441b through this suggested interpretation. In addition to the costs and burdens of litigation, this result would require a calculation as to the number of people a particular communication is likely to reach, with

an inaccurate estimate potentially subjecting the speaker to criminal sanctions. The First Amendment does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day. Prolix laws chill speech for the same reason that vague laws chill speech: People "of common intelligence must necessarily guess at [the law's] meaning and differ as to its application." *Connally* v. *General Constr. Co.*, 269 U. S. 385, 391 (1926). The Government may not render a ban on political speech constitutional by carving out a limited exemption through an amorphous regulatory interpretation. We must reject the approach suggested by the *amici*. Section 441b covers *Hillary*.

B

Citizens United next argues that §441b may not be applied to *Hillary* under the approach taken in *WRTL*. *McConnell* decided that §441b(b)(2)'s definition of an "electioneering communication" was facially constitutional insofar as it restricted speech that was "the functional equivalent of express advocacy" for or against a specific candidate. 540 U. S., at 206. *WRTL* then found an unconstitutional application of §441b where the speech was not "express advocacy or its functional equivalent." 551 U. S., at 481 (opinion of ROBERTS, C. J.). As explained by THE CHIEF JUSTICE's controlling opinion in *WRTL*, the functional-equivalent test is objective: "a court should find that [a communication] is the functional equivalent of express advocacy only if [it] is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *Id.*, at 469–470.

Under this test, *Hillary* is equivalent to express advocacy. The movie, in essence, is a feature-length negative advertisement that urges viewers to vote against Senator

Clinton for President. In light of historical footage, interviews with persons critical of her, and voiceover narration, the film would be understood by most viewers as an extended criticism of Senator Clinton's character and her fitness for the office of the Presidency. The narrative may contain more suggestions and arguments than facts, but there is little doubt that the thesis of the film is that she is unfit for the Presidency. The movie concentrates on alleged wrongdoing during the Clinton administration, Senator Clinton's qualifications and fitness for office, and policies the commentators predict she would pursue if elected President. It calls Senator Clinton "Machiavellian," App. 64a, and asks whether she is "the most qualified to hit the ground running if elected President," *id.*, at 88a. The narrator reminds viewers that "Americans have never been keen on dynasties" and that "a vote for Hillary is a vote to continue 20 years of a Bush or a Clinton in the White House," *id.*, at 143a–144a.

Citizens United argues that *Hillary* is just "a documentary film that examines certain historical events." Brief for Appellant 35. We disagree. The movie's consistent emphasis is on the relevance of these events to Senator Clinton's candidacy for President. The narrator begins by asking "could [Senator Clinton] become the first female President in the history of the United States?" App. 35a. And the narrator reiterates the movie's message in his closing line: "Finally, before America decides on our next president, voters should need no reminders of . . . what's at stake—the well being and prosperity of our nation." *Id.*, at 144a–145a.

As the District Court found, there is no reasonable interpretation of *Hillary* other than as an appeal to vote against Senator Clinton. Under the standard stated in *McConnell* and further elaborated in *WRTL*, the film qualifies as the functional equivalent of express advocacy.

C

Citizens United further contends that §441b should be invalidated as applied to movies shown through video-on-demand, arguing that this delivery system has a lower risk of distorting the political process than do television ads. Cf. *McConnell, supra,* at 207. On what we might call conventional television, advertising spots reach viewers who have chosen a channel or a program for reasons unrelated to the advertising. With video-on-demand, by contrast, the viewer selects a program after taking "a series of affirmative steps": subscribing to cable; navigating through various menus; and selecting the program. See *Reno* v. *American Civil Liberties Union*, 521 U. S. 844, 867 (1997).

While some means of communication may be less effective than others at influencing the public in different contexts, any effort by the Judiciary to decide which means of communications are to be preferred for the particular type of message and speaker would raise questions as to the courts' own lawful authority. Substantial questions would arise if courts were to begin saying what means of speech should be preferred or disfavored. And in all events, those differentiations might soon prove to be irrelevant or outdated by technologies that are in rapid flux. See *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 639 (1994).

Courts, too, are bound by the First Amendment. We must decline to draw, and then redraw, constitutional lines based on the particular media or technology used to disseminate political speech from a particular speaker. It must be noted, moreover, that this undertaking would require substantial litigation over an extended time, all to interpret a law that beyond doubt discloses serious First Amendment flaws. The interpretive process itself would create an inevitable, pervasive, and serious risk of chilling protected speech pending the drawing of fine distinctions

that, in the end, would themselves be questionable. First Amendment standards, however, "must give the benefit of any doubt to protecting rather than stifling speech." *WRTL*, 551 U. S., at 469 (opinion of ROBERTS, C. J.) (citing *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 269–270 (1964)).

D

Citizens United also asks us to carve out an exception to §441b's expenditure ban for nonprofit corporate political speech funded overwhelmingly by individuals. As an alternative to reconsidering *Austin*, the Government also seems to prefer this approach. This line of analysis, however, would be unavailing.

In *MCFL*, the Court found unconstitutional §441b's restrictions on corporate expenditures as applied to nonprofit corporations that were formed for the sole purpose of promoting political ideas, did not engage in business activities, and did not accept contributions from for-profit corporations or labor unions. 479 U. S., at 263–264; see also 11 CFR §114.10. BCRA's so-called Wellstone Amendment applied §441b's expenditure ban to all nonprofit corporations. See 2 U. S. C. §441b(c)(6); *McConnell*, 540 U. S., at 209. *McConnell* then interpreted the Wellstone Amendment to retain the *MCFL* exemption to §441b's expenditure prohibition. 540 U. S., at 211. Citizens United does not qualify for the *MCFL* exemption, however, since some funds used to make the movie were donations from for-profit corporations.

The Government suggests we could find BCRA's Wellstone Amendment unconstitutional, sever it from the statute, and hold that Citizens United's speech is exempt from §441b's ban under BCRA's Snowe-Jeffords Amendment, §441b(c)(2). See Tr. of Oral Arg. 37–38 (Sept. 9, 2009). The Snowe-Jeffords Amendment operates as a backup provision that only takes effect if the Wellstone

Amendment is invalidated. See *McConnell, supra,* at 339 (KENNEDY, J., concurring in judgment in part and dissenting in part). The Snowe-Jeffords Amendment would exempt from §441b's expenditure ban the political speech of certain nonprofit corporations if the speech were funded "exclusively" by individual donors and the funds were maintained in a segregated account. §441b(c)(2). Citizens United would not qualify for the Snowe-Jeffords exemption, under its terms as written, because *Hillary* was funded in part with donations from for-profit corporations.

Consequently, to hold for Citizens United on this argument, the Court would be required to revise the text of *MCFL*, sever BCRA's Wellstone Amendment, §441b(c)(6), and ignore the plain text of BCRA's Snowe-Jeffords Amendment, §441b(c)(2). If the Court decided to create a *de minimis* exception to *MCFL* or the Snowe-Jeffords Amendment, the result would be to allow for-profit corporate general treasury funds to be spent for independent expenditures that support candidates. There is no principled basis for doing this without rewriting *Austin*'s holding that the Government can restrict corporate independent expenditures for political speech.

Though it is true that the Court should construe statutes as necessary to avoid constitutional questions, the series of steps suggested would be difficult to take in view of the language of the statute. In addition to those difficulties the Government's suggestion is troubling for still another reason. The Government does not say that it agrees with the interpretation it wants us to consider. See Supp. Brief for Appellee 3, n. 1 ("Some courts" have implied a *de minimis* exception, and "appellant would appear to be covered by these decisions"). Presumably it would find textual difficulties in this approach too. The Government, like any party, can make arguments in the alternative; but it ought to say if there is merit to an alternative proposal instead of merely suggesting it. This is especially

true in the context of the First Amendment. As the Government stated, this case "would require a remand" to apply a *de minimis* standard. Tr. of Oral Arg. 39 (Sept. 9, 2009). Applying this standard would thus require case-by-case determinations. But archetypical political speech would be chilled in the meantime. "'First Amendment freedoms need breathing space to survive.'" *WRTL*, *supra*, at 468–469 (opinion of ROBERTS, C. J.) (quoting *NAACP* v. *Button*, 371 U. S. 415, 433 (1963)). We decline to adopt an interpretation that requires intricate case-by-case determinations to verify whether political speech is banned, especially if we are convinced that, in the end, this corporation has a constitutional right to speak on this subject.

E

As the foregoing analysis confirms, the Court cannot resolve this case on a narrower ground without chilling political speech, speech that is central to the meaning and purpose of the First Amendment. See *Morse* v. *Frederick*, 551 U. S. 393, 403 (2007). It is not judicial restraint to accept an unsound, narrow argument just so the Court can avoid another argument with broader implications. Indeed, a court would be remiss in performing its duties were it to accept an unsound principle merely to avoid the necessity of making a broader ruling. Here, the lack of a valid basis for an alternative ruling requires full consideration of the continuing effect of the speech suppression upheld in *Austin*.

Citizens United stipulated to dismissing count 5 of its complaint, which raised a facial challenge to §441b, even though count 3 raised an as-applied challenge. See App. 23a (count 3: "As applied to *Hillary*, [§441b] is unconstitutional under the First Amendment guarantees of free expression and association"). The Government argues that Citizens United waived its challenge to *Austin* by dismissing count 5. We disagree.

First, even if a party could somehow waive a facial challenge while preserving an as-applied challenge, that would not prevent the Court from reconsidering *Austin* or addressing the facial validity of §441b in this case. "Our practice 'permit[s] review of an issue not pressed [below] so long as it has been passed upon . . . .'" *Lebron*, 513 U. S., at 379 (quoting *United States* v. *Williams*, 504 U. S. 36, 41 (1992); first alteration in original). And here, the District Court addressed Citizens United's facial challenge. See 530 F. Supp. 2d, at 278 ("Citizens wants us to enjoin the operation of BCRA §203 as a facially unconstitutional burden on the First Amendment right to freedom of speech"). In rejecting the claim, it noted that it "would have to overrule *McConnell*" for Citizens United to prevail on its facial challenge and that "[o]nly the Supreme Court may overrule its decisions." *Ibid.* (citing *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U. S. 477, 484 (1989)). The District Court did not provide much analysis regarding the facial challenge because it could not ignore the controlling Supreme Court decisions in *Austin* or *McConnell*. Even so, the District Court did "'pas[s] upon'" the issue. *Lebron*, *supra*, at 379. Furthermore, the District Court's later opinion, which granted the FEC summary judgment, was "[b]ased on the reasoning of [its] prior opinion," which included the discussion of the facial challenge. App. 261a (citing 530 F. Supp. 2d 274). After the District Court addressed the facial validity of the statute, Citizens United raised its challenge to *Austin* in this Court. See Brief for Appellant 30 ("*Austin* was wrongly decided and should be overruled"); *id.*, at 30–32. In these circumstances, it is necessary to consider Citizens United's challenge to *Austin* and the facial validity of §441b's expenditure ban.

Second, throughout the litigation, Citizens United has asserted a claim that the FEC has violated its First Amendment right to free speech. All concede that this

claim is properly before us. And "'[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.'" *Lebron, supra,* at 379 (quoting *Yee* v. *Escondido,* 503 U. S. 519, 534 (1992); alteration in original). Citizens United's argument that *Austin* should be overruled is "not a new claim." *Lebron,* 513 U. S., at 379. Rather, it is—at most—"a new argument to support what has been [a] consistent claim: that [the FEC] did not accord [Citizens United] the rights it was obliged to provide by the First Amendment." *Ibid.*

Third, the distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge. The distinction is both instructive and necessary, for it goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint. See *United States* v. *Treasury Employees,* 513 U. S. 454, 477–478 (1995) (contrasting "a facial challenge" with "a narrower remedy"). The parties cannot enter into a stipulation that prevents the Court from considering certain remedies if those remedies are necessary to resolve a claim that has been preserved. Citizens United has preserved its First Amendment challenge to §441b as applied to the facts of its case; and given all the circumstances, we cannot easily address that issue without assuming a premise—the permissibility of restricting corporate political speech—that is itself in doubt. See Fallon, As-Applied and Facial Challenges and Third-Party Standing, 113 Harv. L. Rev. 1321, 1339 (2000) ("[O]nce a case is brought, no general categorical line bars a court from making broader pronouncements of invalidity in properly 'as-applied' cases"); *id.*, at 1327–1328. As our request for supplemental briefing implied, Citizens United's claim implicates the validity of *Austin,* which in turn implicates the facial

validity of §441b.

When the statute now at issue came before the Court in *McConnell*, both the majority and the dissenting opinions considered the question of its facial validity. The holding and validity of *Austin* were essential to the reasoning of the *McConnell* majority opinion, which upheld BCRA's extension of §441b. See 540 U. S., at 205 (quoting *Austin*, 494 U. S., at 660). *McConnell* permitted federal felony punishment for speech by all corporations, including nonprofit ones, that speak on prohibited subjects shortly before federal elections. See 540 U. S., at 203–209. Four Members of the *McConnell* Court would have overruled *Austin*, including Chief Justice Rehnquist, who had joined the Court's opinion in *Austin* but reconsidered that conclusion. See 540 U. S., at 256–262 (SCALIA, J., concurring in part, concurring in judgment in part, and dissenting in part); *id.*, at 273–275 (THOMAS, J., concurring in part, concurring in result in part, concurring in judgment in part, and dissenting in part); *id.*, at 322–338 (opinion of KENNEDY, J., joined by Rehnquist, C. J., and SCALIA, J.). That inquiry into the facial validity of the statute was facilitated by the extensive record, which was "over 100,000 pages" long, made in the three-judge District Court. *McConnell* v. *Federal Election Comm'n*, 251 F. Supp. 2d 176, 209 (DC 2003) *(per curiam) (McConnell I)*. It is not the case, then, that the Court today is premature in interpreting §441b "'on the basis of [a] factually barebones recor[d].'" *Washington State Grange* v. *Washington State Republican Party*, 552 U. S. 442, 450 (2008) (quoting *Sabri* v. *United States*, 541 U. S. 600, 609 (2004)).

The *McConnell* majority considered whether the statute was facially invalid. An as-applied challenge was brought in *Wisconsin Right to Life, Inc.* v. *Federal Election Comm'n*, 546 U. S. 410, 411–412 (2006) *(per curiam)*, and the Court confirmed that the challenge could be maintained. Then, in *WRTL*, the controlling opinion of the

Court not only entertained an as-applied challenge but also sustained it. Three Justices noted that they would continue to maintain the position that the record in *McConnell* demonstrated the invalidity of the Act on its face. 551 U. S., at 485–504 (opinion of SCALIA, J.). The controlling opinion in *WRTL*, which refrained from holding the statute invalid except as applied to the facts then before the Court, was a careful attempt to accept the essential elements of the Court's opinion in *McConnell*, while vindicating the First Amendment arguments made by the *WRTL* parties. 551 U. S., at 482 (opinion of ROBERTS, C. J.).

As noted above, Citizens United's narrower arguments are not sustainable under a fair reading of the statute. In the exercise of its judicial responsibility, it is necessary then for the Court to consider the facial validity of §441b. Any other course of decision would prolong the substantial, nation-wide chilling effect caused by §441b's prohibitions on corporate expenditures. Consideration of the facial validity of §441b is further supported by the following reasons.

First is the uncertainty caused by the litigating position of the Government. As discussed above, see Part II–D, *supra*, the Government suggests, as an alternative argument, that an as-applied challenge might have merit. This argument proceeds on the premise that the nonprofit corporation involved here may have received only *de minimis* donations from for-profit corporations and that some nonprofit corporations may be exempted from the operation of the statute. The Government also suggests that an as-applied challenge to §441b's ban on books may be successful, although it would defend §441b's ban as applied to almost every other form of media including pamphlets. See Tr. of Oral Arg. 65–66 (Sept. 9, 2009). The Government thus, by its own position, contributes to the uncertainty that §441b causes. When the Government

holds out the possibility of ruling for Citizens United on a narrow ground yet refrains from adopting that position, the added uncertainty demonstrates the necessity to address the question of statutory validity.

Second, substantial time would be required to bring clarity to the application of the statutory provision on these points in order to avoid any chilling effect caused by some improper interpretation. See Part II–C, *supra*. It is well known that the public begins to concentrate on elections only in the weeks immediately before they are held. There are short timeframes in which speech can have influence. The need or relevance of the speech will often first be apparent at this stage in the campaign. The decision to speak is made in the heat of political campaigns, when speakers react to messages conveyed by others. A speaker's ability to engage in political speech that could have a chance of persuading voters is stifled if the speaker must first commence a protracted lawsuit. By the time the lawsuit concludes, the election will be over and the litigants in most cases will have neither the incentive nor, perhaps, the resources to carry on, even if they could establish that the case is not moot because the issue is "capable of repetition, yet evading review." *WRTL*, *supra*, at 462 (opinion of ROBERTS, C. J.) (citing *Los Angeles* v. *Lyons*, 461 U. S. 95, 109 (1983); *Southern Pacific Terminal Co.* v. *ICC*, 219 U. S. 498, 515 (1911)). Here, Citizens United decided to litigate its case to the end. Today, Citizens United finally learns, two years after the fact, whether it could have spoken during the 2008 Presidential primary—long after the opportunity to persuade primary voters has passed.

Third is the primary importance of speech itself to the integrity of the election process. As additional rules are created for regulating political speech, any speech arguably within their reach is chilled. See Part II–A, *supra*. Campaign finance regulations now impose "unique and

complex rules" on "71 distinct entities." Brief for Seven Former Chairmen of FEC et al. as *Amici Curiae* 11–12. These entities are subject to separate rules for 33 different types of political speech. *Id.*, at 14–15, n. 10. The FEC has adopted 568 pages of regulations, 1,278 pages of explanations and justifications for those regulations, and 1,771 advisory opinions since 1975. See *id.*, at 6, n. 7. In fact, after this Court in *WRTL* adopted an objective "appeal to vote" test for determining whether a communication was the functional equivalent of express advocacy, 551 U. S., at 470 (opinion of ROBERTS, C. J.), the FEC adopted a two-part, 11-factor balancing test to implement *WRTL*'s ruling. See 11 CFR §114.15; Brief for Wyoming Liberty Group et al. as *Amici Curiae* 17–27 (filed Jan. 15, 2009).

This regulatory scheme may not be a prior restraint on speech in the strict sense of that term, for prospective speakers are not compelled by law to seek an advisory opinion from the FEC before the speech takes place. Cf. *Near* v. *Minnesota ex rel. Olson*, 283 U. S. 697, 712–713 (1931). As a practical matter, however, given the complexity of the regulations and the deference courts show to administrative determinations, a speaker who wants to avoid threats of criminal liability and the heavy costs of defending against FEC enforcement must ask a governmental agency for prior permission to speak. See 2 U. S. C. §437f; 11 CFR §112.1. These onerous restrictions thus function as the equivalent of prior restraint by giving the FEC power analogous to licensing laws implemented in 16th- and 17th-century England, laws and governmental practices of the sort that the First Amendment was drawn to prohibit. See *Thomas* v. *Chicago Park Dist.*, 534 U. S. 316, 320 (2002); *Lovell* v. *City of Griffin*, 303 U. S. 444, 451–452 (1938); *Near*, *supra*, at 713–714. Because the FEC's "business is to censor, there inheres the danger that [it] may well be less responsive than a court—part of

an independent branch of government—to the constitutionally protected interests in free expression." *Freedman* v. *Maryland*, 380 U. S. 51, 57–58 (1965). When the FEC issues advisory opinions that prohibit speech, "[m]any persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation, will choose simply to abstain from protected speech—harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas." *Virginia* v. *Hicks*, 539 U. S. 113, 119 (2003) (citation omitted). Consequently, "the censor's determination may in practice be final." *Freedman*, *supra*, at 58.

This is precisely what *WRTL* sought to avoid. *WRTL* said that First Amendment standards "must eschew 'the open-ended rough-and-tumble of factors,' which 'invit[es] complex argument in a trial court and a virtually inevitable appeal.'" 551 U. S., at 469 (opinion of ROBERTS, C. J.) (quoting *Jerome B. Grubart, Inc.* v. *Great Lakes Dredge & Dock Co.*, 513 U. S. 527, 547 (1995); alteration in original). Yet, the FEC has created a regime that allows it to select what political speech is safe for public consumption by applying ambiguous tests. If parties want to avoid litigation and the possibility of civil and criminal penalties, they must either refrain from speaking or ask the FEC to issue an advisory opinion approving of the political speech in question. Government officials pore over each word of a text to see if, in their judgment, it accords with the 11-factor test they have promulgated. This is an unprecedented governmental intervention into the realm of speech.

The ongoing chill upon speech that is beyond all doubt protected makes it necessary in this case to invoke the earlier precedents that a statute which chills speech can and must be invalidated where its facial invalidity has been demonstrated. See *WRTL*, *supra*, at 482–483 (ALITO,

J., concurring); *Thornhill* v. *Alabama*, 310 U. S. 88, 97–98 (1940). For these reasons we find it necessary to reconsider *Austin*.

III

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." Laws enacted to control or suppress speech may operate at different points in the speech process. The following are just a few examples of restrictions that have been attempted at different stages of the speech process—all laws found to be invalid: restrictions requiring a permit at the outset, *Watchtower Bible & Tract Soc. of N. Y., Inc.* v. *Village of Stratton*, 536 U. S. 150, 153 (2002); imposing a burden by impounding proceeds on receipts or royalties, *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 108, 123 (1991); seeking to exact a cost after the speech occurs, *New York Times Co.* v. *Sullivan*, 376 U. S., at 267; and subjecting the speaker to criminal penalties, *Brandenburg* v. *Ohio*, 395 U. S. 444, 445 (1969) *(per curiam)*.

The law before us is an outright ban, backed by criminal sanctions. Section 441b makes it a felony for all corporations—including nonprofit advocacy corporations—either to expressly advocate the election or defeat of candidates or to broadcast electioneering communications within 30 days of a primary election and 60 days of a general election. Thus, the following acts would all be felonies under §441b: The Sierra Club runs an ad, within the crucial phase of 60 days before the general election, that exhorts the public to disapprove of a Congressman who favors logging in national forests; the National Rifle Association publishes a book urging the public to vote for the challenger because the incumbent U. S. Senator supports a handgun ban; and the American Civil Liberties Union creates a Web site telling the public to vote for a Presiden-

tial candidate in light of that candidate's defense of free speech. These prohibitions are classic examples of censorship.

Section 441b is a ban on corporate speech notwithstanding the fact that a PAC created by a corporation can still speak. See *McConnell*, 540 U. S., at 330–333 (opinion of KENNEDY, J.). A PAC is a separate association from the corporation. So the PAC exemption from §441b's expenditure ban, §441b(b)(2), does not allow corporations to speak. Even if a PAC could somehow allow a corporation to speak—and it does not—the option to form PACs does not alleviate the First Amendment problems with §441b. PACs are burdensome alternatives; they are expensive to administer and subject to extensive regulations. For example, every PAC must appoint a treasurer, forward donations to the treasurer promptly, keep detailed records of the identities of the persons making donations, preserve receipts for three years, and file an organization statement and report changes to this information within 10 days. See *id.*, at 330–332 (quoting *MCFL*, 479 U. S., at 253–254).

And that is just the beginning. PACs must file detailed monthly reports with the FEC, which are due at different times depending on the type of election that is about to occur:

> "'These reports must contain information regarding the amount of cash on hand; the total amount of receipts, detailed by 10 different categories; the identification of each political committee and candidate's authorized or affiliated committee making contributions, and any persons making loans, providing rebates, refunds, dividends, or interest or any other offset to operating expenditures in an aggregate amount over $200; the total amount of all disbursements, detailed by 12 different categories; the names of all authorized

> or affiliated committees to whom expenditures aggregating over $200 have been made; persons to whom loan repayments or refunds have been made; the total sum of all contributions, operating expenses, outstanding debts and obligations, and the settlement terms of the retirement of any debt or obligation.'" 540 U. S., at 331–332 (quoting *MCFL*, *supra*, at 253–254).

PACs have to comply with these regulations just to speak. This might explain why fewer than 2,000 of the millions of corporations in this country have PACs. See Brief for Seven Former Chairmen of FEC et al. as *Amici Curiae* 11 (citing FEC, Summary of PAC Activity 1990–2006, online at http://www.fec.gov/press/press2007/20071009pac/sumhistory.pdf); IRS, Statistics of Income: 2006, Corporation Income Tax Returns 2 (2009) (hereinafter Statistics of Income) (5.8 million for-profit corporations filed 2006 tax returns). PACs, furthermore, must exist before they can speak. Given the onerous restrictions, a corporation may not be able to establish a PAC in time to make its views known regarding candidates and issues in a current campaign.

Section 441b's prohibition on corporate independent expenditures is thus a ban on speech. As a "restriction on the amount of money a person or group can spend on political communication during a campaign," that statute "necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." *Buckley* v. *Valeo*, 424 U. S. 1, 19 (1976) *(per curiam)*. Were the Court to uphold these restrictions, the Government could repress speech by silencing certain voices at any of the various points in the speech process. See *McConnell*, *supra*, at 251 (opinion of SCALIA, J.) (Government could repress speech by "attacking all levels of the production

and dissemination of ideas," for "effective public communication requires the speaker to make use of the services of others"). If §441b applied to individuals, no one would believe that it is merely a time, place, or manner restriction on speech. Its purpose and effect are to silence entities whose voices the Government deems to be suspect.

Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. See *Buckley*, *supra*, at 14–15 ("In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential"). The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. The First Amendment "'has its fullest and most urgent application' to speech uttered during a campaign for political office." *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214, 223 (1989) (quoting *Monitor Patriot Co.* v. *Roy*, 401 U. S. 265, 272 (1971)); see *Buckley*, *supra*, at 14 ("Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution").

For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are "subject to strict scrutiny," which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest." *WRTL*, 551 U. S., at 464 (opinion of ROBERTS, C. J.). While it might be maintained that political speech simply cannot be banned or restricted as a categorical matter, see *Simon & Schuster*, 502 U. S., at 124 (KENNEDY, J., concurring in judgment), the quoted language from *WRTL* provides a sufficient framework for protecting the relevant First Amendment interests in this case. We shall employ it

here.

Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints. See, *e.g.*, *United States* v. *Playboy Entertainment Group, Inc.*, 529 U. S. 803, 813 (2000) (striking down content-based restriction). Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. See *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 784 (1978). As instruments to censor, these categories are interrelated: Speech restrictions based on the identity of the speaker are all too often simply a means to control content.

Quite apart from the purpose or effect of regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each.

The Court has upheld a narrow class of speech restrictions that operate to the disadvantage of certain persons, but these rulings were based on an interest in allowing governmental entities to perform their functions. See, *e.g.*, *Bethel School Dist. No. 403* v. *Fraser*, 478 U. S. 675, 683 (1986) (protecting the "function of public school education"); *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U. S. 119, 129 (1977) (furthering "the legitimate penological objectives of the corrections system" (internal quotation marks omitted)); *Parker* v. *Levy*, 417 U. S. 733, 759 (1974) (ensuring "the capacity of the Government to discharge its [military] responsibilities" (internal quota-

tion marks omitted)); *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548, 557 (1973) ("[F]ederal service should depend upon meritorious performance rather than political service"). The corporate independent expenditures at issue in this case, however, would not interfere with governmental functions, so these cases are inapposite. These precedents stand only for the proposition that there are certain governmental functions that cannot operate without some restrictions on particular kinds of speech. By contrast, it is inherent in the nature of the political process that voters must be free to obtain information from diverse sources in order to determine how to cast their votes. At least before *Austin*, the Court had not allowed the exclusion of a class of speakers from the general public dialogue.

We find no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead us to this conclusion.

A

1

The Court has recognized that First Amendment protection extends to corporations. *Bellotti*, *supra*, at 778, n. 14 (citing *Linmark Associates, Inc.* v. *Willingboro*, 431 U. S. 85 (1977); *Time, Inc.* v. *Firestone*, 424 U. S. 448 (1976); *Doran* v. *Salem Inn, Inc.*, 422 U. S. 922 (1975); *Southeastern Promotions, Ltd.* v. *Conrad*, 420 U. S. 546 (1975); *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469 (1975); *Miami Herald Publishing Co.* v. *Tornillo*, 418 U. S. 241 (1974); *New York Times Co.* v. *United States*, 403 U. S. 713 (1971) *(per curiam)*; *Time, Inc.* v. *Hill*, 385 U. S. 374 (1967); *New York Times Co.* v. *Sullivan*, 376 U. S. 254; *Kingsley Int'l Pictures Corp.* v. *Regents of Univ. of N. Y.*, 360 U. S. 684 (1959); *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495 (1952)); see, *e.g.*, *Turner Broadcasting System, Inc.* v. *FCC*,

520 U. S. 180 (1997); *Denver Area Ed. Telecommunications Consortium, Inc.* v. *FCC*, 518 U. S. 727 (1996); *Turner*, 512 U. S. 622; *Simon & Schuster*, 502 U. S. 105; *Sable Communications of Cal., Inc.* v. *FCC*, 492 U. S. 115 (1989); *Florida Star* v. *B. J. F.*, 491 U. S. 524 (1989); *Philadelphia Newspapers, Inc.* v. *Hepps*, 475 U. S. 767 (1986); *Landmark Communications, Inc.* v. *Virginia*, 435 U. S. 829 (1978); *Young* v. *American Mini Theatres, Inc.*, 427 U. S. 50 (1976); *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323 (1974); *Greenbelt Cooperative Publishing Assn., Inc.* v. *Bresler*, 398 U. S. 6 (1970).

This protection has been extended by explicit holdings to the context of political speech. See, *e.g.*, *Button*, 371 U. S., at 428–429; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 244 (1936). Under the rationale of these precedents, political speech does not lose First Amendment protection "simply because its source is a corporation." *Bellotti, supra,* at 784; see *Pacific Gas & Elec. Co.* v. *Public Util. Comm'n of Cal.*, 475 U. S. 1, 8 (1986) (plurality opinion) ("The identity of the speaker is not decisive in determining whether speech is protected. Corporations and other associations, like individuals, contribute to the 'discussion, debate, and the dissemination of information and ideas' that the First Amendment seeks to foster" (quoting *Bellotti,* 435 U. S., at 783)). The Court has thus rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not "natural persons." *Id.,* at 776; see *id.*, at 780, n. 16. Cf. *id.*, at 828 (Rehnquist, J., dissenting).

At least since the latter part of the 19th century, the laws of some States and of the United States imposed a ban on corporate direct contributions to candidates. See B. Smith, Unfree Speech: The Folly of Campaign Finance Reform 23 (2001). Yet not until 1947 did Congress first prohibit independent expenditures by corporations and

labor unions in §304 of the Labor Management Relations Act 1947, 61 Stat. 159 (codified at 2 U. S. C. §251 (1946 ed., Supp. I)). In passing this Act Congress overrode the veto of President Truman, who warned that the expenditure ban was a "dangerous intrusion on free speech." Message from the President of the United States, H. R. Doc. No. 334, 89th Cong., 1st Sess., 9 (1947).

For almost three decades thereafter, the Court did not reach the question whether restrictions on corporate and union expenditures are constitutional. See *WRTL*, 551 U. S., at 502 (opinion of SCALIA, J.). The question was in the background of *United States* v. *CIO*, 335 U. S. 106 (1948). There, a labor union endorsed a congressional candidate in its weekly periodical. The Court stated that "the gravest doubt would arise in our minds as to [the federal expenditure prohibition's] constitutionality" if it were construed to suppress that writing. *Id.*, at 121. The Court engaged in statutory interpretation and found the statute did not cover the publication. *Id.*, at 121–122, and n. 20. Four Justices, however, said they would reach the constitutional question and invalidate the Labor Management Relations Act's expenditure ban. *Id.*, at 155 (Rutledge, J., joined by Black, Douglas, and Murphy, JJ., concurring in result). The concurrence explained that any "'undue influence'" generated by a speaker's "large expenditures" was outweighed "by the loss for democratic processes resulting from the restrictions upon free and full public discussion." *Id.*, at 143.

In *United States* v. *Automobile Workers*, 352 U. S. 567 (1957), the Court again encountered the independent expenditure ban, which had been recodified at 18 U. S. C. §610 (1952 ed.). See 62 Stat. 723–724. After holding only that a union television broadcast that endorsed candidates was covered by the statute, the Court "[r]efus[ed] to anticipate constitutional questions" and remanded for the trial to proceed. 352 U. S., at 591. Three Justices dis-

sented, arguing that the Court should have reached the constitutional question and that the ban on independent expenditures was unconstitutional:

> "Under our Constitution it is We The People who are sovereign. The people have the final say. The legislators are their spokesmen. The people determine through their votes the destiny of the nation. It is therefore important—vitally important—that all channels of communications be open to them during every election, that no point of view be restrained or barred, and that the people have access to the views of every group in the community." *Id.*, at 593 (opinion of Douglas, J., joined by Warren, C. J., and Black, J.).

The dissent concluded that deeming a particular group "too powerful" was not a "justificatio[n] for withholding First Amendment rights from any group—labor or corporate." *Id.*, at 597. The Court did not get another opportunity to consider the constitutional question in that case; for after a remand, a jury found the defendants not guilty. See Hayward, Revisiting the Fable of Reform, 45 Harv. J. Legis. 421, 463 (2008).

Later, in *Pipefitters* v. *United States*, 407 U. S. 385, 400–401 (1972), the Court reversed a conviction for expenditure of union funds for political speech—again without reaching the constitutional question. The Court would not resolve that question for another four years.

2

In *Buckley*, 424 U. S. 1, the Court addressed various challenges to the Federal Election Campaign Act of 1971 (FECA) as amended in 1974. These amendments created 18 U. S. C. §608(e) (1970 ed., Supp. V), see 88 Stat. 1265, an independent expenditure ban separate from §610 that applied to individuals as well as corporations and labor unions, *Buckley*, 424 U. S., at 23, 39, and n. 45.

Before addressing the constitutionality of §608(e)'s independent expenditure ban, *Buckley* first upheld §608(b), FECA's limits on direct contributions to candidates. The *Buckley* Court recognized a "sufficiently important" governmental interest in "the prevention of corruption and the appearance of corruption." *Id.*, at 25; see *id.*, at 26. This followed from the Court's concern that large contributions could be given "to secure a political *quid pro quo*." *Ibid.*

The *Buckley* Court explained that the potential for *quid pro quo* corruption distinguished direct contributions to candidates from independent expenditures. The Court emphasized that "the independent expenditure ceiling . . . fails to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process," *id.*, at 47–48, because "[t]he absence of prearrangement and coordination . . . alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate," *id.*, at 47. *Buckley* invalidated §608(e)'s restrictions on independent expenditures, with only one Justice dissenting. See *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 491, n. 3 (1985) *(NCPAC)*.

Buckley did not consider §610's separate ban on corporate and union independent expenditures, the prohibition that had also been in the background in *CIO*, *Automobile Workers*, and *Pipefitters*. Had §610 been challenged in the wake of *Buckley*, however, it could not have been squared with the reasoning and analysis of that precedent. See *WRTL*, *supra*, at 487 (opinion of SCALIA, J.) ("*Buckley* might well have been the last word on limitations on independent expenditures"); *Austin*, 494 U. S., at 683 (SCALIA, J., dissenting). The expenditure ban invalidated in *Buckley*, §608(e), applied to corporations and unions, 424 U. S., at 23, 39, n. 45; and some of the prevailing plaintiffs in *Buckley* were corporations, *id.*, at 8. The

Buckley Court did not invoke the First Amendment's overbreadth doctrine, see *Broadrick* v. *Oklahoma*, 413 U. S. 601, 615 (1973), to suggest that §608(e)'s expenditure ban would have been constitutional if it had applied only to corporations and not to individuals, 424 U. S., at 50. *Buckley* cited with approval the *Automobile Workers* dissent, which argued that §610 was unconstitutional. 424 U. S., at 43 (citing 352 U. S., at 595–596 (opinion of Douglas, J.)).

Notwithstanding this precedent, Congress recodified §610's corporate and union expenditure ban at 2 U. S. C. §441b four months after *Buckley* was decided. See 90 Stat. 490. Section 441b is the independent expenditure restriction challenged here.

Less than two years after *Buckley*, *Bellotti*, 435 U. S. 765, reaffirmed the First Amendment principle that the Government cannot restrict political speech based on the speaker's corporate identity. *Bellotti* could not have been clearer when it struck down a state-law prohibition on corporate independent expenditures related to referenda issues:

> "We thus find no support in the First . . . Amendment, or in the decisions of this Court, for the proposition that speech that otherwise would be within the protection of the First Amendment loses that protection simply because its source is a corporation that cannot prove, to the satisfaction of a court, a material effect on its business or property. . . . [That proposition] amounts to an impermissible legislative prohibition of speech based on the identity of the interests that spokesmen may represent in public debate over controversial issues and a requirement that the speaker have a sufficiently great interest in the subject to justify communication.

> "In the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue." *Id.*, at 784–785.

It is important to note that the reasoning and holding of *Bellotti* did not rest on the existence of a viewpoint-discriminatory statute. It rested on the principle that the Government lacks the power to ban corporations from speaking.

Bellotti did not address the constitutionality of the State's ban on corporate independent expenditures to support candidates. In our view, however, that restriction would have been unconstitutional under *Bellotti*'s central principle: that the First Amendment does not allow political speech restrictions based on a speaker's corporate identity. See *ibid.*

3

Thus the law stood until *Austin*. *Austin* "uph[eld] a direct restriction on the independent expenditure of funds for political speech for the first time in [this Court's] history." 494 U. S., at 695 (KENNEDY, J., dissenting). There, the Michigan Chamber of Commerce sought to use general treasury funds to run a newspaper ad supporting a specific candidate. Michigan law, however, prohibited corporate independent expenditures that supported or opposed any candidate for state office. A violation of the law was punishable as a felony. The Court sustained the speech prohibition.

To bypass *Buckley* and *Bellotti*, the *Austin* Court identified a new governmental interest in limiting political speech: an antidistortion interest. *Austin* found a compelling governmental interest in preventing "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's sup-

port for the corporation's political ideas." 494 U. S., at 660; see *id.*, at 659 (citing *MCFL,* 479 U. S., at 257; *NCPAC,* 470 U. S., at 500–501).

B

The Court is thus confronted with conflicting lines of precedent: a pre-*Austin* line that forbids restrictions on political speech based on the speaker's corporate identity and a post-*Austin* line that permits them. No case before *Austin* had held that Congress could prohibit independent expenditures for political speech based on the speaker's corporate identity. Before *Austin* Congress had enacted legislation for this purpose, and the Government urged the same proposition before this Court. See *MCFL, supra,* at 257 (FEC posited that Congress intended to "curb the political influence of 'those who exercise control over large aggregations of capital'" (quoting *Automobile Workers, supra,* at 585)); *California Medical Assn.* v. *Federal Election Comm'n,* 453 U. S. 182, 201 (1981) (Congress believed that "differing structures and purposes" of corporations and unions "may require different forms of regulation in order to protect the integrity of the electoral process"). In neither of these cases did the Court adopt the proposition.

In its defense of the corporate-speech restrictions in §441b, the Government notes the antidistortion rationale on which *Austin* and its progeny rest in part, yet it all but abandons reliance upon it. It argues instead that two other compelling interests support *Austin*'s holding that corporate expenditure restrictions are constitutional: an anticorruption interest, see 494 U. S., at 678 (STEVENS, J., concurring), and a shareholder-protection interest, see *id.*, at 674–675 (Brennan, J., concurring). We consider the three points in turn.

1

As for *Austin*'s antidistortion rationale, the Government

does little to defend it. See Tr. of Oral Arg. 45–48 (Sept. 9, 2009). And with good reason, for the rationale cannot support §441b.

If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech. If the antidistortion rationale were to be accepted, however, it would permit Government to ban political speech simply because the speaker is an association that has taken on the corporate form. The Government contends that *Austin* permits it to ban corporate expenditures for almost all forms of communication stemming from a corporation. See Part II–E, *supra;* Tr. of Oral Arg. 66 (Sept. 9, 2009); see also *id.*, at 26–31 (Mar. 24, 2009). If *Austin* were correct, the Government could prohibit a corporation from expressing political views in media beyond those presented here, such as by printing books. The Government responds "that the FEC has never applied this statute to a book," and if it did, "there would be quite [a] good as-applied challenge." Tr. of Oral Arg. 65 (Sept. 9, 2009). This troubling assertion of brooding governmental power cannot be reconciled with the confidence and stability in civic discourse that the First Amendment must secure.

Political speech is "indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual." *Bellotti,* 435 U. S., at 777 (footnote omitted); see *ibid.* (the worth of speech "does not depend upon the identity of its source, whether corporation, association, union, or individual"); *Buckley*, 424 U. S., at 48–49 ("[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment"); *Automobile Workers*, 352 U. S., at 597 (Douglas, J., dissenting); *CIO*, 335 U. S., at 154–155 (Rutledge, J., concurring in result). This protection for speech is inconsistent with *Austin*'s

antidistortion rationale. *Austin* sought to defend the antidistortion rationale as a means to prevent corporations from obtaining "'an unfair advantage in the political marketplace'" by using "'resources amassed in the economic marketplace.'" 494 U. S., at 659 (quoting *MCFL*, *supra*, at 257). But *Buckley* rejected the premise that the Government has an interest "in equalizing the relative ability of individuals and groups to influence the outcome of elections." 424 U. S., at 48; see *Bellotti*, *supra*, at 791, n. 30. *Buckley* was specific in stating that "the skyrocketing cost of political campaigns" could not sustain the governmental prohibition. 424 U. S., at 26. The First Amendment's protections do not depend on the speaker's "financial ability to engage in public discussion." *Id.*, at 49.

The Court reaffirmed these conclusions when it invalidated the BCRA provision that increased the cap on contributions to one candidate if the opponent made certain expenditures from personal funds. See *Davis* v. *Federal Election Comm'n*, 554 U. S. ___, ___ (2008) (slip op., at 16) ("Leveling electoral opportunities means making and implementing judgments about which strengths should be permitted to contribute to the outcome of an election. The Constitution, however, confers upon voters, not Congress, the power to choose the Members of the House of Representatives, Art. I, §2, and it is a dangerous business for Congress to use the election laws to influence the voters' choices"). The rule that political speech cannot be limited based on a speaker's wealth is a necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker's identity.

Either as support for its antidistortion rationale or as a further argument, the *Austin* majority undertook to distinguish wealthy individuals from corporations on the ground that "[s]tate law grants corporations special ad-

vantages—such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets." 494 U. S., at 658–659. This does not suffice, however, to allow laws prohibiting speech. "It is rudimentary that the State cannot exact as the price of those special advantages the forfeiture of First Amendment rights." *Id.*, at 680 (SCALIA, J., dissenting).

It is irrelevant for purposes of the First Amendment that corporate funds may "have little or no correlation to the public's support for the corporation's political ideas." *Id.*, at 660 (majority opinion). All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech. The First Amendment protects the resulting speech, even if it was enabled by economic transactions with persons or entities who disagree with the speaker's ideas. See *id.*, at 707 (KENNEDY, J., dissenting) ("Many persons can trace their funds to corporations, if not in the form of donations, then in the form of dividends, interest, or salary").

Austin's antidistortion rationale would produce the dangerous, and unacceptable, consequence that Congress could ban political speech of media corporations. See *McConnell*, 540 U. S., at 283 (opinion of THOMAS, J.) ("The chilling endpoint of the Court's reasoning is not difficult to foresee: outright regulation of the press"). Cf. *Tornillo*, 418 U. S., at 250 (alleging the existence of "vast accumulations of unreviewable power in the modern media empires"). Media corporations are now exempt from §441b's ban on corporate expenditures. See 2 U. S. C. §§431(9)(B)(i), 434(f)(3)(B)(i). Yet media corporations accumulate wealth with the help of the corporate form, the largest media corporations have "immense aggregations of wealth," and the views expressed by media corporations often "have little or no correlation to the public's support" for those views. *Austin*, 494 U. S., at 660. Thus, under the Government's reasoning, wealthy media corporations

could have their voices diminished to put them on par with other media entities. There is no precedent for permitting this under the First Amendment.

The media exemption discloses further difficulties with the law now under consideration. There is no precedent supporting laws that attempt to distinguish between corporations which are deemed to be exempt as media corporations and those which are not. "We have consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers." *Id.*, at 691 (SCALIA, J., dissenting) (citing *Bellotti,* 435 U. S., at 782); see *Dun & Bradstreet, Inc.* v. *Greenmoss Builders, Inc.*, 472 U. S. 749, 784 (1985) (Brennan, J., joined by Marshall, Blackmun, and STEVENS, JJ., dissenting); *id.*, at 773 (White, J., concurring in judgment). With the advent of the Internet and the decline of print and broadcast media, moreover, the line between the media and others who wish to comment on political and social issues becomes far more blurred.

The law's exception for media corporations is, on its own terms, all but an admission of the invalidity of the antidistortion rationale. And the exemption results in a further, separate reason for finding this law invalid: Again by its own terms, the law exempts some corporations but covers others, even though both have the need or the motive to communicate their views. The exemption applies to media corporations owned or controlled by corporations that have diverse and substantial investments and participate in endeavors other than news. So even assuming the most doubtful proposition that a news organization has a right to speak when others do not, the exemption would allow a conglomerate that owns both a media business and an unrelated business to influence or control the media in order to advance its overall business interest. At the same time, some other corporation, with an identical business interest but no media outlet in its ownership structure,

would be forbidden to speak or inform the public about the same issue. This differential treatment cannot be squared with the First Amendment.

There is simply no support for the view that the First Amendment, as originally understood, would permit the suppression of political speech by media corporations. The Framers may not have anticipated modern business and media corporations. See *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334, 360–361 (1995) (THOMAS, J., concurring in judgment). Yet television networks and major newspapers owned by media corporations have become the most important means of mass communication in modern times. The First Amendment was certainly not understood to condone the suppression of political speech in society's most salient media. It was understood as a response to the repression of speech and the press that had existed in England and the heavy taxes on the press that were imposed in the colonies. See *McConnell*, 540 U. S., at 252–253 (opinion of SCALIA, J.); *Grosjean*, 297 U. S., at 245–248; *Near*, 283 U. S., at 713–714. The great debates between the Federalists and the Anti-Federalists over our founding document were published and expressed in the most important means of mass communication of that era—newspapers owned by individuals. See *McIntyre*, 514 U. S., at 341–343; *id.*, at 367 (THOMAS, J., concurring in judgment). At the founding, speech was open, comprehensive, and vital to society's definition of itself; there were no limits on the sources of speech and knowledge. See B. Bailyn, Ideological Origins of the American Revolution 5 (1967) ("Any number of people could join in such proliferating polemics, and rebuttals could come from all sides"); G. Wood, Creation of the American Republic 1776–1787, p. 6 (1969) ("[I]t is not surprising that the intellectual sources of [the Americans'] Revolutionary thought were profuse and various"). The Framers may have been unaware of certain types of speakers or forms of

communication, but that does not mean that those speakers and media are entitled to less First Amendment protection than those types of speakers and media that provided the means of communicating political ideas when the Bill of Rights was adopted.

Austin interferes with the "open marketplace" of ideas protected by the First Amendment. *New York State Bd. of Elections* v. *Lopez Torres*, 552 U. S. 196, 208 (2008); see *ibid.* (ideas "may compete" in this marketplace "without government interference"); *McConnell, supra*, at 274 (opinion of THOMAS, J.). It permits the Government to ban the political speech of millions of associations of citizens. See Statistics of Income 2 (5.8 million for-profit corporations filed 2006 tax returns). Most of these are small corporations without large amounts of wealth. See Supp. Brief for Chamber of Commerce of the United States of America as *Amicus Curiae* 1, 3 (96% of the 3 million businesses that belong to the U. S. Chamber of Commerce have fewer than 100 employees); M. Keightley, Congressional Research Service Report for Congress, Business Organizational Choices: Taxation and Responses to Legislative Changes 10 (2009) (more than 75% of corporations whose income is taxed under federal law, see 26 U. S. C. §301, have less than $1 million in receipts per year). This fact belies the Government's argument that the statute is justified on the ground that it prevents the "distorting effects of immense aggregations of wealth." *Austin*, 494 U. S., at 660. It is not even aimed at amassed wealth.

The censorship we now confront is vast in its reach. The Government has "muffle[d] the voices that best represent the most significant segments of the economy." *McConnell, supra,* at 257–258 (opinion of SCALIA, J.). And "the electorate [has been] deprived of information, knowledge and opinion vital to its function." *CIO*, 335 U. S., at 144 (Rutledge, J., concurring in result). By suppressing the speech of manifold corporations, both for-profit and non-

profit, the Government prevents their voices and viewpoints from reaching the public and advising voters on which persons or entities are hostile to their interests. Factions will necessarily form in our Republic, but the remedy of "destroying the liberty" of some factions is "worse than the disease." The Federalist No. 10, p. 130 (B. Wright ed. 1961) (J. Madison). Factions should be checked by permitting them all to speak, see *ibid.*, and by entrusting the people to judge what is true and what is false.

The purpose and effect of this law is to prevent corporations, including small and nonprofit corporations, from presenting both facts and opinions to the public. This makes *Austin*'s antidistortion rationale all the more an aberration. "[T]he First Amendment protects the right of corporations to petition legislative and administrative bodies." *Bellotti*, 435 U. S., at 792, n. 31 (citing *California Motor Transport Co.* v. *Trucking Unlimited*, 404 U. S. 508, 510–511 (1972); *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U. S. 127, 137–138 (1961)). Corporate executives and employees counsel Members of Congress and Presidential administrations on many issues, as a matter of routine and often in private. An *amici* brief filed on behalf of Montana and 25 other States notes that lobbying and corporate communications with elected officials occur on a regular basis. Brief for State of Montana et al. as *Amici Curiae* 19. When that phenomenon is coupled with §441b, the result is that smaller or nonprofit corporations cannot raise a voice to object when other corporations, including those with vast wealth, are cooperating with the Government. That cooperation may sometimes be voluntary, or it may be at the demand of a Government official who uses his or her authority, influence, and power to threaten corporations to support the Government's policies. Those kinds of interactions are often unknown and unseen. The speech that §441b forbids, though, is public, and all can judge its content and

purpose. References to massive corporate treasuries should not mask the real operation of this law. Rhetoric ought not obscure reality.

Even if §441b's expenditure ban were constitutional, wealthy corporations could still lobby elected officials, although smaller corporations may not have the resources to do so. And wealthy individuals and unincorporated associations can spend unlimited amounts on independent expenditures. See, *e.g.*, *WRTL*, 551 U. S., at 503–504 (opinion of SCALIA, J.) ("In the 2004 election cycle, a mere 24 individuals contributed an astounding total of $142 million to [26 U. S. C. §527 organizations]"). Yet certain disfavored associations of citizens—those that have taken on the corporate form—are penalized for engaging in the same political speech.

When Government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.

2

What we have said also shows the invalidity of other arguments made by the Government. For the most part relinquishing the antidistortion rationale, the Government falls back on the argument that corporate political speech can be banned in order to prevent corruption or its appearance. In *Buckley*, the Court found this interest "sufficiently important" to allow limits on contributions but did not extend that reasoning to expenditure limits. 424 U. S., at 25. When *Buckley* examined an expenditure ban, it found "that the governmental interest in preventing corruption and the appearance of corruption [was] inadequate to justify [the ban] on independent expenditures." *Id.*, at 45.

With regard to large direct contributions, *Buckley* reasoned that they could be given "to secure a political *quid pro quo*," *id.*, at 26, and that "the scope of such pernicious practices can never be reliably ascertained," *id.*, at 27. The practices *Buckley* noted would be covered by bribery laws, see, *e.g.*, 18 U. S. C. §201, if a *quid pro quo* arrangement were proved. See *Buckley, supra,* at 27, and n. 28 (citing *Buckley* v. *Valeo*, 519 F. 2d 821, 839–840, and nn. 36–38 (CADC 1975) (en banc) *(per curiam)*). The Court, in consequence, has noted that restrictions on direct contributions are preventative, because few if any contributions to candidates will involve *quid pro quo* arrangements. *MCFL*, 479 U. S., at 260; *NCPAC*, 470 U. S., at 500; *Federal Election Comm'n* v. *National Right to Work Comm.*, 459 U. S. 197, 210 (1982) *(NRWC)*. The *Buckley* Court, nevertheless, sustained limits on direct contributions in order to ensure against the reality or appearance of corruption. That case did not extend this rationale to independent expenditures, and the Court does not do so here.

"The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Buckley*, 424 U. S., at 47; see *ibid.* (independent expenditures have a "substantially diminished potential for abuse"). Limits on independent expenditures, such as §441b, have a chilling effect extending well beyond the Government's interest in preventing *quid pro quo* corruption. The anticorruption interest is not sufficient to displace the speech here in question. Indeed, 26 States do not restrict independent expenditures by for-profit corporations. The Government does not claim that these expenditures have corrupted the political process in those States. See Supp. Brief for Appellee 18, n. 3; Supp. Brief for Chamber of Commerce of the United States of

America as *Amicus Curiae* 8–9, n. 5.

A single footnote in *Bellotti* purported to leave open the possibility that corporate independent expenditures could be shown to cause corruption. 435 U. S., at 788, n. 26. For the reasons explained above, we now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption. Dicta in *Bellotti*'s footnote suggested that "a corporation's right to speak on issues of general public interest implies no comparable right in the quite different context of participation in a political campaign for election to public office." *Ibid.* Citing the portion of *Buckley* that invalidated the federal independent expenditure ban, 424 U. S., at 46, and a law review student comment, *Bellotti* surmised that "Congress might well be able to demonstrate the existence of a danger of real or apparent corruption in independent expenditures by corporations to influence candidate elections." 435 U. S., at 788, n. 26. *Buckley*, however, struck down a ban on independent expenditures to support candidates that covered corporations, 424 U. S., at 23, 39, n. 45, and explained that "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application," *id.*, at 42. *Bellotti*'s dictum is thus supported only by a law review student comment, which misinterpreted *Buckley*. See Comment, The Regulation of Union Political Activity: Majority and Minority Rights and Remedies, 126 U. Pa. L. Rev. 386, 408 (1977) (suggesting that "corporations and labor unions should be held to different and more stringent standards than an individual or other associations under a regulatory scheme for campaign financing").

Seizing on this aside in *Bellotti*'s footnote, the Court in *NRWC* did say there is a "sufficient" governmental interest in "ensur[ing] that substantial aggregations of wealth amassed" by corporations would not "be used to incur

political debts from legislators who are aided by the contributions." 459 U. S., at 207–208 (citing *Automobile Workers*, 352 U. S., at 579); see 459 U. S., at 210, and n. 7; *NCPAC, supra*, at 500–501 (*NRWC* suggested a governmental interest in restricting "the influence of political war chests funneled through the corporate form"). *NRWC*, however, has little relevance here. *NRWC* decided no more than that a restriction on a corporation's ability to solicit funds for its segregated PAC, which made direct contributions to candidates, did not violate the First Amendment. 459 U. S., at 206. *NRWC* thus involved contribution limits, see *NCPAC, supra*, at 495–496, which, unlike limits on independent expenditures, have been an accepted means to prevent *quid pro quo* corruption, see *McConnell*, 540 U. S., at 136–138, and n. 40; *MCFL, supra*, at 259–260. Citizens United has not made direct contributions to candidates, and it has not suggested that the Court should reconsider whether contribution limits should be subjected to rigorous First Amendment scrutiny.

When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption. See *McConnell, supra*, at 296–298 (opinion of KENNEDY, J.) (citing *Buckley, supra*, at 26–28, 30, 46–48); *NCPAC*, 470 U. S., at 497 ("The hallmark of corruption is the financial *quid pro quo:* dollars for political favors"); *id.*, at 498. The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt:

> "Favoritism and influence are not . . . avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies. It is well understood that a substantial and legitimate reason, if not the

> only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness." *McConnell*, 540 U. S., at 297 (opinion of KENNEDY, J.).

Reliance on a "generic favoritism or influence theory . . . is at odds with standard First Amendment analyses because it is unbounded and susceptible to no limiting principle." *Id.*, at 296.

The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy. By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate. See *Buckley*, *supra*, at 46. The fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials. This is inconsistent with any suggestion that the electorate will refuse "'to take part in democratic governance'" because of additional political speech made by a corporation or any other speaker. *McConnell*, *supra*, at 144 (quoting *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 390 (2000)).

Caperton v. *A. T. Massey Coal Co.*, 556 U. S. ___ (2009), is not to the contrary. *Caperton* held that a judge was required to recuse himself "when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent." *Id.*, at ___ (slip op., at 14). The remedy of recusal was based on a litigant's due process right to a fair trial before an unbiased judge. See *Withrow* v. *Larkin*, 421 U. S. 35, 46 (1975). *Caperton*'s holding was limited to the rule that the judge must be

recused, not that the litigant's political speech could be banned.

The *McConnell* record was "over 100,000 pages" long, *McConnell I*, 251 F. Supp. 2d, at 209, yet it "does not have any direct examples of votes being exchanged for . . . expenditures," *id.*, at 560 (opinion of Kollar-Kotelly, J.). This confirms *Buckley*'s reasoning that independent expenditures do not lead to, or create the appearance of, *quid pro quo* corruption. In fact, there is only scant evidence that independent expenditures even ingratiate. See 251 F. Supp. 2d, at 555–557 (opinion of Kollar-Kotelly, J.). Ingratiation and access, in any event, are not corruption. The BCRA record establishes that certain donations to political parties, called "soft money," were made to gain access to elected officials. *McConnell*, *supra*, at 125, 130–131, 146–152; see *McConnell I*, 251 F. Supp. 2d, at 471–481, 491–506 (opinion of Kollar-Kotelly, J.); *id.*, at 842–843, 858–859 (opinion of Leon, J.). This case, however, is about independent expenditures, not soft money. When Congress finds that a problem exists, we must give that finding due deference; but Congress may not choose an unconstitutional remedy. If elected officials succumb to improper influences from independent expenditures; if they surrender their best judgment; and if they put expediency before principle, then surely there is cause for concern. We must give weight to attempts by Congress to seek to dispel either the appearance or the reality of these influences. The remedies enacted by law, however, must comply with the First Amendment; and, it is our law and our tradition that more speech, not less, is the governing rule. An outright ban on corporate political speech during the critical preelection period is not a permissible remedy. Here Congress has created categorical bans on speech that are asymmetrical to preventing *quid pro quo* corruption.

3

The Government contends further that corporate independent expenditures can be limited because of its interest in protecting dissenting shareholders from being compelled to fund corporate political speech. This asserted interest, like *Austin*'s antidistortion rationale, would allow the Government to ban the political speech even of media corporations. See *supra*, at 35–37. Assume, for example, that a shareholder of a corporation that owns a newspaper disagrees with the political views the newspaper expresses. See *Austin*, 494 U. S., at 687 (SCALIA, J., dissenting). Under the Government's view, that potential disagreement could give the Government the authority to restrict the media corporation's political speech. The First Amendment does not allow that power. There is, furthermore, little evidence of abuse that cannot be corrected by shareholders "through the procedures of corporate democracy." *Bellotti*, 435 U. S., at 794; see *id.*, at 794, n. 34.

Those reasons are sufficient to reject this shareholder-protection interest; and, moreover, the statute is both underinclusive and overinclusive. As to the first, if Congress had been seeking to protect dissenting shareholders, it would not have banned corporate speech in only certain media within 30 or 60 days before an election. A dissenting shareholder's interests would be implicated by speech in any media at any time. As to the second, the statute is overinclusive because it covers all corporations, including nonprofit corporations and for-profit corporations with only single shareholders. As to other corporations, the remedy is not to restrict speech but to consider and explore other regulatory mechanisms. The regulatory mechanism here, based on speech, contravenes the First Amendment.

4

We need not reach the question whether the Govern-

ment has a compelling interest in preventing foreign individuals or associations from influencing our Nation's political process. Cf. 2 U. S. C. §441e (contribution and expenditure ban applied to "foreign national[s]"). Section 441b is not limited to corporations or associations that were created in foreign countries or funded predominantly by foreign shareholders. Section 441b therefore would be overbroad even if we assumed, *arguendo*, that the Government has a compelling interest in limiting foreign influence over our political process. See *Broadrick*, 413 U. S., at 615.

C

Our precedent is to be respected unless the most convincing of reasons demonstrates that adherence to it puts us on a course that is sure error. "Beyond workability, the relevant factors in deciding whether to adhere to the principle of *stare decisis* include the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned." *Montejo* v. *Louisiana*, 556 U. S. ___, ___ (2009) (slip op., at 13) (overruling *Michigan* v. *Jackson*, 475 U. S. 625 (1986)). We have also examined whether "experience has pointed up the precedent's shortcomings." *Pearson* v. *Callahan*, 555 U. S. ___, ___ (2009) (slip op., at 8) (overruling *Saucier* v. *Katz*, 533 U. S. 194 (2001)).

These considerations counsel in favor of rejecting *Austin*, which itself contravened this Court's earlier precedents in *Buckley* and *Bellotti*. "This Court has not hesitated to overrule decisions offensive to the First Amendment." *WRTL*, 551 U. S., at 500 (opinion of SCALIA, J.). "*[S]tare decisis* is a principle of policy and not a mechanical formula of adherence to the latest decision." *Helvering* v. *Hallock*, 309 U. S. 106, 119 (1940).

For the reasons above, it must be concluded that *Austin* was not well reasoned. The Government defends *Austin*,

relying almost entirely on "the quid pro quo interest, the corruption interest or the shareholder interest," and not *Austin*'s expressed antidistortion rationale. Tr. of Oral Arg. 48 (Sept. 9, 2009); see *id.*, at 45–46. When neither party defends the reasoning of a precedent, the principle of adhering to that precedent through *stare decisis* is diminished. *Austin* abandoned First Amendment principles, furthermore, by relying on language in some of our precedents that traces back to the *Automobile Workers* Court's flawed historical account of campaign finance laws, see Brief for Campaign Finance Scholars as *Amici Curiae;* Hayward, 45 Harv. J. Legis. 421; R. Mutch, Campaigns, Congress, and Courts 33–35, 153–157 (1988). See *Austin, supra,* at 659 (quoting *MCFL,* 479 U. S., at 257–258; *NCPAC,* 470 U. S., at 500–501); *MCFL, supra,* at 257 (quoting *Automobile Workers,* 352 U. S., at 585); *NCPAC, supra,* at 500 (quoting *NRWC,* 459 U. S., at 210); *id.,* at 208 ("The history of the movement to regulate the political contributions and expenditures of corporations and labor unions is set forth in great detail in *[Automobile Workers], supra,* at 570–584, and we need only summarize the development here").

Austin is undermined by experience since its announcement. Political speech is so ingrained in our culture that speakers find ways to circumvent campaign finance laws. See, *e.g., McConnell,* 540 U. S., at 176–177 ("Given BCRA's tighter restrictions on the raising and spending of soft money, the incentives . . . to exploit [26 U. S. C. §527] organizations will only increase"). Our Nation's speech dynamic is changing, and informative voices should not have to circumvent onerous restrictions to exercise their First Amendment rights. Speakers have become adept at presenting citizens with sound bites, talking points, and scripted messages that dominate the 24-hour news cycle. Corporations, like individuals, do not have monolithic views. On certain topics corporations

may possess valuable expertise, leaving them the best equipped to point out errors or fallacies in speech of all sorts, including the speech of candidates and elected officials.

Rapid changes in technology—and the creative dynamic inherent in the concept of free expression—counsel against upholding a law that restricts political speech in certain media or by certain speakers. See Part II–C, *supra*. Today, 30-second television ads may be the most effective way to convey a political message. See *McConnell, supra,* at 261 (opinion of SCALIA, J.). Soon, however, it may be that Internet sources, such as blogs and social networking Web sites, will provide citizens with significant information about political candidates and issues. Yet, §441b would seem to ban a blog post expressly advocating the election or defeat of a candidate if that blog were created with corporate funds. See 2 U. S. C. §441b(a); *MCFL, supra,* at 249. The First Amendment does not permit Congress to make these categorical distinctions based on the corporate identity of the speaker and the content of the political speech.

No serious reliance interests are at stake. As the Court stated in *Payne* v. *Tennessee*, 501 U. S. 808, 828 (1991), reliance interests are important considerations in property and contract cases, where parties may have acted in conformance with existing legal rules in order to conduct transactions. Here, though, parties have been prevented from acting—corporations have been banned from making independent expenditures. Legislatures may have enacted bans on corporate expenditures believing that those bans were constitutional. This is not a compelling interest for *stare decisis*. If it were, legislative acts could prevent us from overruling our own precedents, thereby interfering with our duty "to say what the law is." *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803).

Due consideration leads to this conclusion: *Austin*, 494

U. S. 652, should be and now is overruled. We return to the principle established in *Buckley* and *Bellotti* that the Government may not suppress political speech on the basis of the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations.

D

Austin is overruled, so it provides no basis for allowing the Government to limit corporate independent expenditures. As the Government appears to concede, overruling *Austin* "effectively invalidate[s] not only BCRA Section 203, but also 2 U. S. C. 441b's prohibition on the use of corporate treasury funds for express advocacy." Brief for Appellee 33, n. 12. Section 441b's restrictions on corporate independent expenditures are therefore invalid and cannot be applied to *Hillary*.

Given our conclusion we are further required to overrule the part of *McConnell* that upheld BCRA §203's extension of §441b's restrictions on corporate independent expenditures. See 540 U. S., at 203–209. The *McConnell* Court relied on the antidistortion interest recognized in *Austin* to uphold a greater restriction on speech than the restriction upheld in *Austin*, see 540 U. S., at 205, and we have found this interest unconvincing and insufficient. This part of *McConnell* is now overruled.

IV

A

Citizens United next challenges BCRA's disclaimer and disclosure provisions as applied to *Hillary* and the three advertisements for the movie. Under BCRA §311, televised electioneering communications funded by anyone other than a candidate must include a disclaimer that "'_____ is responsible for the content of this advertising.'" 2 U. S. C. §441d(d)(2). The required statement

must be made in a "clearly spoken manner," and displayed on the screen in a "clearly readable manner" for at least four seconds. *Ibid.* It must state that the communication "is not authorized by any candidate or candidate's committee"; it must also display the name and address (or Web site address) of the person or group that funded the advertisement. §441d(a)(3). Under BCRA §201, any person who spends more than $10,000 on electioneering communications within a calendar year must file a disclosure statement with the FEC. 2 U. S. C. §434(f)(1). That statement must identify the person making the expenditure, the amount of the expenditure, the election to which the communication was directed, and the names of certain contributors. §434(f)(2).

Disclaimer and disclosure requirements may burden the ability to speak, but they "impose no ceiling on campaign-related activities," *Buckley,* 424 U. S., at 64, and "do not prevent anyone from speaking," *McConnell, supra,* at 201 (internal quotation marks and brackets omitted). The Court has subjected these requirements to "exacting scrutiny," which requires a "substantial relation" between the disclosure requirement and a "sufficiently important" governmental interest. *Buckley, supra,* at 64, 66 (internal quotation marks omitted); see *McConnell, supra,* at 231–232.

In *Buckley*, the Court explained that disclosure could be justified based on a governmental interest in "provid[ing] the electorate with information" about the sources of election-related spending. 424 U. S., at 66. The *McConnell* Court applied this interest in rejecting facial challenges to BCRA §§201 and 311. 540 U. S., at 196. There was evidence in the record that independent groups were running election-related advertisements "'while hiding behind dubious and misleading names.'" *Id.*, at 197 (quoting *McConnell I,* 251 F. Supp. 2d, at 237). The Court therefore upheld BCRA §§201 and 311 on the ground that

they would help citizens "'make informed choices in the political marketplace.'" 540 U. S., at 197 (quoting *McConnell I, supra,* at 237); see 540 U. S., at 231.

Although both provisions were facially upheld, the Court acknowledged that as-applied challenges would be available if a group could show a "'reasonable probability'" that disclosure of its contributors' names "'will subject them to threats, harassment, or reprisals from either Government officials or private parties.'" *Id.*, at 198 (quoting *Buckley, supra,* at 74).

For the reasons stated below, we find the statute valid as applied to the ads for the movie and to the movie itself.

B

Citizens United sought to broadcast one 30-second and two 10-second ads to promote *Hillary*. Under FEC regulations, a communication that "[p]roposes a commercial transaction" was not subject to 2 U. S. C. §441b's restrictions on corporate or union funding of electioneering communications. 11 CFR §114.15(b)(3)(ii). The regulations, however, do not exempt those communications from the disclaimer and disclosure requirements in BCRA §§201 and 311. See 72 Fed. Reg. 72901 (2007).

Citizens United argues that the disclaimer requirements in §311 are unconstitutional as applied to its ads. It contends that the governmental interest in providing information to the electorate does not justify requiring disclaimers for any commercial advertisements, including the ones at issue here. We disagree. The ads fall within BCRA's definition of an "electioneering communication": They referred to then-Senator Clinton by name shortly before a primary and contained pejorative references to her candidacy. See 530 F. Supp. 2d, at 276, nn. 2–4. The disclaimers required by §311 "provid[e] the electorate with information," *McConnell, supra,* at 196, and "insure that the voters are fully informed" about the person or group

who is speaking, *Buckley, supra,* at 76; see also *Bellotti,* 435 U. S., at 792, n. 32 ("Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected"). At the very least, the disclaimers avoid confusion by making clear that the ads are not funded by a candidate or political party.

Citizens United argues that §311 is underinclusive because it requires disclaimers for broadcast advertisements but not for print or Internet advertising. It asserts that §311 decreases both the quantity and effectiveness of the group's speech by forcing it to devote four seconds of each advertisement to the spoken disclaimer. We rejected these arguments in *McConnell, supra,* at 230–231. And we now adhere to that decision as it pertains to the disclosure provisions.

As a final point, Citizens United claims that, in any event, the disclosure requirements in §201 must be confined to speech that is the functional equivalent of express advocacy. The principal opinion in *WRTL* limited 2 U. S. C. §441b's restrictions on independent expenditures to express advocacy and its functional equivalent. 551 U. S., at 469–476 (opinion of ROBERTS, C. J.). Citizens United seeks to import a similar distinction into BCRA's disclosure requirements. We reject this contention.

The Court has explained that disclosure is a less restrictive alternative to more comprehensive regulations of speech. See, *e.g., MCFL,* 479 U. S., at 262. In *Buckley,* the Court upheld a disclosure requirement for independent expenditures even though it invalidated a provision that imposed a ceiling on those expenditures. 424 U. S., at 75–76. In *McConnell,* three Justices who would have found §441b to be unconstitutional nonetheless voted to uphold BCRA's disclosure and disclaimer requirements. 540 U. S., at 321 (opinion of KENNEDY, J., joined by Rehnquist, C. J., and SCALIA, J.). And the Court has upheld registra-

tion and disclosure requirements on lobbyists, even though Congress has no power to ban lobbying itself. *United States* v. *Harriss*, 347 U. S. 612, 625 (1954) (Congress "has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose"). For these reasons, we reject Citizens United's contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy.

Citizens United also disputes that an informational interest justifies the application of §201 to its ads, which only attempt to persuade viewers to see the film. Even if it disclosed the funding sources for the ads, Citizens United says, the information would not help viewers make informed choices in the political marketplace. This is similar to the argument rejected above with respect to disclaimers. Even if the ads only pertain to a commercial transaction, the public has an interest in knowing who is speaking about a candidate shortly before an election. Because the informational interest alone is sufficient to justify application of §201 to these ads, it is not necessary to consider the Government's other asserted interests.

Last, Citizens United argues that disclosure requirements can chill donations to an organization by exposing donors to retaliation. Some *amici* point to recent events in which donors to certain causes were blacklisted, threatened, or otherwise targeted for retaliation. See Brief for Institute for Justice as *Amicus Curiae* 13–16; Brief for Alliance Defense Fund as *Amicus Curiae* 16–22. In *McConnell*, the Court recognized that §201 would be unconstitutional as applied to an organization if there were a reasonable probability that the group's members would face threats, harassment, or reprisals if their names were disclosed. 540 U. S., at 198. The examples cited by *amici* are cause for concern. Citizens United, however, has offered no evidence that its members may face similar

threats or reprisals. To the contrary, Citizens United has been disclosing its donors for years and has identified no instance of harassment or retaliation.

Shareholder objections raised through the procedures of corporate democracy, see *Bellotti*, *supra*, at 794, and n. 34, can be more effective today because modern technology makes disclosures rapid and informative. A campaign finance system that pairs corporate independent expenditures with effective disclosure has not existed before today. It must be noted, furthermore, that many of Congress' findings in passing BCRA were premised on a system without adequate disclosure. See *McConnell*, 540 U. S., at 128 ("[T]he public may not have been fully informed about the sponsorship of so-called issue ads"); *id.*, at 196–197 (quoting *McConnell I*, 251 F. Supp. 2d, at 237). With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are "'in the pocket' of so-called moneyed interests." 540 U. S., at 259 (opinion of SCALIA, J.); see *MCFL*, *supra*, at 261. The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.

C

For the same reasons we uphold the application of BCRA §§201 and 311 to the ads, we affirm their application to *Hillary*. We find no constitutional impediment to the application of BCRA's disclaimer and disclosure re-

quirements to a movie broadcast via video-on-demand. And there has been no showing that, as applied in this case, these requirements would impose a chill on speech or expression.

V

When word concerning the plot of the movie *Mr. Smith Goes to Washington* reached the circles of Government, some officials sought, by persuasion, to discourage its distribution. See Smoodin, "Compulsory" Viewing for Every Citizen: *Mr. Smith* and the Rhetoric of Reception, 35 Cinema Journal 3, 19, and n. 52 (Winter 1996) (citing Mr. Smith Riles Washington, Time, Oct. 30, 1939, p. 49); Nugent, Capra's Capitol Offense, N. Y. Times, Oct. 29, 1939, p. X5. Under *Austin*, though, officials could have done more than discourage its distribution—they could have banned the film. After all, it, like *Hillary*, was speech funded by a corporation that was critical of Members of Congress. *Mr. Smith Goes to Washington* may be fiction and caricature; but fiction and caricature can be a powerful force.

Modern day movies, television comedies, or skits on Youtube.com might portray public officials or public policies in unflattering ways. Yet if a covered transmission during the blackout period creates the background for candidate endorsement or opposition, a felony occurs solely because a corporation, other than an exempt media corporation, has made the "purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value" in order to engage in political speech. 2 U. S. C. §431(9)(A)(i). Speech would be suppressed in the realm where its necessity is most evident: in the public dialogue preceding a real election. Governments are often hostile to speech, but under our law and our tradition it seems stranger than fiction for our Government to make this political speech a crime. Yet this is the statute's purpose

and design.

Some members of the public might consider *Hillary* to be insightful and instructive; some might find it to be neither high art nor a fair discussion on how to set the Nation's course; still others simply might suspend judgment on these points but decide to think more about issues and candidates. Those choices and assessments, however, are not for the Government to make. "The First Amendment underwrites the freedom to experiment and to create in the realm of thought and speech. Citizens must be free to use new forms, and new forums, for the expression of ideas. The civic discourse belongs to the people, and the Government may not prescribe the means used to conduct it." *McConnell, supra,* at 341 (opinion of KENNEDY, J.).

The judgment of the District Court is reversed with respect to the constitutionality of 2 U. S. C. §441b's restrictions on corporate independent expenditures. The judgment is affirmed with respect to BCRA's disclaimer and disclosure requirements. The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 08–205

CITIZENS UNITED, APPELLANT *v.* FEDERAL ELECTION COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[January 21, 2010]

CHIEF JUSTICE ROBERTS, with whom JUSTICE ALITO joins, concurring.

The Government urges us in this case to uphold a direct prohibition on political speech. It asks us to embrace a theory of the First Amendment that would allow censorship not only of television and radio broadcasts, but of pamphlets, posters, the Internet, and virtually any other medium that corporations and unions might find useful in expressing their views on matters of public concern. Its theory, if accepted, would empower the Government to prohibit newspapers from running editorials or opinion pieces supporting or opposing candidates for office, so long as the newspapers were owned by corporations—as the major ones are. First Amendment rights could be confined to individuals, subverting the vibrant public discourse that is at the foundation of our democracy.

The Court properly rejects that theory, and I join its opinion in full. The First Amendment protects more than just the individual on a soapbox and the lonely pamphleteer. I write separately to address the important principles of judicial restraint and *stare decisis* implicated in this case.

I

Judging the constitutionality of an Act of Congress is

"the gravest and most delicate duty that this Court is called upon to perform." *Blodgett* v. *Holden*, 275 U. S. 142, 147–148 (1927) (Holmes, J., concurring). Because the stakes are so high, our standard practice is to refrain from addressing constitutional questions except when necessary to rule on particular claims before us. See *Ashwander* v. *TVA*, 297 U. S. 288, 346–348 (1936) (Brandeis, J., concurring). This policy underlies both our willingness to construe ambiguous statutes to avoid constitutional problems and our practice "'never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'" *United States* v. *Raines*, 362 U. S. 17, 21 (1960) (quoting *Liverpool, New York & Philadelphia S. S. Co.* v. *Commissioners of Emigration*, 113 U. S. 33, 39 (1885)).

The majority and dissent are united in expressing allegiance to these principles. *Ante*, at 12; *post*, at 14 (STEVENS, J., concurring in part and dissenting in part). But I cannot agree with my dissenting colleagues on how these principles apply in this case.

The majority's step-by-step analysis accords with our standard practice of avoiding broad constitutional questions except when necessary to decide the case before us. The majority begins by addressing—and quite properly rejecting—Citizens United's statutory claim that 2 U. S. C. §441b does not actually cover its production and distribution of *Hillary: The Movie* (hereinafter *Hillary*). If there were a valid basis for deciding this statutory claim in Citizens United's favor (and thereby avoiding constitutional adjudication), it would be proper to do so. Indeed, that is precisely the approach the Court took just last Term in *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. ___ (2009), when eight Members of the Court agreed to decide the case on statutory grounds instead of reaching the appellant's broader argument that the Voting Rights Act is unconstitutional.

It is only because the majority rejects Citizens United's statutory claim that it proceeds to consider the group's various constitutional arguments, beginning with its narrowest claim (that *Hillary* is not the functional equivalent of express advocacy) and proceeding to its broadest claim (that *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652 (1990) should be overruled). This is the same order of operations followed by the controlling opinion in *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449 (2007) (*WRTL*). There the appellant was able to prevail on its narrowest constitutional argument because its broadcast ads did not qualify as the functional equivalent of express advocacy; there was thus no need to go on to address the broader claim that *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93 (2003), should be overruled. *WRTL*, 551 U. S., at 482; *id.*, at 482–483 (ALITO, J., concurring). This case is different—not, as the dissent suggests, because the approach taken in *WRTL* has been deemed a "failure," *post*, at 11, but because, in the absence of any valid narrower ground of decision, there is no way to avoid Citizens United's broader constitutional argument.

The dissent advocates an approach to addressing Citizens United's claims that I find quite perplexing. It presumably agrees with the majority that Citizens United's narrower statutory and constitutional arguments lack merit—otherwise its conclusion that the group should lose this case would make no sense. Despite agreeing that these narrower arguments fail, however, the dissent argues that the majority should nonetheless latch on to one of them in order to avoid reaching the broader constitutional question of whether *Austin* remains good law. It even suggests that the Court's failure to adopt one of these concededly meritless arguments is a sign that the majority is not "serious about judicial restraint." *Post*, at 16.

This approach is based on a false premise: that our

practice of avoiding unnecessary (and unnecessarily broad) constitutional holdings somehow trumps our obligation faithfully to interpret the law. It should go without saying, however, that we cannot embrace a narrow ground of decision simply because it is narrow; it must also be right. Thus while it is true that "[i]f it is not necessary to decide more, it is necessary not to decide more," *post*, at 14 (internal quotation marks omitted), sometimes it *is* necessary to decide more. There is a difference between judicial restraint and judicial abdication. When constitutional questions are "indispensably necessary" to resolving the case at hand, "the court must meet and decide them." *Ex parte Randolph*, 20 F. Cas. 242, 254 (No. 11, 558) (CC Va. 1833) (Marshall, C. J.).

Because it is necessary to reach Citizens United's broader argument that *Austin* should be overruled, the debate over whether to consider this claim on an as-applied or facial basis strikes me as largely beside the point. Citizens United has standing—it is being injured by the Government's enforcement of the Act. Citizens United has a constitutional claim—the Act violates the First Amendment, because it prohibits political speech. The Government has a defense—the Act may be enforced, consistent with the First Amendment, against corporations. Whether the claim or the defense prevails is the question before us.

Given the nature of that claim and defense, it makes no difference of any substance whether this case is resolved by invalidating the statute on its face or only as applied to Citizens United. Even if considered in as-applied terms, a holding in this case that the Act may not be applied to Citizens United—because corporations as well as individuals enjoy the pertinent First Amendment rights—would mean that any other corporation raising the same challenge would also win. Likewise, a conclusion that the Act may be applied to Citizens United—because it is

constitutional to prohibit corporate political speech—would similarly govern future cases. Regardless whether we label Citizens United's claim a "facial" or "as-applied" challenge, the consequences of the Court's decision are the same.[1]

II

The text and purpose of the First Amendment point in the same direction: Congress may not prohibit political speech, even if the speaker is a corporation or union. What makes this case difficult is the need to confront our prior decision in *Austin*.

This is the first case in which we have been asked to overrule *Austin*, and thus it is also the first in which we have had reason to consider how much weight to give *stare decisis* in assessing its continued validity. The dissent erroneously declares that the Court "reaffirmed" *Austin*'s holding in subsequent cases—namely, *Federal Election Comm'n* v. *Beaumont*, 539 U. S. 146 (2003); *McConnell*; and *WRTL*. *Post*, at 48–50. Not so. Not a single party in any of those cases asked us to overrule *Austin*, and as the dissent points out, *post*, at 4–6, the Court generally does not consider constitutional arguments that have not properly been raised. *Austin*'s validity was therefore not directly at issue in the cases the dissent cites. The Court's unwillingness to overturn *Austin* in those cases cannot be understood as a *reaffirmation* of that decision.

A

Fidelity to precedent—the policy of *stare decisis*—is vital

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[1]The dissent suggests that I am "much too quick" to reach this conclusion because I "ignore" Citizens United's narrower arguments. *Post*, at 13, n. 12. But in fact I do not ignore those arguments; on the contrary, I (and my colleagues in the majority) appropriately consider and reject them on their merits, before addressing Citizens United's broader claims. *Supra*, at 2–3; *ante*, at 5–12.

to the proper exercise of the judicial function. "*Stare decisis* is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne* v. *Tennessee*, 501 U. S. 808, 827 (1991). For these reasons, we have long recognized that departures from precedent are inappropriate in the absence of a "special justification." *Arizona* v. *Rumsey*, 467 U. S. 203, 212 (1984).

At the same time, *stare decisis* is neither an "inexorable command," *Lawrence* v. *Texas*, 539 U. S. 558, 577 (2003), nor "a mechanical formula of adherence to the latest decision," *Helvering* v. *Hallock*, 309 U. S. 106, 119 (1940), especially in constitutional cases, see *United States* v. *Scott*, 437 U. S. 82, 101 (1978). If it were, segregation would be legal, minimum wage laws would be unconstitutional, and the Government could wiretap ordinary criminal suspects without first obtaining warrants. See *Plessy* v. *Ferguson*, 163 U. S. 537 (1896), overruled by *Brown* v. *Board of Education*, 347 U. S. 483 (1954); *Adkins* v. *Children's Hospital of D. C.*, 261 U. S. 525 (1923), overruled by *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379 (1937); *Olmstead* v. *United States*, 277 U. S. 438 (1928), overruled by *Katz* v. *United States*, 389 U. S. 347 (1967). As the dissent properly notes, none of us has viewed *stare decisis* in such absolute terms. *Post*, at 17; see also, *e.g.*, *Randall* v. *Sorrell*, 548 U. S. 230, 274–281 (2006) (STEVENS, J., dissenting) (urging the Court to overrule its invalidation of limits on independent expenditures on political speech in *Buckley* v. *Valeo*, 424 U. S. 1 (1976) (*per curiam*)).

Stare decisis is instead a "principle of policy." *Helvering*, *supra*, at 119. When considering whether to reexamine a prior erroneous holding, we must balance the importance of having constitutional questions *decided* against the importance of having them *decided right*. As Justice

Jackson explained, this requires a "sober appraisal of the disadvantages of the innovation as well as those of the questioned case, a weighing of practical effects of one against the other." Jackson, Decisional Law and *Stare Decisis*, 30 A. B. A. J. 334 (1944).

In conducting this balancing, we must keep in mind that *stare decisis* is not an end in itself. It is instead "the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion." *Vasquez* v. *Hillery*, 474 U. S. 254, 265 (1986). Its greatest purpose is to serve a constitutional ideal—the rule of law. It follows that in the unusual circumstance when fidelity to any particular precedent does more to damage this constitutional ideal than to advance it, we must be more willing to depart from that precedent.

Thus, for example, if the precedent under consideration itself departed from the Court's jurisprudence, returning to the " 'intrinsically sounder' doctrine established in prior cases" may "better serv[e] the values of *stare decisis* than would following [the] more recently decided case inconsistent with the decisions that came before it." *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, 231 (1995); see also *Helvering*, *supra*, at 119; *Randall*, *supra*, at 274 (STEVENS, J., dissenting). Abrogating the errant precedent, rather than reaffirming or extending it, might better preserve the law's coherence and curtail the precedent's disruptive effects.

Likewise, if adherence to a precedent actually impedes the stable and orderly adjudication of future cases, its *stare decisis* effect is also diminished. This can happen in a number of circumstances, such as when the precedent's validity is so hotly contested that it cannot reliably function as a basis for decision in future cases, when its rationale threatens to upend our settled jurisprudence in related areas of law, and when the precedent's underlying

reasoning has become so discredited that the Court cannot keep the precedent alive without jury-rigging new and different justifications to shore up the original mistake. See, *e.g.*, *Pearson* v. *Callahan*, 555 U. S. ___, ___ (2009) (slip op., at 10); *Montejo* v. *Louisiana*, 556 U. S. ___, ___ (2009) (slip op., at 13) (*stare decisis* does not control when adherence to the prior decision requires "fundamentally revising its theoretical basis").

B

These considerations weigh against retaining our decision in *Austin*. First, as the majority explains, that decision was an "aberration" insofar as it departed from the robust protections we had granted political speech in our earlier cases. *Ante*, at 39; see also *Buckley*, *supra*; *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765 (1978). *Austin* undermined the careful line that *Buckley* drew to distinguish limits on contributions to candidates from limits on independent expenditures on speech. *Buckley* rejected the asserted government interest in regulating independent expenditures, concluding that "restrict[ing] the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." 424 U. S., at 48–49; see also *Bellotti*, *supra*, at 790–791; *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290, 295 (1981). *Austin*, however, allowed the Government to prohibit these same expenditures out of concern for "the corrosive and distorting effects of immense aggregations of wealth" in the marketplace of ideas. 494 U. S., at 660. *Austin*'s reasoning was—and remains—inconsistent with *Buckley*'s explicit repudiation of any government interest in "equalizing the relative ability of individuals and groups to influence the outcome of elections." 424 U. S., at 48–49.

Austin was also inconsistent with *Bellotti*'s clear rejec-

tion of the idea that "speech that otherwise would be within the protection of the First Amendment loses that protection simply because its source is a corporation." 435 U. S., at 784. The dissent correctly points out that *Bellotti* involved a referendum rather than a candidate election, and that *Bellotti* itself noted this factual distinction, *id.*, at 788, n. 26; *post*, at 52. But this distinction does not explain why corporations may be subject to prohibitions on speech in candidate elections when individuals may not.

Second, the validity of *Austin*'s rationale—itself adopted over two "spirited dissents," *Payne*, 501 U. S., at 829—has proved to be the consistent subject of dispute among Members of this Court ever since. See, *e.g.*, *WRTL*, 551 U. S., at 483 (SCALIA, J., joined by KENNEDY and THOMAS, JJ., concurring in part and concurring in judgment); *McConnell*, 540 U. S., at 247, 264, 286 (opinions of SCALIA, THOMAS, and KENNEDY, JJ.); *Beaumont*, 539 U. S., at 163, 164 (opinions of KENNEDY and THOMAS, JJ.). The simple fact that one of our decisions remains controversial is, of course, insufficient to justify overruling it. But it does undermine the precedent's ability to contribute to the stable and orderly development of the law. In such circumstances, it is entirely appropriate for the Court—which in this case is squarely asked to reconsider *Austin*'s validity for the first time—to address the matter with a greater willingness to consider new approaches capable of restoring our doctrine to sounder footing.

Third, the *Austin* decision is uniquely destabilizing because it threatens to subvert our Court's decisions even outside the particular context of corporate express advocacy. The First Amendment theory underlying *Austin*'s holding is extraordinarily broad. *Austin*'s logic would authorize government prohibition of political speech by a category of speakers in the name of equality—a point that most scholars acknowledge (and many celebrate), but that the dissent denies. Compare, *e.g.*, Garrett, New Voices in

Politics: Justice Marshall's Jurisprudence on Law and Politics, 52 Howard L. J. 655, 669 (2009) (*Austin* "has been understood by most commentators to be an opinion driven by equality considerations, albeit disguised in the language of 'political corruption' ") with *post*, at 74 (*Austin*'s rationale "is manifestly not just an 'equalizing' ideal in disguise").[2]

It should not be surprising, then, that Members of the Court have relied on *Austin*'s expansive logic to justify greater incursions on the First Amendment, even outside the original context of corporate advocacy on behalf of candidates running for office. See, *e.g.*, *Davis* v. *Federal Election Comm'n*, 554 U. S. ___, ___ (2008) (slip op., at 7–8) (STEVENS, J., concurring in part and dissenting in part) (relying on *Austin* and other cases to justify restrictions on campaign spending by individual candidates, explaining that "there is no reason that their logic—specifically, their concerns about the corrosive and distorting effects of wealth on our political process—is not equally applicable in the context of individual wealth"); *McConnell*, *supra*, at 203–209 (extending *Austin* beyond its original context to cover not only the "functional equivalent" of express advocacy by corporations, but also electioneering speech conducted by labor unions). The dissent in this case succumbs to the same temptation, suggesting that *Austin* justifies prohibiting corporate speech because such speech

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[2] See also, *e.g.*, R. Hasen, The Supreme Court and Election Law: Judging Equality from *Baker* v. *Carr* to *Bush* v. *Gore* 114 (2003) ("*Austin* represents the first and only case [before *McConnell*] in which a majority of the Court accepted, in deed if not in word, the equality rationale as a permissible state interest"); Strauss, Corruption, Equality, and Campaign Finance Reform, 94 Colum. L. Rev. 1369, 1369, and n. 1 (1994) (noting that *Austin*'s rationale was based on equalizing political speech); Ashdown, Controlling Campaign Spending and the "New Corruption": Waiting for the Court, 44 Vand. L. Rev. 767, 781 (1991); Eule, Promoting Speaker Diversity: *Austin* and *Metro Broadcasting*, 1990 S. Ct. Rev. 105, 108–111.

might unduly influence "the market for legislation." *Post*, at 82. The dissent reads *Austin* to permit restrictions on corporate speech based on nothing more than the fact that the corporate form may help individuals coordinate and present their views more effectively. *Post*, at 82. A speaker's ability to persuade, however, provides no basis for government regulation of free and open public debate on what the laws should be.

If taken seriously, *Austin*'s logic would apply most directly to newspapers and other media corporations. They have a more profound impact on public discourse than most other speakers. These corporate entities are, for the time being, not subject to §441b's otherwise generally applicable prohibitions on corporate political speech. But this is simply a matter of legislative grace. The fact that the law currently grants a favored position to media corporations is no reason to overlook the danger inherent in accepting a theory that would allow government restrictions on their political speech. See generally *McConnell*, *supra*, at 283–286 (THOMAS, J., concurring in part, concurring in judgment in part, and dissenting in part).

These readings of *Austin* do no more than carry that decision's reasoning to its logical endpoint. In doing so, they highlight the threat *Austin* poses to First Amendment rights generally, even outside its specific factual context of corporate express advocacy. Because *Austin* is so difficult to confine to its facts—and because its logic threatens to undermine our First Amendment jurisprudence and the nature of public discourse more broadly—the costs of giving it *stare decisis* effect are unusually high.

Finally and most importantly, the Government's own effort to defend *Austin*—or, more accurately, to defend something that is not quite *Austin*—underscores its weakness as a precedent of the Court. The Government concedes that *Austin* "is not the most lucid opinion," yet asks us to reaffirm its holding. Tr. of Oral Arg. 62 (Sept. 9,

2009). But while invoking *stare decisis* to support this position, the Government never once even *mentions* the compelling interest that *Austin* relied upon in the first place: the need to diminish "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." 494 U. S., at 660.

Instead of endorsing *Austin* on its own terms, the Government urges us to reaffirm *Austin*'s specific holding on the basis of two new and potentially expansive interests—the need to prevent actual or apparent *quid pro quo* corruption, and the need to protect corporate shareholders. See Supp. Brief for Appellee 8–10, 12–13. Those interests may or may not support the *result* in *Austin*, but they were plainly not part of the *reasoning* on which *Austin* relied.

To its credit, the Government forthrightly concedes that *Austin* did not embrace either of the new rationales it now urges upon us. See, *e.g.*, Supp. Brief for Appellee 11 ("The Court did not decide in *Austin* . . . whether the compelling interest in preventing actual or apparent corruption provides a constitutionally sufficient justification for prohibiting the use of corporate treasury funds for independent electioneering"); Tr. of Oral Arg. 45 (Sept. 9, 2009) ("*Austin* did not articulate what we believe to be the strongest compelling interest"); *id.*, at 61 ("[The Court:] I take it we have never accepted your shareholder protection interest. This is a new argument. [The Government:] I think that that's fair"); *id.*, at 64 ("[The Court:] In other words, you are asking us to uphold *Austin* on the basis of two arguments, two principles, two compelling interests we have never accepted in [the context of limits on political expenditures]. [The Government:] [I]n this particular context, fair enough").

To be clear: The Court in *Austin* nowhere relied upon the only arguments the Government now raises to support

that decision. In fact, the only opinion in *Austin* endorsing the Government's argument based on the threat of *quid pro quo* corruption was JUSTICE STEVENS's concurrence. 494 U. S., at 678. The Court itself did not do so, despite the fact that the concurrence highlighted the argument. Moreover, the Court's only discussion of shareholder protection in *Austin* appeared in a section of the opinion that sought merely to distinguish *Austin*'s facts from those of *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238 (1986). *Austin, supra,* at 663. Nowhere did *Austin* suggest that the goal of protecting shareholders is itself a compelling interest authorizing restrictions on First Amendment rights.

To the extent that the Government's case for reaffirming *Austin* depends on radically reconceptualizing its reasoning, that argument is at odds with itself. *Stare decisis* is a doctrine of preservation, not transformation. It counsels deference to past mistakes, but provides no justification for making new ones. There is therefore no basis for the Court to give precedential sway to reasoning that it has never accepted, simply because that reasoning happens to support a conclusion reached on different grounds that have since been abandoned or discredited.

Doing so would undermine the rule-of-law values that justify *stare decisis* in the first place. It would effectively license the Court to invent and adopt new principles of constitutional law solely for the purpose of rationalizing its past errors, without a proper analysis of whether those principles have merit on their own. This approach would allow the Court's past missteps to spawn future mistakes, undercutting the very rule-of-law values that *stare decisis* is designed to protect.

None of this is to say that the Government is barred from making new arguments to support the outcome in *Austin*. On the contrary, it is free to do so. And of course the Court is free to accept them. But the Government's

new arguments must stand or fall on their own; they are not entitled to receive the special deference we accord to precedent. They are, as grounds to support *Austin*, literally *un*precedented. Moreover, to the extent the Government relies on new arguments—and declines to defend *Austin* on its own terms—we may reasonably infer that it lacks confidence in that decision's original justification.

Because continued adherence to *Austin* threatens to subvert the "principled and intelligible" development of our First Amendment jurisprudence, *Vasquez*, 474 U. S., at 265, I support the Court's determination to overrule that decision.

* * *

We have had two rounds of briefing in this case, two oral arguments, and 54 *amicus* briefs to help us carry out our obligation to decide the necessary constitutional questions according to law. We have also had the benefit of a comprehensive dissent that has helped ensure that the Court has considered all the relevant issues. This careful consideration convinces me that Congress violates the First Amendment when it decrees that some speakers may not engage in political speech at election time, when it matters most.

SUPREME COURT OF THE UNITED STATES

No. 08–205

CITIZENS UNITED, APPELLANT *v.* FEDERAL ELECTION COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[January 21, 2010]

JUSTICE SCALIA, with whom JUSTICE ALITO joins, and with whom JUSTICE THOMAS joins in part, concurring.

I join the opinion of the Court.[1]

I write separately to address JUSTICE STEVENS' discussion of "*Original Understandings*," *post*, at 34 (opinion concurring in part and dissenting in part) (hereinafter referred to as the dissent). This section of the dissent purports to show that today's decision is not supported by the original understanding of the First Amendment. The dissent attempts this demonstration, however, in splendid isolation from the text of the First Amendment. It never shows why "the freedom of speech" that was the right of Englishmen did not include the freedom to speak in association with other individuals, including association in the corporate form. To be sure, in 1791 (as now) corporations could pursue only the objectives set forth in their charters; but the dissent provides no evidence that their speech in the pursuit of those objectives could be censored.

Instead of taking this straightforward approach to determining the Amendment's meaning, the dissent embarks on a detailed exploration of the Framers' views about the "role of corporations in society." *Post*, at 35. The Framers didn't like corporations, the dissent con-

[1] JUSTICE THOMAS does not join Part IV of the Court's opinion.

cludes, and therefore it follows (as night the day) that corporations had no rights of free speech. Of course the Framers' personal affection or disaffection for corporations is relevant only insofar as it can be thought to be reflected in the understood meaning of the text they enacted—not, as the dissent suggests, as a freestanding substitute for that text. But the dissent's distortion of proper analysis is even worse than that. Though faced with a constitutional text that makes no distinction between types of speakers, the dissent feels no necessity to provide even an isolated statement from the founding era to the effect that corporations are *not* covered, but places the burden on petitioners to bring forward statements showing that they *are* ("there is not a scintilla of evidence to support the notion that anyone believed [the First Amendment] would preclude regulatory distinctions based on the corporate form," *post,* at 34–35).

Despite the corporation-hating quotations the dissent has dredged up, it is far from clear that by the end of the 18th century corporations were despised. If so, how came there to be so many of them? The dissent's statement that there were few business corporations during the eighteenth century—"only a few hundred during all of the 18th century"—is misleading. *Post,* at 35, n. 53. There were approximately 335 charters issued to business corporations in the United States by the end of the 18th century.[2] See 2 J. Davis, Essays in the Earlier History of American Corporations 24 (1917) (reprint 2006) (hereinafter Davis). This was a "considerable extension of corporate enterprise

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[2]The dissent protests that 1791 rather than 1800 should be the relevant date, and that "[m]ore than half of the century's total business charters were issued between 1796 and 1800." *Post,* at 35, n. 53. I used 1800 only because the dissent did. But in any case, it is surely fanciful to think that a consensus of hostility towards corporations was transformed into general favor at some magical moment between 1791 and 1796.

in the field of business," Davis 8, and represented "unprecedented growth," *id.*, at 309. Moreover, what seems like a small number by today's standards surely does not indicate the relative importance of corporations when the Nation was considerably smaller. As I have previously noted, "[b]y the end of the eighteenth century the corporation was a familiar figure in American economic life." *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93, 256 (2003) (SCALIA, J., concurring in part, concurring in judgment in part, and dissenting in part) (quoting C. Cooke, Corporation Trust and Company 92 (1951) (hereinafter Cooke)).

Even if we thought it proper to apply the dissent's approach of excluding from First Amendment coverage what the Founders disliked, and even if we agreed that the Founders disliked founding-era corporations; modern corporations might not qualify for exclusion. Most of the Founders' resentment towards corporations was directed at the state-granted monopoly privileges that individually chartered corporations enjoyed.[3] Modern corporations do not have such privileges, and would probably have been favored by most of our enterprising Founders—excluding, perhaps, Thomas Jefferson and others favoring perpetuation of an agrarian society. Moreover, if the Founders' specific intent with respect to corporations is what matters, why does the dissent ignore the Founders' views about other legal entities that have more in common with modern business corporations than the founding-era cor-

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[3] "[P]eople in 1800 identified corporations with franchised monopolies." L. Friedman, A History of American Law 194 (2d ed. 1985) (hereinafter Friedman). "The chief cause for the changed popular attitude towards business corporations that marked the opening of the nineteenth century was the elimination of their inherent monopolistic character. This was accomplished primarily by an extension of the principle of free incorporation under general laws." 1 W. Fletcher, Cyclopedia of the Law of Corporations §2, p. 8 (rev. ed. 2006).

porations? At the time of the founding, religious, educational, and literary corporations were incorporated under general incorporation statutes, much as business corporations are today.[4] See Davis 16–17; R. Seavoy, Origins of the American Business Corporation, 1784–1855, p. 5 (1982); Cooke 94. There were also small unincorporated business associations, which some have argued were the "'true progenitors'" of today's business corporations. Friedman 200 (quoting S. Livermore, Early American Land Companies: Their Influence on Corporate Development 216 (1939)); see also Davis 33. Were all of these silently excluded from the protections of the First Amendment?

The lack of a textual exception for speech by corporations cannot be explained on the ground that such organizations did not exist or did not speak. To the contrary, colleges, towns and cities, religious institutions, and guilds had long been organized as corporations at common law and under the King's charter, see 1 W. Blackstone, Commentaries on the Laws of England 455–473 (1765); 1 S. Kyd, A Treatise on the Law of Corporations 1–32, 63 (1793) (reprinted 2006), and as I have discussed, the practice of incorporation only expanded in the United States. Both corporations and voluntary associations actively petitioned the Government and expressed their views in newspapers and pamphlets. For example: An antislavery Quaker corporation petitioned the First Congress, distributed pamphlets, and communicated through the press in 1790. W. diGiacomantonio, "For the Gratification of a Volunteering Society": Antislavery and Pressure Group

[4] At times (though not always) the dissent seems to exclude such non-"business corporations" from its denial of free speech rights. See *post*, at 37. Finding in a seemingly categorical text a distinction between the rights of business corporations and the rights of non-business corporations is even more imaginative than finding a distinction between the rights of *all* corporations and the rights of other associations.

Politics in the First Federal Congress, 15 J. Early Republic 169 (1995). The New York Sons of Liberty sent a circular to colonies farther south in 1766. P. Maier, From Resistance to Revolution 79–80 (1972). And the Society for the Relief and Instruction of Poor Germans circulated a biweekly paper from 1755 to 1757. Adams, The Colonial German-language Press and the American Revolution, in The Press & the American Revolution 151, 161–162 (B. Bailyn & J. Hench eds. 1980). The dissent offers no evidence—none whatever—that the First Amendment's unqualified text was originally understood to exclude such associational speech from its protection.[5]

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[5]The best the dissent can come up with is that "[p]ostratification practice" supports its reading of the First Amendment. *Post*, at 40, n. 56. For this proposition, the dissent cites Justice White's statement (in dissent) that "[t]he common law was generally interpreted as prohibiting corporate political participation," *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 819 (1978). The sole authority Justice White cited for this proposition, *id.*, at 819, n. 14, was a law-review note that made no such claim. To the contrary, it stated that the cases dealing with the propriety of corporate political expenditures were "few." Note, Corporate Political Affairs Programs, 70 Yale L. J. 821, 852 (1961). More specifically, the note cites only two holdings to that effect, one by a Federal District Court, and one by the Supreme Court of Montana. *Id.*, at 852, n. 197. Of course even if the common law was "generally interpreted" to prohibit corporate political expenditures as ultra vires, that would have nothing to do with whether political expenditures that *were* authorized by a corporation's charter could constitutionally be suppressed.

As additional "[p]ostratification practice," the dissent notes that the Court "did not recognize *any* First Amendment protections for corporations until the middle part of the 20th century." *Post*, at 40, n. 56. But it did that in *Grosjean* v. *American Press Co.*, 297 U. S. 233 (1936), a case involving freedom of the press—which the dissent acknowledges *did* cover corporations from the outset. The relative recency of that first case is unsurprising. All of our First Amendment jurisprudence was slow to develop. We did not consider application of the First Amendment to speech restrictions other than prior restraints until 1919, see *Schenck* v. *United States*, 249 U. S. 47 (1919); we did not invalidate a state law on First Amendment grounds until 1931, see

Historical evidence relating to the textually similar clause "the freedom of . . . the press" also provides no support for the proposition that the First Amendment excludes conduct of artificial legal entities from the scope of its protection. The freedom of "the press" was widely understood to protect the publishing activities of individual editors and printers. See *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334, 360 (1995) (THOMAS, J., concurring in judgment); see also *McConnell*, 540 U. S., at 252–253 (opinion of SCALIA, J.). But these individuals often acted through newspapers, which (much like corporations) had their own names, outlived the individuals who had founded them, could be bought and sold, were sometimes owned by more than one person, and were operated for profit. See generally F. Mott, American Journalism: A History of Newspapers in the United States Through 250 Years 3–164 (1941); J. Smith, Freedom's Fetters (1956). Their activities were not stripped of First Amendment protection simply because they were carried out under the banner of an artificial legal entity. And the notion which follows from the dissent's view, that modern newspapers, since they are incorporated, have free-speech rights only at the sufferance of Congress, boggles the mind.[6]

Stromberg v. *California*, 283 U. S. 359 (1931), and a federal law until 1965, see *Lamont* v. *Postmaster General*, 381 U. S. 301 (1965).

[6]The dissent seeks to avoid this conclusion (and to turn a liability into an asset) by interpreting the Freedom of the Press Clause to refer to the institutional press (thus demonstrating, according to the dissent, that the Founders "did draw distinctions—explicit distinctions—between types of 'speakers,' or speech outlets or forms"). *Post*, at 40 and n. 57. It is passing strange to interpret the phrase "the freedom of speech, or of the press" to mean, not everyone's right to speak or publish, but rather everyone's right to speak or the institutional press's right to publish. No one thought that is what it meant. Patriot Noah Webster's 1828 dictionary contains, under the word "press," the following entry:

"*Liberty of the press*, in civil policy, is the free right of publishing

In passing, the dissent also claims that the Court's conception of corruption is unhistorical. The Framers "would have been appalled," it says, by the evidence of corruption in the congressional findings supporting the Bipartisan Campaign Reform Act of 2002. *Post*, at 61. For this proposition, the dissent cites a law review article arguing that "corruption" was originally understood to include "moral decay" and even actions taken by citizens in pursuit of private rather than public ends. Teachout, The Anti-Corruption Principle, 94 Cornell L. Rev. 341, 373, 378 (2009). It is hard to see how this has anything to do with what sort of corruption can be combated by restrictions on political speech. Moreover, if speech can be prohibited because, in the view of the Government, it leads to "moral decay" or does not serve "public ends," then there is no limit to the Government's censorship power.

The dissent says that when the Framers "constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind." *Post*, at 37. That is no doubt true. All the provisions of the Bill of Rights set forth the rights of individual men and women—not, for example, of trees or polar bears. But the individual person's right to speak includes the right to speak *in association with other individual persons*. Surely the dissent does not believe that speech

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books, pamphlets, or papers without previous restraint; or the unrestrained right which every citizen enjoys of publishing his thoughts and opinions, subject only to punishment for publishing what is pernicious to morals or to the peace of the state." 2 American Dictionary of the English Language (1828) (reprinted 1970).

As the Court's opinion describes, *ante*, at 36, our jurisprudence agrees with Noah Webster and contradicts the dissent.

"The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. . . . The press in its historical connotation comprehends every sort of publication which affords a vehicle of information and opinion." *Lovell* v. *City of Griffin*, 303 U. S. 444, 452 (1938).

by the Republican Party or the Democratic Party can be censored because it is not the speech of "an individual American." It is the speech of many individual Americans, who have associated in a common cause, giving the leadership of the party the right to speak on their behalf. The association of individuals in a business corporation is no different—or at least it cannot be denied the right to speak on the simplistic ground that it is not "an individual American."[7]

But to return to, and summarize, my principal point, which is the conformity of today's opinion with the original meaning of the First Amendment. The Amendment is written in terms of "speech," not speakers. Its text offers no foothold for excluding any category of speaker, from

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[7] The dissent says that "'speech'" refers to oral communications of human beings, and since corporations are not human beings they cannot speak. *Post*, at 37, n. 55. This is sophistry. The authorized spokesman of a corporation is a human being, who speaks on behalf of the human beings who have formed that association—just as the spokesman of an unincorporated association speaks on behalf of its members. The power to publish thoughts, no less than the power to speak thoughts, belongs only to human beings, but the dissent sees no problem with a corporation's enjoying the freedom of the press.

The same footnote asserts that "it has been 'claimed that the notion of institutional speech . . . did not exist in post-revolutionary America.'" This is quoted from a law-review article by a Bigelow Fellow at the University of Chicago (Fagundes, State Actors as First Amendment Speakers, 100 Nw. U. L. Rev. 1637, 1654 (2006)), which offers as the sole support for its statement a treatise dealing with government speech, M. Yudof, When Government Speaks 42–50 (1983). The cited pages of that treatise provide no support whatever for the statement—unless, as seems overwhelmingly likely, the "institutional speech" referred to was speech by the subject of the law-review article, governmental institutions.

The other authority cited in the footnote, a law-review article by a professor at Washington and Lee Law School, Bezanson, Institutional Speech, 80 Iowa L. Rev. 735, 775 (1995), in fact contradicts the dissent, in that it would accord free-speech protection to associations.

single individuals to partnerships of individuals, to unincorporated associations of individuals, to incorporated associations of individuals—and the dissent offers no evidence about the original meaning of the text to support any such exclusion. We are therefore simply left with the question whether the speech at issue in this case is "speech" covered by the First Amendment. No one says otherwise. A documentary film critical of a potential Presidential candidate is core political speech, and its nature as such does not change simply because it was funded by a corporation. Nor does the character of that funding produce any reduction whatever in the "inherent worth of the speech" and "its capacity for informing the public," *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 777 (1978). Indeed, to exclude or impede corporate speech is to muzzle the principal agents of the modern free economy. We should celebrate rather than condemn the addition of this speech to the public debate.

SUPREME COURT OF THE UNITED STATES

No. 08–205

CITIZENS UNITED, APPELLANT *v.* FEDERAL ELECTION COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[January 21, 2010]

JUSTICE STEVENS, with whom JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE SOTOMAYOR join, concurring in part and dissenting in part.

The real issue in this case concerns how, not if, the appellant may finance its electioneering. Citizens United is a wealthy nonprofit corporation that runs a political action committee (PAC) with millions of dollars in assets. Under the Bipartisan Campaign Reform Act of 2002 (BCRA), it could have used those assets to televise and promote *Hillary: The Movie* wherever and whenever it wanted to. It also could have spent unrestricted sums to broadcast *Hillary* at any time other than the 30 days before the last primary election. Neither Citizens United's nor any other corporation's speech has been "banned," *ante*, at 1. All that the parties dispute is whether Citizens United had a right to use the funds in its general treasury to pay for broadcasts during the 30-day period. The notion that the First Amendment dictates an affirmative answer to that question is, in my judgment, profoundly misguided. Even more misguided is the notion that the Court must rewrite the law relating to campaign expenditures by *for-profit* corporations and unions to decide this case.

The basic premise underlying the Court's ruling is its iteration, and constant reiteration, of the proposition that the First Amendment bars regulatory distinctions based

on a speaker's identity, including its "identity" as a corporation. While that glittering generality has rhetorical appeal, it is not a correct statement of the law. Nor does it tell us when a corporation may engage in electioneering that some of its shareholders oppose. It does not even resolve the specific question whether Citizens United may be required to finance some of its messages with the money in its PAC. The conceit that corporations must be treated identically to natural persons in the political sphere is not only inaccurate but also inadequate to justify the Court's disposition of this case.

In the context of election to public office, the distinction between corporate and human speakers is significant. Although they make enormous contributions to our society, corporations are not actually members of it. They cannot vote or run for office. Because they may be managed and controlled by nonresidents, their interests may conflict in fundamental respects with the interests of eligible voters. The financial resources, legal structure, and instrumental orientation of corporations raise legitimate concerns about their role in the electoral process. Our lawmakers have a compelling constitutional basis, if not also a democratic duty, to take measures designed to guard against the potentially deleterious effects of corporate spending in local and national races.

The majority's approach to corporate electioneering marks a dramatic break from our past. Congress has placed special limitations on campaign spending by corporations ever since the passage of the Tillman Act in 1907, ch. 420, 34 Stat. 864. We have unanimously concluded that this "reflects a permissible assessment of the dangers posed by those entities to the electoral process," *FEC* v. *National Right to Work Comm.*, 459 U. S. 197, 209 (1982) *(NRWC)*, and have accepted the "legislative judgment that the special characteristics of the corporate structure require particularly careful regulation," *id.*, at 209–210. The

Court today rejects a century of history when it treats the distinction between corporate and individual campaign spending as an invidious novelty born of *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652 (1990). Relying largely on individual dissenting opinions, the majority blazes through our precedents, overruling or disavowing a body of case law including *FEC* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449 (2007) *(WRTL)*, *McConnell* v. *FEC*, 540 U. S. 93 (2003), *FEC* v. *Beaumont*, 539 U. S. 146 (2003), *FEC* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238 (1986) *(MCFL)*, *NRWC*, 459 U. S. 197, and *California Medical Assn.* v. *FEC*, 453 U. S. 182 (1981).

In his landmark concurrence in *Ashwander* v. *TVA*, 297 U. S. 288, 346 (1936), Justice Brandeis stressed the importance of adhering to rules the Court has "developed . . . for its own governance" when deciding constitutional questions. Because departures from those rules always enhance the risk of error, I shall review the background of this case in some detail before explaining why the Court's analysis rests on a faulty understanding of *Austin* and *McConnell* and of our campaign finance jurisprudence more generally.[1] I regret the length of what follows, but the importance and novelty of the Court's opinion require a full response. Although I concur in the Court's decision to sustain BCRA's disclosure provisions and join Part IV of its opinion, I emphatically dissent from its principal holding.

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[1] Specifically, Part I, *infra*, at 4–17, addresses the procedural history of the case and the narrower grounds of decision the majority has bypassed. Part II, *infra*, at 17–23, addresses *stare decisis*. Part III, *infra*, at 23–56, addresses the Court's assumptions that BCRA "bans" corporate speech, that identity-based distinctions may not be drawn in the political realm, and that *Austin* and *McConnell* were outliers in our First Amendment tradition. Part IV, *infra*, at 56–89, addresses the Court's treatment of the anticorruption, antidistortion, and shareholder protection rationales for regulating corporate electioneering.

I

The Court's ruling threatens to undermine the integrity of elected institutions across the Nation. The path it has taken to reach its outcome will, I fear, do damage to this institution. Before turning to the question whether to overrule *Austin* and part of *McConnell*, it is important to explain why the Court should not be deciding that question.

Scope of the Case

The first reason is that the question was not properly brought before us. In declaring §203 of BCRA facially unconstitutional on the ground that corporations' electoral expenditures may not be regulated any more stringently than those of individuals, the majority decides this case on a basis relinquished below, not included in the questions presented to us by the litigants, and argued here only in response to the Court's invitation. This procedure is unusual and inadvisable for a court.[2] Our colleagues' suggestion that "we are asked to reconsider *Austin* and, in effect, *McConnell*," *ante*, at 1, would be more accurate if rephrased to state that "we have asked ourselves" to reconsider those cases.

In the District Court, Citizens United initially raised a facial challenge to the constitutionality of §203. App. 23a–24a. In its motion for summary judgment, however, Citi-

[2]See *Yee* v. *Escondido*, 503 U. S. 519, 535 (1992) ("[U]nder this Court's Rule 14.1(a), only questions set forth in the petition, or fairly included therein, will be considered by the Court" (internal quotation marks and alteration omitted)); *Wood* v. *Allen*, *ante*, at __ (slip op., at 13) ("[T]he fact that petitioner discussed [an] issue in the text of his petition for certiorari does not bring it before us. Rule 14.1(a) requires that a subsidiary question be fairly included in the *question presented* for our review" (internal quotation marks and brackets omitted)); *Cooper Industries, Inc.* v. *Aviall Services, Inc.*, 543 U. S. 157, 168–169 (2004) ("We ordinarily do not decide in the first instance issues not decided below" (internal quotation marks omitted)).

zens United expressly abandoned its facial challenge, 1:07–cv–2240–RCL–RWR, Docket Entry No. 52, pp. 1–2 (May 16, 2008), and the parties stipulated to the dismissal of that claim, *id.*, Nos. 53 (May 22, 2008), 54 (May 23, 2008), App. 6a. The District Court therefore resolved the case on alternative grounds,[3] and in its jurisdictional statement to this Court, Citizens United properly advised us that it was raising only "an as-applied challenge to the constitutionality of . . . BCRA §203." Juris. Statement 5. The jurisdictional statement never so much as cited *Austin*, the key case the majority today overrules. And not one of the questions presented suggested that Citizens United was surreptitiously raising the facial challenge to §203 that it previously agreed to dismiss. In fact, not one of those questions raised an issue based on Citizens United's corporate status. Juris. Statement (i). Moreover, even in its merits briefing, when Citizens United injected its request to overrule *Austin*, it never sought a declaration that §203 was facially unconstitutional as to all corporations and unions; instead it argued only that the statute could not be applied to it because it was "funded overwhelmingly by individuals." Brief for Appellant 29; see also *id.*, at 10, 12, 16, 28 (affirming "as applied" character

[3] The majority states that, in denying Citizens United's motion for a preliminary injunction, the District Court "addressed" the facial validity of BCRA §203. *Ante*, at 13. That is true, in the narrow sense that the court observed the issue was foreclosed by *McConnell* v. *FEC*, 540 U. S. 93 (2003). See 530 F. Supp. 2d 274, 278 (DC 2008) *(per curiam)*. Yet as explained above, Citizens United subsequently dismissed its facial challenge, so that by the time the District Court granted the Federal Election Commission's (FEC) motion for summary judgment, App. 261a–262a, any question about statutory validity had dropped out of the case. That latter ruling by the District Court was the "final decision" from which Citizens United appealed to this Court under BCRA §403(a)(3). As regards the lower court decision that has come before us, the claim that §203 is facially unconstitutional was neither pressed nor passed upon in any form.

of challenge to §203); Tr. of Oral Arg. 4–9 (Mar. 24, 2009) (counsel for Citizens United conceding that §203 could be applied to General Motors); *id.*, at 55 (counsel for Citizens United stating that "we accept the Court's decision in *Wisconsin Right to Life*").

"'It is only in exceptional cases coming here from the federal courts that questions not pressed or passed upon below are reviewed,'" *Youakim* v. *Miller*, 425 U. S. 231, 234 (1976) *(per curiam)* (quoting *Duignan* v. *United States*, 274 U. S. 195, 200 (1927)), and it is "only in the most exceptional cases" that we will consider issues outside the questions presented, *Stone* v. *Powell*, 428 U. S. 465, 481, n. 15 (1976). The appellant in this case did not so much as assert an exceptional circumstance, and one searches the majority opinion in vain for the mention of any. That is unsurprising, for none exists.

Setting the case for reargument was a constructive step, but it did not cure this fundamental problem. Essentially, five Justices were unhappy with the limited nature of the case before us, so they changed the case to give themselves an opportunity to change the law.

As-Applied and Facial Challenges

This Court has repeatedly emphasized in recent years that "[f]acial challenges are disfavored." *Washington State Grange* v. *Washington State Republican Party*, 552 U. S. 442, 450 (2008); see also *Ayotte* v. *Planned Parenthood of Northern New Eng.*, 546 U. S. 320, 329 (2006) ("[T]he 'normal rule' is that 'partial, rather than facial, invalidation is the required course,' such that a 'statute may . . . be declared invalid to the extent that it reaches too far, but otherwise left intact'" (quoting *Brockett* v. *Spokane Arcades, Inc.*, 472 U. S. 491, 504 (1985); alteration in original)). By declaring §203 facially unconstitutional, our colleagues have turned an as-applied challenge into a facial challenge, in defiance of this principle.

This is not merely a technical defect in the Court's decision. The unnecessary resort to a facial inquiry "run[s] contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Washington State Grange*, 552 U. S., at 450 (internal quotation marks omitted). Scanting that principle "threaten[s] to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Id.*, at 451. These concerns are heightened when judges overrule settled doctrine upon which the legislature has relied. The Court operates with a sledge hammer rather than a scalpel when it strikes down one of Congress' most significant efforts to regulate the role that corporations and unions play in electoral politics. It compounds the offense by implicitly striking down a great many state laws as well.

The problem goes still deeper, for the Court does all of this on the basis of pure speculation. Had Citizens United maintained a facial challenge, and thus argued that there are virtually no circumstances in which BCRA §203 can be applied constitutionally, the parties could have developed, through the normal process of litigation, a record about the *actual* effects of §203, its actual burdens and its actual benefits, on *all* manner of corporations and unions.[4]

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[4] Shortly before Citizens United mooted the issue by abandoning its facial challenge, the Government advised the District Court that it "require[d] time to develop a factual record regarding [the] facial challenge." 1:07–cv–2240–RCL–RWR, Docket Entry No. 47, p. 4 (Mar. 26, 2008). By reinstating a claim that Citizens United abandoned, the Court gives it a perverse litigating advantage over its adversary, which was deprived of the opportunity to gather and present information necessary to its rebuttal.

"Claims of facial invalidity often rest on speculation," and consequently "raise the risk of premature interpretation of statutes on the basis of factually barebones records." *Id.*, at 450 (internal quotation marks omitted). In this case, the record is not simply incomplete or unsatisfactory; it is nonexistent. Congress crafted BCRA in response to a virtual mountain of research on the corruption that previous legislation had failed to avert. The Court now negates Congress' efforts without a shred of evidence on how §203 or its state-law counterparts have been affecting any entity other than Citizens United.[5]

Faced with this gaping empirical hole, the majority throws up its hands. Were we to confine our inquiry to Citizens United's as-applied challenge, it protests, we would commence an "extended" process of "draw[ing], and then redraw[ing], constitutional lines based on the particular media or technology used to disseminate political speech from a particular speaker." *Ante*, at 9. While tacitly acknowledging that some applications of §203 might be found constitutional, the majority thus posits a future in which novel First Amendment standards must

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[5] In fact, we do not even have a good evidentiary record of how §203 has been affecting Citizens United, which never submitted to the District Court the details of *Hillary*'s funding or its own finances. We likewise have no evidence of how §203 and comparable state laws were expected to affect corporations and unions in the future.

It is true, as the majority points out, that the *McConnell* Court evaluated the facial validity of §203 in light of an extensive record. See *ante*, at 15. But that record is not before us in this case. And in any event, the majority's argument for striking down §203 depends on its contention that the statute has proved too "chilling" in practice—and in particular on the contention that the controlling opinion in *WRTL*, 551 U. S. 449 (2007), failed to bring sufficient clarity and "breathing space" to this area of law. See *ante*, at 12, 16–20. We have no record with which to assess that claim. The Court complains at length about the burdens of complying with §203, but we have no meaningful evidence to show how regulated corporations and unions have experienced its restrictions.

be devised on an ad hoc basis, and then leaps from this unfounded prediction to the unfounded conclusion that such complexity counsels the abandonment of all normal restraint. Yet it is a pervasive feature of regulatory systems that unanticipated events, such as new technologies, may raise some unanticipated difficulties at the margins. The fluid nature of electioneering communications does not make this case special. The fact that a Court can hypothesize situations in which a statute might, at some point down the line, pose some unforeseen as-applied problems, does not come close to meeting the standard for a facial challenge.[6]

The majority proposes several other justifications for the sweep of its ruling. It suggests that a facial ruling is necessary because, if the Court were to continue on its normal course of resolving as-applied challenges as they present themselves, that process would itself run afoul of the First Amendment. See, *e.g.*, *ante*, at 9 (as-applied review process "would raise questions as to the courts' own lawful authority"); *ibid.* ("Courts, too, are bound by the First Amendment"). This suggestion is perplexing. Our colleagues elsewhere trumpet "our duty 'to say what the law is,'" even when our predecessors on the bench and our counterparts in Congress have interpreted the law differ-

[6]Our cases recognize a "type of facial challenge in the First Amendment context under which a law may be overturned as impermissibly overbroad because a substantial number of its applications are unconstitutional." *Washington State Grange* v. *Washington State Republican Party*, 552 U. S. 442, 449, n. 6 (2008) (internal quotation marks omitted). Citizens United has not made an overbreadth argument, and "[w]e generally do not apply the strong medicine of overbreadth analysis where the parties fail to describe the instances of arguable overbreadth of the contested law," *ibid.* (internal quotation marks omitted). If our colleagues nonetheless concluded that §203's fatal flaw is that it affects too much protected speech, they should have invalidated it for overbreadth and given guidance as to which applications are permissible, so that Congress could go about repairing the error.

ently. *Ante*, at 49 (quoting *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803)). We do not typically say what the law *is not* as a hedge against future judicial error. The possibility that later courts will misapply a constitutional provision does not give us a basis for pretermitting litigation relating to that provision.[7]

The majority suggests that a facial ruling is necessary because anything less would chill too much protected speech. See *ante*, at 9–10, 12, 16–20. In addition to begging the question what types of corporate spending are constitutionally protected and to what extent, this claim rests on the assertion that some significant number of corporations have been cowed into quiescence by FEC "'censor[ship].'" *Ante*, at 18–19. That assertion is unsubstantiated, and it is hard to square with practical experience. It is particularly hard to square with the legal landscape following *WRTL*, which held that a corporate communication could be regulated under §203 only if it was "susceptible of *no* reasonable interpretation other than as an appeal to vote for or against a specific candidate." 551 U. S., at 470 (opinion of ROBERTS, C. J.) (emphasis added). The whole point of this test was to make §203 as simple and speech-protective as possible. The Court does not explain how, in the span of a single election cycle, it has determined THE CHIEF JUSTICE's project to be

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[7]Also perplexing is the majority's attempt to pass blame to the Government for its litigating position. By "hold[ing] out the possibility of ruling for Citizens United on a narrow ground yet refrain[ing] from adopting that position," the majority says, the Government has caused "added uncertainty [that] demonstrates the necessity to address the question of statutory validity." *Ante*, at 17. Our colleagues have apparently never heard of an alternative argument. Like every litigant, the Government would prefer to win its case outright; failing that, it would prefer to lose on a narrow ground. The fact that there are numerous different ways this case could be decided, and that the Government acknowledges as much, does not demonstrate anything about the propriety of a facial ruling.

a failure. In this respect, too, the majority's critique of line-drawing collapses into a critique of the as-applied review method generally.[8]

The majority suggests that, even though it expressly dismissed its facial challenge, Citizens United nevertheless preserved it—not as a freestanding "claim," but as a potential argument in support of "a claim that the FEC has violated its First Amendment right to free speech." *Ante*, at 13; see also *ante*, at 4 (ROBERTS, C. J., concurring) (describing Citizens United's claim as: "[T]he Act violates the First Amendment"). By this novel logic, virtually any submission could be reconceptualized as "a claim that the Government has violated my rights," and it would then be available to the Court to entertain any conceivable issue that might be relevant to that claim's disposition. Not only the as-applied/facial distinction, but the basic relationship between litigants and courts, would be upended if the latter had free rein to construe the former's claims at such high levels of generality. There would be no need for plaintiffs to argue their case; they could just cite the constitutional provisions they think relevant, and leave the rest to us.[9]

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[8] The majority's "chilling" argument is particularly inapposite with respect to 2 U. S. C. §441b's longstanding restriction on the use of corporate general treasury funds for express advocacy. If there was ever any significant uncertainty about what counts as the functional equivalent of express advocacy, there has been little doubt about what counts as express advocacy since the "magic words" test of *Buckley* v. *Valeo*, 424 U. S. 1, 44, n. 52 (1976) *(per curiam)*. Yet even though Citizens United's briefs never once mention §441b's restriction on express advocacy; even though this restriction does not generate chilling concerns; and even though no one has suggested that *Hillary* counts as express advocacy; the majority nonetheless reaches out to opine that this statutory provision is "invalid" as well. *Ante*, at 50.

[9] The majority adds that the distinction between facial and as-applied challenges does not have "some automatic effect" that mechanically controls the judicial task. *Ante*, at 14. I agree, but it does not follow that in any given case we should ignore the distinction, much less

Finally, the majority suggests that though the scope of Citizens United's claim may be narrow, a facial ruling is necessary as a matter of remedy. Relying on a law review article, it asserts that Citizens United's dismissal of the facial challenge does not prevent us "'from making broader pronouncements of invalidity in properly "as-applied" cases.'" *Ante*, at 14 (quoting Fallon, As-Applied and Facial Challenges and Third-Party Standing, 113 Harv. L. Rev. 1321, 1339 (2000) (hereinafter Fallon)); accord, *ante*, at 5 (opinion of ROBERTS, C. J.) ("Regardless whether we label Citizens United's claim a 'facial' or 'as-applied' challenge, the consequences of the Court's decision are the same"). The majority is on firmer conceptual ground here. Yet even if one accepts this part of Professor Fallon's thesis, one must proceed to ask *which* as-applied challenges, if successful, will "properly" invite or entail invalidation of the underlying statute.[10] The paradigmatic case is a judicial determination that the legislature acted with an impermissible purpose in enacting a provision, as this carries the necessary implication that all future as-applied challenges to the provision must prevail. See Fallon 1339–1340.

Citizens United's as-applied challenge was not of this sort. Until this Court ordered reargument, its contention was that BCRA §203 could not lawfully be applied to a

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invert it.

[10] Professor Fallon proposes an intricate answer to this question that the majority ignores. Fallon 1327–1359. It bears mention that our colleagues have previously cited Professor Fallon's article for the exact opposite point from the one they wish to make today. In *Gonzales* v. *Carhart*, 550 U. S. 124 (2007), the Court explained that "[i]t is neither our obligation nor within our traditional institutional role to resolve questions of constitutionality with respect to each potential situation that might develop," and "[f]or this reason, '[a]s-applied challenges are the basic building blocks of constitutional adjudication.'" *Id.*, at 168 (opinion for the Court by KENNEDY, J.) (quoting Fallon 1328 (second alteration in original)).

feature-length video-on-demand film (such as *Hillary*) or to a nonprofit corporation exempt from taxation under 26 U. S. C. §501(c)(4)[11] and funded overwhelmingly by individuals (such as itself). See Brief for Appellant 16–41. Success on either of these claims would not necessarily carry any implications for the validity of §203 as applied to other types of broadcasts, other types of corporations, or unions. It certainly would not invalidate the statute as applied to a large for-profit corporation. See Tr. of Oral Arg. 8, 4 (Mar. 24, 2009) (counsel for Citizens United emphasizing that appellant is "a small, nonprofit organization, which is very much like [an *MCFL* corporation]," and affirming that its argument "definitely would not be the same" if *Hillary* were distributed by General Motors).[12] There is no legitimate basis for resurrecting a facial chal-

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[11] Internal Revenue Code section 501(c)(4) applies, *inter alia*, to nonprofit organizations "operated exclusively for the promotion of social welfare, . . . the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."

[12] THE CHIEF JUSTICE is therefore much too quick when he suggests that, "[e]ven if considered in as-applied terms, a holding in this case that the Act may not be applied to Citizens United—because corporations as well as individuals enjoy the pertinent First Amendment rights—would mean that any other corporation raising the same challenge would also win." *Ante*, at 4 (concurring opinion). That conclusion would only follow if the Court were to ignore Citizens United's plausible as-applied arguments and instead take the implausible position that *all* corporations and *all* types of expenditures enjoy the same First Amendment protections, which *always* trump the interests in regulation. At times, the majority appears to endorse this extreme view. At other times, however, it appears to suggest that nonprofit corporations have a better claim to First Amendment protection than for-profit corporations, see *ante*, at 20, 39, "advocacy" organizations have a better claim than other nonprofits, *ante*, at 20, domestic corporations have a better claim than foreign corporations, *ante*, at 46–47, small corporations have a better claim than large corporations, *ante*, at 38–40, and printed matter has a better claim than broadcast communications, *ante*, at 33. The majority never uses a multinational business corporation in its hypotheticals.

lenge that dropped out of this case 20 months ago.

Narrower Grounds

It is all the more distressing that our colleagues have manufactured a facial challenge, because the parties have advanced numerous ways to resolve the case that would facilitate electioneering by nonprofit advocacy corporations such as Citizens United, without toppling statutes and precedents. Which is to say, the majority has transgressed yet another "cardinal" principle of the judicial process: "[I]f it is not necessary to decide more, it is necessary not to decide more," *PDK Labs., Inc.* v. *Drug Enforcement Admin.*, 362 F. 3d 786, 799 (CADC 2004) (Roberts, J., concurring in part and concurring in judgment).

Consider just three of the narrower grounds of decision that the majority has bypassed. First, the Court could have ruled, on statutory grounds, that a feature-length film distributed through video-on-demand does not qualify as an "electioneering communication" under §203 of BCRA, 2 U. S. C. §441b. BCRA defines that term to encompass certain communications transmitted by "broadcast, cable, or satellite." §434(f)(3)(A). When Congress was developing BCRA, the video-on-demand medium was still in its infancy, and legislators were focused on a very different sort of programming: short advertisements run on television or radio. See *McConnell*, 540 U. S., at 207. The sponsors of BCRA acknowledge that the FEC's implementing regulations do not clearly apply to video-on-demand transmissions. See Brief for Senator John McCain et al. as *Amici Curiae* 17–19. In light of this ambiguity, the distinctive characteristics of video-on-demand, and "[t]he elementary rule . . . that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality," *Hooper* v. *California*, 155 U. S. 648, 657 (1895), the Court could have reasonably

ruled that §203 does not apply to *Hillary*.[13]

Second, the Court could have expanded the *MCFL* exemption to cover §501(c)(4) nonprofits that accept only a *de minimis* amount of money from for-profit corporations. Citizens United professes to be such a group: Its brief says it "is funded predominantly by donations from individuals who support [its] ideological message." Brief for Appellant 5. Numerous Courts of Appeal have held that *de minimis* business support does not, in itself, remove an otherwise qualifying organization from the ambit of *MCFL*.[14] This Court could have simply followed their lead.[15]

Finally, let us not forget Citizens United's as-applied constitutional challenge. Precisely because Citizens

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[13] The Court entirely ignores this statutory argument. It concludes that §203 applies to *Hillary* on the basis of the film's content, *ante*, at 7–8, without considering the possibility that §203 does not apply to video-on-demand transmissions generally.

[14] See *Colorado Right to Life Comm., Inc.* v. *Coffman*, 498 F. 3d 1137, 1148 (CA10 2007) (adopting this rule and noting that "every other circuit to have addressed this issue" has done likewise); Brief for Independent Sector as *Amicus Curiae* 10–11 (collecting cases). The Court rejects this solution in part because the Government "merely suggest[s] it" and "does not say that it agrees with the interpretation." *Ante*, at 11. Our colleagues would thus punish a defendant for showing insufficient excitement about a ground it has advanced, at the same time that they decide the case on a ground the plaintiff expressly abandoned. The Court also protests that a *de minimis* standard would "requir[e] intricate case-by-case determinations." *Ante*, at 12. But *de minimis* tests need not be intricate at all. A test that granted *MCFL* status to §501(c)(4) organizations if they received less than a fixed dollar amount of business donations in the previous year, or if such donations represent less than a fixed percentage of their total assets, would be perfectly easy to understand and administer.

[15] Another bypassed ground, not briefed by the parties, would have been to revive the Snowe-Jeffords Amendment in BCRA §203(c), allowing certain nonprofit corporations to pay for electioneering communications with general treasury funds, to the extent they can trace the payments to individual contributions. See Brief for National Rifle Association as *Amicus Curiae* 5–15 (arguing forcefully that Congress intended this result).

United looks so much like the *MCFL* organizations we have exempted from regulation, while a feature-length video-on-demand film looks so unlike the types of electoral advocacy Congress has found deserving of regulation, this challenge is a substantial one. As the appellant's own arguments show, the Court could have easily limited the breadth of its constitutional holding had it declined to adopt the novel notion that speakers and speech acts must always be treated identically—and always spared expenditures restrictions—in the political realm. Yet the Court nonetheless turns its back on the as-applied review process that has been a staple of campaign finance litigation since *Buckley* v. *Valeo*, 424 U. S. 1 (1976) *(per curiam)*, and that was affirmed and expanded just two Terms ago in *WRTL*, 551 U. S. 449.

This brief tour of alternative grounds on which the case could have been decided is not meant to show that any of these grounds is ideal, though each is perfectly "valid," *ante*, at 12 (majority opinion).[16] It is meant to show that there were principled, narrower paths that a Court that was serious about judicial restraint could have taken. There was also the straightforward path: applying *Austin* and *McConnell*, just as the District Court did in holding

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[16] THE CHIEF JUSTICE finds our discussion of these narrower solutions "quite perplexing" because we suggest that the Court should "latch on to one of them in order to avoid reaching the broader constitutional question," without doing the same ourselves. *Ante*, at 3. There is nothing perplexing about the matter, because we are not similarly situated to our colleagues in the majority. We do not share their view of the First Amendment. Our reading of the Constitution would not lead us to strike down any statutes or overturn any precedents in this case, and we therefore have no occasion to practice constitutional avoidance or to vindicate Citizens United's as-applied challenge. Each of the arguments made above is surely at least as strong as the statutory argument the Court accepted in last year's Voting Rights Act case, *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. __ (2009).

that the funding of Citizens United's film can be regulated under them. The only thing preventing the majority from affirming the District Court, or adopting a narrower ground that would retain *Austin*, is its disdain for *Austin*.

II

The final principle of judicial process that the majority violates is the most transparent: *stare decisis*. I am not an absolutist when it comes to *stare decisis*, in the campaign finance area or in any other. No one is. But if this principle is to do any meaningful work in supporting the rule of law, it must at least demand a significant justification, beyond the preferences of five Justices, for overturning settled doctrine. "[A] decision to overrule should rest on some special reason over and above the belief that a prior case was wrongly decided." *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 864 (1992). No such justification exists in this case, and to the contrary there are powerful prudential reasons to keep faith with our precedents.[17]

The Court's central argument for why *stare decisis* ought to be trumped is that it does not like *Austin*. The opinion "was not well reasoned," our colleagues assert, and it conflicts with First Amendment principles. *Ante*, at 47–48. This, of course, is the Court's merits argument, the many defects in which we will soon consider. I am perfectly willing to concede that if one of our precedents were dead wrong in its reasoning or irreconcilable with the rest of our doctrine, there would be a compelling basis for revisiting it. But neither is true of *Austin*, as I explain at length in Parts III and IV, *infra*, at 23–89, and restating a merits argument with additional vigor does not give it

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[17] I will have more to say shortly about the merits—about why *Austin* and *McConnell* are not doctrinal outliers, as the Court contends, and why their logic is not only defensible but also compelling. For present purposes, I limit the discussion to *stare-decisis*-specific considerations.

extra weight in the *stare decisis* calculus.

Perhaps in recognition of this point, the Court supplements its merits case with a smattering of assertions. The Court proclaims that "*Austin* is undermined by experience since its announcement." *Ante*, at 48. This is a curious claim to make in a case that lacks a developed record. The majority has no empirical evidence with which to substantiate the claim; we just have its *ipse dixit* that the real world has not been kind to *Austin*. Nor does the majority bother to specify in what sense *Austin* has been "undermined." Instead it treats the reader to a string of non sequiturs: "Our Nation's speech dynamic is changing," *ante*, at 48; "[s]peakers have become adept at presenting citizens with sound bites, talking points, and scripted messages," *ibid.*; "[c]orporations . . . do not have monolithic views," *ibid.* How any of these ruminations weakens the force of *stare decisis*, escapes my comprehension.[18]

The majority also contends that the Government's hesitation to rely on *Austin*'s antidistortion rationale "diminishe[s]" "the principle of adhering to that precedent." *Ante*, at 48; see also *ante*, at 11 (opinion of ROBERTS, C. J.) (Government's litigating position is "most importan[t]"

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[18] THE CHIEF JUSTICE suggests that *Austin* has been undermined by subsequent dissenting opinions. *Ante*, at 9. Under this view, it appears that the more times the Court stands by a precedent in the face of requests to overrule it, the weaker that precedent becomes. THE CHIEF JUSTICE further suggests that *Austin* "is uniquely destabilizing because it threatens to subvert our Court's decisions even outside" its particular facts, as when we applied its reasoning in *McConnell*. *Ante*, at 9. Once again, the theory seems to be that the more we utilize a precedent, the more we call it into question. For those who believe *Austin* was correctly decided—as the Federal Government and the States have long believed, as the majority of Justices to have served on the Court since *Austin* have believed, and as we continue to believe—there is nothing "destabilizing" about the prospect of its continued application. It is gutting campaign finance laws across the country, as the Court does today, that will be destabilizing.

factor undermining *Austin*). Why it diminishes the value of *stare decisis* is left unexplained. We have never thought fit to overrule a precedent because a litigant has taken any particular tack. Nor should we. Our decisions can often be defended on multiple grounds, and a litigant may have strategic or case-specific reasons for emphasizing only a subset of them. Members of the public, moreover, often rely on our bottom-line holdings far more than our precise legal arguments; surely this is true for the legislatures that have been regulating corporate electioneering since *Austin*. The task of evaluating the continued viability of precedents falls to this Court, not to the parties.[19]

Although the majority opinion spends several pages making these surprising arguments, it says almost nothing about the standard considerations we have used to determine *stare decisis* value, such as the antiquity of the precedent, the workability of its legal rule, and the reliance interests at stake. It is also conspicuously silent about *McConnell*, even though the *McConnell* Court's decision to uphold BCRA §203 relied not only on the anti-distortion logic of *Austin* but also on the statute's historical pedigree, see, *e.g.*, 540 U. S., at 115–132, 223–224, and the need to preserve the integrity of federal campaigns, see *id.*, at 126–129, 205–208, and n. 88.

We have recognized that "*[s]tare decisis* has special force when legislators or citizens 'have acted in reliance on a previous decision, for in this instance overruling the deci-

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[19] Additionally, the majority cites some recent scholarship challenging the historical account of campaign finance law given in *United States* v. *Automobile Workers*, 352 U. S. 567 (1957). *Ante*, at 48. *Austin* did not so much as allude to this historical account, much less rely on it. Even if the scholarship cited by the majority is correct that certain campaign finance reforms were less deliberate or less benignly motivated than *Automobile Workers* suggested, the point remains that this body of law has played a significant and broadly accepted role in American political life for decades upon decades.

sion would dislodge settled rights and expectations or require an extensive legislative response.'" *Hubbard* v. *United States*, 514 U. S. 695, 714 (1995) (quoting *Hilton* v. *South Carolina Public Railways Comm'n*, 502 U. S. 197, 202 (1991)). *Stare decisis* protects not only personal rights involving property or contract but also the ability of the elected branches to shape their laws in an effective and coherent fashion. Today's decision takes away a power that we have long permitted these branches to exercise. State legislatures have relied on their authority to regulate corporate electioneering, confirmed in *Austin*, for more than a century.[20] The Federal Congress has relied on this authority for a comparable stretch of time, and it specifically relied on *Austin* throughout the years it spent developing and debating BCRA. The total record it compiled was *100,000 pages* long.[21] Pulling out the rug beneath Congress after affirming the constitutionality of §203 six years ago shows great disrespect for a coequal branch.

By removing one of its central components, today's ruling makes a hash out of BCRA's "delicate and interconnected regulatory scheme." *McConnell*, 540 U. S., at 172. Consider just one example of the distortions that will follow: Political parties are barred under BCRA from soliciting or spending "soft money," funds that are not subject to the statute's disclosure requirements or its source and amount limitations. 2 U. S. C. §441i; *McConnell*, 540 U. S., at 122–126. Going forward, corporations and unions will be free to spend as much general treasury money as they wish on ads that support or attack specific

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[20] See Brief for State of Montana et al. as *Amici Curiae* 5–13; see also Supp. Brief for Senator John McCain et al. as *Amici Curiae* 1a–8a (listing 24 States that presently limit or prohibit independent electioneering expenditures from corporate general treasuries).

[21] Magleby, The Importance of the Record in *McConnell v. FEC*, 3 Election L. J. 285 (2004).

candidates, whereas national parties will not be able to spend a dime of soft money on ads of any kind. The Court's ruling thus dramatically enhances the role of corporations and unions—and the narrow interests they represent—vis-à-vis the role of political parties—and the broad coalitions they represent—in determining who will hold public office.[22]

Beyond the reliance interests at stake, the other *stare decisis* factors also cut against the Court. Considerations of antiquity are significant for similar reasons. *McConnell* is only six years old, but *Austin* has been on the books for two decades, and many of the statutes called into question by today's opinion have been on the books for a half-century or more. The Court points to no intervening change in circumstances that warrants revisiting *Austin*. Certainly nothing relevant has changed since we decided *WRTL* two Terms ago. And the Court gives no reason to think that *Austin* and *McConnell* are unworkable.

In fact, no one has argued to us that *Austin*'s rule has proved impracticable, and not a single for-profit corporation, union, or State has asked us to overrule it. Quite to the contrary, leading groups representing the business community,[23] organized labor,[24] and the nonprofit sector,[25] together with more than half of the States,[26] urge that we

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[22] To be sure, the majority may respond that Congress can correct the imbalance by removing BCRA's soft-money limits. Cf. Tr. of Oral Arg. 24 (Sept. 9, 2009) (query of KENNEDY, J.). But this is no response to any legislature that takes campaign finance regulation seriously. It merely illustrates the breadth of the majority's deregulatory vision.

[23] See Brief for Committee for Economic Development as *Amicus Curiae;* Brief for American Independent Business Alliance as *Amicus Curiae*. But see Supp. Brief for Chamber of Commerce of the United States of America as *Amicus Curiae*.

[24] See Brief for American Federation of Labor and Congress of Industrial Organizations as *Amicus Curiae* 3, 9.

[25] See Brief for Independent Sector as *Amicus Curiae* 16–20.

[26] See Brief for State of Montana et al. as *Amici Curiae*.

preserve *Austin*. As for *McConnell*, the portions of BCRA it upheld may be prolix, but all three branches of Government have worked to make §203 as user-friendly as possible. For instance, Congress established a special mechanism for expedited review of constitutional challenges, see note following 2 U. S. C. §437h; the FEC has established a standardized process, with clearly defined safe harbors, for corporations to claim that a particular electioneering communication is permissible under *WRTL*, see 11 CFR §114.15 (2009);[27] and, as noted above, THE CHIEF JUSTICE crafted his controlling opinion in *WRTL* with the express goal of maximizing clarity and administrability, 551 U. S., at 469–470, 473–474. The case for *stare decisis* may be bolstered, we have said, when subsequent rulings "have reduced the impact" of a precedent "while reaffirming the decision's core ruling." *Dickerson* v. *United States*, 530 U. S. 428, 443 (2000).[28]

In the end, the Court's rejection of *Austin* and *McCon-*

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[27] The FEC established this process following the Court's June 2007 decision in that case, 551 U. S. 449. In the brief interval between the establishment of this process and the 2008 election, corporations and unions used it to make $108.5 million in electioneering communications. Supp. Brief for Appellee 22–23; FEC, Electioneering Communication Summary, online at http://fec.gov/finance/disclosure/ECSummary.shtml (all Internet materials as visited Jan. 18, 2010, and available in Clerk of Court's case file).

[28] Concedely, *Austin* and *McConnell* were constitutional decisions, and we have often said that "claims of *stare decisis* are at the weakest in that field, where our mistakes cannot be corrected by Congress." *Vieth* v. *Jubelirer*, 541 U. S. 267, 305 (2004) (plurality opinion). As a general matter, this principle is a sound one. But the principle only takes on real force when an earlier ruling has obstructed the normal democratic process; it is the fear of making "mistakes [that] cannot be corrected by Congress," *ibid.*, that motivates us to review constitutional precedents with a more critical eye. *Austin* and *McConnell* did not obstruct state or congressional legislative power in any way. Although it is unclear how high a bar today's decision will pose to future attempts to regulate corporate electioneering, it will clearly restrain much legislative action.

nell comes down to nothing more than its disagreement with their results. Virtually every one of its arguments was made and rejected in those cases, and the majority opinion is essentially an amalgamation of resuscitated dissents. The only relevant thing that has changed since *Austin* and *McConnell* is the composition of this Court. Today's ruling thus strikes at the vitals of *stare decisis*, "the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion" that "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals." *Vasquez* v. *Hillery*, 474 U. S. 254, 265 (1986).

III

The novelty of the Court's procedural dereliction and its approach to *stare decisis* is matched by the novelty of its ruling on the merits. The ruling rests on several premises. First, the Court claims that *Austin* and *McConnell* have "banned" corporate speech. Second, it claims that the First Amendment precludes regulatory distinctions based on speaker identity, including the speaker's identity as a corporation. Third, it claims that *Austin* and *McConnell* were radical outliers in our First Amendment tradition and our campaign finance jurisprudence. Each of these claims is wrong.

The So-Called "Ban"

Pervading the Court's analysis is the ominous image of a "categorical ba[n]" on corporate speech. *Ante*, at 45. Indeed, the majority invokes the specter of a "ban" on nearly every page of its opinion. *Ante*, at 1, 4, 7, 10, 11, 12, 13, 16, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 33, 35, 38, 40, 42, 45, 46, 47, 49, 54, 56. This characterization is highly misleading, and needs to be corrected.

In fact it already has been. Our cases have repeatedly

pointed out that, "[c]ontrary to the [majority's] critical assumptions," the statutes upheld in *Austin* and *McConnell* do "not impose an *absolute* ban on all forms of corporate political spending." *Austin*, 494 U. S., at 660; see also *McConnell*, 540 U. S., at 203–204; *Beaumont*, 539 U. S., at 162–163. For starters, both statutes provide exemptions for PACs, separate segregated funds established by a corporation for political purposes. See 2 U. S. C. §441b(b)(2)(C); Mich. Comp. Laws Ann. §169.255 (West 2005). "The ability to form and administer separate segregated funds," we observed in *McConnell*, "has provided corporations and unions with a constitutionally sufficient opportunity to engage in express advocacy. That has been this Court's unanimous view." 540 U. S., at 203.

Under BCRA, any corporation's "stockholders and their families and its executive or administrative personnel and their families" can pool their resources to finance electioneering communications. 2 U. S. C. §441b(b)(4)(A)(i). A significant and growing number of corporations avail themselves of this option;[29] during the most recent election cycle, corporate and union PACs raised nearly a billion dollars.[30] Administering a PAC entails some administrative burden, but so does complying with the disclaimer, disclosure, and reporting requirements that the Court today upholds, see *ante*, at 51, and no one has suggested that the burden is severe for a sophisticated for-profit corporation. To the extent the majority is worried about

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[29] See FEC, Number of Federal PAC's Increases, http://fec.gov/press/press2008/20080812paccount.shtml.

[30] See Supp. Brief for Appellee 16 (citing FEC statistics placing this figure at $840 million). The majority finds the PAC option inadequate in part because "[a] PAC is a separate association from the corporation." *Ante*, at 21. The formal "separateness" of PACs from their host corporations—which administer and control the PACs but which cannot funnel general treasury funds into them or force members to support them—is, of course, the whole point of the PAC mechanism.

this issue, it is important to keep in mind that we have no record to show how substantial the burden really is, just the majority's own unsupported factfinding, see *ante*, at 21–22. Like all other natural persons, every shareholder of every corporation remains entirely free under *Austin* and *McConnell* to do however much electioneering she pleases outside of the corporate form. The owners of a "mom & pop" store can simply place ads in their own names, rather than the store's. If ideologically aligned individuals wish to make unlimited expenditures through the corporate form, they may utilize an *MCFL* organization that has policies in place to avoid becoming a conduit for business or union interests. See *MCFL*, 479 U. S., at 263–264.

The laws upheld in *Austin* and *McConnell* leave open many additional avenues for corporations' political speech. Consider the statutory provision we are ostensibly evaluating in this case, BCRA §203. It has no application to genuine issue advertising—a category of corporate speech Congress found to be far more substantial than election-related advertising, see *McConnell*, 540 U. S., at 207—or to Internet, telephone, and print advocacy.[31] Like numer-

[31] Roaming far afield from the case at hand, the majority worries that the Government will use §203 to ban books, pamphlets, and blogs. *Ante*, at 20, 33, 49. Yet by its plain terms, §203 does not apply to printed material. See 2 U. S. C. §434(f)(3)(A)(i); see also 11 CFR §100.29(c)(1) ("[E]lectioneering communication does not include communications appearing in print media"). And in light of the ordinary understanding of the terms "broadcast, cable, [and] satellite," §434(f)(3)(A)(i), coupled with Congress' clear aim of targeting "a virtual torrent of televised election-related ads," *McConnell*, 540 U. S., at 207, we highly doubt that §203 could be interpreted to apply to a Web site or book that happens to be transmitted at some stage over airwaves or cable lines, or that the FEC would ever try to do so. See 11 CFR §100.26 (exempting most Internet communications from regulation as advertising); §100.155 (exempting uncompensated Internet activity from regulation as an expenditure); Supp. Brief for Center for Independent Media et al. as *Amici Curiae* 14 (explaining that "the FEC has

ous statutes, it exempts media companies' news stories, commentaries, and editorials from its electioneering restrictions, in recognition of the unique role played by the institutional press in sustaining public debate.[32] See 2 U. S. C. §434(f)(3)(B)(i); *McConnell*, 540 U. S., at 208–209; see also *Austin*, 494 U. S., at 666–668. It also allows corporations to spend unlimited sums on political communications with their executives and shareholders, §441b(b)(2)(A); 11 CFR §114.3(a)(1), to fund additional PAC activity through trade associations, 2 U. S. C. §441b(b)(4)(D), to distribute voting guides and voting records, 11 CFR §§114.4(c)(4)–(5), to underwrite voter registration and voter turnout activities, §114.3(c)(4); §114.4(c)(2), to host fundraising events for candidates within certain limits, §114.4(c); §114.2(f)(2), and to publicly endorse candidates through a press release and press conference, §114.4(c)(6).

At the time Citizens United brought this lawsuit, the only types of speech that could be regulated under §203 were: (1) broadcast, cable, or satellite communications;[33] (2) capable of reaching at least 50,000 persons in the relevant electorate;[34] (3) made within 30 days of a primary or 60 days of a general federal election;[35] (4) by a labor union or a non-*MCFL*, nonmedia corporation;[36] (5) paid for

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consistently construed [BCRA's] media exemption to apply to a variety of non-traditional media"). If it should, the Government acknowledges "there would be quite [a] good as-applied challenge." Tr. of Oral Arg. 65 (Sept. 9, 2009).

[32] As the Government points out, with a media corporation there is also a lesser risk that investors will not understand, learn about, or support the advocacy messages that the corporation disseminates. Supp. Reply Brief for Appellee 10. Everyone knows and expects that media outlets may seek to influence elections in this way.

[33] 2 U. S. C. §434(f)(3)(A)(i).

[34] §434(f)(3)(C).

[35] §434(f)(3)(A)(i)(II).

[36] §441b(b); *McConnell*, 540 U. S., at 211.

with general treasury funds;[37] and (6) "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."[38] The category of communications meeting all of these criteria is not trivial, but the notion that corporate political speech has been "suppress[ed] . . . altogether," *ante*, at 2, that corporations have been "exclu[ded] . . . from the general public dialogue," *ante*, at 25, or that a work of fiction such as *Mr. Smith Goes to Washington* might be covered, *ante*, at 56–57, is nonsense.[39] Even the plaintiffs in *McConnell*, who had every incentive to depict BCRA as negatively as possible, declined to argue that §203's prohibition on certain uses of general treasury funds amounts to a complete ban. See 540 U. S., at 204.

In many ways, then, §203 functions as a source restriction or a time, place, and manner restriction. It applies in a viewpoint-neutral fashion to a narrow subset of advocacy messages about clearly identified candidates for federal office, made during discrete time periods through discrete channels. In the case at hand, all Citizens United needed to do to broadcast *Hillary* right before the primary was to abjure business contributions or use the funds in its PAC, which by its own account is "one of the most active conservative PACs in America," Citizens United Political Victory

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[37] §441b(b)(2)(C).

[38] *WRTL*, 551 U. S. 449, 470 (2007) (opinion of ROBERTS, C. J.).

[39] It is likewise nonsense to suggest that the FEC's "'business is to censor.'" *Ante*, at 18 (quoting *Freedman* v. *Maryland*, 380 U. S. 51, 57 (1965)). The FEC's business is to administer and enforce the campaign finance laws. The regulatory body at issue in *Freedman* was a state *Board of Censors* that had virtually unfettered discretion to bar distribution of motion picture films it deemed not to be "moral and proper." See *id.*, at 52–53, and n. 2. No movie could be shown in the State of Maryland that was not first approved and licensed by the Board of Censors. *Id.*, at 52, n. 1. It is an understatement to say that *Freedman* is not on point, and the majority's characterization of the FEC is deeply disconcerting.

Fund, http://www.cupvf.org/.[40]

So let us be clear: Neither *Austin* nor *McConnell* held or implied that corporations may be silenced; the FEC is not a "censor"; and in the years since these cases were decided, corporations have continued to play a major role in the national dialogue. Laws such as §203 target a class of communications that is especially likely to corrupt the political process, that is at least one degree removed from the views of individual citizens, and that may not even reflect the views of those who pay for it. Such laws burden political speech, and that is always a serious matter, demanding careful scrutiny. But the majority's incessant talk of a "ban" aims at a straw man.

Identity-Based Distinctions

The second pillar of the Court's opinion is its assertion that "the Government cannot restrict political speech based on the speaker's . . . identity." *Ante*, at 30; accord, *ante*, at 1, 24, 26, 30, 31, 32, 33, 34, 49, 50. The case on which it relies for this proposition is *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765 (1978). As I shall explain, *infra*, at 52–55, the holding in that case was far narrower than the Court implies. Like its paeans to unfettered discourse, the Court's denunciation of identity-based distinctions may have rhetorical appeal but it obscures reality.

"Our jurisprudence over the past 216 years has rejected an absolutist interpretation" of the First Amendment. *WRTL*, 551 U. S., at 482 (opinion of ROBERTS, C. J.). The

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[40] Citizens United has administered this PAC for over a decade. See Defendant FEC's Memorandum in Opposition to Plaintiff's Second Motion for Preliminary Injunction in No. 07–2240 (ARR, RCL, RWR) (DC), p. 20. Citizens United also operates multiple "527" organizations that engage in partisan political activity. See Defendant FEC's Statement of Material Facts as to Which There Is No Genuine Dispute in No. 07–2240 (DC), ¶¶ 22–24.

First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press." Apart perhaps from measures designed to protect the press, that text might seem to permit no distinctions of any kind. Yet in a variety of contexts, we have held that speech can be regulated differentially on account of the speaker's identity, when identity is understood in categorical or institutional terms. The Government routinely places special restrictions on the speech rights of students,[41] prisoners,[42] members of the Armed Forces,[43] foreigners,[44] and its own employees.[45] When such restrictions are justified by a legitimate governmental interest, they do not necessarily raise constitutional problems.[46] In

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[41] See, *e.g.*, *Bethel School Dist. No. 403* v. *Fraser*, 478 U. S. 675, 682 (1986) ("[T]he constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings").

[42] See, *e.g.*, *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U. S. 119, 129 (1977) ("In a prison context, an inmate does not retain those First Amendment rights that are inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system" (internal quotation marks omitted)).

[43] See, *e.g.*, *Parker* v. *Levy*, 417 U. S. 733, 758 (1974) ("While the members of the military are not excluded from the protection granted by the First Amendment, the different character of the military community and of the military mission requires a different application of those protections").

[44] See, *e.g.*, 2 U. S. C. §441e(a)(1) (foreign nationals may not directly or indirectly make contributions or independent expenditures in connection with a U. S. election).

[45] See, *e.g.*, *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548 (1973) (upholding statute prohibiting Executive Branch employees from taking "any active part in political management or in political campaigns" (internal quotation marks omitted)); *Public Workers* v. *Mitchell*, 330 U. S. 75 (1947) (same); *United States* v. *Wurzbach*, 280 U. S. 396 (1930) (upholding statute prohibiting federal employees from making contributions to Members of Congress for "any political purpose whatever" (internal quotation marks omitted)); *Ex parte Curtis*, 106 U. S. 371 (1882) (upholding statute prohibiting certain federal employees from giving money to other employees for political purposes).

[46] The majority states that the cases just cited are "inapposite" be-

contrast to the blanket rule that the majority espouses, our cases recognize that the Government's interests may be more or less compelling with respect to different classes of speakers,[47] cf. *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue*, 460 U. S. 575, 585 (1983) ("[D]ifferential treatment" is constitutionally suspect "*unless* justified by some special characteristic" of the regulated class of speakers (emphasis added)), and that the constitutional rights of certain categories of speakers, in certain contexts, "'are not automatically coextensive with the rights'" that are normally accorded to members of our society, *Morse* v. *Frederick*, 551 U. S. 393, 396–397, 404 (2007) (quoting *Bethel School Dist. No. 403* v. *Fraser*, 478 U. S. 675, 682 (1986)).

The free speech guarantee thus does not render every other public interest an illegitimate basis for qualifying a speaker's autonomy; society could scarcely function if it did. It is fair to say that our First Amendment doctrine has "frowned on" certain identity-based distinctions, *Los Angeles Police Dept.* v. *United Reporting Publishing Corp.*,

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cause they "stand only for the proposition that there are certain governmental functions that cannot operate without some restrictions on particular kinds of speech." *Ante*, at 25. The majority's creative suggestion that these cases stand only for that one proposition is quite implausible. In any event, the proposition lies at the heart of this case, as Congress and half the state legislatures have concluded, over many decades, that their core functions of administering elections and passing legislation cannot operate effectively without some narrow restrictions on corporate electioneering paid for by general treasury funds.

[47] Outside of the law, of course, it is a commonplace that the identity and incentives of the speaker might be relevant to an assessment of his speech. See Aristotle, Poetics 43–44 (M. Heath transl. 1996) ("In evaluating any utterance or action, one must take into account not just the moral qualities of what is actually done or said, but also the identity of the agent or speaker, the addressee, the occasion, the means, and the motive"). The insight that the identity of speakers is a proper subject of regulatory concern, it bears noting, motivates the disclaimer and disclosure provisions that the Court today upholds.

528 U. S. 32, 47, n. 4 (1999) (STEVENS, J., dissenting), particularly those that may reflect invidious discrimination or preferential treatment of a politically powerful group. But it is simply incorrect to suggest that we have prohibited all legislative distinctions based on identity or content. Not even close.

The election context is distinctive in many ways, and the Court, of course, is right that the First Amendment closely guards political speech. But in this context, too, the authority of legislatures to enact viewpoint-neutral regulations based on content and identity is well settled. We have, for example, allowed state-run broadcasters to exclude independent candidates from televised debates. *Arkansas Ed. Television Comm'n* v. *Forbes*, 523 U. S. 666 (1998).[48] We have upheld statutes that prohibit the distribution or display of campaign materials near a polling place. *Burson* v. *Freeman*, 504 U. S. 191 (1992).[49] Although we have not reviewed them directly, we have never cast doubt on laws that place special restrictions on campaign spending by foreign nationals. See, *e.g.*, 2 U. S. C. §441e(a)(1). And we have consistently approved laws that bar Government employees, but not others, from contrib-

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[48] I dissented in *Forbes* because the broadcaster's decision to exclude the respondent from its debate was done "on the basis of entirely subjective, ad hoc judgments," 523 U. S., at 690, that suggested anticompetitive viewpoint discrimination, *id.*, at 693–694, and lacked a compelling justification. Needless to say, my concerns do not apply to the instant case.

[49] The law at issue in *Burson* was far from unusual. "[A]ll 50 States," the Court observed, "limit access to the areas in or around polling places." 504 U. S., at 206; see also Note, 91 Ky. L. J. 715, 729, n. 89, 747–769 (2003) (collecting statutes). I dissented in *Burson* because the evidence adduced to justify Tennessee's law was "exceptionally thin," 504 U. S., at 219, and "the reason for [the] restriction [had] disappear[ed]" over time, *id.*, at 223. "In short," I concluded, "Tennessee ha[d] failed to point to any legitimate interest that would justify its selective regulation of campaign-related expression." *Id.*, at 225. These criticisms are inapplicable to the case before us.

uting to or participating in political activities. See n. 45, *supra*. These statutes burden the political expression of one class of speakers, namely, civil servants. Yet we have sustained them on the basis of longstanding practice and Congress' reasoned judgment that certain regulations which leave "untouched full participation . . . in political decisions at the ballot box," *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548, 556 (1973) (internal quotation marks omitted), help ensure that public officials are "sufficiently free from improper influences," *id.*, at 564, and that "confidence in the system of representative Government is not . . . eroded to a disastrous extent," *id.*, at 565.

The same logic applies to this case with additional force because it is the identity of corporations, rather than individuals, that the Legislature has taken into account. As we have unanimously observed, legislatures are entitled to decide "that the special characteristics of the corporate structure require particularly careful regulation" in an electoral context. *NRWC*, 459 U. S., at 209–210.[50] Not only has the distinctive potential of corporations to corrupt the electoral process long been recognized, but within the area of campaign finance, corporate spending is also "furthest from the core of political expression, since corporations' First Amendment speech and association interests are derived largely from those of their members and of the public in receiving information," *Beaumont*, 539 U. S., at 161, n. 8 (citation omitted). Campaign finance distinctions based on corporate identity tend to be less worrisome, in other words, because the "speakers" are not natural persons, much less members of our political community, and

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[50] They are likewise entitled to regulate media corporations differently from other corporations "to ensure that the law 'does not hinder or prevent the institutional press from reporting on, and publishing editorials about, newsworthy events.'" *McConnell*, 540 U. S., at 208 (quoting *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652, 668 (1990)).

the governmental interests are of the highest order. Furthermore, when corporations, as a class, are distinguished from noncorporations, as a class, there is a lesser risk that regulatory distinctions will reflect invidious discrimination or political favoritism.

If taken seriously, our colleagues' assumption that the identity of a speaker has *no* relevance to the Government's ability to regulate political speech would lead to some remarkable conclusions. Such an assumption would have accorded the propaganda broadcasts to our troops by "Tokyo Rose" during World War II the same protection as speech by Allied commanders. More pertinently, it would appear to afford the same protection to multinational corporations controlled by foreigners as to individual Americans: To do otherwise, after all, could "'enhance the relative voice'" of some (*i.e.*, humans) over others (*i.e.*, nonhumans). *Ante*, at 33 (quoting *Buckley*, 424 U. S., at 49).[51] Under the majority's view, I suppose it may be a First Amendment problem that corporations are not permitted to vote, given that voting is, among other things, a

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[51]The Court all but confesses that a categorical approach to speaker identity is untenable when it acknowledges that Congress might be allowed to take measures aimed at "preventing foreign individuals or associations from influencing our Nation's political process." *Ante*, at 46–47. Such measures have been a part of U. S. campaign finance law for many years. The notion that Congress might lack the authority to distinguish foreigners from citizens in the regulation of electioneering would certainly have surprised the Framers, whose "obsession with foreign influence derived from a fear that foreign powers and individuals had no basic investment in the well-being of the country." Teachout, The Anti-Corruption Principle, 94 Cornell L. Rev. 341, 393, n. 245 (2009) (hereinafter Teachout); see also U. S. Const., Art. I, §9, cl. 8 ("[N]o Person holding any Office of Profit or Trust . . . shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State"). Professor Teachout observes that a corporation might be analogized to a foreign power in this respect, "inasmuch as its legal loyalties necessarily exclude patriotism." Teachout 393, n. 245.

form of speech.[52]

In short, the Court dramatically overstates its critique of identity-based distinctions, without ever explaining why corporate identity demands the same treatment as individual identity. Only the most wooden approach to the First Amendment could justify the unprecedented line it seeks to draw.

Our First Amendment Tradition

A third fulcrum of the Court's opinion is the idea that *Austin* and *McConnell* are radical outliers, "aberration[s]," in our First Amendment tradition. *Ante*, at 39; see also *ante*, at 45, 56 (professing fidelity to "our law and our tradition"). The Court has it exactly backwards. It is today's holding that is the radical departure from what had been settled First Amendment law. To see why, it is useful to take a long view.

1. *Original Understandings*

Let us start from the beginning. The Court invokes "ancient First Amendment principles," *ante*, at 1 (internal quotation marks omitted), and original understandings, *ante*, at 37–38, to defend today's ruling, yet it makes only a perfunctory attempt to ground its analysis in the principles or understandings of those who drafted and ratified the Amendment. Perhaps this is because there is not a scintilla of evidence to support the notion that anyone

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[52] See A. Bickel, The Supreme Court and the Idea of Progress 59–60 (1978); A. Meiklejohn, Political Freedom: The Constitutional Powers of the People 39–40 (1965); Tokaji, First Amendment Equal Protection: On Discretion, Inequality, and Participation, 101 Mich. L. Rev. 2409, 2508–2509 (2003). Of course, voting is not speech in a pure or formal sense, but then again neither is a campaign expenditure; both are nevertheless communicative acts aimed at influencing electoral outcomes. Cf. Strauss, Corruption, Equality, and Campaign Finance Reform, 94 Colum. L. Rev. 1369, 1383–1384 (1994) (hereinafter Strauss).

believed it would preclude regulatory distinctions based on the corporate form. To the extent that the Framers' views are discernible and relevant to the disposition of this case, they would appear to cut strongly against the majority's position.

This is not only because the Framers and their contemporaries conceived of speech more narrowly than we now think of it, see Bork, Neutral Principles and Some First Amendment Problems, 47 Ind. L. J. 1, 22 (1971), but also because they held very different views about the nature of the First Amendment right and the role of corporations in society. Those few corporations that existed at the founding were authorized by grant of a special legislative charter.[53] Corporate sponsors would petition the legislature, and the legislature, if amenable, would issue a charter that specified the corporation's powers and purposes and "authoritatively fixed the scope and content of corporate organization," including "the internal structure of the

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[53] Scholars have found that only a handful of business corporations were issued charters during the colonial period, and only a few hundred during all of the 18th century. See E. Dodd, American Business Corporations Until 1860, p. 197 (1954); L. Friedman, A History of American Law 188–189 (2d ed. 1985); Baldwin, American Business Corporations Before 1789, 8 Am. Hist. Rev. 449, 450–459 (1903). JUSTICE SCALIA quibbles with these figures; whereas we say that "a few hundred" charters were issued to business corporations during the 18th century, he says that the number is "approximately 335." *Ante*, at 2 (concurring opinion). JUSTICE SCALIA also raises the more serious point that it is improper to assess these figures by today's standards, *ante*, at 3, though I believe he fails to substantiate his claim that "the corporation was a familiar figure in American economic life" by the century's end, *ibid.* (internal quotation marks omitted). His formulation of that claim is also misleading, because the relevant reference point is not 1800 but the date of the First Amendment's ratification, in 1791. And at that time, the number of business charters must have been significantly smaller than 335, because the pace of chartering only began to pick up steam in the last decade of the 18th century. More than half of the century's total business charters were issued between 1796 and 1800. Friedman, History of American Law, at 189.

corporation." J. Hurst, The Legitimacy of the Business Corporation in the Law of the United States 1780–1970, pp. 15–16 (1970) (reprint 2004). Corporations were created, supervised, and conceptualized as quasi-public entities, "designed to serve a social function for the state." Handlin & Handlin, Origin of the American Business Corporation, 5 J. Econ. Hist. 1, 22 (1945). It was "assumed that [they] were legally privileged organizations that had to be closely scrutinized by the legislature because their purposes had to be made consistent with public welfare." R. Seavoy, Origins of the American Business Corporation, 1784–1855, p. 5 (1982).

The individualized charter mode of incorporation reflected the "cloud of disfavor under which corporations labored" in the early years of this Nation. 1 W. Fletcher, Cyclopedia of the Law of Corporations §2, p. 8 (rev. ed. 2006); see also *Louis K. Liggett Co.* v. *Lee*, 288 U. S. 517, 548–549 (1933) (Brandeis, J., dissenting) (discussing fears of the "evils" of business corporations); L. Friedman, A History of American Law 194 (2d ed. 1985) ("The word 'soulless' constantly recurs in debates over corporations. . . . Corporations, it was feared, could concentrate the worst urges of whole groups of men"). Thomas Jefferson famously fretted that corporations would subvert the Republic.[54] General incorporation statutes, and widespread acceptance of business corporations as socially useful actors, did not emerge until the 1800's. See Hansmann & Kraakman, The End of History for Corporate Law, 89 Geo. L. J. 439, 440 (2001) (hereinafter Hansmann & Kraakman) ("[A]ll general business corporation statutes appear to date from well after 1800").

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[54] See Letter from Thomas Jefferson to Tom Logan (Nov. 12, 1816), in 12 The Works of Thomas Jefferson 42, 44 (P. Ford ed. 1905) ("I hope we shall . . . crush in [its] birth the aristocracy of our monied corporations which dare already to challenge our government to a trial of strength and bid defiance to the laws of our country").

The Framers thus took it as a given that corporations could be comprehensively regulated in the service of the public welfare. Unlike our colleagues, they had little trouble distinguishing corporations from human beings, and when they constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind.[55] While individuals might join together to exercise their speech rights, business corporations, at least, were plainly not seen as facilitating such associational or expressive ends. Even "the notion that business corporations could invoke the First Amendment would probably have been quite a novelty," given that "at the time, the legitimacy of every corporate activity was thought to rest entirely in a concession of the sovereign." Shelledy, Autonomy, Debate, and Corporate Speech, 18 Hastings Const. L. Q. 541, 578 (1991); cf. *Trustees of Dartmouth College* v. *Woodward*, 4 Wheat. 518, 636

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[55] In normal usage then, as now, the term "speech" referred to oral communications by individuals. See, *e.g.*, 2 S. Johnson, Dictionary of the English Language 1853–1854 (4th ed. 1773) (reprinted 1978) (listing as primary definition of "speech": "The power of articulate utterance; the power of expressing thoughts by vocal words"); 2 N. Webster, American Dictionary of the English Language (1828) (reprinted 1970) (listing as primary definition of "speech": "The faculty of uttering articulate sounds or words, as in human beings; the faculty of expressing thoughts by words or articulate sounds. *Speech* was given to man by his Creator for the noblest purposes"). Indeed, it has been "claimed that the notion of institutional speech . . . did not exist in post-revolutionary America." Fagundes, State Actors as First Amendment Speakers, 100 Nw. U. L. Rev. 1637, 1654 (2006); see also Bezanson, Institutional Speech, 80 Iowa L. Rev. 735, 775 (1995) ("In the intellectual heritage of the eighteenth century, the idea that free speech was individual and personal was deeply rooted and clearly manifest in the writings of Locke, Milton, and others on whom the framers of the Constitution and the Bill of Rights drew"). Given that corporations were conceived of as artificial entities and do not have the technical capacity to "speak," the burden of establishing that the Framers and ratifiers understood "the freedom of speech" to encompass corporate speech is, I believe, far heavier than the majority acknowledges.

(1819) (Marshall, C. J.) ("A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it"); Eule, Promoting Speaker Diversity: Austin and Metro Broadcasting, 1990 S. Ct. Rev. 105, 129 ("The framers of the First Amendment could scarcely have anticipated its application to the corporation form. That, of course, ought not to be dispositive. What is compelling, however, is an understanding of who was supposed to be the beneficiary of the free speech guaranty—the individual"). In light of these background practices and understandings, it seems to me implausible that the Framers believed "the freedom of speech" would extend equally to all corporate speakers, much less that it would preclude legislatures from taking limited measures to guard against corporate capture of elections.

The Court observes that the Framers drew on diverse intellectual sources, communicated through newspapers, and aimed to provide greater freedom of speech than had existed in England. *Ante*, at 37. From these (accurate) observations, the Court concludes that "[t]he First Amendment was certainly not understood to condone the suppression of political speech in society's most salient media." *Ibid.* This conclusion is far from certain, given that many historians believe the Framers were focused on prior restraints on publication and did not understand the First Amendment to "prevent the subsequent punishment of such [publications] as may be deemed contrary to the public welfare." *Near* v. *Minnesota ex rel. Olson*, 283 U. S. 697, 714 (1931). Yet, even if the majority's conclusion were correct, it would tell us only that the First Amendment was understood to protect political speech *in* certain media. It would tell us little about whether the Amendment was understood to protect general treasury electioneering expenditures *by* corporations, *and to what extent.*

As a matter of original expectations, then, it seems absurd to think that the First Amendment prohibits legislatures from taking into account the corporate identity of a sponsor of electoral advocacy. As a matter of original meaning, it likewise seems baseless—unless one evaluates the First Amendment's "principles," *ante*, at 1, 48, or its "purpose," *ante*, at 5 (opinion of ROBERTS, C. J.), at such a high level of generality that the historical understandings of the Amendment cease to be a meaningful constraint on the judicial task. This case sheds a revelatory light on the assumption of some that an impartial judge's application of an originalist methodology is likely to yield more determinate answers, or to play a more decisive role in the decisional process, than his or her views about sound policy.

JUSTICE SCALIA criticizes the foregoing discussion for failing to adduce statements from the founding era showing that corporations were understood to be excluded from the First Amendment's free speech guarantee. *Ante*, at 1–2, 9. Of course, JUSTICE SCALIA adduces no statements to suggest the contrary proposition, or even to suggest that the contrary proposition better reflects the kind of right that the drafters and ratifiers of the Free Speech Clause thought they were enshrining. Although JUSTICE SCALIA makes a perfectly sensible argument that an individual's right to speak entails a right to speak with others for a common cause, cf. *MCFL*, 479 U. S. 238, he does not explain why those two rights must be precisely identical, or why that principle applies to electioneering by corporations that serve no "common cause." *Ante*, at 8. Nothing in his account dislodges my basic point that members of the founding generation held a cautious view of corporate power and a narrow view of corporate rights (not that they "despised" corporations, *ante*, at 2), and that they conceptualized speech in individualistic terms. If no prominent Framer bothered to articulate that corporate speech would

have lesser status than individual speech, that may well be because the contrary proposition—if not also the very notion of "corporate speech"—was inconceivable.[56]

JUSTICE SCALIA also emphasizes the unqualified nature of the First Amendment text. *Ante*, at 2, 8. Yet he would seemingly read out the Free Press Clause: How else could he claim that my purported views on newspapers must track my views on corporations generally? *Ante*, at 6.[57] Like virtually all modern lawyers, JUSTICE SCALIA presumably believes that the First Amendment restricts the Executive, even though its language refers to Congress alone. In any event, the text only leads us back to the questions who or what is guaranteed "the freedom of speech," and, just as critically, what that freedom consists of and under what circumstances it may be limited. JUSTICE SCALIA appears to believe that because corporations are created and utilized by individuals, it follows (as

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[56] Postratification practice bolsters the conclusion that the First Amendment, "as originally understood," *ante*, at 37, did not give corporations political speech rights on a par with the rights of individuals. Well into the modern era of general incorporation statutes, "[t]he common law was generally interpreted as prohibiting corporate political participation," *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 819 (1978) (White, J., dissenting), and this Court did not recognize *any* First Amendment protections for corporations until the middle part of the 20th century, see *ante*, at 25–26 (listing cases).

[57] In fact, the Free Press Clause might be turned against JUSTICE SCALIA, for two reasons. First, we learn from it that the drafters of the First Amendment did draw distinctions—explicit distinctions—between types of "speakers," or speech outlets or forms. Second, the Court's strongest historical evidence all relates to the Framers' views on the press, see *ante*, at 37–38; *ante*, at 4–6 (SCALIA, J., concurring), yet while the Court tries to sweep this evidence into the Free Speech Clause, the Free Press Clause provides a more natural textual home. The text and history highlighted by our colleagues suggests why one type of corporation, those that are part of the press, might be able to claim special First Amendment status, and therefore why some kinds of "identity"-based distinctions might be permissible after all. Once one accepts that much, the intellectual edifice of the majority opinion crumbles.

night the day) that their electioneering must be equally protected by the First Amendment and equally immunized from expenditure limits. See *ante*, at 7–8. That conclusion certainly does not follow as a logical matter, and JUSTICE SCALIA fails to explain why the original public meaning leads it to follow as a matter of interpretation.

The truth is we cannot be certain how a law such as BCRA §203 meshes with the original meaning of the First Amendment.[58] I have given several reasons why I believe the Constitution would have been understood then, and ought to be understood now, to permit reasonable restrictions on corporate electioneering, and I will give many more reasons in the pages to come. The Court enlists the Framers in its defense without seriously grappling with their understandings of corporations or the free speech right, or with the republican principles that underlay those understandings.

In fairness, our campaign finance jurisprudence has never attended very closely to the views of the Framers, see *Randall* v. *Sorrell*, 548 U. S. 230, 280 (2006) (STEVENS, J., dissenting), whose political universe differed profoundly from that of today. We have long since held that corporations are covered by the First Amendment, and many legal scholars have long since rejected the concession theory of the corporation. But "historical context is usually relevant," *ibid.* (internal quotation marks omitted), and in light of the Court's effort to cast itself as guardian of ancient values, it pays to remember that nothing in our constitutional history dictates today's outcome. To the contrary, this history helps illuminate just how extraordinarily dissonant the decision is.

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[58] Cf. L. Levy, Legacy of Suppression: Freedom of Speech and Press in Early American History 4 (1960) ("The meaning of no other clause of the Bill of Rights at the time of its framing and ratification has been so obscure to us" as the Free Speech and Press Clause).

2. *Legislative and Judicial Interpretation*

A century of more recent history puts to rest any notion that today's ruling is faithful to our First Amendment tradition. At the federal level, the express distinction between corporate and individual political spending on elections stretches back to 1907, when Congress passed the Tillman Act, ch. 420, 34 Stat. 864, banning all corporate contributions to candidates. The Senate Report on the legislation observed that "[t]he evils of the use of [corporate] money in connection with political elections are so generally recognized that the committee deems it unnecessary to make any argument in favor of the general purpose of this measure. It is in the interest of good government and calculated to promote purity in the selection of public officials." S. Rep. No. 3056, 59th Cong., 1st Sess., 2 (1906). President Roosevelt, in his 1905 annual message to Congress, declared:

> "'All contributions by corporations to any political committee or for any political purpose should be forbidden by law; directors should not be permitted to use stockholders' money for such purposes; and, moreover, a prohibition of this kind would be, as far as it went, an effective method of stopping the evils aimed at in corrupt practices acts.'" *United States* v. *Automobile Workers*, 352 U. S. 567, 572 (1957) (quoting 40 Cong. Rec. 96).

The Court has surveyed the history leading up to the Tillman Act several times, see *WRTL*, 551 U. S., at 508–510 (Souter, J., dissenting); *McConnell*, 540 U. S., at 115; *Automobile Workers*, 352 U. S., at 570–575, and I will refrain from doing so again. It is enough to say that the Act was primarily driven by two pressing concerns: first, the enormous power corporations had come to wield in federal elections, with the accompanying threat of both actual corruption and a public perception of corruption;

and second, a respect for the interest of shareholders and members in preventing the use of their money to support candidates they opposed. See *ibid.*; *United States* v. *CIO*, 335 U. S. 106, 113 (1948); Winkler, "Other People's Money": Corporations, Agency Costs, and Campaign Finance Law, 92 Geo. L. J. 871 (2004).

Over the years, the limitations on corporate political spending have been modified in a number of ways, as Congress responded to changes in the American economy and political practices that threatened to displace the commonweal. Justice Souter recently traced these developments at length.[59] *WRTL*, 551 U. S., at 507–519 (dissenting opinion); see also *McConnell*, 540 U. S., at 115–133; *McConnell*, 251 F. Supp. 2d, at 188–205. The Taft-Hartley Act of 1947 is of special significance for this case. In that Act passed more than 60 years ago, Congress extended the prohibition on corporate support of candidates to cover not only direct contributions, but independent expenditures as well. Labor Management Relations Act, 1947, §304, 61 Stat. 159. The bar on contributions "was being so narrowly construed" that corporations were easily able to defeat the purposes of the Act by supporting candidates through other means. *WRTL*, 551 U. S., at 511 (Souter, J., dissenting) (citing S. Rep. No. 1, 80th Cong., 1st Sess., 38–39 (1947)).

Our colleagues emphasize that in two cases from the middle of the 20th century, several Justices wrote sepa-

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[59] As the majority notes, there is some academic debate about the precise origins of these developments. *Ante*, at 48; see also n. 19, *supra*. There is *always* some academic debate about such developments; the motives of legislatures are never entirely clear or unitary. Yet the basic shape and trajectory of 20th-century campaign finance reform are clear, and one need not take a naïve or triumphalist view of this history to find it highly relevant. The Court's skepticism does nothing to mitigate the absurdity of its claim that *Austin* and *McConnell* were outliers. Nor does it alter the fact that five Justices today destroy a longstanding American practice.

rately to criticize the expenditure restriction as applied to unions, even though the Court declined to pass on its constitutionality. *Ante*, at 27–28. Two features of these cases are of far greater relevance. First, those Justices were writing separately; which is to say, their position failed to command a majority. Prior to today, this was a fact we found significant in evaluating precedents. Second, each case in this line expressed support for the principle that corporate and union political speech financed with PAC funds, collected voluntarily from the organization's stockholders or members, receives greater protection than speech financed with general treasury funds.[60]

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[60] See *Pipefitters* v. *United States*, 407 U. S. 385, 409, 414–415 (1972) (reading the statutory bar on corporate and union campaign spending not to apply to "the voluntary donations of employees," when maintained in a separate account, because "[t]he dominant [legislative] concern in requiring that contributions be voluntary was, after all, to protect the dissenting stockholder or union member"); *Automobile Workers*, 352 U. S., at 592 (advising the District Court to consider on remand whether the broadcast in question was "paid for out of the general dues of the union membership or [whether] the funds [could] be fairly said to have obtained on a voluntary basis"); *United States* v. *CIO*, 335 U. S. 106, 123 (1948) (observing that "funds voluntarily contributed [by union members or corporate stockholders] for election purposes" might not be covered by the expenditure bar). Both the *Pipefitters* and the *Automobile Workers* Court approvingly referenced Congress' goal of reducing "the effect of aggregated wealth on federal elections," understood as wealth drawn from a corporate or union general treasury without the stockholders' or members' "free and knowing choice." *Pipefitters*, 407 U. S., at 416; see *Automobile Workers*, 352 U. S., at 582.

The two dissenters in *Pipefitters* would not have read the statutory provision in question, a successor to §304 of the Taft-Hartley Act, to allow such robust use of corporate and union funds to finance otherwise prohibited electioneering. "This opening of the door to extensive corporate and union influence on the elective and legislative processes," Justice Powell wrote, "must be viewed with genuine concern. This seems to me to be a regressive step as contrasted with the numerous legislative and judicial actions in recent years designed to assure that elections are indeed free and representative." 407 U. S., at 450 (opinion

This principle was carried forward when Congress enacted comprehensive campaign finance reform in the Federal Election Campaign Act of 1971 (FECA), 86 Stat. 3, which retained the restriction on using general treasury funds for contributions and expenditures, 2 U. S. C. §441b(a). FECA codified the option for corporations and unions to create PACs to finance contributions and expenditures forbidden to the corporation or union itself. §441b(b).

By the time Congress passed FECA in 1971, the bar on corporate contributions and expenditures had become such an accepted part of federal campaign finance regulation that when a large number of plaintiffs, including several nonprofit corporations, challenged virtually every aspect of the Act in *Buckley*, 424 U. S. 1, no one even bothered to argue that the bar as such was unconstitutional. *Buckley* famously (or infamously) distinguished direct contributions from independent expenditures, *id.*, at 58–59, but its silence on corporations only reinforced the understanding that corporate expenditures could be treated differently from individual expenditures. "Since our decision in *Buckley*, Congress' power to prohibit corporations and unions from using funds in their treasuries to finance advertisements expressly advocating the election or defeat of candidates in federal elections has been firmly embedded in our law." *McConnell*, 540 U. S., at 203.

Thus, it was unremarkable, in a 1982 case holding that Congress could bar nonprofit corporations from soliciting nonmembers for PAC funds, that then-Justice Rehnquist wrote for a unanimous Court that Congress' "careful legislative adjustment of the federal electoral laws, in a cautious advance, step by step, to account for the particular legal and economic attributes of corporations . . . warrants considerable deference," and "reflects a permissible as-

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of Powell, J., joined by Burger, C. J.).

sessment of the dangers posed by those entities to the electoral process." *NRWC*, 459 U. S., at 209 (internal quotation marks and citation omitted). "The governmental interest in preventing both actual corruption and the appearance of corruption of elected representatives has long been recognized," the unanimous Court observed, "and there is no reason why it may not . . . be accomplished by treating . . . corporations . . . differently from individuals." *Id.*, at 210–211.

The corporate/individual distinction was not questioned by the Court's disposition, in 1986, of a challenge to the expenditure restriction as applied to a distinctive type of nonprofit corporation. In *MCFL*, 479 U. S. 238, we stated again "that 'the special characteristics of the corporate structure require particularly careful regulation,'" *id.*, at 256 (quoting *NRWC*, 459 U. S., at 209–210), and again we acknowledged that the Government has a legitimate interest in "regulat[ing] the substantial aggregations of wealth amassed by the special advantages which go with the corporate form," 479 U. S., at 257 (internal quotation marks omitted). Those aggregations can distort the "free trade in ideas" crucial to candidate elections, *ibid.*, at the expense of members or shareholders who may disagree with the object of the expenditures, *id.*, at 260 (internal quotation marks omitted). What the Court held by a 5-to-4 vote was that a limited class of corporations must be allowed to use their general treasury funds for independent expenditures, because Congress' interests in protecting shareholders and "restrict[ing] 'the influence of political war chests funneled through the corporate form,'" *id.*, at 257 (quoting *FEC* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 501 (1985) *(NCPAC)*), did not apply to corporations that were structurally insulated from those concerns.[61]

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[61] Specifically, these corporations had to meet three conditions. First,

It is worth remembering for present purposes that the four *MCFL* dissenters, led by Chief Justice Rehnquist, thought the Court was carrying the First Amendment *too far*. They would have recognized congressional authority to bar general treasury electioneering expenditures even by this class of nonprofits; they acknowledged that "the threat from corporate political activity will vary depending on the particular characteristics of a given corporation," but believed these "distinctions among corporations" were "distinctions in degree," not "in kind," and thus "more properly drawn by the Legislature than by the Judiciary." 479 U. S., at 268 (opinion of Rehnquist, C. J.) (internal quotation marks omitted). Not a single Justice suggested that regulation of corporate political speech could be no more stringent than of speech by an individual.

Four years later, in *Austin*, 494 U. S. 652, we considered whether corporations falling outside the *MCFL* exception could be barred from using general treasury funds to make independent expenditures in support of, or in opposition to, candidates. We held they could be. Once again recognizing the importance of "the integrity of the marketplace of political ideas" in candidate elections, *MCFL*, 479 U. S., at 257, we noted that corporations have "special advantages—such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets," 494 U. S., at 658–659—that allow them to spend prodigious general treasury sums on campaign messages

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they had to be formed "for the express purpose of promoting political ideas," so that their resources reflected political support rather than commercial success. *MCFL*, 479 U. S., at 264. Next, they had to have no shareholders, so that "persons connected with the organization will have no economic disincentive for disassociating with it if they disagree with its political activity." *Ibid.* Finally, they could not be "established by a business corporation or a labor union," nor "accept contributions from such entities," lest they "serv[e] as conduits for the type of direct spending that creates a threat to the political marketplace." *Ibid.*

that have "little or no correlation" with the beliefs held by actual persons, *id.*, at 660. In light of the corrupting effects such spending might have on the political process, *ibid.*, we permitted the State of Michigan to limit corporate expenditures on candidate elections to corporations' PACs, which rely on voluntary contributions and thus "reflect actual public support for the political ideals espoused by corporations," *ibid.* Notwithstanding our colleagues' insinuations that *Austin* deprived the public of general "ideas," "facts," and "knowledge," *ante*, at 38–39, the decision addressed only candidate-focused expenditures and gave the State no license to regulate corporate spending on other matters.

In the 20 years since *Austin*, we have reaffirmed its holding and rationale a number of times, see, *e.g.*, *Beaumont*, 539 U. S., at 153–156, most importantly in *McConnell*, 540 U. S. 93, where we upheld the provision challenged here, §203 of BCRA.[62] Congress crafted §203 in response to a problem created by *Buckley*. The *Buckley*

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[62] According to THE CHIEF JUSTICE, we are "erroneou[s]" in claiming that *McConnell* and *Beaumont* "'reaffirmed'" *Austin*. *Ante*, at 5. In both cases, the Court explicitly relied on *Austin* and quoted from it at length. See 540 U. S., at 204–205; 539 U. S., at 153–155, 158, 160, 163; see also *ante*, at 15 ("The holding and validity of *Austin* were essential to the reasoning of the *McConnell* majority opinion"); Brief for Appellants National Rifle Association et al., O. T. 2003, No. 02–1675, p. 21 ("*Beaumont* reaffirmed . . . the *Austin* rationale for restricting expenditures"). The *McConnell* Court did so in the teeth of vigorous protests by Justices in today's majority that *Austin* should be overruled. See *ante*, at 15 (citing relevant passages); see also *Beaumont*, 539 U. S., at 163–164 (KENNEDY, J., concurring in judgment). Both Courts also heard criticisms of *Austin* from parties or *amici*. See Brief for Appellants Chamber of Commerce of the United States et al., O. T. 2003, No. 02–1756, p. 35, n. 22; Reply Brief for Appellants/Cross-Appellees Senator Mitch McConnell et al., O. T. 2003, No. 02–1674, pp. 13–14; Brief for Pacific Legal Foundation as *Amicus Curiae* in *FEC* v. *Beaumont*, O. T. 2002, No. 02–403, *passim*. If this does not qualify as reaffirmation of a precedent, then I do not know what would.

Court had construed FECA's definition of prohibited "expenditures" narrowly to avoid any problems of constitutional vagueness, holding it applicable only to "communications that expressly advocate the election or defeat of a clearly identified candidate," 424 U. S., at 80, *i.e.*, statements containing so-called "magic words" like "'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' [or] 'reject,'" *id.*, at 43–44, and n. 52. After *Buckley*, corporations and unions figured out how to circumvent the limits on express advocacy by using sham "issue ads" that "eschewed the use of magic words" but nonetheless "advocate[d] the election or defeat of clearly identified federal candidates." *McConnell*, 540 U. S., at 126. "Corporations and unions spent hundreds of millions of dollars of their general funds to pay for these ads." *Id.*, at 127. Congress passed §203 to address this circumvention, prohibiting corporations and unions from using general treasury funds for electioneering communications that "refe[r] to a clearly identified candidate," whether or not those communications use the magic words. 2 U. S. C. §434(f)(3)(A)(i)(I).

When we asked in *McConnell* "whether a compelling governmental interest justifie[d]" §203, we found the question "easily answered": "We have repeatedly sustained legislation aimed at 'the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas.'" 540 U. S., at 205 (quoting *Austin*, 494 U. S., at 660). These precedents "represent respect for the legislative judgment that the special characteristics of the corporate structure require particularly careful regulation." 540 U. S., at 205 (internal quotation marks omitted). "Moreover, recent cases have recognized that certain restrictions on corporate electoral involvement permissibly hedge against '"circumvention of [valid] contribution

limits."'" *Ibid.* (quoting *Beaumont*, 539 U. S., at 155, in turn quoting *FEC* v. *Colorado Republican Federal Campaign Comm.*, 533 U. S. 431, 456, and n. 18 (2001) *(Colorado II);* alteration in original). BCRA, we found, is faithful to the compelling governmental interests in "'preserving the integrity of the electoral process, preventing corruption, . . . sustaining the active, alert responsibility of the individual citizen in a democracy for the wise conduct of the government,'" and maintaining "'the individual citizen's confidence in government.'" 540 U. S., at 206–207, n. 88 (quoting *Bellotti*, 435 U. S., at 788–789; some internal quotation marks and brackets omitted). What made the answer even easier than it might have been otherwise was the option to form PACs, which give corporations, at the least, "a constitutionally sufficient opportunity to engage in" independent expenditures. 540 U. S., at 203.

3. *Buckley and Bellotti*

Against this extensive background of congressional regulation of corporate campaign spending, and our repeated affirmation of this regulation as constitutionally sound, the majority dismisses *Austin* as "a significant departure from ancient First Amendment principles," *ante*, at 1 (internal quotation marks omitted). How does the majority attempt to justify this claim? Selected passages from two cases, *Buckley*, 424 U. S. 1, and *Bellotti*, 435 U. S. 765, do all of the work. In the Court's view, *Buckley* and *Bellotti* decisively rejected the possibility of distinguishing corporations from natural persons in the 1970's; it just so happens that in every single case in which the Court has reviewed campaign finance legislation in the decades since, the majority failed to grasp this truth. The Federal Congress and dozens of state legislatures, we now know, have been similarly deluded.

The majority emphasizes *Buckley*'s statement that

"'[t]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.'" *Ante*, at 33 (quoting 424 U. S., at 48–49); *ante*, at 8 (opinion of ROBERTS, C. J.). But this elegant phrase cannot bear the weight that our colleagues have placed on it. For one thing, the Constitution does, in fact, permit numerous "restrictions on the speech of some in order to prevent a few from drowning out the many": for example, restrictions on ballot access and on legislators' floor time. *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 402 (2000) (BREYER, J., concurring). For another, the *Buckley* Court used this line in evaluating "the ancillary governmental interest in equalizing the relative ability of individuals and groups to influence the outcome of elections." 424 U. S., at 48. It is not apparent why this is relevant to the case before us. The majority suggests that *Austin* rests on the foreign concept of speech equalization, *ante*, at 34; *ante*, at 8–10 (opinion of ROBERTS, C. J.), but we made it clear in *Austin* (as in several cases before and since) that a restriction on the way corporations spend their money is no mere exercise in disfavoring the voice of some elements of our society in preference to others. Indeed, we *expressly* ruled that the compelling interest supporting Michigan's statute was not one of "'equaliz[ing] the relative influence of speakers on elections,'" *Austin*, 494 U. S., at 660 (quoting *id.*, at 705 (KENNEDY, J., dissenting)), but rather the need to confront the distinctive corrupting potential of corporate electoral advocacy financed by general treasury dollars, *id.*, at 659–660.

For that matter, it should go without saying that when we made this statement in *Buckley*, we could not have been casting doubt on the restriction on corporate expenditures in candidate elections, which had not been challenged as "foreign to the First Amendment," *ante*, at 33 (quoting *Buckley*, 424 U. S., at 49), or for any other reason.

Buckley's independent expenditure analysis was focused on a very different statutory provision, 18 U. S. C. §608(e)(1) (1970 ed., Supp. V). It is implausible to think, as the majority suggests, *ante*, at 29–30, that *Buckley* covertly invalidated FECA's separate corporate and union campaign expenditure restriction, §610 (now codified at 2 U. S. C. §441b), even though that restriction had been on the books for decades before *Buckley* and would remain on the books, undisturbed, for decades after.

The case on which the majority places even greater weight than *Buckley*, however, is *Bellotti*, 435 U. S. 765, claiming it "could not have been clearer" that *Bellotti*'s holding forbade distinctions between corporate and individual expenditures like the one at issue here, *ante*, at 30. The Court's reliance is odd. The only thing about *Bellotti* that could not be clearer is that it declined to adopt the majority's position. *Bellotti* ruled, in an explicit limitation on the scope of its holding, that "our consideration of a corporation's right to speak on issues of general public interest implies no comparable right in the quite different context of participation in a political campaign for election to public office." 435 U. S., at 788, n. 26; see also *id.*, at 787–788 (acknowledging that the interests in preserving public confidence in Government and protecting dissenting shareholders may be "weighty . . . in the context of partisan candidate elections"). *Bellotti*, in other words, did not touch the question presented in *Austin* and *McConnell*, and the opinion squarely disavowed the proposition for which the majority cites it.

The majority attempts to explain away the distinction *Bellotti* drew—between general corporate speech and campaign speech intended to promote or prevent the election of specific candidates for office—as inconsistent with the rest of the opinion and with *Buckley*. *Ante*, at 31, 42–44. Yet the basis for this distinction is perfectly coherent: The anticorruption interests that animate regulations

of corporate participation in candidate elections, the "importance" of which "has never been doubted," 435 U. S., at 788, n. 26, do not apply equally to regulations of corporate participation in referenda. A referendum cannot owe a political debt to a corporation, seek to curry favor with a corporation, or fear the corporation's retaliation. Cf. *Austin*, 494 U. S., at 678 (STEVENS, J., concurring); *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290, 299 (1981). The majority likewise overlooks the fact that, over the past 30 years, our cases have repeatedly recognized the candidate/issue distinction. See, *e.g.*, *Austin*, 494 U. S., at 659; *NCPAC*, 470 U. S., at 495–496; *FCC* v. *League of Women Voters of Cal.*, 468 U. S. 364, 371, n. 9 (1984); *NRWC*, 459 U. S., at 210, n. 7. The Court's critique of *Bellotti*'s footnote 26 puts it in the strange position of trying to elevate *Bellotti* to canonical status, while simultaneously disparaging a critical piece of its analysis as unsupported and irreconcilable with *Buckley*. *Bellotti*, apparently, is both the font of all wisdom and internally incoherent.

The *Bellotti* Court confronted a dramatically different factual situation from the one that confronts us in this case: a state statute that barred business corporations' expenditures on some referenda but not others. Specifically, the statute barred a business corporation "from making contributions or expenditures 'for the purpose of . . . influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation,'" 435 U. S., at 768 (quoting Mass. Gen. Laws Ann., ch. 55, §8 (West Supp. 1977); alteration in original), and it went so far as to provide that referenda related to income taxation would not "'be deemed materially to affect the property, business or assets of the corporation,'" 435 U. S., at 768. As might be guessed, the legislature had enacted this statute in order to limit corporate speech on a proposed

state constitutional amendment to authorize a graduated income tax. The statute was a transparent attempt to prevent corporations from spending money to defeat this amendment, which was favored by a majority of legislators but had been repeatedly rejected by the voters. See *id.*, at 769–770, and n. 3. We said that "where, as here, the legislature's suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended." *Id.*, at 785–786 (footnote omitted).

Bellotti thus involved a *viewpoint-discriminatory* statute, created to effect a particular policy outcome. Even Justice Rehnquist, in dissent, had to acknowledge that "a very persuasive argument could be made that the [Massachusetts Legislature], desiring to impose a personal income tax but more than once defeated in that desire by the combination of the Commonwealth's referendum provision and corporate expenditures in opposition to such a tax, simply decided to muzzle corporations on this sort of issue so that it could succeed in its desire." *Id.*, at 827, n. 6. To make matters worse, the law at issue did not make any allowance for corporations to spend money through PACs. *Id.*, at 768, n. 2 (opinion of the Court). This really was a complete ban on a specific, preidentified subject. See *MCFL*, 479 U. S., at 259, n. 12 (stating that 2 U. S. C. §441b's expenditure restriction "is *of course distinguishable* from the complete foreclosure of any opportunity for political speech that we invalidated in the state referendum context in . . . *Bellotti*" (emphasis added)).

The majority grasps a quotational straw from *Bellotti*, that speech does not fall entirely outside the protection of the First Amendment merely because it comes from a corporation. *Ante*, at 30–31. Of course not, but no one suggests the contrary and neither *Austin* nor *McConnell* held otherwise. They held that even though the expenditures at issue were subject to First Amendment scrutiny,

the restrictions on those expenditures were justified by a compelling state interest. See *McConnell*, 540 U. S., at 205; *Austin*, 494 U. S., at 658, 660. We acknowledged in *Bellotti* that numerous "interests of the highest importance" can justify campaign finance regulation. 435 U. S., at 788–789. But we found no evidence that these interests were served by the Massachusetts law. *Id.*, at 789. We left open the possibility that our decision might have been different if there had been "record or legislative findings that corporate advocacy threatened imminently to undermine democratic processes, thereby denigrating rather than serving First Amendment interests." *Ibid.*

Austin and *McConnell*, then, sit perfectly well with *Bellotti*. Indeed, all six Members of the *Austin* majority had been on the Court at the time of *Bellotti*, and none so much as hinted in *Austin* that they saw any tension between the decisions. The difference between the cases is not that *Austin* and *McConnell* rejected First Amendment protection for corporations whereas *Bellotti* accepted it. The difference is that the statute at issue in *Bellotti* smacked of viewpoint discrimination, targeted one class of corporations, and provided no PAC option; and the State has a greater interest in regulating independent corporate expenditures on candidate elections than on referenda, because in a functioning democracy the public must have faith that its representatives owe their positions to the people, not to the corporations with the deepest pockets.

* * *

In sum, over the course of the past century Congress has demonstrated a recurrent need to regulate corporate participation in candidate elections to "'[p]reserv[e] the integrity of the electoral process, preven[t] corruption, . . . sustai[n] the active, alert responsibility of the individual citizen,'" protect the expressive interests of shareholders, and "'[p]reserv[e] . . . the individual citizen's confidence in

government.'" *McConnell*, 540 U. S., at 206–207, n. 88 (quoting *Bellotti*, 435 U. S., at 788–789; first alteration in original). These understandings provided the combined impetus behind the Tillman Act in 1907, see *Automobile Workers*, 352 U. S., at 570–575, the Taft-Hartley Act in 1947, see *WRTL*, 551 U. S., at 511 (Souter, J., dissenting), FECA in 1971, see *NRWC*, 459 U. S., at 209–210, and BCRA in 2002, see *McConnell*, 540 U. S., at 126–132. Continuously for over 100 years, this line of "[c]ampaign finance reform has been a series of reactions to documented threats to electoral integrity obvious to any voter, posed by large sums of money from corporate or union treasuries." *WRTL*, 551 U. S., at 522 (Souter, J., dissenting). Time and again, we have recognized these realities in approving measures that Congress and the States have taken. None of the cases the majority cites is to the contrary. The only thing new about *Austin* was the dissent, with its stunning failure to appreciate the legitimacy of interests recognized in the name of democratic integrity since the days of the Progressives.

IV

Having explained why this is not an appropriate case in which to revisit *Austin* and *McConnell* and why these decisions sit perfectly well with "First Amendment principles," *ante*, at 1, 48, I come at last to the interests that are at stake. The majority recognizes that *Austin* and *McConnell* may be defended on anticorruption, antidistortion, and shareholder protection rationales. *Ante*, at 32–46. It badly errs both in explaining the nature of these rationales, which overlap and complement each other, and in applying them to the case at hand.

The Anticorruption Interest

Undergirding the majority's approach to the merits is the claim that the only "sufficiently important governmen-

tal interest in preventing corruption or the appearance of corruption" is one that is "limited to *quid pro quo* corruption." *Ante,* at 43. This is the same "crabbed view of corruption" that was espoused by JUSTICE KENNEDY in *McConnell* and squarely rejected by the Court in that case. 540 U. S., at 152. While it is true that we have not always spoken about corruption in a clear or consistent voice, the approach taken by the majority cannot be right, in my judgment. It disregards our constitutional history and the fundamental demands of a democratic society.

On numerous occasions we have recognized Congress' legitimate interest in preventing the money that is spent on elections from exerting an "'undue influence on an officeholder's judgment'" and from creating "'the appearance of such influence,'" beyond the sphere of *quid pro quo* relationships. *Id.,* at 150; see also, *e.g., id.,* at 143–144, 152–154; *Colorado II,* 533 U. S., at 441; *Shrink Missouri,* 528 U. S., at 389. Corruption can take many forms. Bribery may be the paradigm case. But the difference between selling a vote and selling access is a matter of degree, not kind. And selling access is not qualitatively different from giving special preference to those who spent money on one's behalf. Corruption operates along a spectrum, and the majority's apparent belief that *quid pro quo* arrangements can be neatly demarcated from other improper influences does not accord with the theory or reality of politics. It certainly does not accord with the record Congress developed in passing BCRA, a record that stands as a remarkable testament to the energy and ingenuity with which corporations, unions, lobbyists, and politicians may go about scratching each other's backs—and which amply supported Congress' determination to target a limited set of especially destructive practices.

The District Court that adjudicated the initial challenge to BCRA pored over this record. In a careful analysis, Judge Kollar-Kotelly made numerous findings about the

corrupting consequences of corporate and union independent expenditures in the years preceding BCRA's passage. See *McConnell*, 251 F. Supp. 2d, at 555–560, 622–625; see also *id.*, at 804–805, 813, n. 143 (Leon, J.) (indicating agreement). As summarized in her own words:

> "The factual findings of the Court illustrate that corporations and labor unions routinely notify Members of Congress as soon as they air electioneering communications relevant to the Members' elections. The record also indicates that Members express appreciation to organizations for the airing of these election-related advertisements. Indeed, Members of Congress are particularly grateful when negative issue advertisements are run by these organizations, leaving the candidates free to run positive advertisements and be seen as 'above the fray.' Political consultants testify that campaigns are quite aware of who is running advertisements on the candidate's behalf, when they are being run, and where they are being run. Likewise, a prominent lobbyist testifies that these organizations use issue advocacy as a means to influence various Members of Congress.
>
> "The Findings also demonstrate that Members of Congress seek to have corporations and unions run these advertisements on their behalf. The Findings show that Members suggest that corporations or individuals make donations to interest groups with the understanding that the money contributed to these groups will assist the Member in a campaign. After the election, these organizations often seek credit for their support. . . . Finally, a large majority of Americans (80%) are of the view that corporations and other organizations that engage in electioneering communications, which benefit specific elected officials, receive special consideration from those officials when matters

arise that affect these corporations and organizations." *Id.*, at 623–624 (citations and footnote omitted).

Many of the relationships of dependency found by Judge Kollar-Kotelly seemed to have a *quid pro quo* basis, but other arrangements were more subtle. Her analysis shows the great difficulty in delimiting the precise scope of the *quid pro quo* category, as well as the adverse consequences that *all* such arrangements may have. There are threats of corruption that are far more destructive to a democratic society than the odd bribe. Yet the majority's understanding of corruption would leave lawmakers impotent to address all but the most discrete abuses.

Our "undue influence" cases have allowed the American people to cast a wider net through legislative experiments designed to ensure, to some minimal extent, "that officeholders will decide issues . . . on the merits or the desires of their constituencies," and not "according to the wishes of those who have made large financial contributions"—or expenditures—"valued by the officeholder." *McConnell*, 540 U. S., at 153.[63] When private interests are seen to exert outsized control over officeholders solely on account of the money spent on (or withheld from) their campaigns, the result can depart so thoroughly "from what is pure or

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[63] Cf. *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 389 (2000) (recognizing "the broader threat from politicians too compliant with the wishes of large contributors"). Though discrete in scope, these experiments must impose some meaningful limits if they are to have a chance at functioning effectively and preserving the public's trust. "Even if it occurs only occasionally, the potential for such undue influence is manifest. And unlike straight cash-for-votes transactions, such corruption is neither easily detected nor practical to criminalize." *McConnell*, 540 U. S., at 153. There should be nothing controversial about the proposition that the influence being targeted is "undue." In a democracy, officeholders should not make public decisions with the aim of placating a financial benefactor, except to the extent that the benefactor is seen as representative of a larger constituency or its arguments are seen as especially persuasive.

correct" in the conduct of Government, Webster's Third New International Dictionary 512 (1966) (defining "corruption"), that it amounts to a "subversion . . . of the electoral process," *Automobile Workers*, 352 U. S., at 575. At stake in the legislative efforts to address this threat is therefore not only the legitimacy and quality of Government but also the public's faith therein, not only "the capacity of this democracy to represent its constituents [but also] the confidence of its citizens in their capacity to govern themselves," *WRTL*, 551 U. S., at 507 (Souter, J., dissenting). "Take away Congress' authority to regulate the appearance of undue influence and 'the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance.'" *McConnell*, 540 U. S., at 144 (quoting *Shrink Missouri*, 528 U. S., at 390).[64]

The cluster of interrelated interests threatened by such undue influence and its appearance has been well captured under the rubric of "democratic integrity." *WRTL*, 551 U. S., at 522 (Souter, J., dissenting). This value has underlined a century of state and federal efforts to regulate the role of corporations in the electoral process.[65]

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[64] The majority declares by fiat that the appearance of undue influence by high-spending corporations "will not cause the electorate to lose faith in our democracy." *Ante*, at 44. The electorate itself has consistently indicated otherwise, both in opinion polls, see *McConnell* v. *FEC*, 251 F. Supp. 2d 176, 557–558, 623–624 (DC 2003) (opinion of Kollar-Kotelly, J.), and in the laws its representatives have passed, and our colleagues have no basis for elevating their own optimism into a tenet of constitutional law.

[65] Quite distinct from the interest in preventing improper influences on the electoral process, I have long believed that "a number of [other] purposes, both legitimate and substantial, may justify the imposition of reasonable limitations on the expenditures permitted during the course of any single campaign." *Davis* v. *FEC*, 554 U. S. ___, ___ (2008) (slip op., at 3) (opinion concurring in part and dissenting in part). In my judgment, such limitations may be justified to the extent they are tailored to "improving the quality of the exposition of ideas" that voters

Unlike the majority's myopic focus on *quid pro quo* scenarios and the free-floating "First Amendment principles" on which it rests so much weight, *ante*, at 1, 48, this broader understanding of corruption has deep roots in the Nation's history. "During debates on the earliest [campaign finance] reform acts, the terms 'corruption' and 'undue influence' were used nearly interchangeably." Pasquale, Reclaiming Egalitarianism in the Political Theory of Campaign Finance Reform, 2008 U. Ill. L. Rev. 599, 601. Long before *Buckley*, we appreciated that "[t]o say that Congress is without power to pass appropriate legislation to safeguard . . . an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection." *Burroughs* v. *United States*, 290 U. S. 534, 545 (1934). And whereas we have no evidence to support the notion that the Framers would have wanted corporations to have the same rights as natural persons in the electoral context, we have ample evidence to suggest that they would have been appalled by the evidence of corruption that Congress unearthed in developing BCRA and that the Court today discounts to irrelevance. It is fair to say that "[t]he Framers were obsessed with corruption," Teachout 348, which they understood to encompass the dependency of public officeholders on private interests, see *id.*, at 373–374; see also *Randall*, 548 U. S., at 280 (STEVENS, J., dissenting). They discussed corruption "more often in the Constitutional Convention than factions, violence, or instability." Teachout 352. When they brought our consti-

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receive, *ibid.*, "free[ing] candidates and their staffs from the interminable burden of fundraising," *ibid.* (internal quotation marks omitted), and "protect[ing] equal access to the political arena," *Randall* v. *Sorrell*, 548 U. S. 230, 278 (2006) (STEVENS, J., dissenting) (internal quotation marks omitted). I continue to adhere to these beliefs, but they have not been briefed by the parties or *amici* in this case, and their soundness is immaterial to its proper disposition.

tutional order into being, the Framers had their minds trained on a threat to republican self-government that this Court has lost sight of.

Quid Pro Quo *Corruption*

There is no need to take my side in the debate over the scope of the anticorruption interest to see that the Court's merits holding is wrong. Even under the majority's "crabbed view of corruption," *McConnell*, 540 U. S., at 152, the Government should not lose this case.

"The importance of the governmental interest in preventing [corruption through the creation of political debts] has never been doubted." *Bellotti*, 435 U. S., at 788, n. 26. Even in the cases that have construed the anticorruption interest most narrowly, we have never suggested that such *quid pro quo* debts must take the form of outright vote buying or bribes, which have long been distinct crimes. Rather, they encompass the myriad ways in which outside parties may induce an officeholder to confer a legislative benefit in direct response to, or anticipation of, some outlay of money the parties have made or will make on behalf of the officeholder. See *McConnell*, 540 U. S., at 143 ("We have not limited [the anticorruption] interest to the elimination of cash-for-votes exchanges. In *Buckley*, we expressly rejected the argument that antibribery laws provided a less restrictive alternative to FECA's contribution limits, noting that such laws 'deal[t] with only the most blatant and specific attempts of those with money to influence governmental action'" (quoting 424 U. S., at 28; alteration in original)). It has likewise never been doubted that "[o]f almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption." *Id.*, at 27. Congress may "legitimately conclude that the avoidance of the appearance of improper influence is also critical . . . if confidence in the system of representative Government is not to be eroded

to a disastrous extent." *Ibid.* (internal quotation marks omitted; alteration in original). A democracy cannot function effectively when its constituent members believe laws are being bought and sold.

In theory, our colleagues accept this much. As applied to BCRA §203, however, they conclude "[t]he anticorruption interest is not sufficient to displace the speech here in question." *Ante*, at 41.

Although the Court suggests that *Buckley* compels its conclusion, *ante*, at 40–44, *Buckley* cannot sustain this reading. It is true that, in evaluating FECA's ceiling on independent expenditures by all persons, the *Buckley* Court found the governmental interest in preventing corruption "inadequate." 424 U. S., at 45. But *Buckley* did not evaluate corporate expenditures specifically, nor did it rule out the possibility that a future Court might find otherwise. The opinion reasoned that an expenditure limitation covering only express advocacy (*i.e.*, magic words) would likely be ineffectual, *ibid.*, a problem that Congress tackled in BCRA, and it concluded that "the independent advocacy restricted by [FECA §608(e)(1)] *does not presently appear* to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions," *id.*, at 46 (emphasis added). *Buckley* expressly contemplated that an anticorruption rationale might justify restrictions on independent expenditures at a later date, "because it may be that, in some circumstances, 'large independent expenditures pose the same dangers of actual or apparent *quid pro quo* arrangements as do large contributions.'" *WRTL*, 551 U. S., at 478 (opinion of ROBERTS, C. J.) (quoting *Buckley*, 424 U. S., at 45). Certainly *Buckley* did not foreclose this possibility with respect to electioneering communications made with corporate general treasury funds, an issue the Court had no occasion to consider.

The *Austin* Court did not rest its holding on *quid pro*

quo corruption, as it found the broader corruption implicated by the antidistortion and shareholder protection rationales a sufficient basis for Michigan's restriction on corporate electioneering. 494 U. S., at 658–660. Concurring in that opinion, I took the position that "the danger of either the fact, or the appearance, of *quid pro quo* relationships [also] provides an adequate justification for state regulation" of these independent expenditures. *Id.*, at 678. I did not see this position as inconsistent with *Buckley*'s analysis of individual expenditures. Corporations, as a class, tend to be more attuned to the complexities of the legislative process and more directly affected by tax and appropriations measures that receive little public scrutiny; they also have vastly more money with which to try to buy access and votes. See Supp. Brief for Appellee 17 (stating that the Fortune 100 companies earned revenues of $13.1 trillion during the last election cycle). Business corporations must engage the political process in instrumental terms if they are to maximize shareholder value. The unparalleled resources, professional lobbyists, and single-minded focus they bring to this effort, I believed, make *quid pro quo* corruption and its appearance inherently more likely when they (or their conduits or trade groups) spend unrestricted sums on elections.

It is with regret rather than satisfaction that I can now say that time has borne out my concerns. The legislative and judicial proceedings relating to BCRA generated a substantial body of evidence suggesting that, as corporations grew more and more adept at crafting "issue ads" to help or harm a particular candidate, these nominally independent expenditures began to corrupt the political process in a very direct sense. The sponsors of these ads were routinely granted special access after the campaign was over; "candidates and officials knew who their friends were," *McConnell*, 540 U. S., at 129. Many corporate independent expenditures, it seemed, had become essen-

tially interchangeable with direct contributions in their capacity to generate *quid pro quo* arrangements. In an age in which money and television ads are the coin of the campaign realm, it is hardly surprising that corporations deployed these ads to curry favor with, and to gain influence over, public officials.

The majority appears to think it decisive that the BCRA record does not contain "direct examples of votes being exchanged for . . . expenditures." *Ante*, at 45 (internal quotation marks omitted). It would have been quite remarkable if Congress had created a record detailing such behavior by its own Members. Proving that a specific vote was exchanged for a specific expenditure has always been next to impossible: Elected officials have diverse motivations, and no one will acknowledge that he sold a vote. Yet, even if "[i]ngratiation and access . . . are not corruption" themselves, *ibid.*, they are necessary prerequisites to it; they can create both the opportunity for, and the appearance of, *quid pro quo* arrangements. The influx of unlimited corporate money into the electoral realm also creates new opportunities for the mirror image of *quid pro quo* deals: threats, both explicit and implicit. Starting today, corporations with large war chests to deploy on electioneering may find democratically elected bodies becoming much more attuned to their interests. The majority both misreads the facts and draws the wrong conclusions when it suggests that the BCRA record provides "only scant evidence that independent expenditures . . . ingratiate," and that, "in any event," none of it matters. *Ibid.*

In her analysis of the record, Judge Kollar-Kotelly documented the pervasiveness of this ingratiation and explained its significance under the majority's own touchstone for defining the scope of the anticorruption rationale, *Buckley*. See *McConnell*, 251 F. Supp. 2d, at 555–560, 622–625. Witnesses explained how political parties and

candidates used corporate independent expenditures to circumvent FECA's "hard-money" limitations. See, *e.g.*, *id.*, at 478–479. One former Senator candidly admitted to the District Court that "'[c]andidates whose campaigns benefit from [phony "issue ads"] greatly appreciate the help of these groups. In fact, Members will also be favorably disposed to those who finance these groups when they later seek access to discuss pending legislation.'" *Id.*, at 556 (quoting declaration of Sen. Dale Bumpers). One prominent lobbyist went so far as to state, in uncontroverted testimony, that "'unregulated expenditures—whether soft money donations to the parties or issue ad campaigns—can sometimes generate *far more* influence than direct campaign contributions.'" *Ibid.* (quoting declaration of Wright Andrews; emphasis added). In sum, Judge Kollar-Kotelly found, "[t]he record powerfully demonstrates that electioneering communications paid for with the general treasury funds of labor unions and corporations endears those entities to elected officials in a way that could be perceived by the public as corrupting." *Id.*, at 622–623. She concluded that the Government's interest in preventing the appearance of corruption, as that concept was defined in *Buckley*, was itself sufficient to uphold BCRA §203. 251 F. Supp. 2d, at 622–625. Judge Leon agreed. See *id.*, at 804–805 (dissenting only with respect to the Wellstone Amendment's coverage of *MCFL* corporations).

When the *McConnell* Court affirmed the judgment of the District Court regarding §203, we did not rest our holding on a narrow notion of *quid pro quo* corruption. Instead we relied on the governmental interest in combating the unique forms of corruption threatened by corporations, as recognized in *Austin*'s antidistortion and shareholder protection rationales, 540 U. S., at 205 (citing *Austin*, 494 U. S., at 660), as well as the interest in preventing circumvention of contribution limits, 540 U. S., at 128–129,

205, 206, n. 88. Had we felt constrained by the view of today's Court that *quid pro quo* corruption and its appearance are the only interests that count in this field, *ante*, at 32–46, we of course would have looked closely at that issue. And as the analysis by Judge Kollar-Kotelly reflects, it is a very real possibility that we would have found one or both of those interests satisfied and §203 appropriately tailored to them.

The majority's rejection of the *Buckley* anticorruption rationale on the ground that independent corporate expenditures "do not give rise to [*quid pro quo*] corruption or the appearance of corruption," *ante*, at 42, is thus unfair as well as unreasonable. Congress and outside experts have generated significant evidence corroborating this rationale, and the only reason we do not have any of the relevant materials before us is that the Government had no reason to develop a record at trial for a facial challenge the plaintiff had abandoned. The Court cannot both *sua sponte* choose to relitigate *McConnell* on appeal and then complain that the Government has failed to substantiate its case. If our colleagues were really serious about the interest in preventing *quid pro quo* corruption, they would remand to the District Court with instructions to commence evidentiary proceedings.[66]

The insight that even technically independent expendi-

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[66] In fact, the notion that the "electioneering communications" covered by §203 can breed *quid pro quo* corruption or the appearance of such corruption has only become more plausible since we decided *McConnell*. Recall that THE CHIEF JUSTICE's controlling opinion in *WRTL* subsequently limited BCRA's definition of "electioneering communications" to those that are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." 551 U. S., at 470. The upshot was that after *WRTL*, a corporate or union expenditure could be regulated under §203 only if everyone would understand it as an endorsement of or attack on a particular candidate for office. It does not take much imagination to perceive why this type of advocacy might be especially apt to look like or amount to a deal or a threat.

tures can be corrupting in much the same way as direct contributions is bolstered by our decision last year in *Caperton* v. *A. T. Massey Coal Co.*, 556 U. S. ___ (2009). In that case, Don Blankenship, the chief executive officer of a corporation with a lawsuit pending before the West Virginia high court, spent large sums on behalf of a particular candidate, Brent Benjamin, running for a seat on that court. "In addition to contributing the $1,000 statutory maximum to Benjamin's campaign committee, Blankenship donated almost $2.5 million to 'And For The Sake Of The Kids,'" a §527 corporation that ran ads targeting Benjamin's opponent. *Id.*, at ___ (slip op., at 2). "This was not all. Blankenship spent, in addition, just over $500,000 on independent expenditures . . . '"to support . . . Brent Benjamin."'" *Id.*, at ___ (slip op., at 2–3) (second alteration in original). Applying its common sense, this Court accepted petitioners' argument that Blankenship's "pivotal role in getting Justice Benjamin elected created a constitutionally intolerable probability of actual bias" when Benjamin later declined to recuse himself from the appeal by Blankenship's corporation. *Id.*, at ___ (slip op., at 11). "Though n[o] . . . bribe or criminal influence" was involved, we recognized that "Justice Benjamin would nevertheless feel a debt of gratitude to Blankenship for his extraordinary efforts to get him elected." *Ibid.* "The difficulties of inquiring into actual bias," we further noted, "simply underscore the need for objective rules," *id.*, at ___ (slip op., at 13)—rules which will perforce turn on the appearance of bias rather than its actual existence.

In *Caperton*, then, we accepted the premise that, at least in some circumstances, independent expenditures on candidate elections will raise an intolerable specter of *quid pro quo* corruption. Indeed, this premise struck the Court as so intuitive that it repeatedly referred to Blankenship's spending on behalf of Benjamin—spending that consisted

of 99.97% independent expenditures ($3 million) and 0.03% direct contributions ($1,000)—as a "contribution." See, *e.g.*, *id.*, at ___ (slip op., at 1) ("The basis for the [recusal] motion was that the justice had received campaign contributions in an extraordinary amount from" Blankenship); *id.*, at ___ (slip op., at 3) (referencing "Blankenship's $3 million in contributions"); *id.*, at ___ (slip op., at 14) ("Blankenship contributed some $3 million to unseat the incumbent and replace him with Benjamin"); *id.*, at ___ (slip op., at 15) ("Blankenship's campaign contributions . . . had a significant and disproportionate influence on the electoral outcome"). The reason the Court so thoroughly conflated expenditures and contributions, one assumes, is that it realized that some expenditures may be functionally equivalent to contributions in the way they influence the outcome of a race, the way they are interpreted by the candidates and the public, and the way they taint the decisions that the officeholder thereafter takes.

Caperton is illuminating in several additional respects. It underscores the old insight that, on account of the extreme difficulty of proving corruption, "prophylactic measures, reaching some [campaign spending] not corrupt in purpose or effect, [may be] nonetheless required to guard against corruption." *Buckley*, 424 U. S., at 30; see also *Shrink Missouri*, 528 U. S., at 392, n. 5. It underscores that "certain restrictions on corporate electoral involvement" may likewise be needed to "hedge against circumvention of valid contribution limits." *McConnell*, 540 U. S., at 205 (internal quotation marks and brackets omitted); see also *Colorado II*, 533 U. S., at 456 ("[A]ll Members of the Court agree that circumvention is a valid theory of corruption"). It underscores that for-profit corporations associated with electioneering communications will often prefer to use nonprofit conduits with "misleading names," such as And For The Sake Of The Kids, "to

conceal their identity" as the sponsor of those communications, thereby frustrating the utility of disclosure laws. *McConnell*, 540 U. S., at 128; see also *id.*, at 196–197.

And it underscores that the consequences of today's holding will not be limited to the legislative or executive context. The majority of the States select their judges through popular elections. At a time when concerns about the conduct of judicial elections have reached a fever pitch, see, *e.g.*, O'Connor, Justice for Sale, Wall St. Journal, Nov. 15, 2007, p. A25; Brief for Justice at Stake et al. as *Amici Curiae* 2, the Court today unleashes the floodgates of corporate and union general treasury spending in these races. Perhaps "*Caperton* motions" will catch some of the worst abuses. This will be small comfort to those States that, after today, may no longer have the ability to place modest limits on corporate electioneering even if they believe such limits to be critical to maintaining the integrity of their judicial systems.

Deference and Incumbent Self-Protection

Rather than show any deference to a coordinate branch of Government, the majority thus rejects the anticorruption rationale without serious analysis.[67] Today's opinion provides no clear rationale for being so dismissive of Congress, but the prior individual opinions on which it relies have offered one: the incentives of the legislators who passed BCRA. Section 203, our colleagues have suggested, may be little more than "an incumbency protection plan," *McConnell*, 540 U. S., at 306 (KENNEDY, J., concurring in judgment in part and dissenting in part); see also *id.*, at 249–250, 260–263 (SCALIA, J., concurring in part, concurring in judgment in part, and dissenting in part), a dis-

[67] "We must give weight" and "due deference" to Congress' efforts to dispel corruption, the Court states at one point. *Ante*, at 45. It is unclear to me what these maxims mean, but as applied by the Court they clearly do not entail "deference" in any normal sense of that term.

reputable attempt at legislative self-dealing rather than an earnest effort to facilitate First Amendment values and safeguard the legitimacy of our political system. This possibility, the Court apparently believes, licenses it to run roughshod over Congress' handiwork.

In my view, we should instead start by acknowledging that "Congress surely has both wisdom and experience in these matters that is far superior to ours." *Colorado Republican Federal Campaign Comm.* v. *FEC*, 518 U. S. 604, 650 (1996) (STEVENS, J., dissenting). Many of our campaign finance precedents explicitly and forcefully affirm the propriety of such presumptive deference. See, *e.g.*, *McConnell*, 540 U. S., at 158; *Beaumont*, 539 U. S., at 155–156; *NRWC*, 459 U. S., at 209–210. Moreover, "[j]udicial deference is particularly warranted where, as here, we deal with a congressional judgment that has remained essentially unchanged throughout a century of careful legislative adjustment." *Beaumont*, 539 U. S., at 162, n. 9 (internal quotation marks omitted); cf. *Shrink Missouri*, 528 U. S., at 391 ("The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised"). In America, incumbent legislators pass the laws that govern campaign finance, just like all other laws. To apply a level of scrutiny that effectively bars them from regulating electioneering whenever there is the faintest whiff of self-interest, is to deprive them of the ability to regulate electioneering.

This is not to say that deference would be appropriate if there were a solid basis for believing that a legislative action was motivated by the desire to protect incumbents or that it will degrade the competitiveness of the electoral process.[68] See *League of United Latin American Citizens*

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[68] JUSTICE BREYER has suggested that we strike the balance as fol-

v. *Perry*, 548 U. S. 399, 447 (2006) (STEVENS, J., concurring in part and dissenting in part); *Vieth* v. *Jubelirer*, 541 U. S. 267, 317 (2004) (STEVENS, J., dissenting). Along with our duty to balance competing constitutional concerns, we have a vital role to play in ensuring that elections remain at least minimally open, fair, and competitive. But it is the height of recklessness to dismiss Congress' years of bipartisan deliberation and its reasoned judgment on this basis, without first confirming that the statute in question was intended to be, or will function as, a restraint on electoral competition. "Absent record evidence of invidious discrimination against challengers as a class, a court should generally be hesitant to invalidate legislation which on its face imposes evenhanded restrictions." *Buckley*, 424 U. S., at 31.

We have no record evidence from which to conclude that BCRA §203, or any of the dozens of state laws that the Court today calls into question, reflects or fosters such invidious discrimination. Our colleagues have opined that "'*any* restriction upon a type of campaign speech that is equally available to challengers and incumbents tends to favor incumbents.'" *McConnell*, 540 U. S., at 249 (opinion of SCALIA, J.). This kind of airy speculation could easily be turned on its head. The electioneering prohibited by §203 might well tend to favor incumbents, because incumbents have pre-existing relationships with corporations and unions, and groups that wish to procure legislative benefits may tend to support the candidate who, as a sitting officeholder, is already in a position to dispense benefits and is statistically likely to retain office. If a corporation's goal is to induce officeholders to do its bidding, the corpo-

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lows: "We should defer to [the legislature's] political judgment that unlimited spending threatens the integrity of the electoral process. But we should not defer in respect to whether its solution . . . insulates legislators from effective electoral challenge." *Shrink Missouri*, 528 U. S., at 403–404 (concurring opinion).

ration would do well to cultivate stable, long-term relationships of dependency.

So we do not have a solid theoretical basis for condemning §203 as a front for incumbent self-protection, and it seems equally if not more plausible that restrictions on corporate electioneering will be self-denying. Nor do we have a good empirical case for skepticism, as the Court's failure to cite any empirical research attests. Nor does the legislative history give reason for concern. Congress devoted years of careful study to the issues underlying BCRA; "[f]ew legislative proposals in recent years have received as much sustained public commentary or news coverage"; "[p]olitical scientists and academic experts . . . with no self-interest in incumbent protectio[n] were central figures in pressing the case for BCRA"; and the legislation commanded bipartisan support from the outset. Pildes, The Supreme Court 2003 Term Foreword: The Constitutionalization of Democratic Politics, 118 Harv. L. Rev. 28, 137 (2004). Finally, it is important to remember just how incumbent-friendly congressional races were prior to BCRA's passage. As the Solicitor General aptly remarked at the time, "the evidence supports overwhelmingly that incumbents were able to get re-elected under the old system just fine." Tr. of Oral Arg. in *McConnell* v. *FEC*, O. T. 2003, No. 02–1674, p. 61. "It would be hard to develop a scheme that could be better for incumbents." *Id.*, at 63.

In this case, then, "there is no convincing evidence that th[e] important interests favoring expenditure limits are fronts for incumbency protection." *Randall*, 548 U. S., at 279 (STEVENS, J., dissenting). "In the meantime, a legislative judgment that 'enough is enough' should command the greatest possible deference from judges interpreting a constitutional provision that, at best, has an indirect relationship to activity that affects the quantity . . . of repetitive speech in the marketplace of ideas." *Id.*, at 279–

280. The majority cavalierly ignores Congress' factual findings and its constitutional judgment: It acknowledges the validity of the interest in preventing corruption, but it effectively discounts the value of that interest to zero. This is quite different from conscientious policing for impermissibly anticompetitive motive or effect in a sensitive First Amendment context. It is the denial of Congress' authority to regulate corporate spending on elections.

Austin and Corporate Expenditures

Just as the majority gives short shrift to the general societal interests at stake in campaign finance regulation, it also overlooks the distinctive considerations raised by the regulation of *corporate* expenditures. The majority fails to appreciate that *Austin*'s antidistortion rationale is itself an anticorruption rationale, see 494 U. S., at 660 (describing "a different type of corruption"), tied to the special concerns raised by corporations. Understood properly, "antidistortion" is simply a variant on the classic governmental interest in protecting against improper influences on officeholders that debilitate the democratic process. It is manifestly not just an "'equalizing'" ideal in disguise. *Ante*, at 34 (quoting *Buckley*, 424 U. S., at 48).[69]

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[69] THE CHIEF JUSTICE denies this, *ante*, at 9–10, citing scholarship that has interpreted *Austin* to endorse an equality rationale, along with an article by Justice Thurgood Marshall's former law clerk that states that Marshall, the author of *Austin*, accepted "equality of opportunity" and "equalizing access to the political process" as bases for campaign finance regulation, Garrett, New Voices in Politics: Justice Marshall's Jurisprudence on Law and Politics, 52 Howard L. J. 655, 667–668 (2009) (internal quotation marks omitted). It is fair to say that *Austin* can bear an egalitarian reading, and I have no reason to doubt this characterization of Justice Marshall's beliefs. But the fact that *Austin* can be read a certain way hardly proves THE CHIEF JUSTICE's charge that there is nothing more to it. Many of our precedents can bear multiple readings, and many of our doctrines have some "equalizing" implications but do not rest on an equalizing theory: for example, our

1. *Antidistortion*

The fact that corporations are different from human beings might seem to need no elaboration, except that the majority opinion almost completely elides it. *Austin* set forth some of the basic differences. Unlike natural persons, corporations have "limited liability" for their owners and managers, "perpetual life," separation of ownership and control, "and favorable treatment of the accumulation and distribution of assets . . . that enhance their ability to attract capital and to deploy their resources in ways that maximize the return on their shareholders' investments." 494 U. S., at 658–659. Unlike voters in U. S. elections, corporations may be foreign controlled.[70] Unlike other interest groups, business corporations have been "effectively delegated responsibility for ensuring society's economic welfare";[71] they inescapably structure the life of every citizen. "'[T]he resources in the treasury of a business corporation,'" furthermore, "'are not an indication of popular support for the corporation's political ideas.'" *Id.*, at 659 (quoting *MCFL*, 479 U. S., at 258). "'They reflect instead the economically motivated decisions of investors and customers. The availability of these resources may

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takings jurisprudence and numerous rules of criminal procedure. More important, the *Austin* Court expressly declined to rely on a speech-equalization rationale, see 494 U. S., at 660, and we have never understood *Austin* to stand for such a rationale. Whatever his personal views, Justice Marshall simply did not write the opinion that THE CHIEF JUSTICE suggests he did; indeed, he "would have viewed it as irresponsible to write an opinion that boldly staked out a rationale based on equality that no one other than perhaps Justice White would have even considered joining," Garrett, 52 Howard L. J., at 674.

[70] In state elections, even domestic corporations may be "foreign"-controlled in the sense that they are incorporated in another jurisdiction and primarily owned and operated by out-of-state residents.

[71] Regan, Corporate Speech and Civic Virtue, in Debating Democracy's Discontent 289, 302 (A. Allen & M. Regan eds. 1998) (hereinafter Regan).

make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.'" 494 U. S., at 659 (quoting *MCFL*, 479 U. S., at 258).[72]

It might also be added that corporations have no consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and facilitate the activities of human beings, to be sure, and their "personhood" often serves as a useful legal fiction. But they are not themselves members of "We the People" by whom and for whom our Constitution was established.

These basic points help explain why corporate electioneering is not only more likely to impair compelling governmental interests, but also why restrictions on that electioneering are less likely to encroach upon First Amendment freedoms. One fundamental concern of the First Amendment is to "protec[t] the individual's interest in self-expression." *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 534, n. 2 (1980); see also *Bellotti*, 435 U. S., at 777, n. 12. Freedom of speech helps "make men free to develop their faculties," *Whitney* v. *California*, 274 U. S. 357, 375 (1927) (Brandeis,

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[72] Nothing in this analysis turns on whether the corporation is conceptualized as a grantee of a state concession, see, *e.g.*, *Trustees of Dartmouth College* v. *Woodward*, 4 Wheat. 518, 636 (1819) (Marshall, C. J.), a nexus of explicit and implicit contracts, see, *e.g.*, F. Easterbrook & D. Fischel, The Economic Structure of Corporate Law 12 (1991), a mediated hierarchy of stakeholders, see, *e.g.*, Blair & Stout, A Team Production Theory of Corporate Law, 85 Va. L. Rev. 247 (1999) (hereinafter Blair & Stout), or any other recognized model. *Austin* referred to the structure and the advantages of corporations as "state-conferred" in several places, 494 U. S., at 660, 665, 667, but its antidistortion argument relied only on the basic descriptive features of corporations, as sketched above. It is not necessary to agree on a precise theory of the corporation to agree that corporations differ from natural persons in fundamental ways, and that a legislature might therefore need to regulate them differently if it is human welfare that is the object of its concern. Cf. Hansmann & Kraakman 441, n. 5.

J., concurring), it respects their "dignity and choice," *Cohen* v. *California*, 403 U. S. 15, 24 (1971), and it facilitates the value of "individual self-realization," Redish, The Value of Free Speech, 130 U. Pa. L. Rev. 591, 594 (1982). Corporate speech, however, is derivative speech, speech by proxy. A regulation such as BCRA §203 may affect the way in which individuals disseminate certain messages through the corporate form, but it does not prevent anyone from speaking in his or her own voice. "Within the realm of [campaign spending] generally," corporate spending is "furthest from the core of political expression." *Beaumont*, 539 U. S., at 161, n. 8.

It is an interesting question "who" is even speaking when a business corporation places an advertisement that endorses or attacks a particular candidate. Presumably it is not the customers or employees, who typically have no say in such matters. It cannot realistically be said to be the shareholders, who tend to be far removed from the day-to-day decisions of the firm and whose political preferences may be opaque to management. Perhaps the officers or directors of the corporation have the best claim to be the ones speaking, except their fiduciary duties generally prohibit them from using corporate funds for personal ends. Some individuals associated with the corporation must make the decision to place the ad, but the idea that these individuals are thereby fostering their self-expression or cultivating their critical faculties is fanciful. It is entirely possible that the corporation's electoral message will *conflict* with their personal convictions. Take away the ability to use general treasury funds for some of those ads, and no one's autonomy, dignity, or political equality has been impinged upon in the least.

Corporate expenditures are distinguishable from individual expenditures in this respect. I have taken the view that a legislature may place reasonable restrictions on individuals' electioneering expenditures in the service of

the governmental interests explained above, and in recognition of the fact that such restrictions are not direct restraints on speech but rather on its financing. See, *e.g.*, *Randall*, 548 U. S., at 273 (dissenting opinion). But those restrictions concededly present a tougher case, because the primary conduct of actual, flesh-and-blood persons is involved. Some of those individuals might feel that they need to spend large sums of money on behalf of a particular candidate to vindicate the intensity of their electoral preferences. This is obviously not the situation with business corporations, as their routine practice of giving "substantial sums to *both* major national parties" makes pellucidly clear. *McConnell*, 540 U. S., at 148. "[C]orporate participation" in elections, any business executive will tell you, "is more transactional than ideological." Supp. Brief for Committee for Economic Development as *Amicus Curiae* 10.

In this transactional spirit, some corporations have affirmatively urged Congress to place limits on their electioneering communications. These corporations fear that officeholders will shake them down for supportive ads, that they will have to spend increasing sums on elections in an ever-escalating arms race with their competitors, and that public trust in business will be eroded. See *id.*, at 10–19. A system that effectively forces corporations to use their shareholders' money both to maintain access to, and to avoid retribution from, elected officials may ultimately prove more harmful than beneficial to many corporations. It can impose a kind of implicit tax.[73]

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[73] Not all corporations support BCRA §203, of course, and not all corporations are large business entities or their tax-exempt adjuncts. Some nonprofit corporations are created for an ideological purpose. Some closely held corporations are strongly identified with a particular owner or founder. The fact that §203, like the statute at issue in *Austin*, regulates some of these corporations' expenditures does not disturb the analysis above. See 494 U. S., at 661–665. Small-business

In short, regulations such as §203 and the statute upheld in *Austin* impose only a limited burden on First Amendment freedoms not only because they target a narrow subset of expenditures and leave untouched the broader "public dialogue," *ante*, at 25, but also because they leave untouched the speech of natural persons. Recognizing the weakness of a speaker-based critique of *Austin*, the Court places primary emphasis not on the corporation's right to electioneer, but rather on the listener's interest in hearing what every possible speaker may have to say. The Court's central argument is that laws such as §203 have "'deprived [the electorate] of information, knowledge and opinion vital to its function,'" *ante*, at 38 (quoting *CIO*, 335 U. S., at 144 (Rutledge, J., concurring in judgment)), and this, in turn, "interferes with the 'open marketplace' of ideas protected by the First Amendment," *ante*, at 38 (quoting *New York State Bd. of Elections* v. *Lopez Torres*, 552 U. S. 196, 208 (2008)).

There are many flaws in this argument. If the overriding concern depends on the interests of the audience, surely the public's perception of the value of corporate speech should be given important weight. That perception today is the same as it was a century ago when Theodore Roosevelt delivered the speeches to Congress that, in time, led to the limited prohibition on corporate campaign expenditures that is overruled today. See *WRTL*, 551 U. S., at 509–510 (Souter, J., dissenting) (summarizing President

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owners may speak in their own names, rather than the business', if they wish to evade §203 altogether. Nonprofit corporations that want to make unrestricted electioneering expenditures may do so if they refuse donations from businesses and unions and permit members to disassociate without economic penalty. See *MCFL*, 479 U. S. 238, 264 (1986). Making it plain that their decision is not motivated by a concern about BCRA's coverage of nonprofits that have ideological missions but lack *MCFL* status, our colleagues refuse to apply the Snowe-Jeffords Amendment or the lower courts' *de minimis* exception to *MCFL*. See *ante*, at 10–12.

Roosevelt's remarks). The distinctive threat to democratic integrity posed by corporate domination of politics was recognized at "the inception of the republic" and "has been a persistent theme in American political life" ever since. Regan 302. It is only certain Members of this Court, not the listeners themselves, who have agitated for more corporate electioneering.

Austin recognized that there are substantial reasons why a legislature might conclude that unregulated general treasury expenditures will give corporations "unfai[r] influence" in the electoral process, 494 U. S., at 660, and distort public debate in ways that undermine rather than advance the interests of listeners. The legal structure of corporations allows them to amass and deploy financial resources on a scale few natural persons can match. The structure of a business corporation, furthermore, draws a line between the corporation's economic interests and the political preferences of the individuals associated with the corporation; the corporation must engage the electoral process with the aim "to enhance the profitability of the company, no matter how persuasive the arguments for a broader or conflicting set of priorities," Brief for American Independent Business Alliance as *Amicus Curiae* 11; see also ALI, Principles of Corporate Governance: Analysis and Recommendations §2.01(a), p. 55 (1992) ("[A] corporation . . . should have as its objective the conduct of business activities with a view to enhancing corporate profit and shareholder gain"). In a state election such as the one at issue in *Austin*, the interests of nonresident corporations may be fundamentally adverse to the interests of local voters. Consequently, when corporations grab up the prime broadcasting slots on the eve of an election, they can flood the market with advocacy that bears "little or no correlation" to the ideas of natural persons or to any broader notion of the public good, 494 U. S., at 660. The opinions of real people may be marginalized. "The expen-

diture restrictions of [2 U. S. C.] §441b are thus meant to ensure that competition among actors in the political arena is truly competition among ideas." *MCFL*, 479 U. S., at 259.

In addition to this immediate drowning out of noncorporate voices, there may be deleterious effects that follow soon thereafter. Corporate "domination" of electioneering, *Austin*, 494 U. S., at 659, can generate the impression that corporations dominate our democracy. When citizens turn on their televisions and radios before an election and hear only corporate electioneering, they may lose faith in their capacity, as citizens, to influence public policy. A Government captured by corporate interests, they may come to believe, will be neither responsive to their needs nor willing to give their views a fair hearing. The predictable result is cynicism and disenchantment: an increased perception that large spenders "'call the tune'" and a reduced "'willingness of voters to take part in democratic governance.'" *McConnell*, 540 U. S., at 144 (quoting *Shrink Missouri*, 528 U. S., at 390). To the extent that corporations are allowed to exert undue influence in electoral races, the speech of the eventual winners of those races may also be chilled. Politicians who fear that a certain corporation can make or break their reelection chances may be cowed into silence about that corporation. On a variety of levels, unregulated corporate electioneering might diminish the ability of citizens to "hold officials accountable to the people," *ante*, at 23, and disserve the goal of a public debate that is "uninhibited, robust, and wide-open," *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 270 (1964). At the least, I stress again, a legislature is entitled to credit these concerns and to take tailored measures in response.

The majority's unwillingness to distinguish between corporations and humans similarly blinds it to the possibility that corporations' "war chests" and their special

"advantages" in the legal realm, *Austin*, 494 U. S., at 659, may translate into special advantages in the market for legislation. When large numbers of citizens have a common stake in a measure that is under consideration, it may be very difficult for them to coordinate resources on behalf of their position. The corporate form, by contrast, "provides a simple way to channel rents to only those who have paid their dues, as it were. If you do not own stock, you do not benefit from the larger dividends or appreciation in the stock price caused by the passage of private interest legislation." Sitkoff, Corporate Political Speech, Political Extortion, and the Competition for Corporate Charters, 69 U. Chi. L. Rev. 1103, 1113 (2002). Corporations, that is, are uniquely equipped to seek laws that favor their owners, not simply because they have a lot of money but because of their legal and organizational structure. Remove all restrictions on their electioneering, and the door may be opened to a type of rent seeking that is "far more destructive" than what noncorporations are capable of. *Ibid.* It is for reasons such as these that our campaign finance jurisprudence has long appreciated that "the 'differing structures and purposes' of different entities 'may require different forms of regulation in order to protect the integrity of the electoral process.'" *NRWC*, 459 U. S., at 210 (quoting *California Medical Assn.*, 453 U. S., at 201).

The Court's facile depiction of corporate electioneering assumes away all of these complexities. Our colleagues ridicule the idea of regulating expenditures based on "nothing more" than a fear that corporations have a special "ability to persuade," *ante*, at 11 (opinion of ROBERTS, C. J.), as if corporations were our society's ablest debaters and viewpoint-neutral laws such as §203 were created to suppress their best arguments. In their haste to knock down yet another straw man, our colleagues simply ignore the fundamental concerns of the *Austin* Court and the

legislatures that have passed laws like §203: to safeguard the integrity, competitiveness, and democratic responsiveness of the electoral process. All of the majority's theoretical arguments turn on a proposition with undeniable surface appeal but little grounding in evidence or experience, "that there is no such thing as too much speech," *Austin*, 494 U. S., at 695 (SCALIA, J., dissenting)).[74] If individuals in our society had infinite free time to listen to and contemplate every last bit of speech uttered by anyone, anywhere; and if broadcast advertisements had no special ability to influence elections apart from the merits of their arguments (to the extent they make any); and if legislators always operated with nothing less than perfect virtue; then I suppose the majority's premise would be sound. In the real world, we have seen, corporate domination of the airwaves prior to an election may decrease the average listener's exposure to relevant viewpoints, and it may diminish citizens' willingness and capacity to participate in the democratic process.

None of this is to suggest that corporations can or should be denied an opportunity to participate in election campaigns or in any other public forum (much less that a work of art such as *Mr. Smith Goes to Washington* may be banned), or to deny that some corporate speech may contribute significantly to public debate. What it shows, however, is that *Austin*'s "concern about corporate domination of the political process," 494 U. S., at 659, reflects more than a concern to protect governmental interests outside of the First Amendment. It also reflects a concern to *facilitate* First Amendment values by preserving some breathing room around the electoral "marketplace" of ideas, *ante*, at 19, 34, 38, 52, 54, the marketplace in which the actual people of this Nation determine how they will

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[74] Of course, no presiding person in a courtroom, legislature, classroom, polling place, or family dinner would take this hyperbole literally.

govern themselves. The majority seems oblivious to the simple truth that laws such as §203 do not merely pit the anticorruption interest against the First Amendment, but also pit competing First Amendment values against each other. There are, to be sure, serious concerns with any effort to balance the First Amendment rights of speakers against the First Amendment rights of listeners. But when the speakers in question are not real people and when the appeal to "First Amendment principles" depends almost entirely on the listeners' perspective, *ante*, at 1, 48, it becomes necessary to consider how listeners will actually be affected.

In critiquing *Austin*'s antidistortion rationale and campaign finance regulation more generally, our colleagues place tremendous weight on the example of media corporations. See *ante*, at 35–38, 46; *ante*, at 1, 11 (opinion of ROBERTS, C. J.); *ante*, at 6 (opinion of SCALIA, J.). Yet it is not at all clear that *Austin* would permit §203 to be applied to them. The press plays a unique role not only in the text, history, and structure of the First Amendment but also in facilitating public discourse; as the *Austin* Court explained, "media corporations differ significantly from other corporations in that their resources are devoted to the collection of information and its dissemination to the public," 494 U. S., at 667. Our colleagues have raised some interesting and difficult questions about Congress' authority to regulate electioneering by the press, and about how to define what constitutes the press. *But that is not the case before us.* Section 203 does not apply to media corporations, and even if it did, Citizens United is not a media corporation. There would be absolutely no reason to consider the issue of media corporations if the majority did not, first, transform Citizens United's as-applied challenge into a facial challenge and, second, invent the theory that legislatures must eschew all "identity"-based distinctions and treat a local nonprofit news

outlet exactly the same as General Motors.[75] This calls to mind George Berkeley's description of philosophers: "[W]e have first raised a dust and then complain we cannot see." Principles of Human Knowledge/Three Dialogues 38, ¶3 (R. Woolhouse ed. 1988).

It would be perfectly understandable if our colleagues feared that a campaign finance regulation such as §203 may be counterproductive or self-interested, and therefore attended carefully to the choices the Legislature has made. But the majority does not bother to consider such practical matters, or even to consult a record; it simply stipulates that "enlightened self-government" can arise only in the absence of regulation. *Ante*, at 23. In light of the distinctive features of corporations identified in *Austin*, there is no valid basis for this assumption. The marketplace of ideas is not actually a place where items—or laws—are meant to be bought and sold, and when we move from the realm of economics to the realm of corporate electioneering, there may be no "reason to think the market ordering is intrinsically good at all," Strauss 1386.

The Court's blinkered and aphoristic approach to the First Amendment may well promote corporate power at the cost of the individual and collective self-expression the Amendment was meant to serve. It will undoubtedly cripple the ability of ordinary citizens, Congress, and the States to adopt even limited measures to protect against corporate domination of the electoral process. Americans may be forgiven if they do not feel the Court has advanced

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[75] Under the majority's view, the legislature is thus damned if it does and damned if it doesn't. If the legislature gives media corporations an exemption from electioneering regulations that apply to other corporations, it violates the newly minted First Amendment rule against identity-based distinctions. If the legislature does not give media corporations an exemption, it violates the First Amendment rights of the press. The only way out of this invented bind: no regulations whatsoever.

the cause of self-government today.

2. *Shareholder Protection*

There is yet another way in which laws such as §203 can serve First Amendment values. Interwoven with *Austin*'s concern to protect the integrity of the electoral process is a concern to protect the rights of shareholders from a kind of coerced speech: electioneering expenditures that do not "reflec[t] [their] support." 494 U. S., at 660–661. When corporations use general treasury funds to praise or attack a particular candidate for office, it is the shareholders, as the residual claimants, who are effectively footing the bill. Those shareholders who disagree with the corporation's electoral message may find their financial investments being used to undermine their political convictions.

The PAC mechanism, by contrast, helps assure that those who pay for an electioneering communication actually support its content and that managers do not use general treasuries to advance personal agendas. *Ibid.* It "'allows corporate political participation without the temptation to use corporate funds for political influence, quite possibly at odds with the sentiments of some shareholders or members.'" *McConnell*, 540 U. S., at 204 (quoting *Beaumont*, 539 U. S., at 163). A rule that privileges the use of PACs thus does more than facilitate the political speech of like-minded shareholders; it also curbs the rent seeking behavior of executives and respects the views of dissenters. *Austin*'s acceptance of restrictions on general treasury spending "simply allows people who have invested in the business corporation for purely economic reasons"—the vast majority of investors, one assumes—"to avoid being taken advantage of, without sacrificing their economic objectives." Winkler, Beyond *Bellotti*, 32 Loyola (LA) L. Rev. 133, 201 (1998).

The concern to protect dissenting shareholders and union members has a long history in campaign finance

reform. It provided a central motivation for the Tillman Act in 1907 and subsequent legislation, see *Pipefitters* v. *United States*, 407 U. S. 385, 414–415 (1972); Winkler, 92 Geo. L. J., at 887–900, and it has been endorsed in a long line of our cases, see, *e.g.*, *McConnell*, 540 U. S., at 204–205; *Beaumont*, 539 U. S., at 152–154; *MCFL*, 479 U. S., at 258; *NRWC*, 459 U. S., at 207–208; *Pipefitters*, 407 U. S., at 414–416; see also n. 60, *supra*. Indeed, we have unanimously recognized the governmental interest in "protect[ing] the individuals who have paid money into a corporation or union for purposes other than the support of candidates from having that money used to support political candidates to whom they may be opposed." *NRWC*, 459 U. S., at 207–208.

The Court dismisses this interest on the ground that abuses of shareholder money can be corrected "through the procedures of corporate democracy," *ante*, at 46 (internal quotation marks omitted), and, it seems, through Internet-based disclosures, *ante*, at 55.[76] I fail to understand how this addresses the concerns of dissenting union members, who will also be affected by today's ruling, and I fail to understand why the Court is so confident in these mechanisms. By "corporate democracy," presumably the Court means the rights of shareholders to vote and to bring derivative suits for breach of fiduciary duty. In practice, however, many corporate lawyers will tell you that "these rights are so limited as to be almost nonexis-

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[76] I note that, among the many other regulatory possibilities it has left open, ranging from new versions of §203 supported by additional evidence of *quid pro quo* corruption or its appearance to any number of tax incentive or public financing schemes, today's decision does not require that a legislature rely solely on these mechanisms to protect shareholders. Legislatures remain free in their incorporation and tax laws to condition the types of activity in which corporations may engage, including electioneering activity, on specific disclosure requirements or on prior express approval by shareholders or members.

tent," given the internal authority wielded by boards and managers and the expansive protections afforded by the business judgment rule. Blair & Stout 320; see also *id.*, at 298–315; Winkler, 32 Loyola (LA) L. Rev., at 165–166, 199–200. Modern technology may help make it easier to track corporate activity, including electoral advocacy, but it is utopian to believe that it solves the problem. Most American households that own stock do so through intermediaries such as mutual funds and pension plans, see Evans, A Requiem for the Retail Investor? 95 Va. L. Rev. 1105 (2009), which makes it more difficult both to monitor and to alter particular holdings. Studies show that a majority of individual investors make no trades at all during a given year. *Id.*, at 1117. Moreover, if the corporation in question operates a PAC, an investor who sees the company's ads may not know whether they are being funded through the PAC or through the general treasury.

If and when shareholders learn that a corporation has been spending general treasury money on objectionable electioneering, they can divest. Even assuming that they reliably learn as much, however, this solution is only partial. The injury to the shareholders' expressive rights has already occurred; they might have preferred to keep that corporation's stock in their portfolio for any number of economic reasons; and they may incur a capital gains tax or other penalty from selling their shares, changing their pension plan, or the like. The shareholder protection rationale has been criticized as underinclusive, in that corporations also spend money on lobbying and charitable contributions in ways that any particular shareholder might disapprove. But those expenditures do not implicate the selection of public officials, an area in which "the interests of unwilling . . . corporate shareholders [in not being] forced to subsidize that speech" "are at their zenith." *Austin*, 494 U. S., at 677 (Brennan, J., concurring). And in any event, the question is whether shareholder

protection provides a basis for regulating expenditures in the weeks before an election, not whether additional types of corporate communications might similarly be conditioned on voluntariness.

Recognizing the limits of the shareholder protection rationale, the *Austin* Court did not hold it out as an adequate and independent ground for sustaining the statute in question. Rather, the Court applied it to reinforce the antidistortion rationale, in two main ways. First, the problem of dissenting shareholders shows that even if electioneering expenditures can advance the political views of some members of a corporation, they will often compromise the views of others. See, *e.g.*, *id.*, at 663 (discussing risk that corporation's "members may be . . . reluctant to withdraw as members even if they disagree with [its] political expression"). Second, it provides an additional reason, beyond the distinctive legal attributes of the corporate form, for doubting that these "expenditures reflect actual public support for the political ideas espoused," *id.*, at 660. The shareholder protection rationale, in other words, bolsters the conclusion that restrictions on corporate electioneering can serve both speakers' and listeners' interests, as well as the anticorruption interest. And it supplies yet another reason why corporate expenditures merit less protection than individual expenditures.

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Today's decision is backwards in many senses. It elevates the majority's agenda over the litigants' submissions, facial attacks over as-applied claims, broad constitutional theories over narrow statutory grounds, individual dissenting opinions over precedential holdings, assertion over tradition, absolutism over empiricism, rhetoric over reality. Our colleagues have arrived at the conclusion that *Austin* must be overruled and that §203 is facially unconstitutional only after mischaracterizing both the reach and

rationale of those authorities, and after bypassing or ignoring rules of judicial restraint used to cabin the Court's lawmaking power. Their conclusion that the societal interest in avoiding corruption and the appearance of corruption does not provide an adequate justification for regulating corporate expenditures on candidate elections relies on an incorrect description of that interest, along with a failure to acknowledge the relevance of established facts and the considered judgments of state and federal legislatures over many decades.

In a democratic society, the longstanding consensus on the need to limit corporate campaign spending should outweigh the wooden application of judge-made rules. The majority's rejection of this principle "elevate[s] corporations to a level of deference which has not been seen at least since the days when substantive due process was regularly used to invalidate regulatory legislation thought to unfairly impinge upon established economic interests." *Bellotti*, 435 U. S., at 817, n. 13 (White, J., dissenting). At bottom, the Court's opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.

I would affirm the judgment of the District Court.

SUPREME COURT OF THE UNITED STATES

No. 08–205

CITIZENS UNITED, APPELLANT *v.* FEDERAL ELECTION COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[January 21, 2010]

JUSTICE THOMAS, concurring in part and dissenting in part.

I join all but Part IV of the Court's opinion.

Political speech is entitled to robust protection under the First Amendment. Section 203 of the Bipartisan Campaign Reform Act of 2002 (BCRA) has never been reconcilable with that protection. By striking down §203, the Court takes an important first step toward restoring full constitutional protection to speech that is "indispensable to the effective and intelligent use of the processes of popular government." *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93, 265 (2003) (THOMAS, J., concurring in part, concurring in judgment in part, and dissenting in part) (internal quotation marks omitted). I dissent from Part IV of the Court's opinion, however, because the Court's constitutional analysis does not go far enough. The disclosure, disclaimer, and reporting requirements in BCRA §§201 and 311 are also unconstitutional. See *id.*, at 275–277, and n. 10.

Congress may not abridge the "right to anonymous speech" based on the "'simple interest in providing voters with additional relevant information,'" *id.*, at 276 (quoting *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334, 348 (1995)). In continuing to hold otherwise, the Court misapprehends the import of "recent events" that some *amici*

describe "in which donors to certain causes were blacklisted, threatened, or otherwise targeted for retaliation." *Ante*, at 54. The Court properly recognizes these events as "cause for concern," *ibid.*, but fails to acknowledge their constitutional significance. In my view, *amici*'s submissions show why the Court's insistence on upholding §§201 and 311 will ultimately prove as misguided (and ill fated) as was its prior approval of §203.

Amici's examples relate principally to Proposition 8, a state ballot proposition that California voters narrowly passed in the 2008 general election. Proposition 8 amended California's constitution to provide that "[o]nly marriage between a man and a woman is valid or recognized in California." Cal. Const., Art. I, §7.5. Any donor who gave more than $100 to any committee supporting or opposing Proposition 8 was required to disclose his full name, street address, occupation, employer's name (or business name, if self-employed), and the total amount of his contributions.[1] See Cal. Govt. Code Ann. §84211(f) (West 2005). The California Secretary of State was then required to post this information on the Internet. See §§84600–84601; §§84602–84602.1 (West Supp. 2010); §§84602.5–84604 (West 2005); §85605 (West Supp. 2010); §§84606–84609 (West 2005).

Some opponents of Proposition 8 compiled this information and created Web sites with maps showing the locations of homes or businesses of Proposition 8 supporters. Many supporters (or their customers) suffered property damage, or threats of physical violence or death, as a

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[1] BCRA imposes similar disclosure requirements. See, *e.g.*, 2 U. S. C. §434(f)(2)(F) ("Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $10,000 during any calendar year" must disclose "the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to the person making the disbursement").

result. They cited these incidents in a complaint they filed after the 2008 election, seeking to invalidate California's mandatory disclosure laws. Supporters recounted being told: "Consider yourself lucky. If I had a gun I would have gunned you down along with each and every other supporter," or, "we have plans for you and your friends." Complaint in *ProtectMarriage.com—Yes on 8* v. *Bowen*, Case No. 2:09–cv–00058–MCE–DAD (ED Cal.), ¶31. Proposition 8 opponents also allegedly harassed the measure's supporters by defacing or damaging their property. *Id.*, ¶32. Two religious organizations supporting Proposition 8 reportedly received through the mail envelopes containing a white powdery substance. *Id.*, ¶33.

Those accounts are consistent with media reports describing Proposition 8-related retaliation. The director of the nonprofit California Musical Theater gave $1,000 to support the initiative; he was forced to resign after artists complained to his employer. Lott & Smith, Donor Disclosure Has Its Downsides, Wall Street Journal, Dec. 26, 2008, p. A13. The director of the Los Angeles Film Festival was forced to resign after giving $1,500 because opponents threatened to boycott and picket the next festival. *Ibid.* And a woman who had managed her popular, family-owned restaurant for 26 years was forced to resign after she gave $100, because "throngs of [angry] protesters" repeatedly arrived at the restaurant and "shout[ed] 'shame on you' at customers." Lopez, Prop. 8 Stance Upends Her Life, Los Angeles Times, Dec. 14, 2008, p. B1. The police even had to "arriv[e] in riot gear one night to quell the angry mob" at the restaurant. *Ibid.* Some supporters of Proposition 8 engaged in similar tactics; one real estate businessman in San Diego who had donated to a group opposing Proposition 8 "received a letter from the Prop. 8 Executive Committee threatening to publish his company's name if he didn't also donate to the 'Yes on 8' campaign." Donor Disclosure, *supra,* at A13.

The success of such intimidation tactics has apparently spawned a cottage industry that uses forcibly disclosed donor information to *pre-empt* citizens' exercise of their First Amendment rights. Before the 2008 Presidential election, a "newly formed nonprofit group . . . plann[ed] to confront donors to conservative groups, hoping to create a chilling effect that will dry up contributions." Luo, Group Plans Campaign Against G.O.P. Donors, N. Y. Times, Aug. 8, 2008, p. A15. Its leader, "who described his effort as 'going for the jugular,'" detailed the group's plan to send a "warning letter . . . alerting donors who might be considering giving to right-wing groups to a variety of potential dangers, including legal trouble, public exposure and watchdog groups digging through their lives." *Ibid.*

These instances of retaliation sufficiently demonstrate why this Court should invalidate mandatory disclosure and reporting requirements. But *amici* present evidence of yet another reason to do so—the threat of retaliation from *elected officials*. As *amici*'s submissions make clear, this threat extends far beyond a single ballot proposition in California. For example, a candidate challenging an incumbent state attorney general reported that some members of the State's business community feared donating to his campaign because they did not want to cross the incumbent; in his words, "'I go to so many people and hear the same thing: "I sure hope you beat [the incumbent], but I can't afford to have my name on your records. He might come after me next."'" Strassel, Challenging Spitzerism at the Polls, Wall Street Journal, Aug. 1, 2008, p. A11. The incumbent won reelection in 2008.

My point is not to express any view on the merits of the political controversies I describe. Rather, it is to demonstrate—using real-world, recent examples—the fallacy in the Court's conclusion that "[d]isclaimer and disclosure requirements . . . impose no ceiling on campaign-related activities, and do not prevent anyone from speaking."

Ante, at 51 (internal quotation marks and citations omitted). Of course they do. Disclaimer and disclosure requirements enable private citizens and elected officials to implement political strategies *specifically calculated* to curtail campaign-related activity and prevent the lawful, peaceful exercise of First Amendment rights.

The Court nevertheless insists that as-applied challenges to disclosure requirements will suffice to vindicate those speech rights, as long as potential plaintiffs can "show a reasonable probability that disclosure . . . will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Ante*, at 52 (internal quotation marks omitted). But the Court's opinion itself proves the irony in this compromise. In correctly explaining why it must address the facial constitutionality of §203, see *ante*, at 5–20, the Court recognizes that "[t]he First Amendment does not permit laws that force speakers to . . . seek declaratory rulings before discussing the most salient political issues of our day," *ante*, at 7; that as-applied challenges to §203 "would require substantial litigation over an extended time" and result in an "interpretive process [that] itself would create an inevitable, pervasive, and serious risk of chilling protected speech pending the drawing of fine distinctions that, in the end, would themselves be questionable," *ante*, at 9–10; that "a court would be remiss in performing its duties were it to accept an unsound principle merely to avoid the necessity of making a broader ruling," *ante*, at 12; and that avoiding a facial challenge to §203 "would prolong the substantial, nation-wide chilling effect" that §203 causes, *ante*, at 16. This logic, of course, applies equally to as-applied challenges to §§201 and 311.

Irony aside, the Court's promise that as-applied challenges will adequately protect speech is a hollow assurance. Now more than ever, §§201 and 311 will chill protected speech because—as California voters can attest—

"the advent of the Internet" enables "prompt disclosure of expenditures," which "provide[s]" political opponents "with the information needed" to intimidate and retaliate against their foes. *Ante*, at 55. Thus, "disclosure permits citizens . . . to react to the speech of [their political opponents] in a proper"—or undeniably *improper*—"way" long before a plaintiff could prevail on an as-applied challenge.[2] *Ibid.*

I cannot endorse a view of the First Amendment that subjects citizens of this Nation to death threats, ruined careers, damaged or defaced property, or pre-emptive and threatening warning letters as the price for engaging in "core political speech, the 'primary object of First Amendment protection.'" *McConnell*, 540 U. S., at 264 (THOMAS, J., concurring in part, concurring in judgment in part, and dissenting in part) (quoting *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 410–411 (2000) (THOMAS, J., dissenting)). Accordingly, I respectfully dissent from the Court's judgment upholding BCRA §§201 and 311.

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[2] But cf. *Hill* v. *Colorado*, 530 U. S. 703, 707–710 (2000) (approving a statute restricting speech "within 100 feet" of abortion clinics because it protected women seeking an abortion from "'sidewalk counseling,'" which "consists of efforts 'to educate, counsel, persuade, or inform passersby about abortion and abortion alternatives by means of verbal or written speech,'" and which "sometimes" involved "strong and abusive language in face-to-face encounters").

No. 08-205

IN THE
Supreme Court of the United States

CITIZENS UNITED,

Appellant,

v.

FEDERAL ELECTION COMMISSION,

Appellee.

On Appeal from the United States District Court for the District of Columbia

BRIEF OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE* IN SUPPORT OF APPELLANT

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The American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), a federation of 56 national and international labor organizations with a total membership of 11 million working men and women, files this brief *amicus curiae* in support of Appellant with the consent of the parties as provided for in the Rules of this Court.[1]

INTEREST OF *AMICUS*

As plaintiffs in *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003), the AFL-CIO and its federal political committee ("the AFL-CIO Plaintiffs") brought a facial First Amendment challenge to § 203 of the Bipartisan Campaign Reform Act ("BCRA") of 2002, 2 U.S.C. § 441b(b)(2) and (c) (amending the Federal Election Campaign Act ("FECA"), 2 U.S.C. § 431 *et seq.*), which proscribes union and corporate funding of "electioneering communications." The AFL-CIO Plaintiffs did so because this provision criminalized the AFL-CIO's use of the broadcast medium as a legislative and policy advocacy tool, falsely characterized substantial labor organization speech on matters of public concern as wholly or substantially electoral, and impaired union political participation as a matter of law.

The AFL-CIO Plaintiffs placed in the *McConnell* record approximately 85 different television and radio advertisements that the AFL-CIO had sponsored throughout every year from 1995 through 2001, many of which would have been prohibited by § 203

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[1] No counsel for a party authored this brief *amicus curiae* in whole or in part, and no person or entity, other than the *amicus*, made a monetary contribution to the preparation or submission of this brief.

because they referred to incumbent Members of Congress. See Joint Appendix ("J.A."), Vol. I, pp. 440-62 (Declaration of Denise Mitchell); J.A. Vol. II, pgs. 464-587 (Index of AFL-CIO Issue Advertising, 1995-2001); Brief of AFL-CIO Appellants/Cross-Appellees at 1-7, *McConnell v. Federal Election Commission*, No. 02-1775. Without specifically addressing that evidence or the other plaintiffs' evidence of overbreadth, however, this Court held that the various *McConnell* plaintiffs had not "carried their heavy burden of proving that [§ 203] is overbroad" and that § 203 constitutionally proscribed advertising "to the extent that [it was] the functional equivalent of express advocacy." *See* 540 U.S. at 203-11.

The AFL-CIO subsequently filed briefs *amicus curiae* in support of a tax-exempt, non-profit corporation in *Wisconsin Right to Life, Inc. v. Federal Election Commission*, 546 U.S. 410 (2006), and *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (2007) ("*WRTL II*"), in order to preserve its own right to make as-applied challenges to § 203 and to undertake advertising that was structurally similar to that which the Government sought to ban in those cases.

Because the controlling opinion in *WRTL II* still leaves the AFL-CIO uncertain as to which of its public speech is potentially criminal, it has a direct interest in whether *McConnell's* facial upholding of § 203 stands. And, because the AFL-CIO and other labor organizations have fundamental interests in communicating with the general public about candidates and elections, it has a commensurate interest in the fate and interpretation of *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990).

SUMMARY OF ARGUMENT

McConnell should be overruled as to §203's facial constitutionality. *McConnell* endorsed record evidence and theories that treated virtually all advertising literally described by §203 as bearing an "electioneering purpose" or a likely electoral "effect" that justifies its prohibition as the "functional equivalent" of express advocacy. But *WRTL II* rightly rejects these as permissible bases for censorship, eliminating the analytical underpinning of *McConnell*'s overbreadth holding. And, as construed in *WRTL II*, §203 covers an insufficiently defined realm of speech that the FEC's regulatory implementation cannot satisfactorily define. Only express advocacy itself avoids undue vagueness.

The Court need not reconsider *Austin* to decide this case. The Government does not even defend *Austin*'s anti-corruption rationale, instead contending that union and corporate independent speech may be prohibited if candidates and officeholders react favorably to it. But that proposition threatens the established constitutional line between contributions and independent expenditures, and its reliance on the *McConnell* record would justify censorship of speech well beyond even that captured by §203 as written.

The Government cannot demonstrate any other compelling governmental interest in prohibiting union independent expenditures. *Austin* aptly distinguished unions from corporations, and the Government's suggestion that such a prohibition is warranted to protect dissident employees is incorrect because federal constitutional and statutory law fully enable non-members to avoid paying for union political activities they oppose and empower union mem-

bers to form and operate unions democratically with full voting and other participatory rights.

ARGUMENT

I. THE COURT SHOULD OVERRULE *McCONNELL* AND HOLD THAT § 203 IS FACIALLY UNCONSTITUTIONAL

A. *McConnell* upheld §203 on the ground that it was not overbroad, and *WRTL II* declined to revisit that holding in deciding an as-applied challenge. See 127 S. Ct. at 2670 n. 8. But the two decisions coexist in hopeless tension, as *WRTL II's* diligent effort to make constitutional sense of § 203 rebuts *McConnell's* ill-founded departures from sound and established First Amendment principles. The result is that labor organizations, including the AFL-CIO, and corporations, including Citizens United, remain subject to an unworkable censorship regime that can be redressed only by overruling *McConnell's* facial upholding of § 203.

McConnell concluded that "the vast majority of ads" that "clearly identified a [federal] candidate" and aired during the 30- and 60- day periods preceding recent general elections had "an electioneering purpose," 540 U.S. at 206, and "BCRA's application to pure issue ads is [in]substantial." *Id.* at 207. *WRTL II* states that *McConnell's* "vast majority" statement was "beside the point" because the Court "did not find that a 'vast majority' of the issue ads considered were the functional equivalent of express advocacy." 127 S. Ct. at 2670 n.8. But *WRTL II* rejects the analytical linchpins of McConnell's cursory overbreadth analysis, stating both that "electioneer-

ing purpose" was *not* "the appropriate test for distinguishing between genuine issue ads and the functional equivalent of express campaign advocacy," *id.* (emphasis added), and that "this Court in *Buckley* [*v. Valeo*, 424 U.S. 1, 43-44 (1976),] had already rejected an intent-and-effect test for distinguishing between discussions of issues and candidates," a holding that *McConnell* "did not...address." 127 S. Ct. at 2665.

If "electioneering purpose" and "intent-and-effect" are not proxies for "functional equivalen[ce]," then no empirical underpinning remains for *McConnell*'s overbreadth holding, which relied on "studies [that] classified the ads in terms of intent and effect." 127 S. Ct. at 2665. *McConnell* plainly endorsed the explicit position of the Government and the BCRA sponsor-intervenors that, with *rare* exception, § 203's primary definition of "electioneering communication" – a mere "refer[ence] to a clearly identified candidate for federal office" broadcast during the pre-election period and receivable by the requisite electorate, see 2 U.S.C. § 434(f)(3)(A)(i)(I) – *literally* identified "the functional equivalent of express advocacy," with "[in]substantial" exceptions. The *McConnell* majority pointed to four specific portions of the record to support its holding, see 540 U.S. at 206, and all treated § 203's "bright line" capaciously:

- The referenced pages of Annenberg Public Policy Center, "Issue Advertising in the 1999-2000 Election Cycle," termed *all* ads that *referred* to a candidate as "candidate-centered," and stated that they "usually present a candidate in a favorable or unfavorable light and then urge the audience to contact the candidate and tell him or her to support the sponsoring organization's policy position. Though

the intent of these ads is to encourage voters to favor or oppose a candidate, because they do so implicitly instead of explicitly these ads fall outside the current regulatory jurisdiction of federal election law." *Id.* at 13 (emphasis added).

- The referenced pages of J. Krasno and F. Sorauf, "Evaluating the Bipartisan Campaign Reform Act (BCRA)," endorsed the work of student coders who reviewed ads and then answered this question: "In your opinion, is *the* purpose of the ad to provide information about or urge action on a bill or issue, *or* is it to generate support or opposition for a particular candidate?" J.A., Vol. III, p. 1336, *McConnell v. Federal Election Commission* (emphasis added). The few ads that these coders decided were "pure issue ads" "rarely mention[ed] federal candidates." *Id.* at 1339.
- The referenced pages of Judge Kollar-Kotelly's opinion rejected the plaintiffs' overbreadth claim by reasoning that it was "very likely that these eight advertisements did influence federal elections because they refer to a federal candidate in a broadcast advertisement aired in close proximity to a federal election, and targeted to the candidate's electorate" -- enough, she concluded, to warrant prohibition. See 251 F. Supp. 2d 176, 575 (D.D.C. 2003). For example, an ad that "[c]riticized a candidate on past votes in the period immediately before a federal election with no indication of future legislation on the issue likely serves no purpose other than to affect the outcome of the election" and so constitutes prohibitable "electioneering." *Id.*

- The referenced portion of Judge Leon's opinion, which discussed only *political party* advertisements, deemed as "electioneering" those that either "focused on the positions, past actions, or general character traits of federal candidates" or "compared the positions or past actions, of two competing federal candidates," rather than "focusing" on pending legislation or executive action. *Id.* at 826-87.

During the *McConnell* litigation, neither the Government, the BCRA sponsor-intervenors nor their *amici* subjected the advertisements in the record to anything resembling the *WRTL II* test, namely, that irrespective of an ad's actual or likely intent or effect, and irrespective of its context (other than timing and audience), whether the message was "susceptible of *no reasonable interpretation other than* as an appeal to vote for or against a specific candidate." 127 S. Ct. at 2666 (emphasis added). To the contrary, they emphasized § 203's "bright line" and explicitly urged the Court to embrace the view that all candidate-referencing ads broadcast to the electorate close to elections were "functional[ly] equivalent to express advocacy" and so could be prohibited, subject only to rare as-applied challenges regarding ads that, in an inversion of *WRTL II*'s holding, were susceptible of no reasonable interpretation other than as an *entirely non-electoral* legislative or other issue appeal – a so-called "pure" issue ad. Like the student coders' question, they and *McConnell* presumed away the constitutionally critical fact that "'the distinction between discussion of issues and candidates and advocacy of election or defeat may often dissolve in practical application.'" *WRTL II*, 127 S. Ct. at 2669, quoting *Buckley*, 424 U.S. at 42. The Government relies upon the *McConnell* record, see Gov. Br. at 21, but,

as we and other *McConnell* plaintiffs demonstrated through our submissions of actual advertisements in that case, *McConnell* erred in concluding that § 203 was not unconstitutionally overbroad, and the Court should overrule that determination.

B. As a category of speech whose utterance may be either prosecuted as "a federal crime," *WRTL II*, 127 S. Ct. at 2658; see 2 U.S.C. § 437g(a)(5)(C) and (D), or subjected to a wide-ranging FEC investigation and then to "burdensome [civil] litigation," *WRTL II*, 127 S. Ct. at 2666; see 2 U.S.C. § 437g(a)(4)-(6), *WRTL II's* "appeal to vote" standard is unduly vague and therefore unworkable. Relying as it does upon illustrative features that are, respectively, "consistent with that of a genuine issue ad" and "indicia of express advocacy," 127 S. Ct. at 2667, the standard introduces the kind of subjective analysis that the Court eschewed in *Buckley* and *Federal Election Commission v. Massachusetts Citizens for Life, Inc.* ("*MCFL*"), 479 U.S. 238, 248-49 (1986). The resulting uncertainty is well captured by the FEC's ensuing regulation, which offers a grudgingly narrow "safe harbor" and then "rules of interpretation" to determine whether, "on balance," the "appeal to vote" standard is satisfied. See 11 C.F.R. § 114.15. The agency has already failed to achieve a majority when it sought to apply this regulation during the very advisory opinion process that *McConnell* confidently predicted would suffice to "clarif[y]" other BCRA language "and thereby remove any doubt there may be as to the meaning of the law." 540 U.S. at 170 n.64 (citation and interior quotation marks omitted). See FEC Advisory Opinion 2008-15 (2009). Although this Court does not now sit in judgment of the FEC's regulatory implementation of *WRTL II*, it is an inevi-

table administrative consequence of an inherently uncertain standard for permissible speech.

Only express advocacy itself marks an *electoral* speech category that is precise enough to avoid "[t]he constitutional deficiencies" of vagueness: it unacceptably "'puts the speaker wholly at the mercy of the varied understanding of his hearers,'" "'blankets with uncertainly whatever may be said,'" and "'compels the speaker to hedge and trim.'" *Buckley v. Valeo*, 424 U.S. at 43, quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945). *See also Buckley*, 424 U.S. at 79-80; *MCFL*, 479 U.S. at 249; *WRTL II*, 127 S. Ct. at 2682 (Scalia, J. concurring) ("If a permissible test short of the magic-words test existed, *Buckley* would surely have adopted it."). If salvaging § 203 requires the delineation of a category of speech that defies comparably clear application, the Court should invalidate the restriction outright.

II. THE ANTI-CORRUPTION INTEREST THAT SUPPORTS RESTRICTIONS ON CONTRIBUTIONS DOES NOT JUSTIFY RESTRICTIONS ON INDEPENDENT SPEECH

Because the Government does not contend that *Hillary: The Movie* contains express advocacy, and because the Court can and should overrule *McConnell* irrespective of *McConnell*'s reliance on *Austin*, it is unnecessary in this case for the Court to reconsider *Austin*. Moreover, the Government neither directly acknowledges nor defends *Austin*'s holding concerning Michigan's prohibition of corporate independent expenditures, and instead contends that a prohibition of both corporate *and union* expenditures

is warranted by concerns about *quid-pro-quo* corruption that, since *Buckley*, the Court has consistently held warrant restrictions *only* on *contributions*. *See generally Federal Election Commission v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431, 441-42 (2001).

The Government supports that proposition with a fraction of the *McConnell* record and asserts that it "indicated that... federal office-holders and candidates were aware of and felt indebted to corporations and unions that financed electioneering advertisements on their behalf or against their opponents." Gov. Br. at 8; see also *id.* at 11 (independent speech "has come to be used as a means of currying favor with and attempting to influence federal office-holders"). The Court should reject this invitation.

First, the Government fails to explain why that anecdotal record suffices to eliminate "the fundamental constitutional difference between money spent to advertise one's views independently of the candidate's campaign and money contributed to a candidate to be spent on his campaign." *Federal Election Commission v. National Conservative Political Action Committee ("NCPAC")*, 470 U.S. 480, 497 (1985). *Buckley* so distinguished expenditures from contributions in invalidating FECA § 608(e)(l), which limited to $1,000/yr. "any expenditure... advocating the election or defeat of [a] candidate" by any "person," including unions and corporations. 424 U.S. at 44-45 and n.45. After construing this provision to mean only express advocacy in order to "preserve the provision against invalidation on vagueness grounds," *id.* at 46-47, the Court held that the prohibition "inadequate[ly]" served "the governmental interest in preventing corruption and [its] appearance" in part because the in-

dependence of the speech did *not* pose the danger that contributions did, namely, the risk of a "*quid pro quo* for improper commitments from the candidate," and, in fact, uncoordinated speech "may well provide little assistance to the candidate's campaign and indeed may prove counterproductive." *Id.* at 48.

Moreover, "[t]he fact that candidates and elected officials may alter or reaffirm their own positions on issues in response to political messages paid for [independently] by [others] can hardly be called corruption, for one of the essential features of democracy is the presentation to the electorate of varying points of view." *NCPAC*, 470 U.S. at 498. And, independent speech is as likely to curry disfavor as any "favor"; § 203 was fueled by caustic congressional denunciations of advertisements, from "negative" to "nightmare." *McConnell*, 540 U.S. at 260 (Scalia, J.) (collecting examples). All speech risks reaction, and the decision to undertake that risk is the speaker's constitutional prerogative.

Second, *the McConnell union and corporate advertising record, including the portions referenced by the Government, was comprised entirely of independent speech that did not contain express advocacy at all, because 2 U.S.C. § 441b then, as now, prohibited it* – indeed, the point of the Government and the BCRA sponsor-intervenors in compiling that record was to justify banning vast swaths of speech *in addition to* express advocacy, because, it was claimed, they were "functionally equivalent" to each other. The Government's contention now proves far too much and, if accepted, would lay the foundation for Congress and state legislatures to engulf in prohibition both the very independent speech that *WRTL II* held was immune from § 203 and much more.

The spillover in the Government's arguments from express advocacy to other speech on matters of public concern is also reflected in its dismissive contention that advertisements are often "unrelated to the mission of the financing corporation," or, for example, "focus[] on [judicial] candidates' records on crime rather than on issues of special concern to the corporate or union speaker," so their "electoral advocacy is a means to an end rather than an expression of political conviction." Gov. Br. at 10-11 n. 2. But "[i]n the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue." *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 784-85 (1978). The Government does not even acknowledge *Bellotti*, which invalidated a state statute that prohibited corporations from spending on any ballot measure "other than one materially affecting any of [their] property, business or assets[.]" *Id.* at 768 n. 2 (interior quotation marks omitted). *See also Buckley*, 424 U.S. at 57.

The Government's casual dismissal of union political and social concerns brings to mind Justice Frankfurter's observation that "[to] write the history of the [railroad] Brotherhoods, the United Mine Workers, the Steel Workers, the Amalgamated Clothing Workers, the International Ladies Garment Workers, the United Auto Workers, and leave out their so-called political activities and expenditures for them, would be sheer mutilation." *Machinists v. Street*, 367 U.S. 740, 814-15 (1961) (dissenting opinion). "[U]nions have traditionally aligned themselves with a wide range of social, political and ideological viewpoints," *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507, 516 (1991), "expended funds in the support of political

candidates and issues," *Ellis v. Bhd. of Railway and Airline Clerks*, 466 U.S. 435, 447 (1984), and played a vital role in the public arena as advocates for both their members and all workers. *See generally Eastex, Inc. v. NLRB*. 437 U.S. 556, 565-66 (1978); *Abood v. Detroit Board of Education*, 431 U.S. 209, 227-32 (1977); *Pipefitters v. United States*, 407 U.S. 385, 402-32 (1972); *Machinists v. Street*, 367 U.S. at 767. "[T]his Court accepts briefs from the AFL-CIO on issues that cannot be called industrial, in any circumscribed sense," *id.* at 814 (Frankfurter, J., dissenting), an observation that still holds true. See, *e.g.*, Brief of AFL-CIO as *Amicus Curiae*, *Grutter v. Bollinger*, 539 U.S. 306 (2003). The Government simply lacks constitutional authority to designate and enforce its view of what are a union's "mission" or "special concern[s]."

III. NO OTHER COMPELLING GOVERNMENTAL INTEREST WARRANTS PROHIBITION OF UNION INDEPENDENT EXPENDITURES

Nor can the Government point to any other compelling governmental interest that could justify restricting union-financed express advocacy to the general public, and, except inferentially in *McConnell*, the Court has never held that there is one. *See, e.g.*, *Federal Election Commission v. National Right to Work Committee ("NRWC")*, 459 U.S. 197, 208 (1982) (discussing unions with respect to *contributions*, not expenditures). Indeed, even before *Buckley*, indictments of labor organizations for allegedly violating the 1947 Taft-Hartley Act's proscription of union and corporate "expenditures" led every Justice who ad-

dressed its constitutionality to conclude that it violated the First Amendment.

In *United States v. Congress of Industrial Organizations* ("*CIO*"), 335 U.S. 106 (1948), the Court reviewed an indictment of the CIO and its president for making "expenditures" by endorsing a congressional candidate in the CIO's weekly newspaper. Reviewing the 1947 enactment, the Court concluded that the term "expenditure" "has no definitely defined meaning," *id.* at 112, and the "congressional explanation of [its] intended scope...[was] scanty and indecisive." *Id.* at 116. *See also id.* at 134 (Rutledge, J., concurring) (describing legislative history as "a veritable fog of contradictions relating to specific possible applications"). The majority dismissed the indictment by finding that it was not intended to apply to electoral publications by unions and corporations to their "members, stockholders or customers," because otherwise "the gravest doubt would arise in our minds as to its constitutionality." *Id.* at 121. And, four concurring Justices – as urged by the CIO and *amici* AFL and the Machinists Union – concluded that the "expenditure" prohibition should be invalidated because it was unduly vague, the justification that it was necessary to counter unions' "undue influence" was inadequate, and the asserted "minority protection" interest was trumped by its unwarranted "majority prohibition" since unions operated on "the principle of majority rule" in matters of "public advocacy." *See id.* at 147-48.

The Court returned to this prohibition nine years later when it considered another indictment of another labor organization for allegedly violating the expenditure provision in a television broadcast. *United States v. United Auto Workers ("UAW")*, 352

U.S. 567 (1957). Uncertain of the facts, the Court allowed the indictment to proceed and declined to address the union's constitutional claims. *Id.* at 590-93. The three dissenters echoed Justice Rutledge's *CIO* concurrence, *id.* at 593 (Douglas, J., dissenting), and *Buckley* 424 U.S. at 43, approvingly cited that dissent where it rejected the notion that union speech could be prohibited because it might "incite to action," including with the "purpose" "to sway voters." *UAW*, 352 U.S. at 595-96.

In upholding § 203, *McConnell* recited concern about "the special characteristics of the *corporate* structure [that] require particularly careful regulation" but recited none about unions. See *id.* at 205 (emphasis added) (quotation marks and citations omitted). Between *UAW* and *McConnell*, *Austin* was the Court's only decision holding any interest sufficient to warrant such a restriction on any group, there the non-profit Michigan Chamber of Commerce, which was primarily composed and funded by for-profit corporate members. See 494 U.S. at 656.[2] *Austin* identified "a different form of corruption" than had *Buckley*, namely, "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." *Id.* at 660.

Whatever the correctness of this holding as to the Chamber, the Court squarely rejected its applicability to *unions* in denying the Chamber's equal-

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[2] *McConnell* erred in saying that, since *Buckley*, Congress's power to prohibit union and corporate express advocacy "has been firmly embedded in our law." 540 U.S. at 203. See *Austin*, 494 U.S. at 682-83 (Scalia, J., dissenting); *MCFL*, 479 U.S. at 263; *NCPAC*, 470 U.S. at 496.

protection claim that the state law under-inclusively failed also to apply to unincorporated labor organizations. The Court reasoned that unions have "crucial differences" from corporations: first, although unions too "may be able to amass large treasuries, they do so without the significant state-conferred advantage of the corporate structure"; and, second, "the funds available for a union's political activities more accurately reflect members' support for the organization's political views than does a corporation's general treasury" because a union may not compel represented non-members to support, with dues or other fees, the union's political, legislative and other ideological spending that is not directly germane to "'collective bargaining, contract administration and germane adjustment.'" *Id.* at 665-66, quoting *Communications Workers of America v. Beck*, 487 U.S. 735, 746 (1988).

The legal framework governing unions, members, and other workers confirms that conclusion. "[T]he union is obliged 'fairly and equitably to represent all employees..., union and nonunion,' within the relevant unit." *Abood v. Detroit Board of Education*, 431 U.S. at 221, *quoting Machinists v. Street*, 367 U.S. at 761. "Wherever necessary to that end, the union is required to consider requests of nonunion members of the craft and expressions of their views with respect to collective bargaining with the employer and to give to them notice of and opportunity for hearing upon its proposed action." *Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 203 (1944). In 28 states and the District of Columbia, private sector unions and employers may lawfully reach "union-security" agreements under which non-members pay "agency fees" reflecting their fair share for that representation. See W. Osborne, *ed.*, *Labor Union Law and Regula-*

tion 518 (2003). But these non-members cannot be compelled to contribute toward a union's partisan political activities or its legislative, ideological and other activities unrelated to collective bargaining and contract administration. *Communications Workers of America v. Beck.* And, their dissent "is not to be presumed – it must affirmatively be made known by the dissenting employee." *Machinists v. Street*, 367 U.S. at 774. Meanwhile, in the other 22 states, so-called "right-to-work" laws preclude *any* requirement in the private sector that non-members pay *any* fees to their exclusive union representative for *any* purpose, yet the union's duty of fair representation nonetheless applies. See Osborne, *supra.*

Moreover, from their inception unions are democratic, member-controlled organizations. A union forms by its "designat[ion] or select[ion] for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purpose." 29 U.S.C. § 159(a). Following this voluntary formation, members elect their officers and national convention delegates by secret ballot, see 29 U.S.C. §§ 481-483; members determine their dues rates by these same methods, see 29 U.S.C. § 411(a)(3); all members enjoy equal rights to nominate candidates for union office, vote in union elections and otherwise participate in union affairs, and they have rights of speech and association. See 29 U.S.C. §§ 411, 481(e). Membership itself is completely voluntary, and resignation cannot be restricted. *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985).

These laws and practices, which set unions apart from other entities subject to FECA's speech prohibitions, completely undermine the Government's only other proffered rationale for restricting union inde-

pendent expenditures, namely, to protect individuals "'who have paid money into a ...union for purposes other than the support of candidates from having that money used to support political candidates to whom they are opposed.'" See Gov. Br. at 12, quoting *NRWC, supra*. *See also* Gov. Br. at 13 ("protections against the use of compulsory union dues for political purposes"). Even so, the Government tepidly terms that interest as merely "legitimate," *id.* at 12, 13, but only a *compelling* governmental interest can justify such a restriction on any speaker, *WRTL II*, 127 S. Ct. at 2671, and the Court has never held this interest to justify prohibiting union-financed speech outright. However the Court addresses *Austin*, it should recognize no compelling governmental interest in criminalizing independent union electoral speech.

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted,

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No. 08-205

IN THE

Supreme Court of the United States

CITIZENS UNITED,

Appellant,

v.

FEDERAL ELECTION COMMISSION,

Appellee.

On Appeal From the United States District Court
for the District of Columbia

BRIEF OF *AMICI CURIAE* SENATOR JOHN MCCAIN, SENATOR RUSSELL FEINGOLD, FORMER REPRESENTATIVE CHRISTOPHER SHAYS, and FORMER REPRESENTATIVE MARTIN MEEHAN IN SUPPORT OF APPELLEE

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae, Senators John McCain and Russell Feingold and former Representatives Christopher Shays and Martin Meehan, were the principal sponsors of the Bipartisan Campaign Reform Act of 2002 (BCRA). Working together over the course of their public careers, they have devoted enormous time and energy to ensuring that our federal campaign finance laws are meaningful and not subject to wholesale evasion. *Amici* worked for seven years to enact BCRA to close loopholes in the then-existing system. They participated as intervening defendants in *McConnell v. FEC*, 540 U.S. 93 (2003), to defend the constitutionality of those loophole-closing measures. Senator McCain and former representatives Shays and Meehan also participated as *amici curiae* and, later, intervenors in the litigation commenced as *Wisconsin Right to Life, Inc. v. FEC*, which led to two decisions of this Court.[2] Messrs. Shays and Meehan have also been plaintiffs in a series of lawsuits in the federal courts of the District of Columbia seeking to compel the FEC to carry out its duty to promulgate regulations properly implementing BCRA.

Amici McCain, Feingold, Shays, and Meehan submit this brief because the arguments advanced by Citizens United threaten to undo much of what they accomplished in achieving the enactment of BCRA, to roll back long-

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[1] *Amici curiae* certify that no counsel for a party authored this brief in whole or in part and that no person or entity, other than *amici* or their counsel, has made a monetary contribution to the preparation or submission of this brief. The parties have filed letters consenting to the filing of this brief with the Clerk of the Court.

[2] Senator Feingold did not participate in that case because he was the subject of the ads at issue.

standing provisions of the Federal Election Campaign Act (FECA) that predate BCRA, and even to jeopardize statutes requiring disclosure of corporate and union political and lobbying expenditures outside the field of candidate elections. *Amici* urge the Court to reject Citizens United's far-reaching positions and instead apply settled principles establishing that restrictions on the use of corporate and union funds for express candidate advocacy and its functional equivalents are constitutionally permitted, and that the interest in informing voters of the moneyed interests behind candidate-related election-season advertising is sufficient to sustain application of BCRA's disclosure provisions to the entire range of electioneering communications defined in BCRA, as eight members of this Court held in *McConnell*.

SUMMARY OF ARGUMENT

Beyond the dispute over whether the contents of *Hillary: The Movie* are the functional equivalent of express advocacy—a factbound question that was thoroughly considered by the district court, with whose decision we agree for the reasons stated by the FEC and the court itself, and that we do not address further—this case presents several issues of great importance for the ongoing enforcement and administration of federal campaign finance laws. Acceptance of Citizens United's positions would open the door to essentially unlimited corporate- and union-funded election advocacy and would eviscerate disclosure provisions designed to alert the electorate to the interests that finance election-related messages.

Citizens United contends that even assuming that *Hillary: The Movie* contains the functional equivalent of express advocacy, it should have been permitted to finance cable transmissions of the movie outside the constraints of BCRA. To support this position, it advocates

that the Court either overrule its decision in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), significantly expand the scope of its holding in *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) (*MCFL*), or hold that regulation of the financing of "on-demand" cable transmissions of video programming containing candidate advocacy falls outside the justifications this Court has previously accepted for restrictions on funding of electioneering communications by business corporations and labor unions.

None of these submissions has merit. Merely overruling *Austin* would not avail Citizens United because the application of BCRA to corporate- and union-financed communications that are the functional equivalent of express advocacy is supported not only by *Austin*, but also, much more directly, by this Court's more recent decisions in *McConnell* and *FEC v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (2007) (*WRTL II*), neither of which the Court has been asked to overrule. Nor, in any event, does Citizens United offer the special justification necessary to support the overruling of this Court's precedents. As for *MCFL*, Citizens United's arguments would tear it from its moorings as a narrow ruling allowing advocacy by nonprofit corporations that do not accept donations from business corporations and unions, turning it into a loophole that would allow substantial use of corporate and union funds to support express advocacy and its equivalent. And Citizens United's argument that candidate advocacy via on-demand video is so different from traditional advertising that it should be open to no-holds-barred corporate and union financing of electioneering messages overlooks that such advocacy poses the same threats to the electoral system as does corporate funding of more traditional forms of election advocacy.

With respect to the advertisements for *Hillary: The Movie*, Citizens United's arguments are just as unfounded and would be equally destructive of settled principles of campaign finance jurisprudence. With near unanimity, this Court has approved requirements for disclosure of the sources of funding of election-related messages because disclosure serves the electorate's significant informational interests. Citizens United's assertion that those interests are only present when the messages in question involve express advocacy or its equivalent are unsupported by any of this Court's precedents. Rather, those interests are implicated by the full range of electioneering communications under BCRA, specifically including Citizens United's ads bearing derogatory messages about a presidential candidate, targeted at voters in states in which she was competing in primary elections. And Citizens United's hollow claims that it would be burdened by the disclosure and disclaimer requirements applicable to its ads under BCRA are flatly contradicted by this Court's precedents.

ARGUMENT

I. The First Amendment Does Not Protect Citizens United's Use of Corporate Funds to Finance the Functional Equivalent of Express Advocacy.

A. This Court Should Reject Citizens United's Suggestion That It Overrule *Austin v. Michigan Chamber of Commerce*.

In its merits brief, Citizens United suggests for the first time that this Court resolve this case by overruling *Austin v. Michigan Chamber of Commerce*, in which the Court upheld a Michigan statute requiring for-profit corporations and unions to use segregated funds rather than treasury funds to finance express advocacy. Citizens United makes this request despite the failure of its

Jurisdictional Statement in this case to present any such issue. Indeed, the Jurisdictional Statement did not even cite *Austin*, and it limited the questions Citizens United wished to present to as-applied challenges to BRCA's restriction on Citizens United's use of its funds to transmit *Hillary: The Movie* by cable or satellite, and as-applied challenges to BCRA's reporting and disclosure requirements (the same as-applied challenges Citizens United advanced in the district court).

Even overlooking this omission, Citizens United's current suggestion that repudiating *Austin*—the only decision its brief asks this Court to overrule—would be sufficient to decide this case in its favor is incorrect. Citizens United contends that even as to communications that are the functional equivalent of express advocacy—indeed, even as to express advocacy itself—BCRA's restriction on the use of corporate or union treasury funds to finance electioneering communications is unconstitutional. That is not, as Citizens United would have it, a conclusion the Court could reach by overruling *Austin* alone. Rather, to arrive at that holding, the Court would have to overrule its more recent decision in *McConnell v. FEC*, because it was *McConnell* (not *Austin*) that held that the funding restrictions imposed by BCRA are facially constitutional, and the thrust of Citizens United's argument is that those restrictions have *no* constitutional application to the use of corporate or union treasury funds to finance electioneering communications. Notably, overruling *McConnell* is a step that Citizens United does *not* ask the Court to take, despite extensively discussing various aspects of *McConnell*'s holdings. And it is a well-settled principle that this Court generally declines to overrule one of its decisions when no party has asked it to do so. *See, e.g., IBP, Inc. v. Alvarez*, 546 U.S. 21, 32 (2005).

Moreover, the *McConnell* majority's holding that BCRA's restrictions on the use of corporate and union treasury funds to finance electioneering communications are facially constitutional did not rest only, or even principally, on *Austin*. Rather, the majority invoked the Court's campaign finance jurisprudence from *Buckley v. Valeo*, 424 U.S. 1 (1976), onward, with special emphasis on *FEC v. National Right to Work Committee*, 459 U.S. 197 (1982), and *FEC v. Beaumont*, 539 U.S. 146 (2003). *See McConnell*, 540 U.S. at 203-06. The Court based its holding that there is a compelling interest supporting application of funding restrictions to express advocacy, and hence to its functional equivalent, on "our precedents," *id.* at 205, not just on *Austin*. In light of *McConnell*'s reasoning as well as its holding, it is untenable to suggest that a surgical overruling of *Austin*, as opposed to a wholesale overruling of *McConnell* and the line of precedents on which it relied, would suffice to resolve this case.

Citizens United's suggested disposition of the case would also make a mockery of the controlling opinion in *WRTL II*. That opinion went to great pains to explicate a test for distinguishing electioneering communications that are not the functional equivalent of express advocacy (and hence, it held, may not be subjected to the funding restrictions of BCRA Title II), from those that are the functional equivalent of express advocacy, and hence fall within *McConnell*'s undisturbed holding that the funding restrictions are constitutional "to the extent that ... ads broadcast during the 30- and 60-day periods preceding federal primary and general elections are the functional equivalent of express advocacy." *McConnell*, 540 U.S. at 206; *see WRTL II*, 127 S. Ct. at 2670 (opinion of Roberts, C.J.).

The controlling opinion in *WRTL II* explicitly described its holding as "draw[ing] ... a line" between impermissible applications of the funding restrictions and permissible ones, *id.* at 2659, and establishing a "test to distinguish constitutionally protected political speech from *speech that BCRA may proscribe.*" *Id.* at 2665 (emphasis added). Moreover, the opinion defended the line it drew not only against arguments that it was insufficient to serve BCRA's goals of preventing actual and apparent corruption, but also against the contention of the concurring Justices that it was *too restrictive* of speech. *Id.* at 2669 n.7. The controlling opinion roundly rejected the latter view, insisting that a test that "affords protection unless an ad is susceptible of *no reasonable interpretation* other than as an appeal to vote for or against a specific candidate" is adequate to protect First Amendment interests. *Id.* (emphasis in original). To erase that line only two years later with a holding that unlimited corporate and union funds may be used even for communications that are express advocacy or its functional equivalent would be, in the words of *WRTL II*, "a constitutional 'bait and switch.'" *Id.* at 2673.

In any event, Citizens United's argument for overruling *Austin* fails to identify the "special justification" required for this Court to overrule one of its precedents. *Harris v. United States*, 536 U.S. 545, 557 (2002). Citizens United's brief argument for overruling *Austin* rests principally on its alleged inconsistency with the principles of *Buckley v. Valeo* and *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). Such claimed doctrinal inconsistency is hardly a "special justification," *see Harris*, 536 U.S. at 557, especially when the supposedly inconsistent decisions preceded and were thoroughly considered in the decision at issue. *See Austin*, 494 U.S. at 657-58 (extensively discussing *Buckley* and *Bellotti*).

That the Court in *McConnell* (in an opinion coauthored by one of the *Austin* dissenters) reaffirmed the principle that the use of corporate funds for express candidate advocacy may be restricted and again specifically addressed both *Buckley* and *Bellotti* underscores that those decisions offer no special justification for overruling precedents of this Court. *See McConnell*, 540 U.S. at 206 n. 88.

In light of the 60-year history of the prohibition on use of corporate or union treasury funds for express advocacy and the string of this Court's precedents that were either premised on or explicitly affirmed the constitutionality of this restriction—including *Buckley*, *National Right to Work Committee*, *MCFL*, *Austin*, *Beaumont*, *McConnell*, and *WRTL II*—it can hardly be suggested that the "evolution of legal principle" has "implicitly or explicitly left [*Austin* or *McConnell*] behind as a mere survivor of obsolete constitutional thinking." *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 857 (1992).

Indeed, when this Court first considered BCRA in *McConnell*, Citizens United's current counsel, who was then defending BCRA, repeatedly endorsed *Austin*'s holding and argued that it was "clear that the Constitution permits source-of-funding limits on corporate expenditures in connection with candidate elections." Brief for the FEC, at 78, *McConnell* (No. 02-1674). Indeed, counsel told the Court that the record developed in *McConnell*, far from indicating some change in circumstances that undermined *Austin*, provided support for restrictions on corporate and union election expenditures that "dwarfed" the showing accepted in *Austin*, *id.* at 85-86, and rejected the suggestion that *Austin* should be overturned even in part. *Id.* at 116.

Little more than five years later, the holding of *McConnell* and the reasoning of such cases as *Austin* and *Beaumont* that supported it remain fully valid. There is no basis for suggesting that concerns about the potentially overwhelming, distorting, and corrupting influence of unleashing massive corporate and union war chests for use in unfettered express candidate advocacy are no longer compelling. That our electoral process would soon be dominated by corporate and union spending if the Court were to use this case as the occasion to roll back the longstanding prohibition on express advocacy by business corporations and unions is beyond serious question.

B. Citizens United's Communications Are Not Protected by the Principles of *MCFL*.

Beyond its frontal assault on the proposition that the use of corporate funds for express advocacy or its equivalent may be restricted, Citizens United asks the Court to rewrite its precedents to permit Citizens United to engage in such advocacy as long as the corporate funds used for that purpose are outweighed by funds contributed by individuals. According to Citizens United, this Court's holding in *MCFL* that ideological nonprofit organizations that accept *no* money from for-profit corporations may use their treasury funds for express advocacy should also protect Citizens United's use of funds contributed by business corporations, as long as its communications are "funded predominantly by individuals." Citizens United Br. 31.

Citizens United made no such argument in this case before its merits brief in this Court. Nowhere in its papers in the district court or in its Jurisdictional Statement did it contend that the sources of funding on which it relied brought its speech within the protection of

MCFL. Indeed, Citizens United expressly informed the district court that it is "not a 'qualified nonprofit corporation' because it receives corporate donations and engages in business activities." Plaintiff's Statement of Undisputed Material Facts at 1, *Citizens United v. FEC*, No. 07-2240, D.E. 52 (D.D.C. filed May 16, 2008).[3] It made no effort to establish that, despite its acknowledged failure to meet the regulatory criteria for the exception embodying the *MCFL* principle, it nonetheless should receive the benefit of *MCFL*'s holding. Having failed to make the argument in the district court or in its Jurisdictional Statement, Citizens United has waived it. *See Bay Area Laundry & Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 207-08 (1997); *see also TRW Inc. v. Andrews*, 534 U.S. 19, 33-34 (2001).[4]

Even if entertained, Citizens United's belated reliance on *MCFL* should be rejected because it would transform a narrowly limited doctrine designed to protect groups that are truly independent of the interests of for-profit corporations and unions into an avenue for

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[3] "Qualified nonprofit corporation" is the FEC's regulatory nomenclature for an *MCFL* corporation. *See* 11 C.F.R. § 114.10.

[4] Citizens United's failure to advance this argument in the district court inhibited the creation of a complete record that would have unearthed the full extent to which it has relied on corporate funds. Citizens United's brief cites the organization's interrogatory responses, which purport to establish that only two business corporations made contributions of $1000 toward *Hillary: The Movie* (*see* Citizens United Br. 7), but those responses not only are apparently limited to earmarked contributions, but also reveal that significant contributions came from some "other noncorporate persons" who were not individuals. *Id.* Presumably those "noncorporate persons" were other organizations, which may in turn have been passing through funds donated by business corporations.

wholesale circumvention of restrictions on corporate electioneering expenditures and contributions.

This Court's decision in *MCFL* did not, as Citizens United suggests, establish the principle that funding of candidate advocacy by for-profit corporations is constitutionally protected as long as it is combined with a larger quantity of dollars contributed by individuals. Rather, the Court in *MCFL* identified "three features *essential* to our holding that [MCFL] may not constitutionally be bound by [2 U.S.C.] § 441b's restriction on independent spending." *MCFL*, 479 U.S. at 263-64 (emphasis added). The third of those essential features was:

> MCFL was not established by a business corporation or a labor union, *and it is its policy not to accept contributions from such entities*. This *prevents* such corporations from serving as conduits for the type of direct spending that creates a threat to the political marketplace.

Id. at 264 (emphasis added). In other words, what the Court considered essential in *MCFL* was not that the organization received *only a little* corporate money or that its funding was *mostly* from individuals, but that it accepted *no* contributions from business corporations or labor unions, as a matter of policy.

Similarly, in *Austin*, the Court rejected the argument that funding restrictions on candidate advocacy could not be applied to a non-profit corporation that received money from business corporations. The Court reiterated that each of the three characteristics identified in *MCFL* was "crucial," 494 U.S. at 662, and it found the organization at issue (the Michigan Chamber of Commerce) ineligible for *MCFL*'s constitutional exemption from restrictions on candidate advocacy expenditures in part "[b]ecause the Chamber accepts money from for-profit

corporations," and therefore "it could ... serve as a conduit for corporate political spending" if permitted to use its treasury funds for advocacy. *Id.* at 664. The Court thus found it permissible to relegate the Chamber to advocacy through a segregated fund, which "*cannot* receive contributions from corporations." *Id.* at 664 n.3 (emphasis added).

McConnell, too, emphasized that *MCFL* exempts only a "carefully defined category of entities," 540 U.S. at 210, from the requirement that candidate advocacy by corporations be paid for from segregated funds contributed by individuals. And it repeated that one of the "central" requirements of *MCFL* is that an organization have a policy of not accepting contributions from business corporations or labor unions. *Id.* at 210-11. Similarly, in *WRTL II*, the controlling opinion declined to consider the argument that *MCFL* supported the as-applied challenge in that case "because WRTL's funds for its ads were not derived *solely* from individual contributions." 127 S. Ct. at 2673 n.10 (emphasis added).

Accepting Citizens United's argument that a little corporate funding of candidate advocacy must be permitted—or even a substantial amount, as long as it is not "predominant"—would have serious deleterious effects on federal campaign finance law and allow widespread circumvention of critical provisions previously upheld by this Court. Citizens United's argument would apply equally to express advocacy as well as to electioneering communications that are the functional equivalent of express advocacy. *Cf. McConnell*, 540 U.S. at 210 (noting that *MCFL* necessarily applies both to electioneering communications under BCRA and to traditional express-advocacy expenditures under FECA). Thus, the implication of Citizens United's argument is not only that non-

profit organizations may freely finance candidate advocacy with a mix of funds contributed by business corporations and individuals as long as most of the money comes from the latter, but also that (1) business corporations and unions may pay for express advocacy through accounts to which they have contributed their own treasury funds, as long as contributions from individuals predominate; (2) independent political committees that engage in express advocacy (and possibly multicandidate committees that make contributions to candidate committees) must be free to accept corporate funds as long as individual contributions predominate; and (3) BCRA's prohibitions on the use of "soft money" by political parties for federal election activity (upheld in *McConnell*) must be modified to allow some corporate soft-money contributions toward such activity as long as they do not predominate over individual contributions.

In short, Citizens United's argument would upset both the requirements that election expenditures be funded through truly "segregated" funds and the prohibitions on use of corporate and union funds for expenditures by political committees—provisions that are supported by a long line of this Court's decisions. *See McConnell*, 124 S. Ct. at 204-11; *Beaumont*, 539 U.S. at 162-63; *Austin*, 494 U.S. at 658-65; *Nat'l Right to Work Comm.*, 459 U.S. at 201-202; *Cal. Med. Ass'n v. FEC*, 453 U.S. 182 (1981). The effect of accepting Citizens United's view would be to permit the mobilization and unleashing of "political war chests funneled through the corporate form," *FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 501 (1985), as corporations would be free to use essentially unlimited amounts of their treasury funds to back candidate advocacy, as long as those funds were parceled out among nonprofit organizations or political committees in such a way that any par-

ticular piece of advocacy was not paid for "predominantly" with corporate funds. In effect, *MCFL* would be transformed into little more than a "matching" requirement: Every dollar of corporate or union funds supporting express advocacy would have to be matched by something more than a dollar (how much more is unclear) contributed by an individual.

The compelling interest in preventing corruption and the appearance of corruption that is served by "barring corporate earnings from being converted into political 'war chests,'" *Beaumont*, 539 U.S. at 154, as well as the interest in preventing nonprofit organizations from becoming conduits for the evasion of campaign finance law, *id.* at 155, thus demand rejection of Citizens United's proposed expansion of *MCFL*. As in *Beaumont* and *National Right to Work Committee*, the Court should not "second-guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared." *Beaumont*, 539 U.S. at 157 (quoting *Nat'l Right to Work Comm.*, 459 U.S. at 210).

Respect for Congress's judgment in this respect is counseled not only by the interests served by the funding restriction, but also by the absence of any principled and workable basis on which a court that accepted Citizens United's invitation to allow *some* corporate or union funding could proceed to determine *how much* corporate or union money is too much. Moreover, because both the amount and percentage of corporate or union contributions to any particular organization would vary from year to year—and even from communication to communication—the quest to determine "predominance" would become, at least, an annual event. The Court should therefore adhere to the bright-line constitutional principle established by its precedents: Congress may disallow

any use of funds from business corporations or labor unions to pay for express advocacy and its equivalent.

C. Citizens United's Position That Justifications for Limits on Corporate Electioneering Vanish When Voters Must Choose to Expose Themselves to It Is Incorrect.

Leaving aside its pleas for overruling *Austin* or dramatically extending *MCFL*, Citizens United's principal argument seems to be that the justifications for restrictions on corporate and union funding of express advocacy or communications that are its functional equivalent vanish when the advocacy takes the form not of broadcast ads that are imposed on television viewers, but "narrowcast" advocacy that members of the public must first choose to view (enticed, at least in this case, by ads that are themselves electioneering communications).[5] Although the principal focus of the congressional deliberations leading to passage of BCRA's electioneering communications provisions was traditional ads, the interests that provide constitutional justification for the funding restriction are fully applicable to communications that recipients must choose to receive.

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[5] Citizens United also questions whether its particular advocacy would threaten to create actual or apparent corruption because Senator Clinton's principal opponent in the primaries, President Obama, likely would not perceive Citizens United's communications as supportive of his own candidacy. *See* Citizens United Br. 41. But this Court has never suggested that the justifications for limits on corporate express advocacy and its equivalent depend on whether one can identify a specific candidate who would likely be corrupted by a particular expenditure. In any event, Citizens United's argument assumes, wrongly, that only Senator Clinton's primary opponents, and not potential Republican opponents in the general election, would be favorably influenced by Citizens United's spending to defeat her.

Indeed, that ads are imposed on viewers unwillingly is *not* one of the reasons that this Court has relied on in holding that corporations and unions can be prohibited from using their treasury funds to finance candidate advocacy. The Court has identified two principal justifications for that restriction: that there is a significant potential for corruption or its appearance if candidates benefit from large-scale corporate or union expenditures supporting them or targeting their opponents, and that the electoral process should be protected from "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." *McConnell*, 540 U.S. at 205 (quoting *Austin*, 494 U.S. at 660). Both are equally applicable to means of electoral persuasion that voters must take some initiative to access.

Acceptance of Citizens United's argument would have potentially far-reaching and undesirable consequences. The argument, like the *MCFL* argument, cannot be confined to electioneering communications, but would extend to independent expenditures for express advocacy as well. Thus, Citizens United's reasoning would appear equally applicable, for example, to full-scale express advocacy over the Internet (where access to content is typically user-initiated), and it would thereby open the door to unlimited corporate and union expenditures using the web to explicitly urge votes for and against candidates.[6] The same would be true of any cor-

[6] As the FEC notes (FEC Br. 26 n.8), the FEC has been cautious in extending FECA's and BCRA's provisions to the Internet, and the electioneering communications provisions do not apply to the web. The regulations cited by the FEC, however, do *not* exempt

(*Footnote continued*)

porate- or union-funded express advocacy in any form—written, audio, or video—where a voter exercised choice before receiving it. Indeed, Citizens United's reasoning would seem to protect corporate-funded telephone banks that called voters, asked if they were interested in hearing a message about Candidate X, and then, if the voter said yes, launched into express advocacy.

The majority in *McConnell* observed that when it comes to elections, "Money, like water, will always find an outlet." 540 U.S. at 224. Congress cannot, of course, always anticipate precisely what that outlet will be. But when, as here, it has enacted legislation principally motivated by one practice (corporate and union funding of broadcasts and cablecasts of ads containing candidate-related advocacy) that is equally applicable by its terms to another practice (corporate and union funding of on-demand cablecasting of programming containing candidate-related advocacy), and when that other practice poses exactly the same threats of potential corruption of the electoral process, there is no reason to limit Congress's enactment to the precise evil that prompted its passage. *Cf. Brogan v. United States*, 522 U.S. 398, 403 (1998) ("[T]he reach of a statute often exceeds the precise evil to be eliminated").

Although its constitutional arguments are unfounded, Citizens United has also raised a question about whether on-demand cable "narrowcasting" of *Hillary: The Movie*

Internet communications from the restriction on the use of treasury funds of business corporations and unions to finance "expenditures" (i.e., express advocacy). Citizens United's reasoning, by contrast, would place any Internet site accessed at the choice of a user constitutionally off-limits from any restrictions on the use of corporate or union funds.

would have met the FEC's regulatory definition of transmission of an electioneering communication. According to Citizens United, each individual on-demand transmission of the program would have been received only by the household that ordered it, but the regulatory definition of an electioneering communication requires that a transmission be capable of receipt by 50,000 persons in the state where the election is imminent. *See* Citizens United Br. 26-27 n.2 (citing 11 C.F.R. § 100.29(b)(3)(ii)). Because this Court's consideration of the constitutionality of a statutory or regulatory restriction may require, as an antecedent, determining what the challenged law actually provides, *Rumsfeld v. Forum for Academic & Institutional Rights*, 547 U.S. 47, 56 (2006), Citizens United's failure to raise this point before does not necessarily bar this Court from reaching it.

As the FEC points out, however, if *Hillary: The Movie* had been distributed through an on-demand cable channel, it would have been available to all subscribers of a cable system with access to on-demand programming, and the regulatory definition of what it means for a transmission to be capable of being viewed by the requisite number of persons is based primarily on the number of subscribers of the system. *See* FEC Br. 23-24 n.7; 11 C.F.R. § 100.29(b)(7)(i)-(iii). The FEC's interpretation of its own regulation appears reasonable even though the Commission may not have specifically considered application of the regulations to on-demand programming when promulgating them.

To the extent that there may be some ambiguity in the applicability of the regulations, the Court could possibly conclude that it is sufficiently doubtful that on-demand viewing of *Hillary: The Movie* would have been within the scope of the FEC's current regulations that

the Court should withhold judgment on the constitutional issue until such time as the FEC made a more specific regulatory determination to include such transmissions within the regulatory definition of electioneering communications. In no event, however, should the Court accept Citizens United's broad constitutional arguments that would place even express advocacy beyond the bounds of regulation if it is accessed at the choice of the viewer.

II. The Application of BCRA's Disclosure and Disclaimer Requirements to Electioneering Communications That Are Not Functionally Equivalent to Express Candidate Advocacy Is Constitutionally Permissible.

Citizens United's proposed broadcast advertisements for *Hillary: The Movie*, though not containing the functional equivalent of express advocacy within the meaning of *WRTL II*, prominently mentioned Senator Clinton and were intended to be aired shortly before primary elections in which she was a candidate for office and/or the national party convention that would determine the nomination for that office. The ads would thus, without question, have been electioneering communications under BCRA, *see* 2 U.S.C. § 434(f)(3)(A)(i), and the FEC's implementing regulations. Equally unquestionable is that the ads commented negatively on Senator Clinton's character and fitness for office, either explicitly or by insinuation. Nothing in this Court's decisions suggests that measures aimed at disclosing to the public the origin of these broadcast messages and the identity of those who financed them are unconstitutional.

A. The Justifications for Disclosure Requirements That This Court Has Accepted Are Not Limited to Express Advocacy and Its Functional Equivalent.

Citizens United's basic submission is that unless a communication falls within the class as to which Congress may permissibly impose restrictions on corporate funding—that is, express advocacy or its functional equivalent—there is no legitimate justification for disclosure provisions, either. Citizens United's position is flatly at odds with this Court's jurisprudence.

In *McConnell*, eight Justices voted to uphold the facial constitutionality of § 201 of BCRA, the basic provision requiring those who disseminate electioneering communications to disclose contributions made to support them. The five-Justice majority found disclosure to be justified by "the important state interests that prompted the *Buckley* Court to uphold FECA's disclosure requirements—providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions." 540 U.S. at 196. The three concurring Justices did not believe that either the enforcement or anti-corruption rationales applied to electioneering communications, but they agreed that the disclosure requirement "does substantially relate to" the interest in providing the electorate with information, and that this substantial relationship "assures its constitutionality." *Id.* at 321 (Kennedy, J., concurring in the judgment in part and dissenting in part).[7]

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[7] What Citizens United refers to as the "disclaimer" requirement of BCRA § 311—which requires electioneering communica-

(*Footnote continued*)

Notably, the three Justices who concurred on this point did so even though they saw *no* interests sufficient to justify the application of corporate funding restrictions to electioneering communications—a position directly at odds with Citizens United's view that the justifications for disclosure extend only to communications as to which funding restrictions are also justified. Similarly, the majority opinion nowhere suggested that the justification for the disclosure requirements was limited to electioneering communications that are the functional equivalent of express advocacy. In short, eight Justices accepted the disclosure requirements in *McConnell* without intimating any support for Citizens United's position that Congress's power to impose disclosure requirements is coextensive with its power to restrict funding of communications.

Moreover, the majority's treatment of the disclosure requirements was quite different from its analysis of the corporate funding restriction, where it limited its holding that the restriction was facially constitutional by noting that the justifications for the restriction are applicable "to the extent that the issue ads broadcast during the 30- and 60-day periods preceding federal primary and general elections are the functional equivalent of express advocacy." 540 U.S. at 206. By contrast, the majority identified no such limits on the justifications for the disclosure provisions, and concluded that they were facially constitutional because, absent evidence that their appli-

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tions not authorized by candidate committees to identify who paid for them and state that they were not authorized by a candidate committee—was similarly upheld by eight Justices who found that it "bears a sufficient relationship to the important governmental interest of 'shed[ding] the light of publicity' on campaign financing." 540 U.S. at 231 (opinion for the Court of Rehnquist, C.J.).

cation in a particular case was reasonably likely to lead to threats, harassment, or reprisals against contributors (*id.* at 198-99), the interests served by disclosure "amply suppor[t] application of [the] disclosure requirements to the entire range of 'electioneering communications'"—not just those that are equivalent to express advocacy. *Id.* at 196.

McConnell did not, of course, decide as-applied challenges that were not before it. *See Wisc. Right to Life, Inc. v. FEC*, 546 U.S. 410 (2006). But the *reasoning* used by the Court in rejecting the facial challenge to BCRA's disclosure provisions is inconsistent with *this particular* as-applied challenge. In contrast, the controlling opinion in *WRTL II* held that *McConnell*'s reasoning in rejecting the facial challenge to BCRA's funding restrictions for electioneering communications was *not* inconsistent with the as-applied challenge in *WRTL II*.

With respect to the funding restrictions, the Court held in *McConnell* that the statute was not facially overbroad because it could be validly applied to communications that were the functional equivalent of express advocacy, and the Court was not convinced that the possible unconstitutional applications outside that realm were substantial in relation to the statute's legitimate sweep. *See* 540 U.S. at 207. In *WRTL II*, the controlling opinion concluded that that holding necessarily left room for an as-applied challenge to application of the restrictions to communications that were asserted not to be functionally equivalent to express advocacy. *See* 127 S. Ct. at 2659-60.

By contrast, with respect to disclosure, the reason that *McConnell* rejected the facial challenge was not simply that there were a substantial number of permissible applications of the disclosure provision, but that the justifications for disclosure applied to the "entire range

of 'electioneering communications,'" *McConnell*, 540 U.S. at 196, except where the result would be harassment, threats or reprisals. That reasoning is inconsistent with the as-applied challenge advanced here, and there is nothing novel in recognizing that the reasoning of a decision finding a statute facially constitutional may determine the outcome of subsequent as-applied challenges. *See, e.g., WRTL II*, 127 S. Ct. at 2664 (recognizing that resolution of an as-applied challenge is "informed by our precedents" and that *McConnell*'s holding would doom an as-applied challenge to the application of BCRA's electioneering communication funding restrictions to "express advocacy or its functional equivalent").

Nor does the Court's holding in *WRTL II* call into doubt the constitutionality of applying the disclosure provisions to electioneering communications that fall short of being the functional equivalent of express advocacy. The controlling opinion in *WRTL II* acknowledged that advertisements that are not the functional equivalent of express advocacy may be intended to influence elections and may have actual effects on elections, and that it may be exceedingly difficult to distinguish ads with that intent and effect from electorally neutral ones. 127 S. Ct. at 2664-69. But because the Court was considering what the controlling opinion regarded as a prohibition on speech by corporate speakers, it adopted a narrow, objective test for determining when a communication constitutes the functional equivalent of express advocacy, premised on the notion that "[w]here the First Amendment is implicated, the tie goes to the speaker, not the censor," and that "[d]iscussion of issues cannot be *suppressed* because the issues may also be pertinent in an election." *Id.* at 2669 (emphasis added). In short, the controlling opinion in *WRTL II* was determining what justifications would support a "ban" on protected

speech, and its conclusions reflected the view that in deciding such an issue "we give the benefit of the doubt to speech, not censorship." *Id.* at 2674.

The controlling opinion's conclusion that speech must be the functional equivalent of express advocacy before the interests identified as compelling in *McConnell*, *Austin*, and *Buckley* justify a *prohibition* on corporate funding by no means suggests that lesser measures can only be sustained for the same type of speech. Rather, the undoubted electoral effects of advertisements that discuss candidates in proximity to an election, which were described in detail in the majority opinion in *McConnell*, 540 U.S. at 126-30, 193-94, and nowhere denied in the controlling opinion in *WRTL II*, are more than sufficient to support *disclosure* requirements on informational grounds alone. An electorate bombarded with messages about candidates in the run-up to an election has an obvious interest in knowing what moneyed interests lie behind them so that it can evaluate in a more informed manner whether, and to what extent, the messages should influence voting. *See Buckley*, 424 U.S. at 66 (relying on the interest of the voting public in knowing "where political campaign money comes from"). Indeed, that is undoubtedly why eight Justices of this Court saw little difficulty in upholding the disclosure provision (and even less difficulty in sustaining the so-called "disclaimer" provision) in *McConnell*.

In this specific case, the interest in disclosure is evident. The advertisements in question were to be run during the primary season in states where Senator Clinton was on the presidential primary ballot. Each advertisement either contained direct negative statements about Senator Clinton's political views or insinuated that there was negative information that members of the public

could learn more about if they viewed *Hillary: The Movie*, which, as the district court found, is itself a thoroughgoing critique with the theme that Senator Clinton was unfit for the office for which she was running. Moreover, the ads themselves discuss no "issues" other than the "issue" of Senator Clinton herself, a subject pertinent first and foremost to the imminent elections.

Under such circumstances, viewers of the ads would have an obvious and legitimate interest in knowing who was—and was not—behind them. It would be important, for example, to know that the ads were *not* the work of the campaigns of either her Democratic rivals in the primaries or her potential Republican opponents in the general election (hence the disclaimer). Beyond that, there would be an obvious interest in finding out both who paid for the ads (Citizens United) and who supplied the money behind that innocuous-sounding name, so that members of the public could help place Citizens United "in the political spectrum" (*Buckley*, 424 U.S. at 67) and identify the interests it represents—all with the goal of providing themselves more information to assist in evaluating the credibility of its critique of the Senator and determining whether to seek more information from this source. Nothing in this Court's jurisprudence suggests that such interests are insufficient to justify disclosure here.[8]

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[8] The Court's recent decision in *Davis v. FEC*, 128 S. Ct. 2759 (2007), notwithstanding Citizens United's repeated citations, does not suggest that the interests that support disclosure here are insufficient. In *Davis*, the *only* interest served by the disclosure provisions the Court struck down was to make possible implementation of the substantive provisions of the "Millionaire's Amendment," which, the Court held, were themselves unconstitutional. *See id.* at 2775. That implementation of unconstitutional restrictions is not a suffi-

(*Footnote continued*)

Indeed, the Court has long recognized the legitimacy of disclosure requirements much further removed from express candidate advocacy than the ones at issue here. For instance, in *Bellotti*,—the very decision that sustained the right of corporations to engage in issue advocacy and that lies at the core of *WRTL II*'s holding that corporate funding of speech that is not the functional equivalent of express candidate advocacy cannot be prohibited—the Court recognized that where corporate issue advertising is concerned, "[i]dentification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected," and that the government may rely on "the prophylactic effect of requiring that the source of communication be disclosed." *Bellotti*, 435 U.S. at 792 n.32 (citing *Buckley*, 424 U.S. at 66-67). Similarly, in *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290 (1981) (*CARC*), while holding that limits on contributions to a committee formed for ballot measure issue advocacy were unconstitutional, the Court stressed that, even absent those limits, the government could protect the interest in informing voters of the committee's sources of funding by enforcing disclosure provisions. *Id.* at 298-99.

Citizens United characterizes these statements in *Bellotti* and *CARC* as "dicta," Citizens United Br. 55-56, but they were nonetheless important to the Court's explanations of its holdings. Moreover, in *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995), where the Court

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cient justification for *anything* should go without saying, but that does not advance Citizens United's claim that the different interests served by the provisions at issue here are insufficient to meet constitutional demands.

upheld the right of an individual to distribute self-published, anonymous pamphlets on ballot measure issues, the Court was careful to reconcile its holding with the "dicta" from *Bellotti* and took pains not to call into doubt regulations requiring disclosure of corporate campaign expenditures and contributions, whether issue or candidate-related. *See id.* at 353-56. Moreover, "dicta" or not, these statements by the Court are far more persuasive than the authority Citizens United musters for the proposition that disclosure of expenditures and sources of funding for issue advocacy may *not* be required—that is to say, no authority at all.

Indeed, the notion that disclosure requirements applicable to political speech must be limited to express candidate advocacy or its equivalent is directly at odds with the holding in *United States v. Harriss*, 347 U.S. 612 (1954). There, the Court upheld disclosure requirements as to nonelectoral issue advocacy—that is, lobbying—based on the informational interest in disclosing to the public and to members of Congress "who is being hired, who is putting up the money, and how much," information that it found essential to "maintain[ing] the integrity of a basic governmental process." *Id.* at 625.

In each of these cases, the Court asserted the validity of disclosure requirements as to the amount and source of expenditures notwithstanding that (1) the expenditures themselves could not be prohibited, and (2) the expenditures involved issue rather than candidate advocacy. The decisions thus demonstrate the fallacy of Citizens United's two related submissions that disclosure requirements cannot be imposed upon its communications unless they are the type of communications as to which corporate funding may be prohibited and/or they are express candidate advocacy or its equivalent.

Whatever the limits may be to the imposition of disclosure requirements when citizens pool their money to address matters of public interest, the provisions of BCRA at issue here do not approach them. When a corporation such as Citizens United collects and expends funds to broadcast messages about a candidate on the eve of an election, this Court's precedents indicate that the public interest in knowing whose money is behind those messages is more than sufficient to justify reporting and disclosure requirements.

B. Citizens United's "Burdensomeness" Arguments Are Unfounded.

Citizens United's assertion that the disclosure and disclaimer requirements are unduly burdensome is unpersuasive and unsupported by this Court's precedents. As to disclosure, Citizens United's argument is refuted by the very authority on which it relies—*MCFL* (*see* Citizens United Br. 54). *MCFL*, to begin with, expressly stated that even though an ideological nonprofit corporation that accepts no contributions from business corporations cannot be restrained from expending its own funds for express candidate advocacy or forced to bear the burden of establishing a "separate segregated fund" subject to the detailed reporting and disclosure requirements applicable to a "political committee," it must nonetheless report its political expenditures and contributors. *Compare* 479 U.S. at 253-54 (discussing burdens of political committee requirements) *with id.* at 262. Specifically, the Court in *MCFL* stated that, under FECA's provision for disclosure of independent expenditures (2 U.S.C. § 434(c)),

> MCFL will be required to identify all contributors who annually provide in the aggregate $200 in funds intended to influence elections, will have to

> specify all recipients of independent spending amounting to more than $200, and will be bound to identify all persons making contributions over $200 who request that the money be used for independent expenditures. These reporting obligations provide precisely the information necessary to monitor MCFL's independent spending activity and its receipt of contributions. The state interest in disclosure therefore can be met in a manner less restrictive than imposing the full panoply of regulations that accompany status as a political committee under the Act.

479 U.S. at 262.

MCFL's discussion on this point has twofold significance. First, it provides yet another refutation of Citizens United's position that disclosure obligations cannot be imposed on it if its funding of the speech itself is constitutionally protected, for the *MCFL* Court acknowledged the existence of sufficient justifications for disclosure even in circumstances where it could not find constitutional justification for prohibiting the use of the corporation's funds for the expenditures at issue. Second, it is fatal to Citizens United's undue burden argument. While finding the requirements of political committee status generically too burdensome for *MCFL* corporations, the Court obviously thought that compliance with FECA's standards for disclosure of independent expenditures created no similarly excessive burden. Moreover, as the majority in *McConnell* observed, BCRA's disclosure requirements for electioneering communications are "actually somewhat *less* intrusive than the comparable requirements that have long applied to persons making independent expenditures [under 2 U.S.C. § 434(c)]." *McConnell*, 540 U.S. at 196 n.81 (emphasis added). If, as

MCFL recognized, the requirements of § 434(c) are not too burdensome for a true *MCFL* corporation, it follows that the *less* onerous reporting requirements of BCRA are not excessive for a corporation that does not even qualify under *MCFL*.

As for Citizens United's contention that the four-second disclaimer requirements applicable to its ads under BCRA are excessively burdensome, it, too, is untenable. Four seconds is obviously a minimal requirement for conveying any information, and Citizens United cites no authority for the proposition that its own decision to use ads so abbreviated that the disclaimer cannot fit comfortably with everything else it wants to cram into the short timeframe it has selected renders the disclaimer requirement unduly burdensome. The significant public interest in knowing who is and is not behind such election-eve, candidate-related messages is more than sufficient to justify the minimal burden of a four-second disclaimer and to outweigh Citizens United's interest (if any) in making its messages so short that it has no time for a disclaimer.

CONCLUSION

This Court should affirm the decision of the three-judge district court.

Respectfully submitted,

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Attorneys for Amici Curiae

Date: February 2009

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* Counsel for *Amici* Senator Feingold and former Representatives Shays and Meehan.

3/10/10 CONFIRMA-TION HEARING: DANIEL S. SULLIVAN

SENATE
CONFIRMATION COMMITTEE REPORT

Date: 3/10/10

In accordance with AS 39.05.080 and Art. III, Sec. 25 of the Alaska Constitution, the Judiciary Committee reviewed the following and recommends the appointment be forwarded to a joint session for consideration:

Daniel S. Sullivan - Attorney General

This does not reflect an intent by any of the members to vote for or against the confirmation of the individual during any further sessions.

Signature:	Printed Last Name
	EGAN
	McGuire
	Wielechowski
	Coghill
Chair:	French

Please return to the Senate Secretary's Office (Room 211).

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sean Parnell, Governor

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-2133
FAX: (907)465-2075

March 24, 2010

The Honorable Hollis French
Alaska State Legislature
State Capitol, Room 417
Juneau, AK 99801

Re: Responses to March 8, 2010 Memorandum

Dear Senator French:

Thank you for the opportunity to provide answers to the questions posed in your memorandum of March 8, 2010, in anticipation of my confirmation hearing before the Senate Judiciary Committee.

Are you satisfied with turnover rates in the criminal division? What actions do you plan to take in reaction to that challenge?

The biggest challenge the criminal division faces is in human resources. Prosecutors receive modest pay, and their work takes an emotional toll. As a result, most attorneys who join the criminal division do not become career prosecutors. This means that for the most complex cases, we have fewer experienced attorneys to call upon, and those experienced attorneys have less time to assist and mentor newer attorneys.

Reducing turnover is therefore a priority, and the Department of Law has made special efforts to reduce the number of prosecutors who leave public service for higher paying jobs. We have allowed each district attorney's office the discretion to develop a flex-time work schedule. We have created the Rural Prosecution Unit to take the strain off single-prosecutor offices by providing additional manpower and experience. We provide opportunities for professional training, with both an annual training for all attorneys and, for the past three years, a trial advocacy course for 20 attorneys. With these efforts, we hope to reduce turnover rates and retain our experienced, capable prosecutors.

What is the current salary disparity between a state attorney and a private one? Compare attorneys at 3, 5, and 10 years of practice.

We do not currently have an accurate comparison of Department of Law salaries with private-sector salaries. Comparing the two is difficult, because law firm salaries vary widely and

because compensation comes in different forms in the private sector: salary, bonus, use of car, payment of professional dues and fees for trainings and conferences.

However, we can compare Department of Law attorney salaries to the attorney salaries of other public sector employers. The Department of Administration, in a recent salary survey, compared Department of Law salaries to the 65th percentile of legal salaries for public sector employers. The 65th percentile was chosen as a target to determine where the department stands vis-à-vis other top-tier public sector employers. The survey found that salaries for attorney IIs, who have 1-3 years of experience, are 5.4% above the target, while salaries for attorney IVs, who have more than 6 years of experience, are 11% below the target. This suggests that while our less experienced attorneys receive salaries comparable to their peers at other public interest employers, their salaries become less competitive as they grow more experienced. Additionally, when compared with the top level of public sector employers, Department of Law salaries are significantly less competitive. Attorney II salaries are 13% below the maximum range of public sector attorney salaries, while attorney IV salaries are 43% below that range.

Alaska suffers from some of the highest sex assault and sex abuse rates in the nation. Are prosecutions of this crime increasing? Are trials on these charges increasing? Please provide some statistics on this subject. What actions do you plan to take in this area?

As you know, fighting the problems of domestic violence and sexual assault is a priority of the Department of Law. We have participated extensively in developing the Governor's ten-year strategy to combat sexual assault and domestic violence, a comprehensive approach to addressing problems with deep roots and many facets.

Prosecuting offenders who commit these crimes is an important element of this approach. The number of prosecutions has roughly tracked the number of reported offenses. In general, there has been an annual 10% increase in crime in Alaska. Sexual assaults and sexual abuse followed this increase. In 2006 and 2007 there was a spike in these cases. We saw a decrease in 2008 and although in 2009 there was an increase, we are not quite up to 2007 levels.

Prosecutions have generally followed these fluctuations. In 2007, we were referred 620 felony sex crimes and accepted 296 (47%) for prosecution, obtaining 196 convictions. In 2008, we were referred 513 felony sex crimes, and accepted 231 (45%) for prosecution, obtaining 135 convictions. In 2009, we were referred 569 felony sex crimes and accepted 240 (42%) for prosecution, obtaining 40 convictions (many cases accepted for prosecution in 2009 have not yet reached their resolution).

In order to ensure that those who commit sex crimes receive the strong punishment they deserve and are forced to register as sex offenders, we have implemented a policy that prosecutors shall not accept a plea bargain with a person accused of a sex crime unless the accused pleads to a crime that requires him to register as a sex offender. Additionally, my top two criminal attorneys will be training prosecutors at every office in the state in tough negotiating tactics. With regard to increasing the percentage of sex crimes referred to us that are ultimately accepted for prosecution, I believe that the Governor's plan to dramatically increase

VPSOs in rural communities and to hire more state troopers focused solely on sex crimes will result in stronger cases against offenders.

In short, I believe that the combination of continued training in the prosecution of sex crimes and increased law enforcement and evidence-collection capabilities promised by the Governor's initiative will enable the Department of Law to put more sex offenders behind bars.

I hope this letter adequately answers your questions. Please do not hesitate to contact me with any further questions.

Sincerely,

Daniel S. Sullivan
Attorney General

Kaltag questions:

The Kaltag case involves an adoption of a tribal child by her relatives who were not tribal members in Kaltag (they live in Huslia). Kid's mom with serious substance abuse issues and in jail for murder; was dad out of state and uninterested. No parties involved objected to the proceedings. The state refused to recognize the results because *it * did not refer the case to the tribal court. The AG in HJUD also made the argument that it was a problem because it involved "nontribal" members though the child went to relatives and is safe and happy.

1. Can you tell us what position the 9th Circuit Court has taken in regard to tribal court jurisdiction in the past? Hasn't the state litigated this point before and lost (in Venetie, 20 years ago)? Hasn't the state taken the opposite position in the past and in front of the state's supreme court as recently as 2004?

2. Why are we relitigating this issue with *this particular* case? Did any of the parties involved in this adoption object to the tribal court's actions or their jurisdiction in this case? Is there a workload change at Health and Social Services we are unaware of that they have time to prioritize adoption cases like this one (OCS often does not respond even to complaints involving violence against children, especially in rural Alaska)? Given the state's extreme workloads in children's cases, why is it NOT in the state's best interest to work cooperatively with tribal governments?

3. How much money have we spent so far on litigation of this case? Estimate of attorneys fees or hourly rates? How much does the state pay for active social work case managers for this region of Alaska? How much time and effort did the State spent trying to mediate a solution before jumping into litigation?

Cindy Smith

From: Sen. Hollis French
Sent: Thursday, July 30, 2009 2:55 PM
To: Cindy Smith
Subject: FW: c.c. to AG

file

From: James Behlke [jim@behlke.com]
Sent: Thursday, July 30, 2009 1:25 PM
To: Sen. Hollis French
Subject: c.c. to AG

Dear Mr. Sullivan:

As an Alaskan I think I'm entitled to information about what, if anything, the so-called "rural subcabinet" has done since it was created.

I had contacted you earlier and encouraged you to look into reported problems from rural residents who couldn't afford to purchase fuel for their boats for subsistence fishing purposes. I encouraged you to add this issue to the rural subcabinet's agenda.

(Now I think my request may have been laughable-- I doubt the rural subcabinet regularly meets)

I never received a response from you about my concern.

I also contacted John Moller, the executive branch rural affairs advisor, and asked him to answer the following questions:

1. What (if any) business has the "rural subcabinet" conducted?

2. On what dates has it met?

3. Who are its members?

4. Are there comprehensive minutes from any and all meetings that would be available to Alaska's public?

5. Has the rural subcabinet executed any action items (with tangible results) since it was created?

Mr. Moller advised me to research through published Alaska regulations for answers to my questions. I did and learned which state officials reside on the subcabinet. However I could not find answers to 1, 2, 4, or 5 within the State's records. Personally I speculate Mr. Moller may know good and well the answers to my remaining questions.

I indicated to Mr. Moller that he hadn't answered most of my questions.

I had also contacted Mr. Moller and asked if rural Alaska had received sufficient fuel for next winter. He never responded to that question.

Could you please respond to my original inquiry? Also, could you please answer questions 1, 2, 4, and 5 above? As an added bonus, any information you may have about the fuel situation for the upcoming winter would be appreciated.

I'll copy this message to the Governor, to Mr. Moller, to Alaska's Ombudsman, and to Senator Hollis French, Chair of the Senate Judiciary Committee.

Thanks,

Sincerely,

Jim Behlke

c.c. John Moller
Senator Hollis French
Governor
Alaska Ombudsman

Compose Mail

Inbox (5)
Buzz (1)
Sent Mail
Drafts (39)
[Gmail]Trash
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Search, add, or invite
Hollis French
Set status here
Amory
Chris Schutte
Heather Beatty
accident prone
Jim Lottsfeldt
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Matthew Moser
Andy Moderow
Kate Herring
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Max Hensley
Cindy Smith
Options Add Contact

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New window
Print all
Collapse all
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Hollis French to Cindy show details 8:32 PM (12 hours ago) Reply

Kaltag v. State of Alaska

Attorney: Natalie Landreth

Case Update

This is an action to enforce the full faith and credit clause of the Indian Child Welfare Act. The Kaltag Tribe had completed an adoption in tribal court and had applied for a new birth certificate, but the State refused to issue one on the grounds that the Tribe had not petitioned for reassumption of jurisdiction under ICWA. This argument assumes that a Tribe does not have inherent jurisdiction to adjudicate adoptions of its own tribal members. The Tribe and the parents (two individual Kaltag tribal members) brought suit against the State of Alaska Department of Health and Social Services and the Alaska Bureau of Vital Statistics for denying full faith and credit to a tribal adoption decree in violation of section 1911(d) of the Indian Child Welfare Act. The parents also have raised a section 1983 claim.

Cross motions for summary judgment were filed in May 2007 and the court ruled in favor of the Tribe on all claims, holding that their decision was entitled to full faith and credit under the ICWA. The State moved to stay the judgment and has also appealed to the Ninth Circuit. The Ninth Circuit denied the stay and affirmed the decision on appeal. The State further moved for rehearing en banc, which was also recently denied.

Reply Reply to all Forward

Cindy Smith to me show details 8:01 AM (52 minutes ago) Reply

What a waste of time and money...you know no one was even disputing tribal jurisdiction in this case - except the state.

From: Hollis French [mailto:hsfrench@gmail.com]
Sent: Tuesday, March 09, 2010 8:32 PM
To: hsfrench@gmail.com; Cindy Smith
Subject: kaltag
- Show quoted text -

Reply Forward

Sponsored Links (feedback)

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Biography of Alaska Attorney General
Daniel S. Sullivan

Federal Government Service

Prior to becoming Attorney General, Sullivan served as the U.S. Assistant Secretary of State for Economic, Energy, and Business Affairs. His nomination by the President for this position was unanimously confirmed by the United States Senate in May 2006 and he served until January 2009. In this role, he was a senior advisor to the Secretary of State and other top U.S. government officials on the formulation and execution of international economic, energy, trade, finance, transportation, telecommunications and Arctic policies. Sullivan also led and managed the 200-employee State Department Bureau of Economic, Energy, and Business Affairs.

As the Assistant Secretary of State, much of Sullivan's work focused on international energy issues. He served as the U.S. Governing Board member of the Paris-based International Energy Agency – the world's premier energy security organization. He and the State Department bureau he led worked closely with the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects on Alaska gas pipeline issues. Sullivan also was responsible for overseeing and leading several complex international negotiations of strategic importance to the United States, including serving as the primary negotiator for the President at the Group of Eight (G8) Summits.

Prior to serving as the Assistant Secretary of State, Sullivan was a Director in the International Economics Directorate of the National Security Council and National Economic Council staffs at the White House

Alaska Law Background

Sullivan is one of a select number of Alaska attorneys who has held judicial clerkships on both the highest state and highest federal courts in Alaska. He was a judicial law clerk for Judge Andrew Kleinfeld of the United States Court of Appeals for the Ninth Circuit in Fairbanks from 1997-98, and was a judicial law clerk for Chief Justice Warren Matthews of the Alaska Supreme Court in Anchorage from 1998-99. Following his clerkships, Sullivan joined the Anchorage office of Perkins, Coie, LLP. His practice focused on corporate transactions and commercial litigation, and he represented a variety of clients, including Alaska small businesses and Native corporations.

U.S. Military Service

Sullivan has served in the United States Marine Corps since 1993 on active duty and in the reserves as an infantry and reconnaissance officer, including with Second Battalion, Fifth Marines at Camp Pendleton, California, and for several years with Anchorage-based Echo Company, Fourth Reconnaissance Battalion – the Marine Corps Reserve's premier cold weather reconnaissance unit. In recent years, Sullivan has been recalled to active duty twice: in January 2009 to help draft a regional strategy report for the Commander of U.S. Central Command (CENTCOM) General David Petraeus, and from December 2004 until April 2006 to serve as a strategic advisor to CENTCOM Commander General John Abizaid. During this period, Sullivan spent substantial time deployed in the CENTCOM theater of operations.

Academic Background

Sullivan graduated *magna cum laude* from Harvard University, earning a bachelors degree in Economics, where he was a Harvard College scholar during each of his four years. Sullivan graduated *cum laude* from Georgetown University Law Center, earning a Juris Doctor and Masters of Science in Foreign Service joint degree. He was an articles editor on the *Georgetown Law Journal* and a contributing author to the *Georgetown Criminal Procedure Project*. During his final year at Georgetown, Sullivan worked as a law clerk for Judge James L. Buckley on the U.S. Court of Appeals for the District of Columbia.

Awards, Honors, and Personal Information

Sullivan is the recipient of numerous professional, academic, and military awards, including the White House Fellowship, the National Security Council Outstanding Service Award, and the Defense Meritorious Service Medal. He is a member of the Council on Foreign Relations.

Sullivan was born in Fairview Park, Ohio. He has been married for 15 years to Julie Fate Sullivan of Fairbanks. They moved to Alaska in 1997, after Sullivan completed active duty service with the Marine Corps. They have three daughters, two of whom were born in Anchorage.

Background Information on Alaska Attorney General Daniel S. Sullivan

Academic Background

Sullivan graduated *magna cum laude* from Harvard University in 1987, earning a bachelor's degree in economics. He was a Harvard College scholar, a designation awarded to students with a 3.5 GPA or higher, during each of his four years at Harvard, and was awarded a Rotary Foundation Scholarship upon graduation.

Sullivan graduated *cum laude* from Georgetown University Law Center, earning a Juris Doctor and Masters of Science in Foreign Service (MSFS) joint degree in 1993. He was a member and articles editor on the *Georgetown Law Journal*, awarded to first-year students in the top 4 percent of their class, and a contributing author to the *Georgetown Criminal Procedure Project* – one of the country's most respected annual surveys of criminal procedure. He received the MSFS Award for Academic Excellence, awarded to students with a 3.8 GPA or higher. He was also awarded the Ford Foundation Fellowship for the Study of Public International Law.

During his final year at Georgetown, Sullivan worked as law clerk/intern for Judge James L. Buckley on the U.S. Court of Appeals for the District of Colombia Circuit – generally recognized as the second most important court in the United States.

Alaska Law Background

Sullivan is one of a select number of Alaska attorneys who has held judicial clerkships on both the highest state and highest federal courts in Alaska. He was a judicial law clerk for Judge Andrew Kleinfeld of the United States Court of Appeals for the Ninth Circuit in Fairbanks from 1997-98, and was a judicial law clerk for Chief Justice Warren Matthews of the Alaska Supreme Court in Anchorage from 1998-99. As a Ninth Circuit Court of Appeals and Alaska Supreme court law clerk, Sullivan analyzed appellate cases, conducted extensive legal research, wrote bench memoranda for Chief Justice Matthews, Judge Kleinfeld and the other justices and judges on the bench, and helped draft published opinions on some of the most important state and federal legal issues facing Alaska. These judicial clerkships have provided Sullivan with insights into and a deep respect for the Alaska legal system, its judges and public officials. He also served briefly as an appellate court staff attorney on the Alaska Court of Appeals, which focuses on criminal cases.

In 2000, Sullivan joined the Anchorage office of Perkins, Coie, LLP, one of the largest law firms in the Pacific Northwest. His practice focused on corporate transactions and commercial litigation, and he represented a variety of clients, including Alaska small businesses and Native corporations. He has been a member of the Alaska Bar Association since 2000.

Alaska Community Service

As an attorney in Alaska, Sullivan was appointed by the mayor of Anchorage to serve as vice chairman of the Anchorage Public Facilities Commission, which was responsible for holding public hearings and advising city officials on the financial, operational and long-term planning of Anchorage's major public facilities, including convention centers and sports arenas. He also served on the Anchorage Veterans Affairs Commission, which was responsible for holding public hearings and advising city government officials on policies affecting Anchorage's substantial population of veterans.

Sullivan has been a member of the School Advisory Committee of Saint Elizabeth Ann Seaton School, where his children attended grade school. He also was active for several years with Alaska's Toys for Tots Foundation, a community program involving active duty and reserve Marines and dozens of other volunteers who collect and distribute thousands of toys throughout the state for low-income families during the holiday season. He served as a member of Advocates for Harvard ROTC and in 2001 published an article in the "My Turn" column of *Newsweek* criticizing elite universities for their discriminatory treatment of the U.S. military. His article helped reignite a national public debate on the issue.

Service at the White House

In response to the September 11th terrorist attacks on the United States, Sullivan applied for and was awarded a White House Fellowship – one of only three Alaskans to have been selected for this honor. In July 2002, he left private law practice in Anchorage and moved to Washington, D.C., to serve as a director in the International Economics Directorate of the National Security Council (NSC) and National Economic Council (NEC) staffs at the White House. In this capacity, he advised the president, the national security advisor and the NEC chairman on international economic and security issues, also assisting them with preparations for international economic meetings, such as the Group of Eight (G8) Summit, the Asia-Pacific Economic Cooperation Summit, the U.S.-EU Summit and the Summit of the Americas.

Sullivan also led coordination among U.S. government agencies on the formulation and execution of international economic policies, particularly those focused on trade. He worked and traveled extensively with U.S. Trade Representative Robert Zoellick, a Bush administration cabinet member, as part of his multilateral and bilateral negotiating team. Sullivan's work at the White House ended in December 2004, when he was recalled to active duty by the United States Marine Corps.

Service as U.S. Assistant Secretary of State

In April 2006, while still on active duty with the Marines, Sullivan was nominated by the president to serve as the assistant secretary of state for economic, energy and business affairs. He was unanimously confirmed by the United States Senate for this position in May 2006 and served until January 2009. In this role, he served as a senior advisor to the secretary and other top U.S. government officials on the formulation and execution of

international economic, energy, trade, finance, transportation, telecommunications and Arctic policies.

He led and managed the 200-employee State Department Bureau of Economic, Energy, and Business Affairs. He was responsible for managing six different sub-bureaus covering the following policy areas: (1) energy security, sanctions and efforts against terrorist financing; (2) international trade, investment and intellectual property rights; (3) international finance, debt relief and development; (4) international telecommunications; (5) international transportation; and (6) advocacy for U.S. businesses and the private sector abroad.

Much of Sullivan's work focused on international energy issues. He served as the U.S. Governing Board member for the Paris-based International Energy Agency (IEA) – the world's premier energy security organization. He and the State Department bureau he led worked closely with the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects in advancing the Alaska gas pipeline. His bureau also had regulatory responsibility for cross-border permitting of petroleum pipelines in North America.

Sullivan developed, negotiated and helped to implement numerous international energy initiatives, including: a $10 billion annual G8 commitment to invest in clean energy R&D; a G8 commitment to reduce and eliminate global tariffs on clean energy technology goods and services; the U.S.-Brazil Western Hemisphere bio-fuels partnership; International Energy Agency (IEA) initiatives to deepen China and India's cooperation with the IEA; and a comprehensive U.S. Eurasian/Caspian energy security strategy that included the establishment of a special presidential envoy. He strengthened U.S.-Canadian energy ties as the co-chair of the U.S.-Canadian Energy Consultative Group.

Sullivan led, oversaw, and was responsible for several complex international negotiations of strategic importance to the United States. He served as the primary negotiator for the president at the G8 summits, as well for the Western Hemisphere "Pathways to Prosperity" economic integration initiative. Additionally, he was responsible for overseeing the following: aviation liberalization agreements, including those with the European Union, China, Japan and Australia; Bilateral Investment Treaty negotiations, including those with China and India; global telecommunications and internet governance agreements; "Paris Club" sovereign debt-relief negotiations and agreements, including those that resulted in significant debt reduction for Iraq, Afghanistan and Liberia; and economic and energy agreements at the Organization for Economic Cooperation and Development, and the International Energy Agency.

Leadership on Issues Affecting Alaska

In addition to focusing on global energy issues, Sullivan played an important role on a number of other issues directly affecting Alaska, including an updated National Security Policy Directive (NSPD) on U.S. Arctic strategy. He helped ensure that the new NSPD

strategy focused on all of the core issues relating to the Arctic, including: developing the region's vast resources; protecting the environment; promoting safe, secure and reliable transportation; and respecting the culture and way of life of indigenous peoples. He worked closely with the White House, the chairman of the Arctic Research Commission, and Alaska's congressional delegation (particularly Senator Murkowski's office) to ensure enactment of this important strategy at the end of 2008.

Sullivan was also a strong advocate in government meetings, congressional testimony and public speeches on the importance of U.S. accession to the Law of the Sea Convention. His leadership on working to open markets overseas, including those for aviation services, stands to significantly benefit Alaska exporters and aviation service providers.

U.S. Military Service

Sullivan has served in the United States Marine Corps since 1993 on active duty and in the reserves as an infantry and reconnaissance officer, including with Second Battalion, Fifth Marines at Camp Pendleton, California, and for several years with Anchorage-based Echo Company, Fourth Reconnaissance Battalion – the Marine Corps Reserve's premier cold weather reconnaissance unit. He has held a wide variety of billets, including 81mm mortar platoon commander, weapons company executive officer, and commander of a search-and-rescue unit deployed as part of a three-ship special operations Marine Expeditionary Unit. He also served as an overseas faculty member with Central Texas College, teaching college courses on U.S. foreign policy and criminal justice to Marines on deployment and at Camp Pendleton.

In the past four years, Sullivan has been recalled to active duty twice: in January 2009 to help draft a regional strategy report for Commander of U.S. Central Command (CENTCOM) General David Petraeus; and from December 2004 until April 2006 to serve as a strategic advisor to CENTCOM Commander General John Abizaid. During this period, Sullivan spent substantial time deployed in the CENTCOM theater of operations and was responsible for drafting the 2006 CENTCOM "Posture Statement" with General Abizaid, which provides strategic guidance for subordinate commanders as they conduct military operations in the CENTCOM area of operations.

Sullivan has completed training at the following U.S. military schools and courses: USMC Officer Candidate School; USMC Basic Officer School; USMC Infantry Officer Course; USMC Amphibious Reconnaissance School; USMC Mountain Reconnaissance Course; U.S. Army Airborne School; Navy-Marine Corps Survival, Evasion, Resistance and Escape (SERE) School; USMC Marine Air Ground Task Force Intelligence School; and USMC Expeditionary Warfare Staff Planning Course.

Awards and Honors

Sullivan is the recipient of numerous professional, academic, and military awards, including the White House Fellowship, the National Security Council Outstanding

Service Award, the Defense Meritorious Service Medal, and the U.S. Junior Chamber of Commerce Ten Outstanding Young Americans Award.

Personal Information

Sullivan, 44, was born in Fairview Park, Ohio. He has been married for almost 15 years to Julie Fate Sullivan of Fairbanks, who is a Doyon shareholder. They have three daughters, two of whom were born in Anchorage. After Sullivan left active duty service with the Marine Corps in 1997, they moved to Alaska and have owned a home in Anchorage since 2000.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Dennis Egan
Senator John Coghill

Senate Judiciary Committee

1. Describe your law school experience. Where and when did you attend law school? Did you receive any honors? Did you participate in your school's law review? Moot court? Legal aid clinic? Any other details about that time in your life?

2. Describe your legal employment after law school. What subject areas have you practiced in? How many other lawyers did you practice with? How many jury trials have you completed? How many appearances have you made before the Alaska Supreme Court? Before the Ninth Circuit Court of Appeals? Have you published in any legal journals?

3. Which US Supreme Court Justice do you admire most? Why?

4. Which US President do you admire most? Why?

5. What do you see as the primary mission of the Attorney General?

6. What is the biggest challenge facing the civil division? What actions do you plan to take in reaction to that challenge?

7. What is the biggest challenge facing the criminal division? What actions do you plan to take in reaction to that challenge?

8. Are you satisfied with the turnover rates in the criminal division? If not, what actions do you plan to take to lower the turnover rates?

9. What is the current salary disparity between a state attorney and a private one? Compare attorneys at 3, 5, and 10 years of practice.

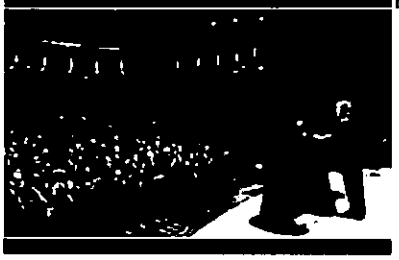
10. Alaska suffers from some of the highest sex assault and sex abuse rates in the nation. Are prosecutions of this crime increasing? Are trials on these charges increasing? Please provide some statistics on this subject. What actions do you plan to take in this area?

11. Recently many current and former state employees' private personal data was lost by Price Waterhouse Cooper. When was the state notified of that loss? Did the state comply with the relevant identity theft statutes?

12. What will be your Department's approach to the issues of tribes and tribal sovereignty in Alaska?

This is historical material, "frozen in time." The web site is no longer updated and links to external web sites and some internal pages will not work.

PRESIDENT GEORGE W. BUSH
RESOURCES FOR THE PRESIDENT'S TEAM



- **Messages From The President**
  Video and transcripts of recent remarks.
- **Appointee Directory**
  Get bios and photos of appointees online.
- **Department Links**
  Links to departments and cabinet level offices.

SEARCH | SEARCH

THE PRESIDENT & HIS LEADERSHIP TEAM

Appointee Directory

View: ---Alphabetical--- | ---By Department---

Daniel Sullivan -- Department of State

Assistant Secretary of State for Economic and Business Affairs

Mr. Sullivan serves as the Assistant Secretary for Economic, Energy and Business Affairs. The Bureau he leads is responsible for overseeing work on international trade and investment policy; international finance, development, and debt policy; economic sanctions and combating terrorist financing; international energy security policy; international telecommunications and transportation policies; and support for U.S. businesses and the private sector overseas. Nominated by President Bush on April 24, 2006, Mr. Sullivan was unanimously confirmed by the Senate on May 26, 2006, and was sworn in as Assistant Secretary on June 6, 2006. Mr. Sullivan came to the State Department from the National Security Council/National Economic Council Staff at the White House where he served as a Director and Acting Senior Director in the International Economics Directorate. He focused on international trade and intellectual property rights issues, as well as international economic summits, including the G-8, Asia Pacific Economic Cooperation (APEC), and the Summit of the Americas. A Marine Corps infantry and reconnaissance officer, Mr. Sullivan was recalled from the reserves to active duty service from January 2005 until April 2006 and served as a Strategic Advisor and Special Assistant to the Commander of U.S. Central Command (CENTCOM), spending substantial time deployed in the CENTCOM theater of operations. Before joining the Bush Administration, Mr. Sullivan practiced business and corporate law with Perkins Coie, LLP. He also served as a judicial law clerk to the Honorable Andrew Kleinfeld, United States Court of Appeals for the Ninth Circuit, and to Chief Justice Warren Matthews of the Alaska Supreme Court. Mr. Sullivan graduated magna cum laude from Harvard University earning a bachelors degree in Economics and graduated cum laude from Georgetown University earning a J.D./Master of Science in Foreign Service joint degree, focusing on law, international economics, and national security studies. He is the recipient of numerous professional, military, and academic awards, including the National Security Council Outstanding Service Award, the Defense Meritorious Service Medal, the U.S. Junior Chamber of Commerce Ten Outstanding Young Americans Award, and the White House Fellowship. Mr. Sullivan is married and has three daughters.

(703) 274-0089

Alaska State Legislature

Senate

Office of the Secretary

State Capitol, Room 211
Juneau, Alaska 99801-1182
Phone: (907) 465-3701
Fax: (907) 465-2832
Email:senate_secretary@legis.state.ak.us

Official Business

Memorandum

TO: Senator French, Chair
Judiciary Committee

FROM: Kirsten Waid
Secretary of the Senate

DATE: February 4, 2010

SUBJECT: Confirmation of Governor's Appointment

Pursuant to AS 39.05.080 and Art. III, Sec. 25 of the Alaska Constitution, the President has referred the following name, with attached resume, for legislative confirmation to your committee for a hearing, recommendation and report:

State of Alaska Attorney General
Daniel S. Sullivan
Appointed: 6/16/2009

Attachment: Resume

KW:sgf
gl#2

2009

CONFIRMA-TIONS

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Kim Elton
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

REPORT ON CONFIRMATION OF APPOINTMENTS

March 18, 2009

The Honorable Gary Stevens
President of the Senate
State Capitol
Juneau, Alaska 99801-1182

Dear President Stevens:

In accordance with AS 39.05.080, the Senate Judiciary Committee met in joint session with the House Judiciary Committee and reviewed the following names with regard to confirmation:

Commission on Judicial Conduct
James Christopher (Chris) Brown, Anchorage

Board of Parole
Lonzo Henderson, Anchorage

There were no stated objections to the named individuals. This does not reflect an intent by any of the members to vote for or against the individuals during any further sessions.

Senator Hollis French

Senator Bill Wielechowski

Senator Lesil McGuire

Senator Gene Therriault

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Kim Elton
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

REPORT ON CONFIRMATION OF APPOINTMENTS

February 20, 2009

The Honorable Gary Stevens
President of the Senate
State Capitol
Juneau, Alaska 99801-1182

Dear President Stevens:

In accordance with AS 39.05.080, the Senate Judiciary Committee met in joint session with the House Judiciary Committee and reviewed the following names with regard to confirmation:

Board of Governors of the Alaska Bar
Dr. David L. Eichler, North Pole

Commission on Judicial Conduct
Jan Ostrovsky, Anchorage

Alaska Judicial Council
William F. Clarke, Chugiak
Kathleen R. Tompkins-Miller, Fairbanks

Violent Crimes Compensation Board
Dr. Regina Chennault, Soldotna

There were no stated objections to the named individuals. This does not reflect an intent by any of the members to vote for or against the individuals during any further sessions. A joint signature page is attached, with signatures from Senator French, Chair, Senator Wielechowski, Senator Elton, and Senator Therriault.

Respectfully,

Senator Hollis French

CONFIRMATION COMMITTEE REPORT

Action date: 2/20/09

The **Judiciary Committee** has reviewed the qualifications of the following Governor's appointee(s) as shown on the attached Referral for Confirmation form(s) and recommends that the name(s) be forwarded to a joint session for consideration:

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
	Frenchu
	Coghill
	Gruenberg
	GUNN
	Holmes
	Elton
	Wielechowski
	THERRIAULT
Chair:	

Please attach appointee Referral for Confirmation form(s) and return to the Chief Clerk's office.

Official Business

Alaska State Legislature

Senate

Office of the Secretary

State Capitol, Room 213
Juneau, Alaska 99801-1182
Phone: (907) 465-3701
Fax: (907) 465-2832
Email:senate_secretary@legis.state.ak.us

Memorandum

TO: Senator French, Chair
Judiciary Committee

FROM: Kirsten Waid
Secretary of the Senate

DATE: February 4, 2009

SUBJECT: Confirmation of Governor's Appointments

Pursuant to AS 39.05.080, the President has referred the following names, with attached resumes, for legislative confirmation to your committee for a hearing, recommendation and report:

Board of Governors of the Alaska Bar
Dr. David L. Eichler – North Pole
Appointed: 3/1/2009 Term Expires: 3/1/2012

Commission on Judicial Conduct
Chris Brown – Anchorage
Appointed: 3/1/2009 Term Expires: 3/1/2013

Jan S. Ostrovsky – Anchorage
Appointed: 3/1/2009 Term Expires: 3/1/2013

Alaska Judicial Council
William F. Clarke – Chugiak
Appointed: 10/16/2008 Term Expires: 3/1/2013

Kathleen R. Tompkins-Miller – Fairbanks
Appointed: 3/1/2009 Term Expires: 3/1/2015

Board of Parole
Lonzo Henderson – Anchorage
Appointed: 12/29/2008 Term Expires: 3/1/2014

Violent Crimes Compensation Board
Dr. Regina C. Chennault – Soldotna
Appointed: 10/18/2005 Reappointed: 3/1/2006
Reappointed: 3/1/2009 Term Expires: 3/1/2012

Attachments

KW:lc
gl # 4

STATE OF ALASKA
OFFICE OF THE GOVERNOR
P.O. Box 110001
Juneau, AK 99811-0001

BOARDS AND COMMISSIONS APPLICATION/RESUME FORM

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resumé. Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Board or Commission for which I am applying:

Please list any other State Boards or Commissions on which you currently or previously have served:

None

Name: David L. Eichler

Mailing Address: 3375 Badger Rd. #1

Residence Address:

City, State and Zip Code: North Pole

Home Telephone: [redacted] Business or Message Telephone: 907.488.0978

Fax Number: 907.488.4421 Cell Phone:

Email address : northpoledentist@gci.net

AS 39.05.100 requires that a person appointed to a state board or commission be a registered voter prior to the last general election:

Are you a registered voter? YES XXX NO

Voter Registration Number (Optional): Social Security Number (Optional):

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years?

YES NO XXX If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recentness, and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

CONFLICTS OF INTEREST: Certain boards and commissions require full disclosure of personal financial data under AS 39.50.010. If required for the board or commission for which you are applying, are you willing to do so?
YES NA NO

Could you or any member of your family be affected financially by decisions to be made by the board or commission for which you have applied? YES XXX NO

If "YES", explain: It is in the nature of self-regulation of a professional board that the members' decisions will directly affect their own financial condition

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TRAINING AND EXPERIENCE: **(If resumé attached, it is not necessary to complete items A-D)**

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:
Alaska Dental License first issued 10/1993 in good standing continually since then

B. List both formal and informal education and training experiences: (Use additional paper if necessary)
High School Graduate 1971
BS Animal Science OSU Corvallis, OR 1976
Assoc Degree Nursing LCC Eugene, OR 1987
DMD OHSU Portland,OR 1993

C. List any community service, municipal government, and state positions held, and any awards received. Include both compensated and uncompensated positions (such as president of a service organization or a mayor). Include length of time served.
Republican Party of Alaska State Central Committee 1996- 2002
Treasurer, Alaska Dental Society 2001-present

D. Employment work history - paid, unpaid or voluntary: (Use additional paper if necessary)
Self employed dentist1993-present
Registered nurse 1987-1993

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

DATE OF BIRTH:

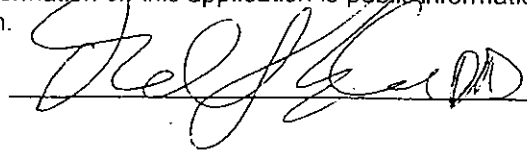
SEX: Male XXX Female

ETHNICITY: Alaska Native American Indian Asian or Pacific Islander Black Hispanic White XXX

MILITARY SERVICE (if applicable, give dates):

CERTIFICATION: I swear the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates, or I may be removed from the position. I agree that the Office of the Governor may contact present or

former employees or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature:  Date: 12/03/2002

STATE OF ALASKA
OFFICE OF THE GOVERNOR
P.O. Box 110001, Juneau, AK 99811-0001
Phone: (907) 465-3500 Fax: (907) 465-3532

BOARDS AND COMMISSIONS APPLICATION FORM

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resume. Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Board or Commission and seat for which I am applying: Judicial Conduct, public seat
(For example, Board of Agriculture, public seat)

Please list any other State Boards or Commissions on which you currently or previously have served: N/A

Name: James Christopher (Chris) Brown

Mailing Address

Residence Address:

City, State and Zip Code:

Home or Message Telephone: Business Telephone: 907/264-7360

Fax Number: 907/777-2589 Cell Phone

Email address: chrisbrown@gttalaska.com.net

AS 39-05-100 requires that a person appointed to a state board or commission be a registered voter prior to the last general election:

Are you a registered voter: YES ✓ NO Voter Registration Number (Optional):

Social Security Number (Optional, required if appointed for travel, reimbursement etc.):

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years?

YES NO ✓ if "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recentness, and relationship to the board position applied for, will be evaluated and a determination will be made after a review of all relevant facts.

CONFLICTS OF INTEREST: Certain boards and commissions require full disclosure of personal financial data under AS 39.50.010 if required for the board or commission for which you are applying, are you willing to do so?
YES ✓ NO

Could you or any member of your family be affected financially by decisions to be made by the board or commission for which you have applied? YES NO ✓

If "YES", explain:

STATE OF ALASKA
OFFICE OF THE GOVERNOR

BOARDS AND COMMISSIONS

Name: James Christopher (Chris) Brown Date: 12/24/08

(Indicate top three boards/commissions of interest by number with #1 as your preference)

	Accounting Board
	Aerospace Development Corporation
	Aging Commission
	Agriculture & Conservation
	Alaska Juvenile Justice Advisory Committee
	Alaska Retirement Management Board
	Alaska Statehood Celebration Commission
	Alaska-Alberta Bilateral Council
	Alcohol/Drug Abuse
	Alcoholic Beverage Control
	Architects/ Engineers / Land Surveyors
	Arts Council
	Assessment Review Board
	Aviation Advisory Board
	Bald Eagle Preserve
	Bar Association
	Barbers & Hairdressers
	Bering Sea Fishery Advisory Board
	Big Game Commercial Services
	Boating Safety Council
	Broadcasting Commission
	Children's Trust Board
	Chiropractic Examiners
	Clemency Advisory Committee
	Commemorative Coin Commission
	Commercial Fisheries Entry
	Commercial Fishing/ Agriculture Bank
	Community Service Commission
	Denali Access System Advisory Committee
	Dental Examiners
	Disabilities/Special Education
	Domestic Violence/Sexual Assault
	Education & Early Development
	Education Commission/States
	Emergency Medical Services
	Emergency Response Commission
	Employment of People with Disabilities
	Exxon Valdez Oil Spill Trustee
	Faith-Based & Community Initiatives Council
	Fire Standards Council
	Fisheries

	Fisherman's Fund Advisory & Appeals
	Forestry
	Game
	Health Council
	Historical Commission
	Historical Records Advisory
	Homeless Council
	Housing Finance Corporation
	Human Rights
	Humanities Forum
	Independent Living Council
	Industrial Development/Export Authority
	Interstate Oil & Gas Compact
	Judicial Conduct
	Judicial Council
	Knik Arm Bridge
	Labor Relations Agency
	Libraries Advisory
	Local Boundary Commission
	Marine Pilots
	Marine Transportation Advisory Board
	Marital & Family Therapy
	Medical Board
	Mental Health Board
	Mental Health Trust Authority
	Midwives
	Minerals Commission
	Municipal Bond Bank
	Natural Gas Authority
	Natural Gas Pipeline Corporation
	Natural Resources Conservation Dev
	North Pacific Anadromous Fish
	North Pacific Fisheries Management Council
	North Pacific Research Board
	Nursing
	Occupational Safety
	Oil & Gas Conservation Commission
	Optometry
	Pacific Marine Fisheries Commission
	Pacific Salmon Commission-Commissioners
	Pacific Salmon Commission- Northern Panel

	Pacific Salmon Commission-Transboundary Panel
	Parole Board
	Permanent Fund
	Pharmacy Board
	Physical/Occupational Therapy
	Pioneer's Home Advisory
	Police Standards Council
	Postsecondary Education
	Professional Counselors
	Professional Teaching Practices
	Psychologist/ Psychological assoc.
	Public Offices Commission
	PWS Oil Spill Recovery Institute
	Railroad Corporation
	Real Estate Appraisers
	Real Estate Commission
	Regents
	Regulatory Commission (RCA)
	Royalty Oil & Gas Development
	Safety Advisory Council
	Seafood Marketing Institute
	Seismic Hazards Safety Commission
	Social Work Examiners
	Student Loan Corporation
	Subsistence Resource Commissions
	Suicide Prevention Council
	Telecommunications
	Uniform State Laws
	Veterans Advisory Council
	Veterinary Examiners
	Violent Crimes Compensation
	Water and Wastewater Works
	Western Interstate Comm/Higher Educ
	Wood-Tikchik State Park
	Worker's compensation
	Worker's Compensation Appeals Commission
	Workforce Investment Board
	Yukon River Panel

Press release text:

Chris Brown, 57, of Anchorage, is the Chief Operating Officer for AT&T's Alaska business unit (formerly known as AT&T Alascom.) Mr. Brown holds a BSEE from the University of South Florida in Tampa, Florida and an MBA from Emory University, Atlanta, Georgia.

Curriculum Vitae

James Christopher (Chris) Brown

; (907) 264-7360 (work);
chrisbrown@attalascom.net

Summary

Telecommunications executive with 30 years of telecom and high tech industry experience, engaged citizen with service and not-for-profit involvement.

Education

- BSEE (electrical engineering), University of South Florida, Tampa, FL 1974
  Eau Beta Pi Engineering Honor Society
- MBA, Emory University, Atlanta, GA 1987
  Beta Gamma Sigma Business Honor Society

Professional

Over 30 Years of experience in large, small, emerging and start up companies, including:

- Sprint (United Telecom); 1981-1991
  Director - various Technical and Marketing functions
- British Telecom; 1991-1994
  Director – Market Strategy and Business Development
- Intermedia Communications (competitive local phone company); 1994-1998
  Senior VP Strategic Planning and Marketing
- Shepherd Systems (High tech start up); 1998-2001
  President and COO
- AT&T Alascom; 2004-present
  Chief Operating Officer

Community/Service

- Atlanta Boy Choir Board of Directors; 2002 – 2004
- Anchorage Economic Development Corporation;
  Board of Directors 2008 – present
  elected to Executive Committee 2009
- Advisory Committee to AK Commissioner of Administration
  Alaska Land Mobile Radio System 2007 – present
- Alaska Family Council Board of Directors 2007 – present
  Treasurer 2008 - present
- Church Elder / Adult Teacher 1990 - present

JAN SAMUEL OSTROVSKY

PROFESSIONAL EXPERIENCE

BANKRUPTCY COURT, DISTRICT OF ALASKA — 2007-
CLERK OF COURT
605 W. Fourth Ave, #138
Anchorage AK 99501

- *Collier Bankruptcy Treatise*, contributing author;
- *Collier Compensation, Employment and Appointment of Trustees and Professionals in Bankruptcy Cases*- co-author;
- Selected recent speaking engagements: National Conference of Bankruptcy Judges (ethics) (2008). National Conference of Bankruptcy Judges (ethics) (2006). National Association of Bankruptcy Trustees (2006), and Northwest Bankruptcy Institute (2005);
- AV rated; Super Lawyer

CROCKER KUNO OSTROVSKY LLC — 2002 –2007
PARTNER
720 Olive Way, Suite 1000
Seattle WA 98101

- Member of a five lawyer boutique specializing in insolvency, bankruptcy, and commercial matters. All three partners, including myself, selected as Super Lawyers. AVVO rating 10/10, "superb" (not current as of 2008).
- *Enron*- Court appointed Fee Examiner;
- Northwest Bankruptcy Institute- Chair 2002-2003;
- Certified in Business Bankruptcy- American Bankruptcy Board of Certification (as of 2008, not renewed)

U.S. DEPARTMENT OF JUSTICE — 1995 – 2001
UNITED STATES TRUSTEE, Region 18
1200 Sixth Avenue, Suite 600
Seattle WA 98101

- Appointed position within DOJ;
- Oversaw all bankruptcy cases and appointed all bankruptcy trustees in Washington, Oregon, Alaska, Idaho, and Montana;
- Managed fifteen attorneys, eleven accountants, and associated staff in seven offices;
- Acted as trustee in one of the largest fraud cases in history of Northwest;
- Chair of the Director's Advisory Committee;
- Chair of the Program's Chapter 11 Subcommittee;
- Leadership role in national issues such as data privacy, illegal reaffirmation practices, abusive bankruptcy filings, quarterly fees, etc.

UNIVERSITY OF WASHINGTON, SCHOOL OF LAW — 2001 – 2003
ADJUNCT PROFESSOR – BANKRUPTCY

PERKINS-COIE — 1992 – 1995
OF COUNSEL — *1029 West Third Avenue, Anchorage AK 99501*

- Bankruptcy, commercial finance, and commercial litigation;
- Major clients included Alaska Airlines, BP, Beech Aircraft, National Bank of Alaska and other clients in large commercial matters.

BOGLE & GATES — 1986 – 1992
PARTNER — *Anchorage and Seattle*

- Bankruptcy, commercial finance, and commercial litigation.

CAMPBELL, OSTROVSKY & THWAITES — 1979 – 1986
PARTNER — *1031 Fourth Ave, Anchorage AK 99501*

- Bankruptcy, commercial finance, and commercial litigation.

REPRESENTATIVE CASES

- *In re Security Aviation* (2006-2007, Alaska); bankruptcy of air services company. Represented a defendant in a substantial avoidance action;
- *In re ERA Aviation* (2005-2006, Alaska); bankruptcy of regional air carrier. Represented Alaska Airlines;
- *In re Enron* (2002-2005, NY); fee examiner
- *In re Hoyt and Sons Ranches* (1997- 2001, Oregon); Chapter 7 Trustee in complex case involving over two billion dollars in claims, and approximately 100 adversary proceedings;
- *Consumer Reaffirmation Cases* (1997-2000); on behalf of USDOJ, participated in resolution of Federated Department Stores, Sears, and other matters involving national reaffirmation practices;
- *In re MarkAir* (1992-1995, Alaska); Chapter 11, regional jet carrier; at its zenith, MarkAir had more than 61 aircraft, flew to more than 145 cities, had more than 2,000 employees; its annual revenues exceeded $250 million. Represented Alaska Airlines and Beech Aircraft;
- *In re Wagner* (1992-1993, Alaska); special counsel to Chapter 11 trustee regarding recovery of transferred oil and gas leases;
- *In re Chugach Alaska Regional Native Corporation* (1991-1992, Alaska); represented Exxon Shipping regarding oil spill claims;
- *In re Zamarello* (1986-1989, Alaska); counsel to Bank of California in case of shopping center developer;
- *In re Ryan Air* (1986-1989, Alaska); commuter carrier Chapter 11; represented creditors' committee;

Representative Cases Continued

In re Liberty Air (1983-1984, Alaska): commuter carrier Chapter 11; counsel for primary secured creditor;

- *In re Bering Straits Regional Native Corporation* (1985-1988, Alaska): represented the committee in the first Alaska Native Corporation Chapter 11; significant sale of Net Operating Losses;
- *In re Wein Airlines* (1983-1984, Alaska): Chapter 11, regional jet carrier; represented creditors' committee.

Education

Juris Doctor, Cum Laude — 1975
Ohio State University, College of Law — *Columbus OH*

A.B. — 1971
Kenyon College — *Gambier OH*

Admitted To Practice

Alaska (1977- occasionally inactive, currently active), Washington (1987-inactive), and Ohio (1975-inactive)

Please deliver to Frank

STATE OF ALASKA
OFFICE OF THE GOVERNOR
P.O. Box 110001, Juneau, AK 99811-0001
Phone: (907) 465-3500 Fax: (907) 465-3532

BOARDS AND COMMISSIONS APPLICATION FORM

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your request. Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Board or Commission and seat for which I am applying: Judicial Council (Program, Board, Commission, or public seat)

Please list any other State Boards or Commissions on which you currently or previously have served:

Name: William F. Clarke

Mailing Address:

Residence Address:

City, State and Zip Code: Chugiak AK

Home or Message Telephone: 907 529 6164 Business Telephone: Same

Fax Number: Cell Phone: Same

Email address: clarke.bd@gmail.com

AS 39-05-100 requires that a person appointed to a state board or commission be a registered voter prior to the last general election:

Are you a registered voter: YES X NO Voter Registration Number (Optional):

Social Security Number (Optional, required if appointed for travel reimbursement etc.):

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years?

YES NO X If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recentness, and relationship to the board position applied for, will be evaluated and a determination will be made after a review of all relevant facts.

CONFLICTS OF INTEREST: Certain boards and commissions require full disclosure of personal financial data under AS 39.50.010. If required for the board or commission for which you are applying, are you willing to do so?
YES X NO

Could you or any member of your family be affected financially by decisions to be made by the board or commission for which you have applied? YES NO X

If "YES", explain:

TRAINING AND EXPERIENCE: (If resume attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications or registrations and dates obtained that may be used as qualifying criteria: N/A

B. List both formal and informal education and training experiences: (Use additional paper if necessary).
B.A., English Lit., 1961

C. List any community service, municipal government, and state positions held, and any awards received. Include both compensated and uncompensated positions (such as president of a service organization or a mayor). Include length of time served.
Served on board of directors, Anchorage Rotary Club

D. Employment work history – paid, unpaid or voluntary: (Use additional paper of necessary).
1964 - 1984, Pilot, U.S. Air Force
1989 - ~~XX~~ 2005 Director of Engineering Marketing,
Dowl Engineers, Inc., Anchorage

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

DATE OF BIRTH: SEX: FEMALE ___ MALE X

ETHNICITY:
Alaska Native ___ American Indian ___ Asian or Pacific Islander ___ Black ___ Hispanic ___ White X

MILITARY SERVICE (if applicable, give dates): USAF, 1964-1984

CERTIFICATION: I swear the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates, or I may be removed from the position. I agree that the Office of the Governor may contact present or former employers or other persons who know me to obtain an additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature (in ink): William E. Clark Date: 2 Oct 2003

Please attach a current resume with your application.

KATHLEEN R. (TOMPKINS) MILLER

P.O. Box 83440
Fairbanks, AK 99708
(907) 451-8559

EXPERIENCE

October 2002-Present

Law Offices of Joseph Miller, LLC, Fairbanks, Alaska
Office Manager/Legal Secretary/Paralegal (part-time)
File court documents, answer phone and client queries, schedule appointments, invoice and bill clients, calendar court deadlines and appearances, and manage all other clerical aspects of law offices. Organize exhibits and evidence for trial, draft pleadings as directed, interview witnesses, screen prospective clients, communicate with adverse counsel, prepare spreadsheets, and provide other paralegal services to law offices.

August 1994-Present

Miller Home-School, Anchorage, Tok, and Fairbanks, Alaska
Teacher
Mother of eight children. Educate up to seven children per school year from grade school through highschool utilizing a variety of curricula. The two graduates to-date from home-school program are both Alaska Merit Scholars. Other children consistently test in above-average percentiles.

August 2007-July 2008

Fairhill Christian School, Fairbanks, Alaska
Teacher
Teach elementary school children, full-time. Teaching duties include preparation of scope and sequence for language, arithmetic, writing, reading, science, health, history, spelling, and art courses. Prepare daily lesson plans. Conduct parent-teacher conferences. Organize and supervise field trips. Assist in organizing fundraisers for nonprofit, private school. Recognized for volunteer work with school's athletic program. Assist with after-school program as needed. School received 2007-2008 Fairbanks Daily News-Miner's Readers' Choice Award.

June 2002-December 2002

United States District Court, District of Alaska, Fairbanks, Alaska
United States Magistrate Judge Clerk (part-time)
Federal court clerk for criminal and civil bench trials, preliminary examinations, removal proceedings, extradition hearings, detention hearings, suppression hearings, sentencing hearings, and probation revocation proceedings. Provide clerical support for naturalization ceremonies, for traveling U.S. District Court Judges, and for other U.S. Magistrate Judges. Accept filings of various legal papers in magistrate judge's court. Prepare, summarize, and report statistical data to the Administrative Office of the U.S. Court System. Answer phone and queries directed to magistrate judge's office.

August 2002-December 2002

Lighthouse School, Fairbanks, Alaska
Substitute Teacher, Home Economics Teacher (part-time)
Substitute teach (as requested) elementary grade classes and high school mathematics. Teach weekly home economics course to elementary school students.

App/Phy/OEC/PT/OT 07.

ENTERED 9.26.05 dc

STATE OF ALASKA
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Phone: (907) 465-3500 Fax: (907) 465-3532

BOARDS AND COMMISSIONS APPLICATION FORM

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resume. Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Board or Commission and seat for which I am applying: Medical/Other/Occupational Ther.
(For example, Board of Agriculture, public seat)

Please list any other State Boards or Commissions on which you currently or previously have served:

Name: Regina Christine Sutton Chennault, M.D.

Mailing Address: P.O. Box 1129 Soldotna, Alaska 99669

Residence Address: Soldotna, Alaska 99669

City, State and Zip Code: Soldotna, Alaska 99669

Home or Message Telephone: _____ Business Telephone: 907. 260. 2045

Fax Number: 907. 260. 2047 Cell Phone: _____

Email address: rchennault@alaska.net

AS 39-05-100 requires that a person appointed to a state board or commission be a registered voter prior to the last general election:

Are you a registered voter: YES (circled) NO _____ Voter Registration Number (Optional): _____

Social Security Number (Optional, required if appointed for travel, reimbursement etc.): _____

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years?

YES _____ NO (circled) if "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recentness, and relationship to the board position applied for, will be evaluated and a determination will be made after a review of all relevant facts.

CONFLICTS OF INTEREST: Certain boards and commissions require full disclosure of personal financial data under AS 39.50.010. If required for the board or commission for which you are applying, are you willing to do so?
YES (circled) NO _____

Could you or any member of your family be affected financially by decisions to be made by the board or commission for which you have applied? YES _____ NO (circled)

If "YES", explain:

TRAINING AND EXPERIENCE: (If resume attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria: M. D. Degree 1993

B. List both formal and informal education and training experiences: (Use additional paper if necessary).
General Surgery residency 5 years

C. List any community service, municipal government, and state positions held, and any awards received. Include both compensated and uncompensated positions (such as president of a service organization or a mayor). Include length of time serviced.
Vice Chairman, State of Alaska, Federal Comm/Hee on Trauma

D. Employment work history - paid, unpaid or voluntary: (Use additional paper of necessary).
Private practice surgeon Soldotna, Alaska

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will no be used to illegally discriminate against you.

DATE OF BIRTH: SEX: (FEMALE ✓) ___ MALE ___

ETHNICITY:
Alaska Native ___ American Indian ___ Asian or Pacific Islander ___ Black Hispanic (White ✓)

MILITARY SERVICE (if applicable, give dates): None

CERTIFICATION: I swear the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates, or I may be removed from the position. I agree that the Office of the Governor may contact present or former employees or other persons who know me to obtain an additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature (in ink): [signature] Date: 9-26-5

Please attach a current resume with your application.

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BOARDS AND COMMISSIONS APPLICATION FORM

INSTRUCTIONS

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Board or Commission and seat for which I am applying: Judicial Conduct, public seat
(For example, Board of Agriculture, public seat)

Please list any other State Boards or Commissions on which you currently or previously have served: N/A

Name: James Christopher (Chris) Brown

Mailing Address

Residence Address:

City, State and Zip Code:

Home or Message Telephone: Business Telephone: 907/264-7360

Fax Number: 907/777-2589 Cell Phone

Email address: chrisbrown@gttglass.com.net

AS 39-05-100 requires that a person appointed to a state board or commission be a registered voter prior to the last general election:

Are you a registered voter: YES ✓ NO Voter Registration Number (Optional):

Social Security Number (Optional, required if appointed for travel, reimbursement etc.):

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years?

YES NO ✓ if "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recentness, and relationship to the board position applied for, will be evaluated and a determination will be made after a review of all relevant facts.

CONFLICTS OF INTEREST: Certain boards and commissions require full disclosure of personal financial data under AS 39.50.010 If required for the board or commission for which you are applying, are you willing to do so?
YES ✓ NO

Could you or any member of your family be affected financially by decisions to be made by the board or commission for which you have applied? YES NO ✓

If "YES", explain:

STATE OF ALASKA
OFFICE OF THE GOVERNOR

BOARDS AND COMMISSIONS

Name: James Christopher (Chris) Brown Date: 12/24/08

(Indicate top three boards/commissions of interest by number with #1 as your preference)

	Accounting Board
	Aerospace Development Corporation
	Aging Commission
	Agriculture & Conservation
	Alaska Juvenile Justice Advisory Committee
	Alaska Retirement Management Board
	Alaska Statehood Celebration Commission
	Alaska-Alberta Bilateral Council
	Alcohol/Drug Abuse
	Alcoholic Beverage Control
	Architects/Engineers/Land Surveyors
	Arts Council
	Assessment Review Board
	Aviation Advisory Board
	Bald Eagle Preserve
	Bar Association
	Barbers & Hairdressers
	Bering Sea Fishery Advisory Board
	Big Game Commercial Services
	Boating Safety Council
	Broadcasting Commission
	Children's Trust Board
	Chiropractic Examiners
	Clemency Advisory Committee
	Commemorative Coin Commission
	Commercial Fisheries Entry
	Commercial Fishing/Agriculture Bank
	Community Service Commission
	Denali Access System Advisory Committee
	Dental Examiners
	Disabilities/Special Education
	Domestic Violence/Sexual Assault
	Education & Early Development
	Education Commission/States
	Emergency Medical Services
	Emergency Response Commission
	Employment of People with Disabilities
	Exxon Valdez Oil Spill Trustee
	Faith-Based & Community Initiatives Council
	Fire Standards Council
	Fisheries

	Fisherman's Fund Advisory & Appeals
	Forestry
	Game
	Health Council
	Historical Commission
	Historical Records Advisory
	Homeless Council
	Housing Finance Corporation
	Human Rights
	Humanities Forum
	Independent Living Council
	Industrial Development/Export Authority
	Interstate Oil & Gas Compact
1	Judicial Conduct
	Judicial Council
	Knik Arm Bridge
	Labor Relations Agency
	Libraries Advisory
	Local Boundary Commission
	Marine Pilots
	Marine Transportation Advisory Board
	Marital & Family Therapy
	Medical Board
	Mental Health Board
	Mental Health Trust Authority
	Midwives
	Minerals Commission
	Municipal Bond Bank
	Natural Gas Authority
	Natural Gas Pipeline Corporation
	Natural Resources Conservation Dev
	North Pacific Anadromous Fish
	North Pacific Fisheries Management Council
	North Pacific Research Board
	Nursing
	Occupational Safety
	Oil & Gas Conservation Commission
	Optometry
	Pacific Marine Fisheries Commission
	Pacific Salmon Commission-Commissioners
	Pacific Salmon Commission- Northern Panel

	Pacific Salmon Commission-Transboundary Panel
	Parole Board
	Permanent Fund
	Pharmacy Board
	Physical/Occupational Therapy
	Pioneer's Home Advisory
	Police Standards Council
	Postsecondary Education
	Professional Counselors
	Professional Teaching Practices
	Psychologist/ Psychological Assoc.
	Public Offices Commission
	PWS Oil Spill Recovery Institute
	Railroad Corporation
	Real Estate Appraisers
	Real Estate Commission
	Regents
	Regulatory Commission (RCA)
	Royalty Oil & Gas Development
	Safety Advisory Council
	Seafood Marketing Institute
	Seismic Hazards Safety Commission
	Social Work Examiners
	Student Loan Corporation
	Subsistence Resource Commissions
	Suicide Prevention Council
	Telecommunications
	Uniform State Laws
	Veterans Advisory Council
	Veterinary Examiners
	Violent Crimes Compensation
	Water and Wastewater Works
	Western Interstate Comm/Higher Educ
	Wood-Tikchik State Park
	Worker's compensation
	Worker's Compensation Appeals Commission
	Workforce Investment Board
	Yukon River Panel

Press release text:

Chris Brown, 57, of Anchorage, is the Chief Operating Officer for AT&T's Alaska business unit (formerly known as AT&T Alascom.) Mr. Brown holds a BSEE from the University of South Florida in Tampa, Florida and an MBA from Emory University, Atlanta, Georgia.

Curriculum Vitae

James Christopher (Chris) Brown

; (907) 264-7360 (work);
chrisbrown@attalascom.net

Summary

Telecommunications executive with 30 years of telecom and high tech industry experience, engaged citizen with service and not-for-profit involvement.

Education

- BSEE (electrical engineering), University of South Florida, Tampa, FL 1974
  Tau Beta Pi Engineering Honor Society
- MBA, Emory University, Atlanta, GA 1987
  Beta Gamma Sigma Business Honor Society

Professional

Over 30 Years of experience in large, small, emerging and start up companies, including:

- Sprint (United Telecom); 1981-1991
  Director - various Technical and Marketing functions
- British Telecom; 1991-1994
  Director – Market Strategy and Business Development
- Intermedia Communications (competitive local phone company); 1994-1998
  Senior VP Strategic Planning and Marketing
- Shepherd Systems (High tech start up); 1998-2001
  President and COO
- AT&T Alascom; 2004-present
  Chief Operating Officer

Community/Service

- Atlanta Boy Choir Board of Directors; 2002 – 2004
- Anchorage Economic Development Corporation;
  Board of Directors 2008 – present
  elected to Executive Committee 2009
- Advisory Committee to AK Commissioner of Administration
  Alaska Land Mobile Radio System 2007 – present
- Alaska Family Council Board of Directors 2007 – present
  Treasurer 2008 - present
- Church Elder / Adult Teacher 1990 - present

STATE OF ALASKA
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BOARDS AND COMMISSIONS APPLICATION FORM

Instructions

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Board or Commission and seat for which I am applying: Parole Board
(For example, Board of Agriculture, public seat)

Please list any other State Boards or Commissions on which you currently or previously have served: None

Name: Lonzo Henderson

Mailing Addres: _____

Residence Address: _____

City, State and Zip Code: Anchorage, AK

Home or Message Telephone: _____

Fax Number: 907-868-3784

Business Telephone: 907-277-4501, ext. 14 (907) 441-1359 cell.

Email address: lonzohenderson@gci.net

AS 39-05-100 requires that a person appointed to a state board or commission be a registered voter prior to the last general election:

Are you a registered voter: YES. Voter Registration Number (Optional):

Social Security Numbe[illegible]d if appointed for travel, reimbursement etc.):

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years?

YES___NO X If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recentness, and relationship to the board position applied for, will be evaluated and a determination will be made after a review of all relevant facts.

CONFLICTS OF INTEREST: Certain boards and commissions require full disclosure of personal financial data under AS 39.50.010. If required for the board or commission for which you are applying, are you willing to do so?
YES X____ NO_____

Could you or any member of your family be affected financially by decisions to be made by the board or commission for which you have applied? YES _ NO X_____

If "YES", explain:

See attached resume.

See attached resume.

See attached resume.

See attached resume.

MILITARY SERVICE: 09/02/1970-09/26/1976

Signature: Lonzo Henderson Date: 10/18/2008

STATE OF ALASKA
OFFICE OF THE GOVERNOR

BOARDS AND COMMISSIONS

Name: Henderson, Lonzo Date: 10/18/2008

(Indicate top three boards/commissions of interest by number with #1 as your preference)

	Accounting Board
	Aerospace Development Corporation
	Aging Commission
	Agriculture & Conservation
	Alaska Juvenile Justice Advisory Committee
	Alaska Retirement Management Board
	Alaska Statehood Celebration Commission
	Alaska-Alberta Bilateral Council
	Alcohol/Drug Abuse
	Alcoholic Beverage Control
	Architects/Engineers/Land Surveyors
	Arts Council
	Assessment Review Board
	Aviation Advisory Board
	Bald Eagle Preserve
	Bar Association
	Barbers & Hairdressers
	Bering Sea Fishery Advisory Board
	Big Game Commercial Services
	Boating Safety Council
	Broadcasting Commission
	Children's Trust Board
	Chiropractic Examiners
	Clemency Advisory Committee
	Commemorative Coin Commission
	Commercial Fisheries Entry
	Commercial Fishing/Agriculture Bank
	Community Service Commission
	Denali Access System Advisory Committee
	Dental Examiners
	Disabilities/Special Education
	Domestic Violence/Sexual Assault
	Education & Early Development
	Education Commission/States
	Emergency Medical Services
	Emergency Response Commission
	Employment of People with Disabilities
	Exxon Valdez Oil Spill Trustee
	Faith-Based & Community Initiatives Council
	Fire Standards Council
	Fisheries

	Fisherman's Fund Advisory & Appeals
	Forestry
	Game
	Health Council
	Historical Commission
	Historical Records Advisory
	Homeless Council
	Housing Finance Corporation
	Human Rights
	Humanities Forum
	Independent Living Council
	Industrial Development/Export Authority
	Interstate Oil & Gas Compact
	Judicial Conduct
	Judicial Council
	Knik Arm Bridge
	Labor Relations Agency
	Libraries Advisory
	Local Boundary Commission
	Marine Pilots
	Marine Transportation Advisory Board
	Marital & Family Therapy
	Medical Board
	Mental Health Board
	Mental Health Trust Authority
	Midwives
	Minerals Commission
	Municipal Bond Bank
	Natural Gas Authority
	Natural Gas Pipeline Corporation
	Natural Resources Conservation Dev
	North Pacific Anadromous Fish
	North Pacific Fisheries Management Council
	North Pacific Research Board
	Nursing
	Occupational Safety
	Oil & Gas Conservation Commission
	Optometry
	Pacific Marine Fisheries Commission
	Pacific Salmon Commission Commissioners
	Pacific Salmon Commission- Northern Panel

	Pacific Salmon Commission-Transboundary Panel
1	Parole Board
	Permanent Fund
	Pharmacy Board
	Physical/Occupational Therapy
	Pioneer's Home Advisory
	Police Standards Council
	Postsecondary Education
	Professional Counselors
	Professional Teaching Practices
	Psychologist/ Psychological assoc.
	Public Offices Commission
	PWS Oil Spill Recovery Institute
	Railroad Corporation
	Real Estate Appraisers
	Real Estate Commission
	Regents
	Regulatory Commission (RCA)
	Royalty Oil & Gas Development
	Safety Advisory Council
	Seafood Marketing Institute
	Seismic Hazards Safety Commission
	Social Work Examiners
	Student Loan Corporation
	Subsistence Resource Commissions
	Suicide Prevention Council
	Telecommunications
	Uniform State Laws
	Veterans Advisory Council
	Veterinary Examiners
	Violent Crimes Compensation
	Water and Wastewater Works
	Western Interstate Comm/Higher Educ
	Wood Tikchik State Park
	Worker's compensation
	Worker's Compensation Appeals Commission
	Workforce Investment Board
	Yukon River Panel

If appointed, a press release will be issued announcing your appointment pending the completion of the appointment process with the Governor's office. Please supply our office with the following information that will be included in the press release.

Lonzo Henderson obtained a Bachelor's of Arts Degree in Sociology from the University of Alaska, Anchorage in (1981), and a Masters of Arts in Teaching in Adult & Continuing Education from Alaska Pacific University, Anchorage in (1989). Mr. Henderson retired in 2001 from the Department of Corrections as the Assistant Director/Deputy Compact Administrator with more than 22 years of work experience with the Alaska Department of Corrections. Mr. Henderson began his career as a Probation/Parole Officer with the Anchorage Probation/Parole Office in (1980). Mr. Henderson was promoted to Probation/Parole Office III /Supervisor in (1991). Mr. Henderson continued those duties at the Anchorage Probation/Parole Office until July 1995, He then was promoted to Chief Probation of the Southcentral Region, and in 1999 Mr. Henderson was promoted to the Position of Assistant Director/Deputy Compact Administrator. He carried out those managerial responsibilities for the Department of Corrections until his retirement in 2001.

LONZO HENDERSON

Anchorage, AK
Work: 277-4501. ext. 14

Fax: 907-868-3784
Email Work: lonzohenderson@gci.net

Professional Experience:

06/23/03-Present Case Manager, CRC Offender Supervision Program (OSP)

- Supervise offenders placed on (OSP).
- Intake, evaluation of offender needs, design; and implement treatment plans.
- Complete monthly reports, and discharge summaries.
- Ensure compliance with Court ordered treatment, furlough requirements, and referrals to community resources.
- Liaison with staff at treatment agencies regarding offender's attendance/compliance with court-ordered treatment programs.
- Attend revocation hearings before the Superior Court and the Alaska Board of Parole.

Department of Corrections, Division of Community Correction.
7/01/99-11/30/01 Assistant Director/Deputy Compact Administrator, Department of Corrections, Division of Community Corrections consists of one hundred fifty staff members, and allocation of a ten million dollar budget.

- Review budgets, policies and procedures, offender supervision, staff utilization, performance standards, implement programs, determines budget priorities, ensures fiscal accountability and maintain coordination between the Division's facilities and offices.
- Attend meetings and conferences with federal and state officials, members of the public and the media pertaining to policy matters, program operations, legislative proposal administrative reviews, and quality control. Provide assistance to the courts and Parole Board on probation policy, and community programs.
- Act as liaison between regional or district offices, local community governments, and organizations involved in enhancing overall adequacy of rehabilitation programs. Oversight of the specialized Victim Service Unit and sex offender programs. Liaison with local and statewide victim organization and members of the community to provide interpretations of policy and procedure.

- Assign tasks, approve leave, and prepare performance evaluations. Supervise, review, and approve recommendations of a Farm Supervisor and three Chief Probation Officers (CPO) in Regional Offices. Northern Region (NRO, Southcentral Region (SCRO), and Southeast Region SERO), consisting of thirteen District Probation/Parole Offices, and Pt. Mackenzie Rehabilitation Farm.
- Conduct on-site internal investigation. Obtain statements and facts from those involved, analyze information, and take appropriate disciplinary action, if required.
- Audit, evaluate, and troubleshoot operation within the Division of Community Corrections.

- Ensure cooperation, appropriate use of staff, quality control, and effective implementation of policies, procedures, and programs for statewide consistency, which included oversight of Community Correction's transition to a new management information system.
- Establish special or pilot projects through Chief Probation Officers, and Farm Supervisor.
- Do assessments, planning, and case supervision by consultation and case reviews.
- Plan, develop, and implement programs, and coordinate with managers; and planners involved in statewide programs within correctional facilities.
- Determine statewide training needs, establish Probation Officer Academy curriculum, and ensure staff training requirements are met.
- Ensure staff compliance with the Interstate Compact.
- Monitor correspondence from Compact Officers in other states to enforce compliance with Interstate procedures.
- Communicate with Interstate Compact offices in other states to resolve issues regarding Interstate cases.

10/15 /94- 06/20/99 Chief Probation Officer V, Southcentral Region.
Supervision of Southcentral Region consisting of (seventy-two staff) and five District Probation/Parole Offices: Anchorage, Dillingham, Kenai, Kodiak, and Palmer.

- Allocation /oversight of five million-dollar budget for Southcentral Region.
- Develop and implemented a budget projection procedure to track expenditures.
- Develop policies, and standards procedures relating to parole-probation supervision.
- Liaison with communities to establish partnerships with public/private agencies to ensure public protection, and rehabilitation of adult offenders.
- Implement pilot project such as Community Based Supervision.
- Training of Village Public Safety Officers (VPSO), to assist Probation/Parole Officers with supervision in rural areas.

4/15/-91-10/14/94 Probation/Parole Officer III, Anchorage Probation/Parole Office.
Supervise the Presentence, Field Supervision, and Clerical Unit consisting of eleven staff.

- Review and approve pre-sentence reports and other related legal correspondence.
- Ensure compliance with State statutes, Appellate Court decisions, Alaska Court Rules of evidence pertaining to search and seizure.
- Serve as a liaison with Superior court, District Attorneys, Public Defenders Office, Victims for Justice, and other agencies.
- Enforce compliance with standard Operating Procedure (SOP).
- Assist with developing the Probation/Parole Field Training Manual currently used to train new Probation/Parole Officers to become certified under Alaska Police Standard Council.

06/23/80-4/15/91 Probation/Parole Officer, Anchorage Probation/Parole Office.

- Supervise a caseload of approximately 80 felony offenders. Intake, evaluation of offender needs, assessment and re-assessments, design; and implement treatment plans.
- Mediate conflict between victims and offenders, and referrals to community resources. Conduct individual and groups counseling sessions.
- Interface with staff at community and treatment agencies regarding offender's attendance/compliance with court-ordered treatment programs.
- Conduct pre-sentence investigations on felony offenders, and interview offenders, victims and complete pre-sentence reports, make recommendations to Superior Court judges, and parole board.
- Attend preliminary and final revocation hearings before the Alaska Board of Parole, cross-examine state and defense witnesses to substantiate allegations for parole violations.

Education:

Master of Arts - Adult and Continuing Education, 1989.
University of Alaska, Anchorage, AK
Bachelors of Arts Sociology- Psychology Minor, 1981.
Anchorage Community College, Anchorage, AK *Associates of Arts in Sociology-concentration in Social Services, 1979.*

Honors and Achievements:

- Member of Anchorage East Rotary
- Certificates of Achievement for Student & Teacher of the month presentations from Anchorage East Rotary.
- Posted in Who's Who Among Rising Young Americans.
- Posted to the National Dean's List and Honor Roll.
- State of Alaska Distinguished Public Service Award.

References:

Justice Dana Fabe
303 K Street
Anchorage, AK 99501
Office: 907-264-0622

Joe Schmidt
Commissioner
Department of Corrections
550 West 7th Avenue
Anchorage, AK 99501
Office: 907-269-7397

Sam Edwards
Deputy Commissioner
Department of Corrections
550 West 7th Avenue

Elmer J. Salontai, Jr.
Principal Piping Designer
Phone: 907-273-3970
Fax: 907-273-3991

Additional references are available upon request.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Kim Elton
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

REPORT ON CONFIRMATION OF APPOINTMENTS

February 9, 2009

The Honorable Gary Stevens
President of the Senate
State Capitol
Juneau, Alaska 99801-1182

Dear President Stevens:

In accordance with AS 44.64.010, the Senate Judiciary Committee reviewed the following name with regard to confirmation:

Chief Administrative Law Judge
Terry Thurbon

There were no stated objections to the named individual. This does not reflect an intent by any of the members to vote for or against the individual during any further sessions.

Respectfully,

Senator French, Chair

Senator Wielechowski

Senator McGuire

Senator Elton

Senator Therriault

Official Business

Alaska State Legislature

Senate

Office of the Secretary

State Capitol, Room 213
Juneau, Alaska 99801-1182
Phone: (907) 465-3701
Fax: (907) 465-2832
Email:senate_secretary@legis.state.ak.us

Memorandum

TO: Senator French, Chair
Judiciary Committee

FROM: Kirsten Waid
Secretary of the Senate

DATE: February 4, 2009

SUBJECT: Confirmation of Governor's Appointments

Pursuant to AS 44.64.010, the President has referred the following name to your committee:

Chief Administrative Law Judge
Terry Thurbon

Appointed:	11/1/2004	Term Expires:	3/1/2009
Reappointed:	3/1/2009	Term Expires:	3/1/2014

Attachments: Governor's letter and Resume

KW:lc
gl # 3

SARAH PALIN
GOVERNOR
GOVERNOR@GOV.STATE.AK.US

FEB 0 3 2009

P.O. BOX 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 3, 2009

The Honorable Gary Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

Although this position does not require legislative confirmation, it is important that the individual have the confidence of legislators and, therefore, I am submitting the name of Ms. Terry Thurbon for Chief Administrative Law Judge under Alaska Statute 39.05.053:

Appointed:	11/1/2004	Term Expires:	3/1/2009
Reappointed:	3/1/2009	Term Expires:	3/1/2014

The resume for this appointment has been submitted to the offices of the Senate Secretary and the Chief Clerk.

Sincerely,

Sarah Palin
Governor

cc: Kirsten Waid, Senate Secretary, Alaska State Senate
Suzi Lowell, Chief Clerk, Alaska House of Representatives

TERRY L. THURBON

PROFESSIONAL EXPERIENCE

Chief Administrative Law Judge, Alaska Office of Administrative Hearings (Nov. 2004-)

As chief administrative law judge, I am responsible for operating the State's central panel of administrative law judges who hear cases in more than 40 categories. This includes developing policies and procedures; supervising the office; employing judges and staff; establishing case management and performance standards; managing the budget; providing peer review and training for the judges; conducting alternative dispute resolution, hearing cases and writing decisions; considering complaints alleging violation of the Code of Hearing Officer Conduct; and reporting to the Governor and Legislature on the activities of the office. The chief's duties also include monitoring State agencies' administrative hearing processes and reviewing their hearing-related regulations; providing training to executive branch adjudicators; and recommending changes in the law to improve administrative adjudications. As the first chief judge, I have been responsible for developing procedural regulations for the office's cases and Code of Hearing Officer Conduct regulations applicable to all State hearing officers, and for many tasks required to start up a new state agency.

Assistant Attorney General, State of Alaska, Department of Law (Oct. 2003-Oct. 2004)

As an Assistant Attorney General in the Environmental Section, I worked on legislation and regulations for the Department of Environmental Conservation and advised the Commissioner on administrative appeals of permit decisions. This included drafting legislation and assisting with reports to the Legislature and responses to legislators' questions, testifying before committees of the Legislature; drafting regulations and assisting with the public comment process; and researching legal issues for and drafting proposed decisions on administrative appeals before the Commissioner. Other duties included representing the State in matters such as the clean up of contaminated sites and related cost recovery, cruise ship regulatory compliance, and Village Safe Water project contracting. I also represented the State in federal litigation regarding the State's interest in Tongass timber supply.

Legal & Regulatory Consultant, Thurbon Regulatory-Legal Services (Apr.-Oct. 2003)

Emphasizing work on environmental permitting and compliance, I provided legal support to environmental consulting firms, law firms, and government agencies on matters ranging from drafting legislation and regulations to advising natural resources industry clients (particularly mining sector clients) on permitting requirements and administrative procedures under Alaska and federal law.

Associate Attorney/Director, Robertson, Monagle & Eastaugh (May 1991-Apr. 2003)

I practiced natural resources and environmental law, working primarily on environmental permitting, land use and related litigation for resources industry clients, as well as on environmental compliance matters and associated business matters such as preparation and enforcement of contracts. This work included representing clients before administrative agencies and before state and federal courts; preparing briefs and memoranda; drafting and negotiating agreements, including permits, leases and other forms of land use authorizations; reviewing technical and legal documents; drafting, commenting upon and tracking proposed legislation and regulations; and overseeing the work efforts of associate attorneys, paralegals and law clerks.

Lecturer in Law/Legal Research & Writing Director, McGeorge School of Law (1987-91)

I taught classes in legal method, legal research and writing, appellate advocacy, and international law. I designed legal problems to test students' analytical and research skills, critiqued drafts of office memoranda, trial briefs and client letters, and conferred with students about their work products. As Legal Research & Writing Director, I assisted in hiring new instructors, trained and monitored all instructors, and generally administered the program in which each year more than four hundred first-year law students were introduced to such fundamental skills as legal analysis, research, drafting, and fact gathering. I also served as faculty advisor to the International Law Moot Court Board and coached the Jessup International Law Moot Court Competition Team.

Law Clerk/Graduate Legal Assistant, Institute for Administrative Justice (1986-87)

I assisted with training programs for state and federal administrative hearing officers, and researched and drafted analyses for projects under contract to the Institute, including comprehensive legal analyses of state administrative programs. I served as interim project coordinator for the Victims of Crime Resource Center, overseeing operation of the legislatively mandated state-wide telephone information and referral service for crime victims and supervising the students who counseled victims.

EDUCATION

University of the Pacific, McGeorge School of Law
Juris Doctor with Distinction (1986)

California State University, Sacramento
Bachelor of Arts (1983): Government (major); Criminal Justice Administration (minor)

PROFESSIONAL MEMBERSHIPS & PUBLIC SERVICE

- ☐ Member, State Bars of Alaska and California, American Bar Ass'n & Federal Bar Ass'n
- ☐ Commissioner, National Conference of Commissioners on Uniform State Laws (Oct. 2005-)
- ☐ Alaska Lawyer Representative to Ninth Circuit Court of Appeals (2002-2005)
- ☐ Member, Mining and Minerals Sector Group of *Marketing Alaska* Task Force (1995)
- ☐ Panel Attorney, California Court of Appeal Panel on Indigent Criminal Appeals (1990-91)

SELECTED LAW SCHOOL ACTIVITIES & HONORS

- ☐ Pacific Law Journal, Comment Staff & Outstanding Comment/Note Writer (1986)
- ☐ Comparative Law Yearbook, Staff Writer (1985-86)
- ☐ International Law Moot Court Honors Board (1985-86)
- ☐ Jessup International Law Moot Court Competition Team (1985)
- ☐ American Jurisprudence Award, Immigration & Nationality Law (1986)

LEGAL PUBLICATIONS

In Support of Education: An Examination of the Parental Obligation to Provide Postsecondary Education in California, 18 Pac. L. J. 377 (1987); *Significant Developments in Private International Law: The Gulf of Maine Delimitation*, 9 Comp. L. Y.B. 155 (1985)

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Kim Elton
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

REPORT ON CONFIRMATION OF APPOINTMENTS

February 4, 2009

The Honorable Gary Stevens
President of the Senate
State Capitol
Juneau, Alaska 99801-1182

Dear President Stevens:

In accordance with AS 24.60.130, the Senate Judiciary Committee reviewed the following with regard to confirmation of the appointment by Chief Justice Dana Fabe:

Select Committee on Legislative Ethics
Herman G. Walker, Jr.
Dennis "Skip" Cook

There were no stated objections to the named individual. This does not reflect an intent by any of the members to vote for or against the individual during any further sessions.

Respectfully,

Senator French, Chair

Senator Wielechowski

Senator McGuire

Senator Elton

Senator Therriault

JAN 2 3 2009

303 K Street
Anchorage, Alaska
99501-2013

(907) 264-0622
FAX (907) 264-0554

Chambers of
Dana Fabe
Chief Justice

Supreme Court
State of Alaska
January 21, 2009

The Honorable Gary Stevens
Senate President
State Capitol, Room 111
Juneau, Alaska 99801-1182

The Honorable Michael Chenault
Speaker of the House
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear President Stevens and Speaker Chenault:

Alaska Statute 24.60.130(b)(3) designates the Chief Justice of the Alaska Supreme Court to nominate the five public members who sit on the Select Committee on Legislative Ethics. The terms of two current public members will expire in 2009.

In my capacity as Chief Justice, and pursuant to AS 24.60.130(b)(3), I am nominating the two incumbents whose terms are expiring for an additional term. The contact information for these nominees is as follows:

(1) Herman G. Walker, Jr. Mr. Walker is an attorney and business owner in Anchorage and can be reached at (907) 279-2889. His mailing address is 606 E Street, Suite 203, Anchorage, Alaska 99501. For purposes of determining compliance with AS 24.60.130(c), Mr. Walker is non-partisan.

(2) Dennis "Skip" Cook. Mr. Cook is an attorney in Fairbanks and can be reached at (907) 452-1855, ext. 111. His mailing address is 714 4th Avenue, Suite 200, Fairbanks, Alaska 99701. For purposes of determining compliance with AS 24.60.130(c), Mr. Cook is non-partisan.

Please let me know if I can provide you with any other information.

Sincerely,

Dana Fabe
Chief Justice

DF:jd
cc: Herman G. Walker, Jr.
Dennis "Skip" Cook
Joyce Anderson, Select Committee on Legislative Ethics

HERMAN GENE WALKER, JR.
606 E Street, Suite 203, Anchorage Alaska 99501
(907) 279-2889 email: hermanjr@limonwalker.com

EDUCATION

- University of Wyoming Laramie, Wyoming. May 1992
  J.D. Degree

- Arizona State University Tempe, Arizona. May 1988
  B.S. Political Science Degree

LAW EXPERIENCE

- Limon & Walker, LLC. Anchorage AK 2006 to Present
  Attorney
- Lynda Limon Law Offices Anchorage AK 2000 to 2005
  Attorney
- Koval & Featherly Law Offices Anchorage AK 1998 to 2000
  Attorney
- Public Defender Agency Anchorage AK 1995 to1996
  Attorney
- Rex Lamont Butler & Associates Anchorage AK 1993 to 1995
  Associate Attorney
- Law Office of Rex Lamont Butler Anchorage AK 1993 to 1993
  Law Clerk
- Office of Public Advocacy Anchorage AK 1992 to 1993
  Legal Intern
- Defender Association of Philadelphia PA 1991
  Legal Intern
- Maricopa County Superior Court Phoenix AZ 1989
  Pre-Trial Services Officer

BUSINESS OWNERSHIP

- The Body Shop, 5th Avenue Mall Anchorage AK November 1996

MEMBERSHIPS AND AFFILIATIONS

Alaska Bar Association, United States District Court of Alaska, Anchorage Bar Association, American Bar Association, National Association of Criminal Defense Lawyers, Alaskan Association for Justice , National Board of American Association for Justice, Urban League, Sigma Pi Phi Fraternity,

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

ARRIVED JAN 14 2009 APOC-ANCH PM FAX ELE

FINANCIAL DISCLOSURE STATEMENT FOR: PUBLIC OFFICIALS, LEGISLATORS & CANDIDATES

EXECUTIVE BRANCH: Governor, Lt. Gov., commissioners, directors, special assistants, legislative liaisons; state boards and commissions; procurement and investment officers; city/borough officials, candidates.

JUDICIAL BRANCH: Justices, judges and magistrates.

LEGISLATIVE BRANCH: Legislators, legislative directors, Select Committee on Legislative Ethics.

FOR MORE INFORMATION, INSTRUCTIONS, BLANK FORMS, SAMPLE FORMS & QUESTIONS:
Visit APOC online at: www.apoc.alaska.gov :

- To find detailed instructions and sample disclosures, under the heading "How do I..." click "Complete my initial, annual or final Public Official Financial Disclosure Statement"
- To find blank Financial Disclosure forms for public officials and legislators as well as a *Guide to Financial Disclosure in Alaska*, under the heading "Quick Links" click "APOC Forms"
- To find the laws and regulations that APOC administers and enforces, there is a link to "Statutes" or "APOC Statutes & Regulations" throughout the APOC Web site.

Contact APOC directly:

- ANCHORAGE: 2221 E. Northern Lights Blvd., Rm 128, Anchorage, AK 99508 / 907-276-4176 / Fax 907-276-7018
- JUNEAU: 240 Main St., Rm 201 / P.O. Box 110222, Juneau, AK 99811 / 907-465-4864 / Fax 907-465-4832
- TOLL-FREE: 800-478-4176 / Online contact info: www.apoc.alaska.gov/staff.shtml

→ THIS IS A PUBLIC DOCUMENT ←

THIS REPORT IS A SWORN STATEMENT. YOUR SIGNATURE ON THE LAST PAGE CERTIFIES THAT THIS DISCLOSURE IS TRUE, CORRECT and COMPLETE.

NAME: Herman G. Walker, Jr.

MAILING ADDRESS: 606 E Street, Suite 203, Anchorage, AK 99501
Street address or P.O. box, city, zip code

CONTACT PHONE(S): WK: (907) 279-2889 HM: (907) 243-3349 Cell: (907) 227-6004 Fax: (907) 258-4428

E-MAIL: hermanjr@limonwalker.com

SPOUSE / DOMESTIC PARTNER: Lynda Ann Limon

DEPENDENT CHILDREN: 2 NON-DEPENDENT CHILDREN LIVING WITH YOU: 0
Report number of children, including stepchildren, adoptive children. Legislative filers: List non-dependent children living with you.

NAME NON-DEPENDENT CHILDREN LIVING with YOU: N/A

WHY ARE YOU FILING? ☐ OFFICE HOLDER or ☐ CANDIDATE

Office held or sought: Public Member of Legislative Ethics Committee

☐ INITIAL STATEMENT: Due 30 days from appointment – for new public officials.
☐ ANNUAL STATEMENT: Due by March 15 – for incumbent officials.
☐ FINAL STATEMENT: Due 90 days after leaving office – include 2008 data up until leaving office.
☐ CANDIDATE STATEMENT: Due when filing declaration of candidacy

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE A: SOURCES OF INCOME OVER $1,000

1. SALARIED EMPLOYMENT NONE: check box → ☐

Report each employer who paid you, your spouse, domestic partner or children covered by reporting requirements more than $1,000. Include amount of income, dates of employment, terms of employment, amount of time worked. **Income means anything of value and covers all forms of compensation, including deferred income.**
DESCRIBE THE WORK PERFORMED IN SUFFICIENT DETAIL TO MAKE IT CLEAR TO A PERSON OF ORDINARY UNDERSTANDING.

EARNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $ 60,000

☒ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: 2008

If work is not full-time, specify amount of time worked (months/days/hours):

Employer: Limon & Walker LLC

Address: 606 E Street, Suite 203, Anchorage, Alaska 99501

DETAILED DESCRIPTION of SERVICES PROVIDED: Legal Services

EARNED BY: ☐ Filer / ☒ Spouse/domestic partner / ☐ Child / Total income: $ 60,000

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: 2008

If work is not full-time, specify amount of time worked (months/days/hours):

Employer: Limon & Walker LLC

Address: 606 E Street, Suite 203, Anchorage, Alaska 99501

DETAILED DESCRIPTION of SERVICES PROVIDED: Legal Services

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates:

If work is not full-time, specify amount of time worked (months/days/hours):

Employer:

Address:

DETAILED DESCRIPTION of SERVICES PROVIDED:

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE A: SOURCES OF INCOME OVER $1,000

2. SELF-EMPLOYMENT: NON-RETAIL NONE: check box → ☒

Disclose each client, customer or business that paid you, your spouse/domestic partner or child more than $1,000. Self-employment includes sole proprietors, partnerships, limited liability companies, professional corporations. List each source of income over $1,000 by name and amount. Exemptions: if the identity of the source of income is confidential by law, you may be excused from disclosing the source. To obtain an exemption, you must qualify under the law, you must file a written request, and you must ***receive*** an exemption from the commission. Exemption rules: Public officials, candidates: 2 AAC 50.100-102. Legislators: 2 AAC 50.775-780.

Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / Customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

_____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

_____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

JAN 14 2009

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ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008
SCHEDULE A: SOURCES OF INCOME OVER $1,000

3. SELF-EMPLOYMENT – RETAIL

NONE: check box → ☐

List each self-employment retail business that was a source of income of more than $1,000. Individual retail clients/customers do ***not*** need to be disclosed with these ***exceptions.*** You must disclose (1) customers with a line of credit extending through two or more billing cycles, (2) customers with ongoing contracts to purchase goods or services, and (3) customers who are offered discounts not available to the general public.

Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $ Have Not Filed 2008 Taxes

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: 2008

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: Wyld Group; DBA The Body Shop

Client/customer name/address (if applicable): _____

DETAILED DESCRIPTION of services provided: Bath & Body Products, Aroma Therapy & Cosmetics

EARNED BY: ☐ Filer / ☒ Spouse/domestic partner / ☐ Child / Total income: $ Have Not Filed 2008 Taxes

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: 2008

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: Wyld Group; DBA The Body Shop

Client/customer name/address (if applicable): _____

DETAILED DESCRIPTION of services provided: Bath & Body Products, Aroma Therapy & Cosmetics

4. RENTAL INCOME

NONE: check box → ☐

OWNER:	TENANTS WHO PAID > $1,000 (For property outside Alaska managed by agent, list AGENT instead of tenant)	AMOUNT
☒ Filer	Belinda Whitman	10,400
☒ Spouse or domestic partner	Molly Brigman	2,100
☐ Child		
☐ Co-owner with others		

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008
SCHEDULE A: SOURCES OF INCOME OVER $1,000

5. DIVIDENDS and INTEREST NONE: check box → ☐

Disclose source and amount of income over $1,000 from dividends and interest. Include bank accounts, capital gains, money market accounts, certificates of deposit, Native corporation dividends, Permanent Fund dividends.

RECIPIENT	SOURCE	AMOUNT
☒ Filer ☐ Child ☐ Spouse/ partner	PERMANENT FUND DIVIDENT, HERMAN WALKER, JR	3,269.00
☐ Filer ☐ Child ☒ Spouse/ partner	PERMANENT FUND DIVIDENT, LYNDA A. LIMEN	3,269.00
☐ Filer ☒ Child ☐ Spouse/ partner	PERMANENT FUND DIVIDENT, DUPREE L. WALKER	3,269.00
☐ Filer ☒ Child ☐ Spouse/ partner	PERMANENT FUND DIVIDENT, LUCERO L. WALKER	3,269.00
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		

6. OTHER INCOME NONE: check box → ☒

List source and amount of income over $1,000 not listed elsewhere in this form, including sale of goods or property, pensions, IRA cash-outs, honorariums, alimony, child support, shared living expenses and government entitlements.

RECIPIENT	SOURCE	AMOUNT
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		

7. GIFTS WORTH MORE THAN $250 NONE: check box → ☒

Report gifts worth more than $250 (including gifts from a single source with a cumulative value more than $250) – *except* gifts from spouse, domestic partner, parent, child, sibling, grandparent, aunt, uncle, niece or nephew. Include travel expenses, discounts not available to the public, loans forgiven or loans paid by a third party. Legislators must submit more detailed disclosure reports to the Legislative Ethics Committee.

RECIPIENT	DESCRIPTION	SOURCE	VALUE
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners.	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

JAN 14 2009

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE B

BUSINESS INTERESTS

NONE: check box → ☐

Report business interests even if they were **NOT** a source of income, including businesses in which you/family:
- Served as stockholder, owner, officer, director, partner, proprietor, employee or held an interest.
- Had ownership interests of more than $1,000 in a publicly traded corporation.
- Had any other ownership interest in a business, including shares in non-publicly traded corporations, sole proprietorships, limited liability companies. Include options to buy.
- Include non-profit organizations, corporations, businesses, associations, trade groups.

If the business was a source of income over $1,000, it must also be reported in Schedule A.

☒ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: Bath & Body Retail

Business name: The Wyld Group DBA The Body Shop

Business address: 606 E Street, Suite 203, Anchorage, Alaska 99501

DETAILED DESCRIPTION of business activity: Bath & Body Products, Aroma Therapy & Cosmetics

☐ Filer / ☒ Spouse/domestic partner / ☐ Child / Position/Type of interest: Bath & Body Retail

Business name: The Wyld Group DBA The Body Shop

Business address: 606 E Street, Suite 203, Anchorage, Alaska 99501

DETAILED DESCRIPTION of business activity: Bath & Body Products, Aroma Therapy & Cosmetics

☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: _____

Business name: _____

Business address: _____

DETAILED DESCRIPTION of business activity: _____

☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: _____

Business name: _____

Business address: _____

DETAILED DESCRIPTION of business activity: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED; USE EXTRA PAGES IF NECESSARY	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners.	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE".

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008
SCHEDULE C

REAL PROPERTY INTERESTS NONE: check box → ☐

Include your home, a rent-to-own home, rental property, vacant property, recreational property, options to buy, business property and real estate interests held in a limited liability company, limited partnership or trust. Include property owned or sold during the reporting period. *If property is jointly owned, check all boxes that apply.*

OWNER(S): ☒ Filer / ☒ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____
Street address or legal description: 2351 Luspardi Point Circle
City or borough / State: Anchorage, Alaska 99515
Ownership interest: Home Owner
(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

OWNER(S): ☒ Filer / ☒ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____
Street address or legal description: 2440 E 5th Place
City or borough / State: Tempe, ARIZONA 85281
Ownership interest: Ownership
(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

OWNER(S): ☒ Filer / ☒ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____
Street address or legal description: 9314 Strathmore Drive
City or borough / State: Anchorage, Alaska 99515
Ownership interest: Ownership
(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

OWNER(S): ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____
Street address or legal description: _____
City or borough / State: _____
Ownership interest: _____

OWNER(S): ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____
Street address or legal description: _____
City or borough / State: _____
Ownership interest: _____
(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners.	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

JAN 14 2009

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE D

BENEFICIAL INTERESTS: TRUSTS & RETIREMENT ACCOUNTS over $1,000 / NONE: ☐

Report each beneficial interest in a trust or retirement account that exceeded $1,000 during the reporting period. Report stocks, bonds, mutual funds, cash accounts, CDs, deferred compensation plans, profit-sharing accounts, employee benefit accounts, retirement accounts (such as IRA, 401K, SEP or Keogh) trust funds (including blind trusts) and limited partnerships. "Managed by" means the filer, employer, business, investment entity or name of the company that manages the account. Identify individual investments if you or family members manage or personally control the investments. "Identify fund or companies" means the individual companies or accounts where you are the manager and you control the investments; if a mutual fund, investment company or other third party entity manages and controls the investments, list the name or type of fund where the assets are held. You do NOT need to list the dollar value of the assets, but you must identify the assets by owner, manager and name.

ASSETS – OWNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: 20%

ASSETS – MANAGED BY: HERMAN G. WALKER, SR. TRUSTOR IS LIVING

ASSETS – IDENTIFY FUND or COMPANIES: VARIOUS PROPERTIES AROUND THE COUNTRY No PROPERTY IN ALASKA

ASSETS – OWNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: 100%

ASSETS – MANAGED BY: STATE of ALASKA

ASSETS – IDENTIFY FUND or COMPANIES: PERS

ASSETS – OWNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: 100%

ASSETS – MANAGED BY: NORTHWESTERN PRUDENTIAL

ASSETS – IDENTIFY FUND or COMPANIES: Simple IRA

ASSETS – OWNED BY: ☐ Filer / ☒ Spouse/domestic partner / ☐ Child / PERCENT: 100%

ASSETS – MANAGED BY: NORTH WESTERN PRUDENTIAL

ASSETS – IDENTIFY FUND or COMPANIES: Simple IRA

ASSETS – OWNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: _____

ASSETS – MANAGED BY: _____

ASSETS – IDENTIFY FUND or COMPANIES: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or, A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
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SCHEDULE E

1. LOANS, LOAN GUARANTEES & DEBTS OVER $1,000

NONE: check box → ☐

Report each creditor or lender to whom more than $1,000 was owed during the reporting period. Report guarantor of each loan. List financial obligations, including mortgages on property owned or sold during the reporting period; loans that have been guaranteed; delinquent taxes; alimony; child support payments; medical bills; boat and vehicle loans; business and personal loans; escrows; student loans; signature loans and promissory notes. Loans include secured, unsecured and contingent loans. *Do NOT list credit card obligations or revolving charge accounts.*

DEBTOR: ☒ Filer / ☒ Spouse/domestic partner / ☐ Child

☒ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: Wells Fargo

DEBTOR: ☒ Filer / ☒ Spouse/domestic partner / ☐ Child

☒ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: USA Federal Credit Union

DEBTOR: ☒ Filer / ☒ Spouse/domestic partner / ☐ Child

☒ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: Bank Of America

DEBTOR: ☒ Filer / ☒ Spouse/domestic partner / ☐ Child

☒ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: Northrim Bank

2. *FOR LEGISLATIVE BRANCH FILERS ONLY*

NONE: check box → ☒

Legislative branch filers must report additional details: original amount of the obligation, the current balance owed, interest rate, length of the loan and whether a written agreement exists for a creditor or lender who:

- Lobbies or hired lobbyists
- Had contracts or sought contracts worth more than $10,000 with any state agency
- Was a municipal or local government entity
- Was affected financially – in an amount exceeding $1,000 – by an act of the legislature or state agency decision, including actions affecting professional or occupational licenses; natural resource permits or quotas; assessments; tax rates; health, safety or environmental standards; insurance or business practices.

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER or ☐ CREDITOR / Name: _____

Address: _____

Original loan: $_____ Balance owed: $_____ Interest rate: _____%

Term: ☐ _____ years ☐ _____ months / WRITTEN LOAN AGREEMENT? ☐ Yes / ☐ No

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE F

1. LEASES: GOVERNMENT CONTRACTS & LEASES

NONE: check box → ☐

List all contracts, bids and offers to contract with the state or any state or municipal agency or entity. Report contract interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company or through a corporation in which filer or family members held a controlling interest.

CONTRACTOR: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / CONTRACT ID (name/number): Dept. of Admin. Office of Public Advocacy

CONTRACTING AGENCY: Office of Public Advocacy, Anchorage, AK

CONTRACT DESCRIPTION: 07-13

CONTRACTOR: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / CONTRACT ID (name/number): _____

CONTRACTING AGENCY: Alaska Public Defender, Palmer, Alaska

CONTRACT DESCRIPTION: Defend Clients

2. LEASES: NATURAL RESOURCE LEASES

NONE: check box → ☒

List natural resource leases – including mineral, timber, oil and gas leases – held, bid or offered during the reporting period. Report lease interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company; or corporation in which you or family (individually or together) held controlling interest.

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / LEASE ID (name/number): _____

LEASE DESCRIPTION: _____

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / LEASE ID (name/number): _____

LEASE DESCRIPTION: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners.	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008
SCHEDULE G

1. CLOSE ECONOMIC ASSOCIATIONS

NONE: check box → ☒

EXEMPT: Municipal and local officials are exempt from reporting close economic associations. **Members of state boards and commissions are exempt** from reporting close economic associations. **Local officials and state board/commission members do NOT have to complete this section. Check the box for NONE.**

STATE PUBLIC OFFICIALS: Disclose financial relations with legislators, other public officials and lobbyists.

LEGISLATIVE BRANCH: Disclose financial relations with public officials, lobbyists, other legislators, and legislative employees. Report close economic association detailed information to the Legislative Ethics Committee.

CLOSE ECONOMIC ASSOCIATION means a financial relationship between public officials, legislators and lobbyists, including shared interests in a business, property, association, partnership, corporation or LLC.

CHANGES: Report new close economic associations within 60 days.

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

2. FILERS WITH A LOBBYIST SPOUSE or DOMESTIC PARTNER

NONE: ☒

EXEMPT: Local officials and members of state boards and commissions are EXEMPT. Check NONE.

STATE PUBLIC OFFICIALS with a lobbyist spouse or domestic partner: Report names and addresses of each employer of the lobbyist and the total monetary value received from each of the lobbyist's employers.

LEGISLATIVE BRANCH filers with a lobbyist spouse or domestic partner: Disclose employer of lobbyist and compensation, and report details to t he Legislative Ethics Committee.

CHANGES: Report changes in lobbyist's employer within 48 hours of the change.

LOBBYIST'S EMPLOYER: NAME & ADDRESS	COMPENSATION

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and the information in this disclosure statement is, to the best of my knowledge, true, correct and complete. A person who makes a false sworn certification which he or she does not believe to be true is guilty of perjury.

SIGNATURE _____

If you are filing online, you must have an Electronic Filing Agreement with APOC to use an electronic signature.

Herman Walker, JR.
NAME of FILER

1-13-09
DATE &PLACE SIGNED / FILED

All officials and candidates who are required to file disclosure statements are solely responsible for filing complete, accurate and truthful statements by the deadlines.

WHERE TO FILE THIS STATEMENT

STATE OFFICIALS: File initial, annual and final statements with the Alaska Public Offices Commission.

STATE CANDIDATES: File with the Division of Elections along with Declaration of Candidacy.

BOROUGH / MUNICIPAL / CITY OFFICIALS and CANDIDATES: File with city or borough clerk where you hold or seek office.

FILE ELECTRONICALLY to APOC: doa.apoc.reports@alaska.gov

THIS IS A PUBLIC DOCUMENT

NOTE: Public officials who are required to file this disclosure statement may have additional obligations to disclose conflicts of interest or potential conflicts under state executive, legislative or judicial ethics rules or personnel rules. Legislators who are required to file this disclosure statement have additional disclosure and reporting requirements imposed by the Select Committee on Legislative Ethics. Local officials may also be governed by local ethics ordinances or personnel rules.

Disclosure forms, guidelines, laws and regulations are online: www.apoc.alaska.gov or from APOC offices

ALASKA PUBLIC OFFICES COMMISSION

ANCHORAGE OFFICE:
2221 E. Northern Lights Blvd – Rm 128
Anchorage, AK 99508-4149
907-276-4176 / Toll-free 800-478-4176
Fax 907-276-7018

JUNEAU OFFICE:
240 Main St. – Rm 201
Mail: P.O. Box 110222
Juneau, AK 99811-0222
907-465-4864 / Fax 907-465-4832

E-mail APOC: doa.apoc@alaska.gov
File electronic disclosure statements to: doa.apoc.reports@alaska.gov

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

DENNIS E. "SKIP" COOK

Telephones:
Home: 907/457-6994
Work: 907/452-1855
Cell: 907/322-1678

E-Mail:
skip@alaskalaw.com
SSN: 574-12-6319

Home Mailing Address:
431 Birch Hill Road
Fairbanks AK 99721-1621

Business Mailing Address:
P.O. Box 70810
Fairbanks AK 99707-0810

PERSONAL

Born: 2/8/40, Fairbanks, Alaska
Parents: Earl & Pat Cook of Fairbanks
Married: Olga (Blair) Cook, Boise, Idaho, June 22, 1963
Children: Tyler, 41; Bret, 39; Dana, 37; Zachary, 33;
Katie, 28; Lizzie, 25; Whitney 21;
and 21 grandchildren + 1 great-grandchild

EDUCATION & CREDENTIALS

Admitted to practice law in the State of Alaska since 1970.
J.D., Willamette University College of Law, Salem, OR; 1967-70.
M.A., Political Science, Northwestern University, Evanston, IL; 1962-63.
B.S., Economics, Politics & Engineering, Massachusetts Institute of Technology, Cambridge, MA;, 1958-62.
Diploma, Fairbanks High School, Fairbanks, AK; 1954-58.
Elementary School, Attended Immaculate Conception School, 1946-1949, and Fairbanks Public Schools, 1945 & 1949-1954.

PROFESSIONAL MEMBERSHIPS

Tanana Valley Bar Association (Officer positions: Secretary and Vice-President)
Alaska Bar Association
American Bar Association

EMPLOYMENT CHRONOLOGY

Partner/Shareholder, Cook Schuhmann & Groseclose, Inc., Fairbanks, AK; 1972-present.
Expertise in workers' compensation, commercial law and domestic law.
Started as associate in 1970.

Distribution Representative, Alaskan Adventures, Inc., Fairbanks, AK; 1969-70.
Distributed the hunting/fishing film "This is My Alaska" to movie houses from Colorado to the West Coast.

Registered Representative, Horton, Geib & O'Rourk, Inc., Salem, OR; 1968-69.
Sold mutual funds as a part time job while attending law school.

Clerk, Oregon State Police, Salem, OR; 1967-68.
Performed office clerical functions while attending law school.

General Manager, Alaska 67 Centennial Exposition, Fairbanks, AK; 1965-67.
Started as **Assistant General Manager;** promoted on the GM's departure.
Planned, developed and directed construction of theme park now known as **Alaskaland.**
Planned and coordinated exposition activities celebrating Alaska's purchase from Russia in 1867.

Acting Director, Alaska Local Affairs Agency, State of Alaska, Juneau, AK; 1963-65.
Started as Assistant Director; promoted to Acting Director on director's departure.
Assisted local governments in the formation of boroughs.
Initiated revision and consolidation of Alaska Statutes Title 7 and Title 29 into the Alaska Municipal Code.

Election Supervisor, Alaska Division of Elections, Fairbanks, AK; 1963
Conducted the election on the formation of a borough under the Mandatory Borough Act.

Various Employment Prior to 1963: Employed by the Alaska Railroad (freight handler), U.S. Civil Service (clerk-typist), University of Alaska Geophysical Institute (laborer), DEWline in Northern Alaska (warehousman), Foodland Store (cheese-cutter), Ray's Supermarket (boxboy/stocker) and Fairbanks Daily News-Miner (paperboy).

AWARDS & ACHIEVEMENTS

Fairbanks Distinguished Citizen Award (December, 2003).
Vigil Honor, Order of the Arrow, Boy Scouts of America; 2003.
Outstanding Service Award, Alaska Bar Association Pro Bono Program; 1998.
Silver Beaver Award, Midnight Sun Council, Boy Scouts of America; 1997.
Blue Ribbon Volunteer Service Award: Tanana Valley State Fair Association; 1989.
Rotarian of the Year, Fairbanks Rotary Club; 1985.
Distinguished Service Award, Jaycees of Fairbanks; 1967.
Valedictorian, Fairbanks High School; 1958.
Explorer Scout Exchange to Greece, Boy Scouts of America; 1957.
Citizens Now Conference, BSA, Willamette University, delegate; 1956.
Eagle Scout, Boy Scouts of America; 1953.

CIVIC & COMMUNITY ACTIVITIES

Blood Donor, MIT and Fairbanks Memorial Hospital; 1970-2003
10 Gallon Club Member.

Member, Select Committee on Legislative Ethics, State of Alaska; 1998-present.
Chair, 2000-2001, Chair, Senate Subcommittee, 2001-2002.

Fairbanks Chair, Alaska Family Coalition; 1999.
Promoted Constitutional Amendment regarding marriage.

Member, Community Activity Center Site Selection Committee; 1985-86.
Reviewed and selected site for multi-million dollar John Carlson Center in Fairbanks.

Fairbanks Representative, MIT Educational Council; 1971-present.
Interview, advise and recommend prospective applicants to MIT.

AFFILIATIONS

The church of Jesus Christ of Latter-day Saints.
Branch President, Bishop, District President, State President, Regional Representative, Seminary Teacher, Temple Sealer, Family History Center Co-Director.

Boy Scouts of America, Midnight Sun Council.
Scoutmaster, Council Board and Executive Committee Member (President 1998-2000), Merit Badge Counselor.

Rotary Club of Fairbanks, 1977-present.
Director, Secretary, Treasurer, President 1993-94.

Rotary International District 5010.
District Governor, 2005-2006.

Tanana Valley State Fair Association.
Board Member, 1970-1984, President 1974-1984.

Interior Alaska Adoptive Parents, Western Association of Concerned Adoptive Parents
Founding Member.

Beta Chapter, Chi Phi Fraternity, Massachusetts Institute of Technology.
President 1961-62.

Massachusetts Institute of Technology.
Educational councilor – 1970 - present

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

FINANCIAL DISCLOSURE STATEMENT FOR: PUBLIC OFFICIALS, LEGISLATORS & CANDIDATES

EXECUTIVE BRANCH: Governor, Lt. Gov., commissioners, directors, special assistants and legislative liaisons; state boards and commissions; procurement and investment officers; city/borough officials; candidates.

JUDICIAL BRANCH: Justices, judges and magistrates.

LEGISLATIVE BRANCH: Legislators, legislative directors, Select Committee on Legislative Ethics.

FOR MORE INFORMATION, INSTRUCTIONS, BLANK FORMS, SAMPLE FORMS & QUESTIONS:
Visit APOC online at: www.apoc.alaska.gov :

- To find detailed instructions and sample disclosures, under the heading "How do I..." click "Complete my initial, annual or final Public Official Financial Disclosure Statement"
- To find blank Financial Disclosure forms for public officials and legislators as well as a *Guide to Financial Disclosure in Alaska,* under the heading "Quick Links" click "APOC Forms"
- To find the laws and regulations that APOC administers and enforces, there is a link to "Statutes" or "APOC Statutes & Regulations" throughout the APOC Web site.

Contact APOC directly:

- ANCHORAGE: 2221 E. Northern Lights Blvd., Rm 128, Anchorage, AK 99508 / 907-276-4176 / Fax 907-276-7018
- JUNEAU: 240 Main St., Rm 201 / P.O. Box 110222, Juneau, AK 99811 / 907-465-4864 / Fax 907-465-4832
- TOLL-FREE: 800-478-4176 / Online contact info: www.apoc.alaska.gov/staff.shtml

→ THIS IS A PUBLIC DOCUMENT ←

THIS REPORT IS A SWORN STATEMENT. YOUR SIGNATURE ON THE LAST PAGE CERTIFIES THAT THIS DISCLOSURE IS TRUE, CORRECT and COMPLETE.

NAME: Dennis E. "Skip" Cook

MAILING ADDRESS: P.O. Box 70810 Fairbanks AK 99707-0810
Street address or P.O. box, city, zip code

CONTACT PHONE(S): 907-457-6994; 907-452-1855 Fax: 907-452-8154

E-MAIL: skip@alaskalaw.com

SPOUSE / DOMESTIC PARTNER: Olga B. Cook

DEPENDENT CHILDREN: -0- NON-DEPENDENT CHILDREN LIVING WITH YOU: -0- 12/31/08
Report number of children, including stepchildren, adoptive children. Legislative filers: List non-dependent children living with you.

NAME NON-DEPENDENT CHILDREN LIVING with YOU:

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WHY ARE YOU FILING? ☒ OFFICE HOLDER or ☐ CANDIDATE

Office held or sought: Select Committee on Legislative Ethics

☐ INITIAL STATEMENT: Due 30 days from appointment – for new public officials.
☒ ANNUAL STATEMENT: Due by March 15 – for incumbent officials.
☐ FINAL STATEMENT: Due 90 days after leaving office – include 2008 data up until leaving office.
☐ CANDIDATE STATEMENT: Due when filing declaration of candidacy

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE".

Entered By Chris

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ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE A: SOURCES OF INCOME OVER $1,000

1. SALARIED EMPLOYMENT

NONE: check box → ☐

Report each employer who paid you, your spouse, domestic partner or children covered by reporting requirements more than $1,000. Include amount of income, dates of employment, terms of employment, amount of time worked. Income means anything of value and covers all forms of compensation, including deferred income.
DESCRIBE THE WORK PERFORMED IN SUFFICIENT DETAIL TO MAKE IT CLEAR TO A PERSON OF ORDINARY UNDERSTANDING.

EARNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $ 75,000

☐ Full-time ☒ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: all year

If work is not full-time, specify amount of time worked (months/days/hours): _____

Employer: Cook Schuckmann & Grosecloss, Inc.

Address: P.O. Box 70010 Fairbanks Ak 99707-0810

DETAILED DESCRIPTION of SERVICES PROVIDED: ~~staff~~ attorney

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EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $ _____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Employer: _____

Address: _____

DETAILED DESCRIPTION of SERVICES PROVIDED: _____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $ _____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Employer: _____

Address: _____

DETAILED DESCRIPTION of SERVICES PROVIDED: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE A: SOURCES OF INCOME OVER $1,000

2. SELF-EMPLOYMENT: NON-RETAIL NONE: check box → ☒

Disclose each client, customer or business that paid you, your spouse/domestic partner or child more than $1,000. Self-employment includes sole proprietors, partnerships, limited liability companies, professional corporations. List each source of income over $1,000 by name and amount. Exemptions: if the identity of the source of income is confidential by law, you may be excused from disclosing the source. To obtain an exemption, you must qualify under the law, you must file a written request, and you must ***receive*** an exemption from the commission. Exemption rules: Public officials, candidates: 2 AAC 50.100-102. Legislators: 2 AAC 50.775-780.

Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / Customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

_____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

_____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008
SCHEDULE A: SOURCES OF INCOME OVER $1,000

3. SELF-EMPLOYMENT – RETAIL

NONE: check box → ☒

List each self-employment retail business that was a source of income of more than $1,000. Individual retail clients/customers do *not* need to be disclosed with these *exceptions.* You must disclose (1) customers with a line of credit extending through two or more billing cycles, (2) customers with ongoing contracts to purchase goods or services, and (3) customers who are offered discounts not available to the general public.

Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client/customer name/address (if applicable): _____

DETAILED DESCRIPTION of services provided: _____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client/customer name/address (if applicable): _____

DETAILED DESCRIPTION of services provided: _____

_____

4. RENTAL INCOME

NONE: check box → ☒

OWNER:	TENANTS WHO PAID > $1,000 (For property outside Alaska managed by agent, list AGENT instead of tenant)	AMOUNT
☐ Filer		
☐ Spouse or domestic partner		
☐ Child		
☐ Co-owner with others		

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008
SCHEDULE A: SOURCES OF INCOME OVER $1,000

5. DIVIDENDS and INTEREST NONE: check box → ☐

Disclose source and amount of income over $1,000 from dividends and interest. Include bank accounts, capital gains, money market accounts, certificates of deposit, Native corporation dividends, Permanent Fund dividends.

RECIPIENT	SOURCE	AMOUNT
☒ Filer ☐ Child ☒ Spouse/ partner	PFDs	
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		

6. OTHER INCOME NONE: check box → ☐

List source and amount of income over $1,000 not listed elsewhere in this form, including sale of goods or property, pensions, IRA cash-outs, honorariums, alimony, child support, shared living expenses and government entitlements.

RECIPIENT	SOURCE	AMOUNT
☒ Filer ☐ Child ☐ Spouse/ partner	Cook Schuhmann + Groseclose Retirement Plan	60,000
☐ Filer ☐ Child ☐ Spouse/ partner		
☒ Filer ☐ Child ☐ Spouse/ partner	Social Security	26,000
☐ Filer ☐ Child ☒ Spouse/ partner	Social Security	10,000
☒ Filer ☐ Child ☒ Spouse/ partner	Alascorp - Sale of Subdivision Lots	$50,000

7. GIFTS WORTH MORE THAN $250 NONE: check box → ☒

Report gifts worth more than $250 (including gifts from a single source with a cumulative value more than $250) – *except* gifts from spouse, domestic partner, parent, child, sibling, grandparent, aunt, uncle, niece or nephew. Include travel expenses, discounts not available to the public, loans forgiven or loans paid by a third party. Legislators must submit more detailed disclosure reports to the Legislative Ethics Committee.

RECIPIENT	DESCRIPTION	SOURCE	VALUE
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE".

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ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE B

BUSINESS INTERESTS

NONE: check box → ☐

Report business interests even if they were **NOT** a source of income, including businesses in which you/family:

- Served as stockholder, owner, officer, director, partner, proprietor, employee or held an interest.
- Had ownership interests of more than $1,000 in a publicly traded corporation.
- Had any other ownership interest in a business, including shares in non-publicly traded corporations, sole proprietorships, limited liability companies. Include options to buy.
- Include non-profit organizations, corporations, businesses, associations, trade groups.

If the business was a source of income over $1,000, it must also be reported in Schedule A.

☒ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: 1/6 Shareholder

Business name: Cook Schuhmann & Groseclose, Inc.

Business address: P.O. Box 70810 Fairbanks Ak 99707-0810

DETAILED DESCRIPTION of business activity: Law Firm

☒ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: 1/6 Shareholder

Business name: Polar Cache Corp.

Business address: P.O. Box 72134 Fairbanks Ak. 99707

DETAILED DESCRIPTION of business activity: Family Corp. with siblings— owns real property interests.

☒ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: Board + Ex. Com.

Business name: Midnight Sun Council Boy Scouts of America

Business address: 1400 Gillam Way Fairbanks Ak 99701

DETAILED DESCRIPTION of business activity: Non-profit youth organization

☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: _____

Business name: _____

Business address: _____

DETAILED DESCRIPTION of business activity: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners.	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE."

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE D

BENEFICIAL INTERESTS: TRUSTS & RETIREMENT ACCOUNTS over $1,000 / NONE: ☐

Report each beneficial interest in a trust or retirement account that exceeded $1,000 during the reporting period. Report stocks, bonds, mutual funds, cash accounts, CDs, deferred compensation plans, profit-sharing accounts, employee benefit accounts, retirement accounts (such as IRA, 401K, SEP or Keogh) trust funds (including blind trusts) and limited partnerships. "Managed by" means the filer, employer, business, investment entity or name of the company that manages the account. Identify individual investments if you or family members manage or personally control the investments. "Identify fund or companies" means the individual companies or accounts where you are the manager and you control the investments; if a mutual fund, investment company or other third party entity manages and controls the investments, list the name or type of fund where the assets are held. You do NOT need to list the dollar value of the assets, but you must identify the assets by owner, manager and name.

ASSETS – OWNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: 100 %

ASSETS – MANAGED BY: Cook Schuhmann & Groseclose pension & profit sharing

ASSETS – IDENTIFY FUND or COMPANIES: Am. Bar Assn plan assets via State Street Bank of Boston

ASSETS – OWNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: 100 %

ASSETS – MANAGED BY: Dennis E. Cook

ASSETS – IDENTIFY FUND or COMPANIES: Gunn Allen Financial IRA

ASSETS – OWNED BY: ☐ Filer / ☒ Spouse/domestic partner / ☐ Child / PERCENT: 100 %

ASSETS – MANAGED BY: Olga B. Cook

ASSETS – IDENTIFY FUND or COMPANIES: Wells Fargo Investments IRA

ASSETS – OWNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: _____

ASSETS – MANAGED BY: _____

ASSETS – IDENTIFY FUND or COMPANIES: _____

ASSETS – OWNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: _____

ASSETS – MANAGED BY: _____

ASSETS – IDENTIFY FUND or COMPANIES: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008
SCHEDULE C

REAL PROPERTY INTERESTS

NONE: check box → ☐

Include your home, a rent-to-own home, rental property, vacant property, recreational property, options to buy, business property and real estate interests held in a limited liability company, limited partnership or trust. Include property owned or sold during the reporting period. *If property is jointly owned, check all boxes that apply.*

OWNER(S): ☒ Filer / ☒ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____

Street address or legal description: 431 Birch Hill Road

City or borough / State: Fairbanks AK 99712

Ownership interest: own as JTWROS Home

(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

OWNER(S): ☒ Filer / ☒ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____

Street address or legal description: 9770 Salchaket Dr. ve, Harding lake AK

City or borough / State: Alaska

Ownership interest: own as JTWROS Recreational Cabin

(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

OWNER(S): ☒ Filer / ☒ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____

Street address or legal description: 431 Birch Hill Road

City or borough / State: Fairbanks AK 99712 3 subdivision lots — sold during reporting period

Ownership interest: owned as JTWROS

(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

OWNER(S): ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / ☒ Other co-owner: siblings in Polar Cache Corp.

Street address or legal description: Polar Cache Corp., P.O. Box 72134

City or borough / State: Fairbanks AK

Ownership interest: 1/6 interest with siblings

OWNER(S): ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____

Street address or legal description: _____

City or borough / State: _____

Ownership interest: _____

(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
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SCHEDULE E

1. LOANS, LOAN GUARANTEES & DEBTS OVER $1,000

NONE: check box → ☐

Report each creditor or lender to whom more than $1,000 was owed during the reporting period. Report guarantor of each loan. List financial obligations, including mortgages on property owned or sold during the reporting period; loans that have been guaranteed; delinquent taxes; alimony; child support payments; medical bills; boat and vehicle loans; business and personal loans; escrows; student loans; signature loans and promissory notes. Loans include secured, unsecured and contingent loans. *Do NOT list credit card obligations or revolving charge accounts.*

DEBTOR: ☒ Filer / ☒ Spouse/domestic partner / ☐ Child

☒ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: Mt. McKinley Bank

DEBTOR: ☒ Filer / ☒ Spouse/domestic partner / ☐ Child

☒ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: Key Bank

DEBTOR: ☐ Filer / ☒ Spouse/domestic partner / ☐ Child

☒ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: AK USA FCU – Car loan

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: _____

2. *FOR LEGISLATIVE BRANCH FILERS ONLY*

NONE: check box → ☐

Legislative branch filers must report additional details: original amount of the obligation, the current balance owed, interest rate, length of the loan and whether a written agreement exists for a creditor or lender who:

- Lobbies or hired lobbyists
- Had contracts or sought contracts worth more than $10,000 with any state agency
- Was a municipal or local government entity
- Was affected financially – in an amount exceeding $1,000 – by an act of the legislature or state agency decision, including actions affecting professional or occupational licenses; natural resource permits or quotas; assessments; tax rates; health, safety or environmental standards; insurance or business practices.

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER or ☐ CREDITOR / Name: _____

Address: _____

Original loan: $_____ Balance owed: $_____ Interest rate: _____%

Term: ☐ _____ years ☐ _____ months / WRITTEN LOAN AGREEMENT? ☐ Yes / ☐ No

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE".

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ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

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SCHEDULE F

1. LEASES: GOVERNMENT CONTRACTS & LEASES

NONE: check box → ☒

List all contracts, bids and offers to contract with the state or any state or municipal agency or entity. Report contract interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company or through a corporation in which filer or family members held a controlling interest.

CONTRACTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / CONTRACT ID (name/number): _____

CONTRACTING AGENCY: _____

CONTRACT DESCRIPTION: _____

_____

CONTRACTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / CONTRACT ID (name/number): _____

CONTRACTING AGENCY: _____

CONTRACT DESCRIPTION: _____

_____

2. LEASES: NATURAL RESOURCE LEASES

NONE: check box → ☒

List natural resource leases – including mineral, timber, oil and gas leases – held, bid or offered during the reporting period. Report lease interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company; or corporation in which you or family (individually or together) held controlling interest.

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / LEASE ID (name/number): _____

LEASE DESCRIPTION: _____

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / LEASE ID (name/number): _____

LEASE DESCRIPTION: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

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SCHEDULE G

1. CLOSE ECONOMIC ASSOCIATIONS

NONE: check box → ☒

EXEMPT: Municipal and local officials are exempt from reporting close economic associations. **Members of state boards and commissions are exempt** from reporting close economic associations. **Local officials and state board/commission members do NOT have to complete this section. Check the box for NONE.**

STATE PUBLIC OFFICIALS: Disclose financial relations with legislators, other public officials and lobbyists.

LEGISLATIVE BRANCH: Disclose financial relations with public officials, lobbyists, other legislators, and legislative employees. Report close economic association detailed information to the Legislative Ethics Committee.

CLOSE ECONOMIC ASSOCIATION means a financial relationship between public officials, legislators and lobbyists, including shared interests in a business, property, association, partnership, corporation or LLC.

CHANGES: Report new close economic associations within 60 days.

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

2. FILERS WITH A LOBBYIST SPOUSE or DOMESTIC PARTNER

NONE: ☒

EXEMPT: Local officials and members of state boards and commissions are EXEMPT. Check NONE.

STATE PUBLIC OFFICIALS with a lobbyist spouse or domestic partner: Report names and addresses of each employer of the lobbyist and the total monetary value received from each of the lobbyist's employers.

LEGISLATIVE BRANCH filers with a lobbyist spouse or domestic partner: Disclose employer of lobbyist and compensation, and report details to t he Legislative Ethics Committee.

CHANGES: Report changes in lobbyist's employer within 48 hours of the change.

LOBBYIST'S EMPLOYER: NAME & ADDRESS	COMPENSATION

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and the information in this disclosure statement is, to the best of my knowledge, true, correct and complete. A person who makes a false sworn certification which he or she does not believe to be true is guilty of perjury.

SIGNATURE Dennis E. Cook

If you are filing online, you must have an Electronic Filing Agreement with APOC to use an electronic signature.

Dennis E. Cook — NAME of FILER

12/30/08 - Fairbanks — DATE & PLACE SIGNED / FILED

All officials and candidates who are required to file disclosure statements are solely responsible for filing complete, accurate and truthful statements by the deadlines.

WHERE TO FILE THIS STATEMENT

STATE OFFICIALS: File initial, annual and final statements with the Alaska Public Offices Commission.

STATE CANDIDATES: File with the Division of Elections along with Declaration of Candidacy.

BOROUGH / MUNICIPAL / CITY OFFICIALS and CANDIDATES: File with city or borough clerk where you hold or seek office.

FILE ELECTRONICALLY to APOC: doa.apoc.reports@alaska.gov

THIS IS A PUBLIC DOCUMENT

NOTE: Public officials who are required to file this disclosure statement may have additional obligations to disclose conflicts of interest or potential conflicts under state executive, legislative or judicial ethics rules or personnel rules. Legislators who are required to file this disclosure statement have additional disclosure and reporting requirements imposed by the Select Committee on Legislative Ethics. Local officials may also be governed by local ethics ordinances or personnel rules.

Disclosure forms, guidelines, laws and regulations are online: www.apoc.alaska.gov or from APOC offices

ALASKA PUBLIC OFFICES COMMISSION

ANCHORAGE OFFICE:
2221 E. Northern Lights Blvd – Rm 128
Anchorage, AK 99508-4149
907-276-4176 / Toll-free 800-478-4176
Fax 907-276-7018

JUNEAU OFFICE:
240 Main St. – Rm 201
Mail: P.O. Box 110222
Juneau, AK 99811-0222
907-465-4864 / Fax 907-465-4832

E-mail APOC: doa.apoc@alaska.gov
File electronic disclosure statements to: doa.apoc.reports@alaska.gov

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

WEDBUSH MORGAN SECURITIES

DENNIS E COOK &
OLGA B COOK JTWROS

JAN 5 2008

ACCOUNT SUMMARY

(Unpriced Securities Excluded)	PRIOR PERIOD	03-31-08
MUTUAL FUNDS: OPEN END	2,031.37	1,898.18
ACCOUNT NET WORTH	**2,031.37**	**1,898.18**

INCOME/PRINCIPAL SUMMARY	CURRENT MONTH	YEAR TO DATE
CASH DIVIDEND	5.57	5.57
TOTAL INCOME/PRINCIPAL	**5.57**	**5.57**

ACCOUNT PORTFOLIO

QUANTITY	DESCRIPTION	SYMBOL/ CUSIP	CURRENT PRICE	CURRENT VALUE	COST BASIS	UNREALIZED GAIN OR LOSS	ESTIMATED ANNUAL INCOME	ESTIMATED CURRENT YIELD %	TYPE
MONEY BALANCE: CREDIT									
MUTUAL FUNDS: OPEN END									
111.396	HANCOCK JOHN SOVEREIGN INVESTORS FUND CL A	SOVIX	17.04	1,898	2,333	435-	23	1.2	1
	MUTUAL FUNDS: OPEN END TOTAL			**1,898**	**2,333**		**23**	**1.2**	
	ACCOUNT NET WORTH			**1,898**	**2,333**		**23**	**1.2**	

The cost basis shown on this statement is for informational purposes only. Please refer to actual purchase documentation to confirm its accuracy. You are urged to consult with your own tax advisor regarding the taxable status of any realized gain or loss.

ACCOUNT ACTIVITY

DATE	ACTIVITY	QUANTITY	DESCRIPTION	PRICE	AMOUNT CHARGED	AMOUNT CREDITED	TYPE
			OPENING BALANCE				
03-24-08	DIVIDEND		HANCOCK JOHN SOVEREIGN INVESTORS FUND CL A 032008 111.39600			5.57	1
03-24-08	REINVEST DIV	.331	HANCOCK JOHN SOVEREIGN INVESTORS FUND CL A REINVEST AT 16.840		5.57		1
			CLOSING BALANCE				

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WEDBUSH MORGAN SECURITIES
Investment Bankers for Entrepreneurs

1000 WILSHIRE BLVD., SUITE 855
LOS ANGELES, CA 90017
www.wedbush.com
Phone: (213) 688-8000

1099-CONSOLIDATED TAX STATEMENT
Tax Year 2007 Copy B For Recipient

Department of the Treasury - Internal Revenue Service
(Keep for your records)

FEDERAL ID NUMBER: 95-2495390

JAN - 5 2008

TAXPAYER ID NUMBER: 574-12-6319
ACCOUNT NUMBER: CGMH 2451-6117

Your Investment Representative: CGMH
MARY ANN HOFFMAN
714 4TH AVE SUITE 305
FAIRBANKS AK 99701-4469
907-452-8101

391533 F001 2829 1OZ 1/2 1—— 1415
DENNIS E COOK &
OLGA B COOK JTWROS
431 BIRCH HILL RD
FAIRBANKS AK 99712

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

IRS BOX	FORM 1099-DIV - DIVIDENDS AND DISTRIBUTIONS OMB NO. 1545-0110	
1A.	TOTAL ORDINARY DIVIDENDS	$20.86
1B.	QUALIFIED DIVIDENDS	$20.86
2A.	TOTAL CAPITAL GAIN DISTRIBUTIONS	$194.80
2B.	UNRECAP. SEC. 1250 GAIN	$0.00
2C.	SECTION 1202 GAIN	$0.00
2D.	COLLECTIBLES (28%) GAIN	$0.00
3.	NONTAXABLE DISTRIBUTIONS	$0.00
4.	**FEDERAL INCOME TAX WITHHELD**	**$0.00**
5.	INVESTMENT EXPENSES	$0.00
6.	FOREIGN TAX PAID	$0.00
8.	CASH LIQUIDATION DISTRIBUTIONS	$0.00
9.	NON-CASH LIQUIDATION DISTRIBUTIONS	$0.00

IRS BOX	FORM 1099-INT - INTEREST INCOME OMB NO. 1545-0112	
1.	INTEREST INCOME NOT INCLUDED IN IRS BOX 3	$0.00
3.	INTEREST INCOME ON U.S. TREASURY OBLIGATIONS	$0.00
4.	**FEDERAL INCOME TAX WITHHELD**	**$0.00**
5.	INVESTMENT EXPENSES	$0.00
6.	FOREIGN TAX PAID	$0.00
8.	TAX EXEMPT INTEREST	$0.00
9.	SPECIFIED PRIVATE ACTIVITY BOND INTEREST	$0.00

IRS BOX	FORM 1099-MISC - MISCELLANEOUS INCOME OMB NO. 1545-0115	
2.	ROYALTIES	$0.00
3.	OTHER INCOME	$0.00
4.	**FEDERAL INCOME TAX WITHHELD**	**$0.00**
8.	SUBSTITUTE PAYMENTS IN LIEU OF DIVIDENDS OR INTEREST	$0.00

Detail relating to this summary information is contained in the following pages.

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Instructions for Recipient

Form 1099-DIV (OMB No. 1545-0110)

Account number. May show an account or other unique number the payer assigned to distinguish your account.

Box 1a. Shows total ordinary (short term) dividends that are taxable. Include this amount on Line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040) or Schedule 1 (Form 1040A) if required. The amount shown may be a distribution from an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A but treat it as a plan distribution, not as investment income, for any other purpose.

Box 1b. Shows the portion of the amount in box 1a that may be eligible for the 15% or 5% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

Box 2a. Shows total capital gain distributions (long-term) from a regulated investment company or real estate investment trust. Report the amounts shown in box 2a on Schedule D (Form 1040), line 13. But, if no amount is shown in boxes 2c-2d and you only capital gains and losses are capital gain distributions, you may be able to report the amounts shown in box 2a on line 13 of Form 1040 (line 10 of Form 1040A) rather than Schedule D. See the Form 1040/1040A instructions.

Box 2b. Shows the portion of the amount in box 2a that is unrecaptured section 1250 gain from certain depreciable real property. Report this amount on the Unrecaptured Section 1250 Gain Worksheet-Line 19 in the Schedule D instructions (Form 1040).

Box 2c. Shows the portion of the amount in box 2a that is section 1202 gain from certain small business stock that may be subject to a 50% exclusion. See the Schedule D (Form 1040) instructions.

Box 2d. Shows 28% rate gain from sales or exchanges of collectibles. If ...ired, use this amount when completing the 28% Rate Gain ...sheet-Line 18 in the instructions for Schedule D (Form 1040).

...3. Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

Box 4. Shows backup withholding. For example, a payer must backup withhold on certain payments at a 28% rate if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 5. Shows your share of expenses of a nonpublicly offered regulated investment company, generally a nonpublicly offered mutual fund. If you file Form 1040, you may deduct these expenses on the "Other expenses" line on Schedule A (Form 1040) subject to the 2% limit. This amount is included in box 1a.

Box 6. Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

Boxes 8 and 9. Shows cash and noncash liquidation distributions.

Nominees. If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the 2007 General Instructions for Forms 1099, 1098, 5498, and W-2G.

Form 1099-INT (OMB No. 1545-0112)

Account number. May show an account or other unique number the payer assigned to distinguish your account.

Box 1. Shows taxable interest paid to you during the calendar year by the payer. This does not include interest shown in box 3. May also show the ...t amount of the credits from clean renewable energy bonds and Gulf tax ...d bonds that must be included in your interest income. These amounts ...e treated as paid to you during 2007 on the credit allowance dates (March 15, June 15, September 15, and December 15). For more information, see Form 8912, Credit for Clean Renewable Energy and Gulf Tax Credit Bonds.

Box 2. Shows interest or principal forfeited because of early withdrawal of time savings. You may deduct this amount to figure your adjusted gross income on your income tax return. See the instructions for Form 1040 to see where to take the deduction.

Box 3. Shows interest on U.S. Savings Bonds, Treasury bills, Treasury bonds, and Treasury notes. This may or may not be all taxable. See Pub. 550, Investment Income and Expenses. This interest is exempt from state and local income taxes. This interest is not included in box 1.

Box 4. Shows backup withholding. Generally, a payer must backup withhold at a 28% rate if you did not furnish your taxpayer identification number (TIN) or you did not furnish the correct TIN to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 5. Any amount shown is your share of investment expenses of a single-class REMIC. If you file Form 1040, you may deduct these expenses on the "Other expenses" line of Schedule A (Form 1040) subject to the 2% limit. This amount is included in box 1.

...deduction or a credit on your Form 1040. See your Form 1040 instructions.

Box 8. Shows tax-exempt interest, including exempt-interest dividends from a mutual fund or other regulated investment company, paid to you during the calendar year by the payer. Report this amount on line 8b of Form 1040 or Form 1040A. This amount may be subject to backup withholding. See box 4.

Box 9. Shows tax-exempt interest subject to the alternative minimum tax. This amount is included in box 8. See the instructions for Form 6251, Alternative Minimum Tax-Individuals.

Nominees. If this form includes amounts belonging to another person(s), you are considered a nominee recipient. Complete a Form 1099-INT for each of the other owners showing the income allocable to each. File Copy A of the form with the IRS. Furnish Copy B to each owner. List yourself as the "payer" and the other owner(s) as the "recipient." File Form(s) 1099-INT with Form 1096, Annual Summary and Transmittal of U.S. Information Returns, with the Internal Revenue Service Center for your area. On Form 1096 list yourself as the "filer." A husband or wife is not required to file a nominee return to show amounts owned by the other.

Form 1099-OID (OMB No. 1545-0117)

Original issue discount (OID) is the excess of an obligation's stated redemption price at maturity over its issue price (acquisition price for a stripped bond or coupon). OID is taxable as interest over the life of the obligation. If you are the holder of an OID obligation, generally you must include an amount of OID in your gross income each year you hold the obligation. Obligations that may have OID include a bond, debenture, note, certificate, or other evidence of indebtedness having a term of more than 1 year. For example, the OID rules may apply to certificates of deposit (CDs), time deposits, bonus savings plans, and other deposit arrangements, especially if the payment of interest is deferred until maturity. In addition, the OID rules apply to Treasury inflation-indexed securities. See Pub. 550, Investment Income and Expenses, for more information.

If, as the record holder, you receive Form 1099-OID showing amounts belonging to another person, you are considered a nominee recipient. Complete a Form 1099-OID for each of the other owners showing the amounts allocable to each. File Copy A of the form with the IRS. Furnish Copy B to each owner. List yourself as the "payer" and the other owner as the "recipient." File Form(s) 1099-OID with Form 1096, Annual Summary and Transmittal of U.S. Information Returns, with the Internal Revenue Service Center for your area. On Form 1096, list yourself as the "filer." A husband or wife is not required to file a nominee return to show amounts owned by the other. If you bought or sold an obligation during the year and you are not a nominee, you are not required to issue or file Form 1099-OID showing the OID or stated interest allocable to the seller/buyer of the obligation.

Account number. May show an account or other unique number the payer assigned to distinguish your account.

Box 1. Shows the OID on the obligation for the part of the year you owned it. Report the amount in box 1 as interest income on your income tax return. However, depending on the type of debt instrument, the issue or acquisition date, and other factors (for example, if you paid acquisition or bond premium), or the obligation is a stripped bond or coupon), you may have to figure the correct amount of OID to report on your return. See Pub. 1212, Guide to Original Issue Discount (OID) Instruments, for details on how to figure the correct OID.

Box 2. Shows other interest on this obligation for the year, which is an amount separate from the OID, if you held the obligation the entire year, report this amount as interest income on your tax return. If you disposed of the obligation or acquired it from another holder during the year, see Pub. 550 for reporting instructions. If there is an amount in both boxes 2 and 6, the amount in box 2 is interest on a U.S. Treasury obligation and is exempt from state and local income taxes.

Box 3. Shows interest or principal forfeited if you withdrew the money before the maturity date of the obligation, such as from a CD. You may deduct this amount to figure your adjusted gross income on your income tax return. See the instructions for Form 1040 to see where to take the deduction.

Box 4. Shows backup withholding. Generally, a payer must backup withhold at a 28% rate if you did not furnish your taxpayer identification number (TIN) or you did not furnish the correct TIN to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 5. Shows the identification number (CUSIP number) or description of the obligation. The description may include the stock exchange, issuer, coupon rate, and year of maturity.

Box 6. Shows OID on a U.S. Treasury obligation for the part of the year you owned it. Report this amount as interest income on your federal income tax return, and see Pub. 1212 to figure any appropriate adjustments to this amount. This OID is exempt from state and local income taxes and is not included in box 1.

Box 7. Any amount shown is your share of investment expenses of a single-class REMIC. If you file Form 1040, you may deduct these expenses on the "Other expenses" line of Schedule A (Form 1040) subject to the 2% limit. This amount is included in box 2.

1099-MISC (OMB No. 1545-0115)

Account number. May show an account or other unique number the payer assigned to distinguish your account.

...income from self-employment is $400 or more, you ... file a return and compute your SE tax on Schedule SE (Form 1040). See Pub. 334, Tax Guide for Small Business, for more information. If no income or social security and Medicare taxes were withheld and you are still receiving these payments, see Form 1040-ES, Estimated Tax for Individuals. Individuals must report as explained for box 7 below. Corporations, fiduciaries, or partnerships report the amounts on the proper line of your tax return.

Boxes 1 and 2. Report rents from real estate on Schedule E (Form 1040). If you provided significant services to the tenant, sold real estate as a business, or rented personal property as a business, report on Schedule C or C-EZ (Form 1040). For royalties on timber, coal, and iron ore, see Pub. 544, Sales and Other Dispositions of Assets.

Box 3. Generally, report this amount on the "Other income" line of Form 1040 and identify the payment. The amount shown may be payments received as the beneficiary of a deceased employee, prizes awards, taxable damages, Indian gaming profits, payments made by employers to former employees who are serving in the Armed Forces or the National Guard, or other taxable income. See Pub. 525, Taxable and Nontaxable Income. If it is trade or business income, report this amount on Schedule C, C-EZ, or F (Form 1040).

Box 4. Shows backup withholding or withholding on Indian gaming profits. Generally, a payer must backup withhold at a 28% rate if you did not furnish your taxpayer identification number. See Form W-9, Request for Taxpayer Identification Number and Certification, for more information. Report this amount on your income tax return as tax withheld.

Box 5. An amount in this box means the fishing boat operator considers you self-employed. Report this amount on Schedule C or C-EZ (Form 1040). See Pub. 334.

Box 6. For individuals, report on Schedule C or C-EZ (Form 1040).

Box 7. Shows nonemployee compensation. If you are in the trade or business of catching fish, box 7 may show cash you received for the sale of fish. If payments in this box are SE income, report this amount on Schedule C, C-EZ, or F (Form 1040), and complete Schedule SE (Form 1040). You received this form instead of Form W-2 because the payer did not consider you an employee and did not withhold income tax or social security and Medicare taxes. Contact the payer if you believe this form is incorrect or has been issued in error. If you believe you are an employee, call the IRS for information on how to report any social security and Medicare taxes or see Form 8919, Uncollected Social Security and Medicare Taxes on Wages.

Box 8. Shows substitute payments in lieu of dividends or tax-exempt interest received by your broker on your behalf as a result of a loan of your securities. Report on the "Other income" line of Form 1040.

Box 9. If checked, $5,000 or more of sales of consumer products was paid to you on a buy-sell, deposit-commission, or other basis. A dollar amount does not have to be shown. Generally, report any income from your sale of these products on Schedule C or C-EZ (Form 1040).

Box 10. Report this amount on line 8 of Schedule F (Form 1040).

Box 13. Shows your total compensation of excess golden parachute payments subject to a 20% excise tax. See the Form 1040 instructions for where to report.

Box 14. Shows gross proceeds paid to an attorney in connection with legal services. Report only the taxable part as income on your return.

Box 15a. Shows current year deferrals as a nonemployee under a nonqualified deferred compensation (NQDC) plan that is subject to the requirements of section 409A. Any earnings on current and prior year deferrals are also reported.

Box 15b. Shows income as a nonemployee under a NQDC plan that does not meet the requirements of section 409A. This amount is also included in box 7 as nonemployee compensation. Any amount included in box 15a that is currently taxable is also included in this box. This income is also subject to a substantial additional tax to be reported on Form 1040. See "Total Tax" in the Form 1040 instructions.

Boxes 16-18. Shows state or local income tax withheld from the payments.

Form 1099-B (OMB No. 1545-0715)

Brokers and barter exchanges must report proceeds from transactions to you and the IRS on Form 1099-B. Reporting is also required when your broker knows or has reason to know that a corporation in which you own stock has had a change in control or a substantial change in capital structure. You may be required to recognize gain from the receipt of cash, stock, or other property that was exchanged for the corporation's stock. If your broker reported this type of transaction to you, the corporation is identified in the box below your name and address on Form 1099-B.

Account number. May show an account or other unique number the payer assigned to distinguish your account.

Box 1a. Shows the trade date of the transaction. For aggregate reporting, no entry will be present.

Box 1b. For broker transactions, may show the CUSIP (Committee on Uniform Security Identification Procedures) number of the item reported.

Box 2. Shows the aggregate proceeds from transactions involving stocks, bonds, other debt obligations, commodities, or forward contracts. May show the proceeds from the disposition of your interest(s) in a widely held fixed investment trust. Loss on forward contracts and changes in control or substantial change in capital structure are shown in parentheses.

...This box does not include proceeds from regulated futures contracts. The broker must indicate whether gross proceeds or gross proceeds less commissions and option premiums were reported to the IRS. Report this amount on Schedule D (Form 1040), Capital Gains and Losses. However, if box 12 is checked, you cannot take a loss on your tax return based on gross proceeds from an acquisition of control or substantial change in capital structure reported in box 2. Do not report this loss on Schedule D (Form 1040). The broker should advise you of any losses on a separate statement.

Box 3. Shows the cash you received, the fair market value of any property or services you received, and/or the fair market value of any trade credits or scrip credited to your account by a barter exchange. See Pub. 525, Taxable and Nontaxable Income, for information on how to report this income.

Box 4. Shows backup withholding. Generally, a payer must backup withhold at a 28% rate if you did not furnish your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 5. Shows the number of shares of the corporation's stock that you held which were exchanged in the change in control or substantial change in capital structure.

Box 6. Shows the class or classes of the corporation's stock that were exchanged in the change in control or substantial change in capital structure.

Box 7. Shows a brief description of the item or service for which the proceeds or bartering income is being reported. For regulated futures contracts and forward contracts, "RFC" or other appropriate description may be shown.

Regulated Futures Contracts:

Box 8. Shows the profit or (loss) realized on regulated futures or foreign currency contracts closed during 2007.

Box 9. Shows any year-end adjustment to the profit or (loss) shown in box 8 due to open contracts on December 31, 2006.

Box 10. Shows the unrealized profit or (loss) on open contracts held in your account on December 31, 2007. These are considered sold as of that date. This will become an adjustment reported in box 9 in 2008.

Box 11. Boxes 8, 9, and 10 are all used to figure the aggregate profit or (loss) on regulated futures or foreign currency contracts for the year. Include this amount on your 2007 Form 6781.

Form 1099-C (OMB No. 1545-1424)

If a federal government agency, certain agencies connected with the Federal Government, financial institution, credit union, or an organization having a significant trade or business of lending money (such as a finance or credit card company) cancels or forgives a debt you owe of $600 or more, this form must be provided to you. Generally, if you are an individual, you must include all canceled amounts, even if less than $600, on the "Other income" line of Form 1040. If you are a corporation, partnership, or other entity, report the canceled debt on your tax return. See the instructions for your tax return.

However, some canceled debts are not includible, or fully includible, in your income, such as certain student loans (see Pub. 525), certain debts reduced by the seller after purchase (see Pub. 334), qualified farm debt (see Pub. 225), qualified real property business debt (see Pub. 334), or debts canceled in bankruptcy (see Pub. 908). Do not report a canceled debt as income if you did not deduct it but would have been able to do so on your tax return if you had paid it. Also, do not include canceled debts in your income to the extent you were insolvent. If you exclude a canceled debt from your income because it was canceled in a bankruptcy case or during insolvency, or because the debt is qualified farm debt or qualified real property business debt, file Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).

Account number. May show an account or other unique number the creditor assigned to distinguish your account.

Box 1. Shows the date the debt was canceled.

Box 2. Shows the amount of debt canceled.

Box 3. Shows interest if included in the canceled debt in box 2. See Pub. 525, Taxable and Nontaxable Income, to see if you must include the interest in gross income.

Box 5. Shows a description of the debt. If box 7 is completed, box 5 shows a description of the property.

Box 6. If the box is marked, the creditor has indicated the debt was canceled in a bankruptcy proceeding.

Box 7. If, in the same calendar year, a foreclosure or abandonment of property occurred in connection with the cancellation of the debt, the fair market value (FMV) of the property will be shown, or you will receive a separate Form 1099-A, Acquisition or Abandonment of Secured Property. Generally, the gross foreclosure bid price is considered to be the FMV. For an abandonment or voluntary conveyance in lieu of foreclosure, the FMV is generally the appraised value of the property. You may have income or loss because of the acquisition or abandonment. See Pub. 544, Sales and Other Dispositions of Assets, for information about foreclosures and abandonments.

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WEDBUSH MORGAN SECURITIES
Investment Bankers for Entrepreneurs
1000 WILSHIRE BLVD., SUITE 855
LOS ANGELES, CA 90017
www.wedbush.com
Phone: (213) 688-8000

1099-CONSOLIDATED TAX STATEMENT
Tax Year 2007 Copy B For Recipient

Department of the Treasury - Internal Revenue Service
(Keep for your records)

FEDERAL ID NUMBER: 95-2495390

TAXPAYER ID NUMBER: 574-12-6319
ACCOUNT NUMBER: CGMH 2451-6117

JAN - 5 2009

The following detailed information is NOT provided to the Internal Revenue Service, but is being provided to you as a courtesy. The IRS box numbers referenced for individual items listed below comprise the totals shown on the 1099 forms from the previous pages.

1099-DIV DIVIDENDS AND DISTRIBUTIONS

DESCRIPTION	CUSIP	EX-DIVIDEND DATE	DATE	ACTIVITY	AMOUNT	IRS BOX	COUNTRY	NOTES
HANCOCK SVRGN INVS CL A	47803P302	03/19/07	03/22/07	QUALIFIED DIVIDEND	$4.42	1B		
HANCOCK SVRGN INVS CL A	47803P302	06/18/07	06/21/07	QUALIFIED DIVIDEND	$5.58	1B		
HANCOCK SVRGN INVS CL A	47803P302	09/17/07	09/20/07	QUALIFIED DIVIDEND	$4.48	1B		
HANCOCK SVRGN INVS CL A	47803P302	12/12/07	12/17/07	QUALIFIED DIVIDEND	$6.38	1B		
TOTAL DIVIDENDS					**$20.86**			
HANCOCK SVRGN INVS CL A	47803P302		12/17/07	CAPITAL GAIN	$194.80	2A		
TOTAL CAPITAL GAINS DISTRIBUTIONS					**$194.80**			

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WEDBUSH MORGAN SECURITIES
Investment Bankers for Entrepreneurs

1000 WILSHIRE BLVD., SUITE 855
LOS ANGELES, CA 90017
www.wedbush.com
Phone: (213) 688-8000

1099-CONSOLIDATED TAX STATEMENT
Tax Year 2007 Copy B For Recipient

Department of the Treasury - Internal Revenue Service
(Keep for your records)

FEDERAL ID NUMBER: 95-2495390

TAXPAYER ID NUMBER: 574-12-6319
ACCOUNT NUMBER: CGMH 2451-6117

This section lists non-federally reported activity, which may be useful in helping you prepare your tax return. This activity may or may not be taxable at the state or local level and will NOT be furnished to the Internal Revenue Service. Please review this information with your tax advisor.

BOX	NON-FEDERALLY REPORTED ACTIVITY TOTALS FOR TAX YEAR 2007	
1.	MARGIN INTEREST	$0.00
2.	OID EXEMPT MUNICIPAL INTEREST	$0.00
4.	RETURN OF CAPITAL OR PRINCIPAL	$0.00
5.	OID INCOME SUBJECT TO ALT MIN TAX	$0.00
7.	EXEMPT UIT INVESTMENT EXPENSES	$0.00
8.	PARTNERSHIP (MLP) DISTRIBUTIONS	$0.00
9.	ACCRUED INTEREST ON PURCHASES	$0.00
10.	PURCHASES	$215.66
11.	OPTION TRANSACTIONS	$0.00

PURCHASES

DESCRIPTION	CUSIP	DATE	ACTIVITY	QUANTITY	PRICE	AMOUNT	NOTES
HANCOCK SVRGN INVS CL A	47803P302	03/22/07	PURCHASE	0.23600	$0.0000	$4.42	
HANCOCK SVRGN INVS CL A	47803P302	06/21/07	PURCHASE	0.27400	$0.0000	$5.58	
HANCOCK SVRGN INVS CL A	47803P302	09/20/07	PURCHASE	0.21800	$0.0000	$4.48	
HANCOCK SVRGN INVS CL A	47803P302	12/17/07	PURCHASE	0.34500	$0.0000	$6.38	
COCK SVRGN INVS CL A	47803P302	12/17/07	PURCHASE	10.53000	$0.0000	$194.80	
TOTAL PURCHASES						$215.66	

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Return Mail Processing Only
Not For Client Correspondence
P.O. Box 5275
Sioux Falls, SD 57117-5275

Retirement Account

JAN - 5 2009

AT 01 010851 69407H 42 A**3DGT

WELLS FARGO BANK IRA C/F
OLGA B COOK
513 9TH AVE
FAIRBANKS AK 99701-4901

Financial Consultant: GK46

Contact Us At:
ROBERT BELL
301 W. NORTHERN LIGHTS BLVD.,
ANCHORAGE AK 99503
(907) 456-8918
24 Hour Assistance: (866) 281-7436

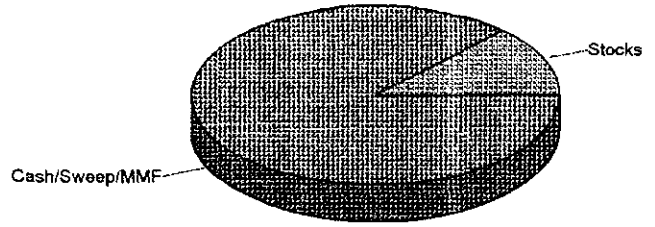
Last Statement Date:
October 31, 2008

Account Number:
W20977829

See Page 2 for important messages about your account. You may also review your account information online at http://www.wellsfargo.com. Ask us for more details.

Portfolio Summary

November 1, 2008 - November 30, 2008		Current Value	Previous Value
87 %	Cash, Cash Sweep & Money Mkt Fds	$16,473.32	$16,428.95
13 %	Stocks	2,436.66	2,408.54
Total Portfolio Value		**$18,909.98**	**$18,837.49**



Year to Date Change in Assets

Total Asset Value as of November 30, 2008	$18,909.98
Total Asset Value as of December 31, 2007	19,463.92
Net Change	**($553.94)**

Income Summary

	November 30, 2008	Year to Date
Wells Fargo Cash Sweep - FDIC	$0.02	$0.17
Taxable Money Market Funds	22.85	341.20
Equity Securities & Mutual Funds	21.50	99.84
Total Income	**$44.37**	**$441.21**

Investment and Insurance Products:
- Are **NOT** insured by the FDIC or any other federal government agency
- Are **NOT** deposits of or guaranteed by the Bank or any Bank Affiliate
- May Lose Value

Wells Fargo Investments, LLC (Member SIPC), a non-bank affiliate of Wells Fargo & Company. Wells Fargo Cash Sweep is held at Wells Fargo Bank, N.A., a bank affiliate of Wells Fargo & Company, and is FDIC-insured up to applicable limits and is Not SIPC covered. Precious metals are not SIPC covered or FDIC insured.

WELLS FARGO

1. This statement is provided to clients of Wells Fargo Investments, LLC ("WFI")(member SIPC). All orders and transactions shall be solely for your account and risk, shall be subject to the constitution, rules, regulations, customs, usages, rulings and interpretations of the exchange or market and the clearing facility, if any, where the transactions are executed and/ or settled and to all applicable laws and regulations.

2. It is your responsibility to review your statement and promptly report any inaccuracy or discrepancy to us. Any oral communication must be confirmed to us in writing at the address on the front of your statement to protect your rights, including rights under the Securities Investor Protection Act. We will consider this account statement correct unless we receive written notice from you of a suspected error within 30 days of receipt.

3. Securities and other assets (except brokered certificates of deposit and Wells Fargo Cash Sweep) are **Not FDIC Insured, May lose value and are Not bank guaranteed, but** are protected against broker-dealer insolvency up to a value of $500,000 (limited to $100,000 for cash claims) by SIPC. Explanatory brochure available by calling 202-371-8300 or at www.sipc.org. Please refer to your Brokerage Account Agreement under the section titled **Not FDIC Insured** or contact us for further information. Please be aware that **SIPC** account protection features **do not** protect against investment losses. The Wells Fargo Cash Sweep is held at Wells Fargo Bank, N.A. and (along with brokered CDs) is FDIC-insured up to applicable limits. Please see the *Disclosure Statement for Sweep Features* for further information. Precious metals are not SIPC covered or FDIC insured.

4. If you maintain a margin account, this is a combined statement of your general account and of a special memorandum account maintained for you under Regulation T of the Board of Governors of the Federal Reserve System. The permanent record of the separate account as required by Regulation T is available for your inspection upon written request.

Free credit balances may be used in the conduct of WFI's business subject to applicable rules and regulations. Any free credit balance in your account is payable immediately on demand.

5. If you trade options in your account, you are responsible to inform WFI of any change in your investment objectives or financial situation. Exercise notices for option contracts are allocated among client's short positions pursuant to a procedure that selects those contracts from among customer short option positions including positions established on the date of assignment. All short options positions are liable for assignment at any time. Commissions and other charges incurred in connection with the execution of option transactions have been included in confirmations of these transactions previously furnished to you. A summary of this information will be furnished upon written request.

6. Taxable dividends and interest reported on this statement for retirement plan accounts are generally exempt from year-end government reporting. If earnings are taxable in the tax year received, you will receive a Form 1099 at year-end. The information is provided as a convenience only, and may vary from the year-end tax report. There is no representation regarding the taxability of earnings at the state or local levels.

7. A copy of the financial statements for WFI is available for personal inspection at its main offices in Minneapolis, Minnesota or a copy will be furnished upon written request.

8. Under the NASD Regulation's Public Disclosure Program, the NASDR provides certain information regarding the disciplinary history of broker/dealers and their associated persons. Such information can be obtained from the NASDR Public Disclosure Program hotline number (1-800-289-9999) or the NASDR web site (www.nasdr.com). An investor brochure that includes information describing the NASDR Public Disclosure Program will be furnished upon written request.

9. Payment for Order Flow: WFI may receive payment for order flow from various market centers, but payment for order flow is not a consideration for any routing decisions. Unless otherwise instructed, WFI routes equity orders taking into consideration, among other factors, the quality and speed of execution, price improvement statistics, liquidity enhancements, NASDAQ report cards, and T+1 reports. WFI uses compensation received from market centers to help offset costs associated with executing orders. Payment information on specific market centers can be found by selecting the Wells Fargo Investments Equity Order Routing Information link on the bottom of the Wells Fargo Brokerage web site at www.wellsfargo.com/investing/styles/ and clicking on the Material Aspects of the Relationship link next to each market center. Information on payments and/ or credits received in connection with a specific transaction will be furnished upon written request.

Notice of Availability of Order Routing Information: WFI prepares quarterly reports describing its order routing practices for non-directed orders routed to a particular venue for execution. These reports are publicly available through a link at the bottom of the Wells Fargo Brokerage web site, www.wellsfargo.com/investing/styles/. WFI will furnish a printed copy of the quarterly report upon written request. In addition, WFI will provide on request more detailed information relating to the routing of any order in the six months prior to the request.

10. Dividend reinvestment transactions were affected by WFI acting as agent. Additional information regarding these transactions will be furnished upon written request.

11. Open orders will remain in effect until executed or canceled by you or until the expiration date on the open order confirmation previously sent to you. Failure to cancel an open order may result in the transaction being executed for your account. WFI has no responsibility to cancel an open order at its own initiative.

12. The prices of securities displayed on your statement are derived from various sources, and in some cases may be higher or lower than the price you would actually receive in the market. For securities listed on an exchange or trading continually in an active marketplace, the price reflects market quotations at the close of your statement period. For certificates of deposit ("CDs"), the value shown reflects the market value of the CDs. The actual value of the CDs may be different from their purchase price. CDs held until maturity are redeemed by the issuer at their face value. If CDs are sold prior to maturity, the result could be a significant loss of principal. The secondary market for CDs may be limited. The maturity value of CDs can be found under the "Quantity" section. If the CD market value listed appears as 'N/A', the market value was not available at the time this statement was prepared. Please note that any unpriced positions are not reflected in the total account value reported on this statement. For bonds trading less frequently, we generally rely on outside pricing services or a computerized pricing model which cannot always give us actual market values. Similarly, some annuity values provided by outside carriers may be estimates.

If we cannot obtain a price or estimate, "N/A" appears. Direct Participation Program (DPP) and Real Estate Investment Trust (REIT) securities are generally illiquid; the value of the security will be different than its purchase price.

13. In the event of a partial CALL of corporate or municipal bonds, or preferred stock held in bulk segregation, the securities to be called will automatically be selected on a random basis, as is customary in the securities industry. The probability that your securities will be selected is proportional to the amount of your holdings relative to the total holdings. A detailed description of the random selection procedure is available upon written request.

14. All information provided with respect to cost basis is derived from transactions in the account or information supplied by you or other sources. There is no guarantee as to the accuracy of cost basis information or the profit and loss information provided. Accordingly cost basis information is not intended for tax reporting purposes. Please inform us in the event that a cost basis is not accurate.

Reported gains and losses are based on a tax lot basis and are not based on an average cost. This information should not be used for tax purposes.

15. The information provided in this statement is for informational purposes only and should not be used for tax preparation. This information is not intended and should not be construed as tax, accounting or legal advice. Please consult your tax advisor regarding the tax consequences of your investment decisions.

When reporting your taxes please rely exclusively on Form 1099 and other tax reporting forms that WFI will provide to you at year-end.

16. Complaints should be directed to the Branch Office Manager. If you are unable to reach the Branch Office Manager, complaints may be directed to Wells Fargo Investments, Attn: Compliance Department, P.O. Box 7898, San Francisco, CA, 94120-9816 or by calling 866-415-6982.

17. For a change of address, please send your request to WFI at the address shown on the front of this statement.

WFI / WT REV. 10/08 v.09

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WELLS FARGO

WELLS FARGO BANK IRA C/F
OLGA B COOK

Account number: **W20977829**
Financial Consultant: ROBERT BELL
Phone Number: (907) 456-8918

JAN - 5 2009

Activity Summary

	Amount
Total Asset Value as of October 31, 2008	**$18,837.49**
Cash/Cash Sweep/Money Mkt Fds Activity for November	
Closing Balance as of 10/31/2008	16,428.95
Income	44.37
Closing Balance as of 11/30/2008	**$16,473.32**

Important Information About Your Account

Focus on Year-End Planning Guide
Now is the time to start thinking about your financial strategies for year end and beyond. Our Focus on Year-End Planning: Guide for Investors covers broad investment trends you should be thinking about, as well as some short-term tax-planning steps to take before year-end. Contact a Wells Fargo Investment Professional for your complimentary copy today.

Bring 2009 into Focus
Concerned about recent volatility? Log on to wellsfargo.com/focus2009 to view our exclusive Focus 2009 Economic Outlook webcast with Wells Fargo Bank Chief Investment Officer Dean Junkans. Gain perspective on market volatility and how you should position your portfolio for the year ahead. After watching the webcast, contact your Wells Fargo Investments Professional to review your overall financial situation.

Portfolio Value

CASH, CASH SWEEP & MONEY MKT FDS 87%

Quantity	Description	Market Price	Market Value	Estimated Annual Income
	WELLS FARGO CASH SWEEP FDIC INSURED Average Yield: .17%		$152.32	
16,321.00	WF ADVANTAGE MONEY MARKET FD CL A 30 Day Yield: 1.71%	1.00	16,321.00	279
	Cash, Cash Sweep & Money Mkt Fds Subtotal		**$16,473.32**	**$279**

STOCKS 13%

Quantity	Description	Symbol	Market Price	Long/ Short	Market Value	Estimated Annual Income
200	ASSOCIATES FIRST CAP CORP RESIDUAL VALUE OBLG	ASFZ	$0.0002	Long	$0.04	
11	EDEN BIOSCIENCE CORP	EDEN	0.87	Long	9.57	

WELLS FARGO

WELLS FARGO BANK IRA C/F
OLGA B COOK

Account number: **W20977829**
Financial Consultant: ROBERT BELL
Phone Number: (907) 456-8918

Portfolio Value (continued)

STOCKS (continued) 13%

Quantity	Description	Symbol	Market Price	Long/ Short	Market Value	Estimated Annual Income
200	LTV CORP NEW	LTVCQ	0.001	Long	0.20	
86	PUGET ENERGY INC NEW	PSD	24.48	Long	2,105.28	86
27	SUPERVALU INC	SVU	11.91	Long	321.57	18
	Stocks Subtotal				**$2,436.66**	**$104**

	Total Market Value	Total Estimated Annual Income
TOTAL PORTFOLIO VALUE	**$18,909.98**	**$383**

Activity Details

PURCHASES AND SALES & SWEEPS

SETTLED TRADES & SWEEPS

Trade Date	As Of Date	Description	Symbol/ CUSIP	Settle Date	Activity	Accrued Interest	Quantity	Price	Amount
11/18/08	11/18/08	WELLS FARGO CASH SWEEP FDIC INSURED	09999361	11/18/08	SWEEP				($21.50)
11/28/08	11/28/08	WELLS FARGO CASH SWEEP FDIC INSURED	09999361	11/28/08	REINVEST INT				(0.02)
11/28/08	11/28/08	WF ADVANTAGE MONEY MARKET FD CL A	09999752	11/28/08	REINVEST DIV				(22.85)
	TOTAL								**($44.37)**

INCOME

WELLS FARGO CASH SWEEP & MONEY MARKET FUNDS

Date	Description		Activity	Amount
11/28/08	WELLS FARGO CASH SWEEP .17% 30 DAY AVG. YIELD	FDIC INSURED PERIOD ENDING 11/30/08	INTEREST	$0.02
11/28/08	WF ADVANTAGE MONEY	MARKET FD CL A	DIVIDEND	22.85
	TOTAL			**$22.87**

WELLS FARGO

WELLS FARGO BANK IRA C/F
OLGA B COOK

Account number: **W20977829**
Financial Consultant: ROBERT BELL
Phone Number: (907) 456-8918

JAN - 5 2009

Activity Details (continued)

INCOME (continued)

STOCKS

Date	Description	Activity	Amount
11/17/08	PUGET ENERGY INC NEW	DIVIDEND	$21.50
	TOTAL		**$21.50**

Cash Flow Analysis

CHRONOLOGICAL TRANSACTION SUMMARY

Date	As Of Date	Description	Activity	Quantity	Price	Debit	Credit	Balance
		Beginning Cash Balance						**$0.00**
11/17/08	11/15/08	PUGET ENERGY INC NEW	DIVIDEND				$21.50	$21.50
11/18/08	11/18/08	WELLS FARGO CASH SWEEP	SWEEP			(21.50)		0.00
11/28/08	11/28/08	WELLS FARGO CASH SWEEP	INTEREST				0.02	0.02
11/28/08	11/28/08	WELLS FARGO CASH SWEEP	REINVEST INT			(0.02)		0.00
11/28/08	11/28/08	WF ADVANTAGE MONEY	DIVIDEND				22.85	22.85
11/28/08	11/28/08	WF ADVANTAGE MONEY	REINVEST DIV			(22.85)		0.00
		Ending Cash Balance						**$0.00**

IRA Account Summary & Beneficiary Designation

	Current Tax Year	Previous Tax Year
Contributions	$0.00	N/A
Distributions	$0.00	N/A
Rollovers	$0.00	N/A
Tax Withheld	$0.00	N/A
12/31/07 Fair Market Value:		**N/A**

According to our records, you have designated the following beneficiaries for your retirement account. This section is provided for your informational purposes only, and reflects the latest entry in our system as of the date this statement was produced. At the time of death, assets will be dispersed based upon the latest written designation on file. If this information is incorrect or incomplete please call your financial consultant.

Primary Beneficiary (ies)	Relationship	Percentage
Not available - please provide		

Contingent Beneficiary (ies)	Relationship	Percentage
None		

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GunnAllen Financial
5002 W. Waters Ave.
Tampa, FL 33634-1313
Phone: 800.889.2914

Individual Retirement Account Statement

JAN - 5 2009

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IRA FBO DENNIS E COOK
PERSHING LLC AS CUSTODIAN
431 BIRCH HILL ROAD
FAIRBANKS AK 99712-1621

Account Number: 0CK-908899
Statement Period: 10/01/2008 - 10/31/2008

Your Registered Representative:
K. BRISARD / P. BRISARD
(212) 618-1834

Valuation at a Glance

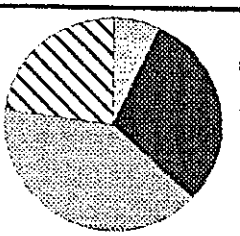
	This Period
Beginning Account Value	**$21,237.62**
Dividends/Interest	192.54
Change in Account Value	-5,065.84
Ending Account Value	**$16,364.32**
Estimated Annual Income	**$814.73**

FDIC insured bank deposits are not securities, are not held by Pershing LLC, and are not covered by the Securities Investor Protection Corporation. These bank deposits are covered by the Federal Deposit Insurance Corporation.

Asset Allocation

	Value Last Period	Value This Period	Percent Allocation
Cash, Money Funds, and FDIC Deposits[1]	943.04	1,135.58	7%
Equities	4,720.58	4,874.04	30%
Mutual Funds	9,790.00	6,574.70	40%
Exchange-Traded Products	5,784.00	3,780.00	23%
Account Total (Pie Chart)	**$21,237.62**	**$16,364.32**	**100%**

1 Includes FDIC insured bank deposits.



Asset Allocation percentages are rounded to the nearest whole percentage.

Pie Chart allocation excludes all asset classes which net to a liability.

DALBAR RATED FOR COMMUNICATION
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PAR-02-ROLL
Clearing Through Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation
Member FINRA, NYSE, SIPC

Summary of Gains and Losses

	Realized		Unrealized
	This Period	Year-to-Date	This Period
Short-Term Gain/Loss	0.00	-6,731.89	-9,978.31
Net Gain/Loss	**0.00**	**-6,731.89**	**-9,978.31**

This summary excludes transactions where cost basis information is not available.

Customer Service Information

Your Registered Representative: BCB

:RISARD / P. BRISARD
20TH FL
14 WALL ST
NEW YORK NY 10005-2123

Contact Information

Telephone Number: (212) 618-1834

Customer Service Information

Service Hours: Weekdays 08:30 a.m. - 05:30 p.m. EST
Customer Service Telephone Number: (800) 889-2914
Web Site: www.gunnallen.com

Investment Objective: SHORT TERM GROWTH

If you have any questions concerning your investment objective or wish to make a change, please contact Your Registered Representative.

Prior Year-End Fair Market Value: $35,640.15 **will be furnished to the Internal Revenue Service.**

Portfolio Holdings

Quantity	Opening Date	Account Number	Activity Ending	Opening Balance	Closing Balance	Accrued Income	Income This Year	30-Day Yield	Current Yield
Cash, Money Funds, and FDIC Deposits **7.00% of Portfolio**									
FDIC Insured Bank Deposits									
SERVE INSURED DEPOSITS									
1,135.580	10/01/08	0CK908899	10/31/08	943.04	1,135.58	0.02	5.35	N/A	0.00%
Total FDIC Insured Bank Deposits				**$943.04**	**$1,135.58**	**$0.02**	**$5.35**		
Total Cash, Money Funds, and FDIC Deposits				**$943.04**	**$1,135.58**	**$0.02**	**$5.35**		

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Individual Retirement Account Statement

JAN - 5 2009

Statement Period: 10/01/2008 - 10/31/2008

Portfolio Holdings *(continued)*

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Equities 30.00% of Portfolio								
Common Stocks								
)EN BIOSCIENCE CORP COM PAR								
Dividend Option: Cash								
Security Identifier: EDEN								
11.000	Please Provide	N/A	Please Provide	0.8200	9.02	N/A		
SLTV CORP NEW NO STOCKHOLDERS								
EQUITY 12/07/01								
Dividend Option: Cash								
Security Identifier: LTVCQ								
200.000	Please Provide	N/A	Please Provide	0.0001	0.02	N/A		
Total Common Stocks			**$0.00**		**$9.04**	**$0.00**	**$0.00**	
Real Estate Investment Trusts								
ANNALY CAP MANAGEMENT INC								
Dividend Option: Cash								
Security Identifier: NLY								
350.000	02/08/08	20.8070	7,282.49	13.9000	4,865.00	-2,417.49	770.00	15.82%
Total Real Estate Investment Trusts			**$7,282.49**		**$4,865.00**	**-$2,417.49**	**$770.00**	
Total Equities			**$7,282.49**		**$4,874.04**	**-$2,417.49**	**$770.00**	

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Mutual Funds 40.00% of Portfolio								
Mutual Funds								
SLATIN AMERICAN DISCOVERY FUND INC								
Closed End Fund								
Security Identifier: LDF								
Dividend Option: Cash								
400.000	Please Provide	N/A	Please Provide	11.9540	4,781.60	N/A	12.64	0.26%

Portfolio Holdings *(continued)*

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Mutual Funds *(continued)*								
Mutual Funds *(continued)*								
LATIN AMERICAN DISCOVERY FUND INC *(continued)*								
150.000	07/31/08	25.7530	3,863.00	11.9540	1,793.10	-2,069.90	4.74	0.26%
550.000	**Total**		**$3,863.00**		**$6,574.70**	**-$2,069.90**	**$17.38**	
Total Mutual Funds			**$3,863.00**		**$6,574.70**	**-$2,069.90**	**$17.38**	
Total Mutual Funds			**$3,863.00**		**$6,574.70**	**-$2,069.90**	**$17.38**	

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Exchange-Traded Products 23.00% of Portfolio								
Exchange-Traded Products								
MARKET VECTORS RUSSIA ETF TR SHS								
BEN INT								
Security Identifier: RSX								
Dividend Option: Cash								
200.000	01/31/08	46.3550	9,270.92	18.9000	3,780.00	-5,490.92	22.00	0.58%
Total Exchange-Traded Products			**$9,270.92**		**$3,780.00**	**-$5,490.92**	**$22.00**	
Total Exchange-Traded Products			**$9,270.92**		**$3,780.00**	**-$5,490.92**	**$22.00**	

	Cost Basis	Market Value	Unrealized Gain/Loss	Accrued Interest	Estimated Annual Income
)tal Portfolio Holdings	**$21,551.99**	**$16,364.32**	**-$9,978.31**	**$0.00**	**$814.73**

[5] Unrealized gains and losses are not reported for securities for which cost basis or market value is not available.

The values, where indicated, of real estate investment trusts (REITs) and direct participation programs (DPPs), including limited partnerships, have been provided by the REITs or DPPs, generally through an intermediary. The values are not guaranteed and are intended to reflect an estimate of the interest in the REIT or DPP represented by the units or shares described above. REIT and DPP securities are generally illiquid, and the value may not be realized when you seek to liquidate the security. Where no value is indicated, please note that:

- REIT or DPP securities are generally illiquid
- The value of the security may be different from its purchase price
- Accurate valuation information is not available.

Please note the values for DPPs and REITs which are provided by the REITs and DPPs may not reflect recent activity and do not reflect an independent evaluation of the REIT or DPP.

Disclosures and Other Information

GunnAllen Financial
5002 W. Waters Ave.
Tampa, FL 33634-1313
Phone: 800.889.2914

Individual Retirement Account Statement

JAN - 5 2009

Statement Period: 10/01/2008 - 10/31/2008

Portfolio Holdings *(continued)*

Pricing - Securities prices may vary from actual liquidation value. Prices shown should only be used as a general guide to portfolio value. Prices are received from various pricing services. However, pricing services are sometimes unable to provide timely information. Where pricing sources are not readily available, particularly on certain debt securities, estimated prices may be generated by a matrix system taking various factors into consideration. The pricing of listed options takes into account the last closing price, as well as the current bid and offer prices. Where securities have not been priced, such securities have not been included in the Asset Allocation information at the beginning of this statement.

Investment - The dollar amount of Mutual Fund distributions, Money Market Fund dividend income, Bank Deposit interest income, or dividends for other securities shown on your Statement may have been reinvested. You will not receive confirmation of these reinvestments. However, information pertaining to these transactions which would otherwise appear on confirmations, including the time of execution and the name of the person from whom your security was purchased, will be furnished to you upon written request to your introducing firm. In dividend reinvestment transactions, Pershing acts as your agent and receives payment for order flow, the source and nature of which payment will be furnished to you upon written request to your introducing firm.

Option Disclosure - Information with respect to commissions and other charges incurred in connection with the execution of option transactions has been included in confirmations previously furnished to you. A summary of this information is available to you promptly upon your written request directed to your introducing firm. In order to assist your introducing firm in maintaining current background and financial information concerning your option accounts, please promptly advise them in writing of any material change in your investment objectives or financial situation. Expiring options which are valuable are exercised automatically pursuant to the exercise by exception procedure of the Options Clearing Corporation. Additional information regarding this procedure is available upon written request to your introducing firm.

Foreign Currency Transactions - Pershing may execute foreign currency transactions as principal for your account. Pershing may automatically convert foreign currency to or from U.S. dollars for dividends and similar corporate action transactions unless you instruct your financial organization otherwise. Pershing's currency conversion rate will not exceed the highest interbank conversion rate identified from customary banking sources on the conversion date or the prior business day, increased by up to 1%, unless a particular rate is required by applicable law. Your financial organization may also increase the currency conversion rate. This conversion rate may differ from rates in effect on the date you executed a transaction, incurred a charge, or received a credit. Transactions converted by agents (such as depositories) will be billed at the rates such agents use.

Proxy Vote - Securities held by you on margin (securities not fully paid for by you) may be lent by Pershing to itself or others in accordance with the terms outlined in the Margin Agreement. The right to vote your shares held on margin will be reduced by the amount of shares on loan. The Proxy Voting Instruction Form sent to you may reflect a smaller number of shares entitled to vote than the number of shares in your margin account.

Exchange-Traded Products - Exchange-traded products may include any combination of exchange-traded funds, exchange-traded notes, and other exchange-traded products.

Transactions in Date Sequence

Process/ Settlement Date	Trade/ Transaction Date	Activity Type	Description	Quantity	Price	Accrued Interest	Amount
10/17/08	10/16/08	MONEY MARKET INTEREST REINVESTED	RESERVE INS DEPOSITS INTEREST REINVESTED				-0.04
10/17/08	10/16/08	MONEY MARKET FUND INTEREST RECEIVED	RESERVE INS DEPOSITS INTEREST CREDITED				0.04

Transactions in Date Sequence *(continued)*

Process/ Settlement Date	Trade/ Transaction Date	Activity Type	Description	Quantity	Price	Accrued Interest	Amount
10/29/08		CASH DIVIDEND RECEIVED	350 SHRS ANNALY CAP MANAGEMENT INC RD 09/18 PD 10/29/08				192.50
10/30/08		MONEY MARKET DEPOSIT	RESERVE INS DEPOSITS				-192.50

Transactions Summary	Total Amount	Currency
UNITED STATES DOLLAR	0.00	USD

The price and quantity displayed may have been rounded.

FDIC Insured Bank Deposits

Date	Activity Type	Description	Amount	Balance
Sweep FDIC Insured Bank Deposits				
RESERVE INSURED DEPOSITS				
Account Number: 0CK908899	Activity Ending: 10/31/08			
10/01/08	Opening Balance		943.04	943.04
10/15/08	Deposit	INTEREST CREDITED	0.04	943.08
10/16/08		YIELD .05%		943.08
'16/08		STILLWATER NATL BANK		943.08
.../16/08		A/O 10/16 $943.08		943.08
10/30/08	Deposit	DEPOSIT	192.50	1,135.58
10/31/08	**Closing Balance**			**$1,135.58**
Total FDIC Insured Bank Deposits				**$1,135.58**

The FDIC Insured Bank Deposits are not securities and are not covered by the Securities Investor Protection Corporation (SIPC). The Bank Deposits at each bank are insured by the Federal Deposit Insurance Corporation (FDIC) up to $100,000 for each category of legal ownership and $250,000 for each individual retirement account and certain other self directed retirement accounts. Please review this in connection with other deposits you may have at each respective bank.

GunnAllen Financial
5002 W. Waters Ave.
Tampa, FL 33634-1313
Phone: 800.889.2914

Individual Retirement Account Statement

JAN - 5 2009

Statement Period: 10/01/2008 - 10/31/2008

Income and Expense Summary

	Current Period Tax Deferred	Year-to-Date Tax Deferred
Dividend Income		
Equities	192.50	755.92
Interest Income		
FDIC Insured Bank Deposits	0.04	5.35
Total Dividends, Interest, Income and Expenses	**$192.54**	**$761.27**
Distributions		
Long - Term Capital Gain Distributions	0.00	2,878.12
Short - Term Capital Gain Distributions	0.00	451.64
Total Distributions	**$0.00**	**$3,329.76**

Messages

Although a money market mutual fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in a money market mutual fund. Please see the money market mutual fund's prospectus or contact your investment professional for additional information.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)-INSURED BANK DEPOSITS ARE NOT PROTECTED BY SECURITIES INVESTOR PROTECTION CORPORATION (SIPC).

YOU MAY VIEW CURRENT MONEY MARKET FUND RATES BY VISITING WWW.PERSHING.COM AND SELECTING THE LINK AT THE BOTTOM OF THE PAGE TITLED "MONEY MARKET FUND AND FDIC INSURED BANK RATES AND BANK LISTS." PLEASE NOTE THAT WE MAY NOT OFFER ALL OF THE MONEY MARKET FUNDS LISTED ON THE PERSHING WEBSITE.

Clarity is the cornerstone of trust between investors and their financial representative. Please visit www.gunnallen.com and read our "Investor's Bill of Rights."

Clearing Through Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation
Member FINRA, NYSE, SIPC

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Phone: 800.889.2914

Brokerage
Account Statement

JAN - 5 2009

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DENNIS E COOK
714 4TH AVE STE 200
FAIRBANKS AK 99701-4470

Account Number: 0DA-011636
Statement Period: 10/01/2008 - 10/31/2008

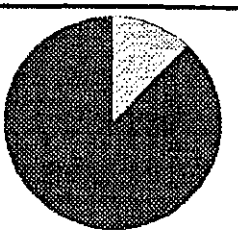
Your Registered Representative:
K. BRISARD / P. BRISARD
(212) 618-1834

Valuation at a Glance

	This Period
Beginning Account Value	**$19,591.48**
Dividends/Interest	330.00
Change in Account Value	-2,454.00
Ending Account Value	**$17,467.48**
Estimated Annual Income	**$1,320.00**

Asset Allocation

	Value Last Period	Value This Period	Percent Allocation
Cash, Money Funds, and FDIC Deposits	1,745.48	2,075.48	12%
Equities	17,846.00	15,392.00	88%
Account Total (Pie Chart)	**$19,591.48**	**$17,467.48**	**100%**



Asset Allocation percentages are rounded to the nearest whole percentage.

Pie Chart allocation excludes all asset classes which net to a liability.

DALBAR RATED FOR COMMUNICATION

Clearing Through Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation
Member FINRA, NYSE, SIPC

Summary of Gains and Losses

	Realized		Unrealized
	This Period	Year-to-Date	This Period
Short-Term Gain/Loss	0.00	0.00	-3,833.98
Long-Term Gain/Loss	0.00	0.00	-3,727.96
Net Gain/Loss	**0.00**	**0.00**	**-7,561.94**

This summary excludes transactions where cost basis information is not available.

Customer Service Information

Your Registered Representative: BCB	Contact Information	Customer Service Information
K. BRISARD / P. BRISARD 20TH FL 14 WALL ST NEW YORK NY 10005-2123	**Telephone Number:** (212) 618-1834	**Service Hours:** Weekdays 08:30 a.m. - 05:30 p.m. EST **Customer Service Telephone Number:** (800) 889-2914 **Web Site:** www.gunnallen.com
Investment Objective: None Specified		Please discuss your investment objective with Your Registered Representative.

Portfolio Holdings

Quantity	Opening Date	Account Number	Activity Ending	Opening Balance	Closing Balance	Accrued Income	Income This Year	30-Day Yield	Current Yield
Cash, Money Funds, and FDIC Deposits 12.00% of Portfolio									
Cash Balance				1,745.48	2,075.48				
Total Cash, Money Funds, and FDIC Deposits				**$1,745.48**	**$2,075.48**	**$0.00**	**$0.00**		

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Equities 88.00% of Portfolio								
Common Stocks								
AECOM TECHNOLOGY CORP COM								
Dividend Option: Cash								
Security Identifier: ACM								
400.000	07/12/07	26.9500	10,779.96	17.6300	7,052.00	-3,727.96		
Total Common Stocks			**$10,779.96**		**$7,052.00**	**-$3,727.96**	**$0.00**	

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Member FINRA, NYSE, SIPC

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Tampa, FL 33634-1313
Phone: 800.889.2914

Brokerage Account Statement

Statement Period: 10/01/2008 - 10/31/2008

JAN - 5 2009

Portfolio Holdings *(continued)*

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Equities *(continued)*								
Real Estate Investment Trusts								
VALY CAP MANAGEMENT INC								
Dividend Option: Cash								
Security Identifier: NLY								
600.000	02/04/08	20.2900	12,173.98	13.9000	8,340.00	-3,833.98	1,320.00	15.82%
Total Real Estate Investment Trusts			**$12,173.98**		**$8,340.00**	**-$3,833.98**	**$1,320.00**	
Total Equities			**$22,953.94**		**$15,392.00**	**-$7,561.94**	**$1,320.00**	

	Cost Basis	Market Value	Unrealized Gain/Loss	Accrued Interest	Estimated Annual Income
Total Portfolio Holdings	**$25,029.42**	**$17,467.48**	**-$7,561.94**	**$0.00**	**$1,320.00**

[3] The cost basis of securities positions acquired prior to the availability of the PORTFOLIO EVALUATION SERVICE for this account, or delivered into this account, has been provided to PERSHING by your financial institution, and we make no representation as to the accuracy of such cost basis.

The values, where indicated, of real estate investment trusts (REITs) and direct participation programs (DPPs), including limited partnerships, have been provided by the REITs or DPPs, generally through an intermediary. The values are not guaranteed and are intended to reflect an estimate of the interest in the REIT or DPP represented by the units or shares described above. REIT and DPP securities are generally illiquid, and the value may not be realized when you seek to liquidate the security. Where no value is indicated, please note that:

- REIT or DPP securities are generally illiquid
- The value of the security may be different from its purchase price
- Accurate valuation information is not available.

Please note the values for DPPs and REITs which are provided by the REITs and DPPs may not reflect recent activity and do not reflect an independent evaluation of the REIT or DPP.

Disclosures and Other Information

Pricing - Securities prices may vary from actual liquidation value. Prices shown should only be used as a general guide to portfolio value. Prices are received from various pricing services. However, pricing services are sometimes unable to provide timely information. Where pricing sources are not readily available, particularly on certain debt securities, estimated prices may be generated by a matrix system taking various factors into consideration. The pricing of listed options takes into account the last closing price, as well as the current bid and offer prices. Where securities have not been priced, such securities have not been included in the Asset Allocation information at the beginning of this statement.

Portfolio Holdings *(continued)*

Reinvestment - The dollar amount of Mutual Fund distributions, Money Market Fund dividend income, Bank Deposit interest income, or dividends for other securities shown on your Statement may have been reinvested. You will not receive confirmation of these reinvestments. However, information pertaining to these transactions which would otherwise appear on confirmations, including the time of execution and the name of the person from whom your security was purchased, will be furnished to you upon written request to your introducing firm. In dividend reinvestment transactions, Pershing acts as your agent and receives payment for order flow, the source and nature of which payment will be furnished to you upon written request to your introducing firm.

Option Disclosure - Information with respect to commissions and other charges incurred in connection with the execution of option transactions has been included in confirmations previously furnished to you. A summary of this information is available to you promptly upon your written request directed to your introducing firm. In order to assist your introducing firm in maintaining current background and financial information concerning your option accounts, please promptly advise them in writing of any material change in your investment objectives or financial situation. Expiring options which are valuable are exercised automatically pursuant to the exercise by exception procedure of the Options Clearing Corporation. Additional information regarding this procedure is available upon written request to your introducing firm.

Foreign Currency Transactions - Pershing may execute foreign currency transactions as principal for your account. Pershing may automatically convert foreign currency to or from U.S. dollars for dividends and similar corporate action transactions unless you instruct your financial organization otherwise. Pershing's currency conversion rate will not exceed the highest interbank conversion rate identified from customary king sources on the conversion date or the prior business day, increased by up to 1%, unless a particular rate is required by applicable law. Your financial organization may also increase the currency conversion rate. This conversion rate may differ from rates in effect on the date you executed a transaction, incurred a charge, or received a credit. Transactions converted by agents (such as depositories) will be billed at the rates such agents use.

Proxy Vote - Securities held by you on margin (securities not fully paid for by you) may be lent by Pershing to itself or others in accordance with the terms outlined in the Margin Agreement. The right to vote your shares held on margin will be reduced by the amount of shares on loan. The Proxy Voting Instruction Form sent to you may reflect a smaller number of shares entitled to vote than the number of shares in your margin account.

Transactions in Date Sequence

Process/ Settlement Date	Activity Type	Description	Quantity	Price	Accrued Interest	Amount
10/29/08	CASH DIVIDEND RECEIVED	600 SHRS ANNALY CAP MANAGEMENT INC RD 09/18 PD 10/29/08				330.00

Transactions Summary	Total Amount	Currency
UNITED STATES DOLLAR	330.00	USD

The price and quantity displayed may have been rounded.

Income and Expense Summary

	Current Period		Year-to-Date	
	Taxable	Non Taxable	Taxable	Non Taxable
Dividend Income				
Equities	330.00	0.00	948.00	0.00

GunnAllen Financial
5002 W. Waters Ave.
Tampa, FL 33634-1313
Phone: 800.889.2914

Brokerage
Account Statement

JAN - 5 2009

Statement Period: 10/01/2008 - 10/31/2008

Income and Expense Summary *(continued)*

	Current Period		Year-to-Date	
	Taxable	Non Taxable	Taxable	Non Taxable
Interest Income				
Credit Interest	0.00	0.00	7.58	0.00
Total Dividends, Interest, Income and Expenses	**$330.00**	**$0.00**	**$955.58**	**$0.00**

Messages

Although a money market mutual fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in a money market mutual fund. Please see the money market mutual fund's prospectus or contact your investment professional for additional information.

Clarity is the cornerstone of trust between investors and their financial representative. Please visit www.gunnallen.com and read our "Investor's Bill of Rights."

A0030394CSF1IDP

CALBAR RATED FOR COMMUNICATION

Account Number: 0DA-011636
DENNIS E COOK

PAR-02-ROLL

Clearing Through Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation
Member FINRA, NYSE, SIPC

979

GunnAllen Financial
5002 W. Waters Ave.
Tampa, FL 33634-1313
Phone: 800.889.2914

Brokerage
Account Statement

JAN - 5 2009

* 00041345 02 MB 0.494 TR 00215 X220WD04 100000

DENNIS E COOK
714 4TH AVE STE 200
FAIRBANKS AK 99701-4470

Account Number: 0DA-011636
Statement Period: 08/01/2008 - 09/30/2008

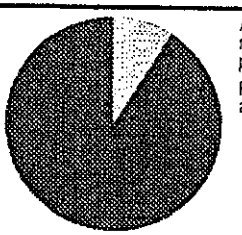
Valuation at a Glance

	This Period
Beginning Account Value	**$22,175.48**
Change in Account Value	-2,584.00
Ending Account Value	**$19,591.48**
Estimated Annual Income	**$1,320.00**

Your Registered Representative:
K. BRISARD / P. BRISARD
(212) 618-1834

Asset Allocation

	Value Last Period	Value This Period	Percent Allocation
Cash, Money Funds, and FDIC Deposits	1,745.48	1,745.48	9%
Equities	20,430.00	17,846.00	91%
Account Total (Pie Chart)	**$22,175.48**	**$19,591.48**	**100%**



Asset Allocation percentages are rounded to the nearest whole percentage.

Pie Chart allocation excludes all asset classes which net to a liability.

DALBAR RATED FOR COMMUNICATION

A0111469CSF220D2

PAR-02-ROLL

Clearing Through Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation
Member FINRA, NYSE, SIPC

Summary of Gains and Losses

	Realized		Unrealized
	This Period	Year-to-Date	This Period
Short-Term Gain/Loss	0.00	0.00	-4,103.98
Long-Term Gain/Loss	0.00	0.00	-1,003.96
Net Gain/Loss	**0.00**	**0.00**	**-5,107.94**

This summary excludes transactions where cost basis information is not available.

Customer Service Information

ar Registered Representative: BCB	Contact Information	Customer Service Information
K. BRISARD / P. BRISARD 20TH FL 14 WALL ST NEW YORK NY 10005-2123	**Telephone Number:** (212) 618-1834	**Service Hours:** Weekdays 08:30 a.m. - 05:30 p.m. EST **Customer Service Telephone Number:** (800) 889-2914 **Web Site:** www.gunnallen.com
Investment Objective: None Specified		Please discuss your investment objective with Your Registered Representative.

Portfolio Holdings

Quantity	Opening Date	Account Number	Activity Ending	Opening Balance	Closing Balance	Accrued Income	Income This Year	30-Day Yield	Current Yield
Cash, Money Funds, and FDIC Deposits 9.00% of Portfolio									
Cash Balance				1,745.48	1,745.48				
Total Cash, Money Funds, and FDIC Deposits				**$1,745.48**	**$1,745.48**	**$0.00**	**$0.00**		

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Equities 91.00% of Portfolio								
Common Stocks								
AECOM TECHNOLOGY CORP COM								
Dividend Option: Cash								
Security Identifier: ACM								
400.000	07/12/07	26.9500	10,779.96	24.4400	9,776.00	-1,003.96		
Total Common Stocks			**$10,779.96**		**$9,776.00**	**-$1,003.96**	**$0.00**	

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Brokerage Account Statement

JAN - 5 2009

Statement Period: 08/01/2008 - 09/30/2008

Portfolio Holdings *(continued)*

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Equities *(continued)*								
Real Estate Investment Trusts								
INALY CAP MANAGEMENT INC								
Dividend Option: Cash								
Security Identifier: NLY								
600.000	02/04/08	20.2900	12,173.98	13.4500	8,070.00	-4,103.98	1,320.00	16.35%
Total Real Estate Investment Trusts			**$12,173.98**		**$8,070.00**	**-$4,103.98**	**$1,320.00**	
Total Equities			**$22,953.94**		**$17,846.00**	**-$5,107.94**	**$1,320.00**	

	Cost Basis	Market Value	Unrealized Gain/Loss	Accrued Interest	Estimated Annual Income
Total Portfolio Holdings	**$24,699.42**	**$19,591.48**	**-$5,107.94**	**$0.00**	**$1,320.00**

[3] The cost basis of securities positions acquired prior to the availability of the PORTFOLIO EVALUATION SERVICE for this account, or delivered into this account, has been provided to PERSHING by your financial institution, and we make no representation as to the accuracy of such cost basis.

The values, where indicated, of real estate investment trusts (REITs) and direct participation programs (DPPs), including limited partnerships, have been provided by the REITs or DPPs, generally through an intermediary. The values are not guaranteed and are intended to reflect an estimate of the interest in the REIT or DPP represented by the units or shares described above. REIT and DPP securities are generally illiquid, and the value may not be realized when you seek to liquidate the security. Where no value is indicated, please note that:

- REIT or DPP securities are generally illiquid
- The value of the security may be different from its purchase price
- Accurate valuation information is not available.

Please note the values for DPPs and REITs which are provided by the REITs and DPPs may not reflect recent activity and do not reflect an independent evaluation of the REIT or DPP.

Disclosures and Other Information

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Portfolio Holdings *(continued)*

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Income and Expense Summary

	Current Period		Year-to-Date	
	Taxable	Non Taxable	Taxable	Non Taxable
Dividend Income				
Equities	0.00	0.00	618.00	0.00
Interest Income				
Credit Interest	0.00	0.00	7.58	0.00
Total Dividends, Interest, Income and Expenses	**$0.00**	**$0.00**	**$625.58**	**$0.00**

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SEMI-ANNUAL STATEMENT OF FINANCIAL CONDITION

Pursuant to The Securities Exchange Act of 1934, Pershing LLC (Pershing) provides individual investors with certain financial information on a semi-annual basis.

Pershing's June Statement of Financial Condition is now available, and on June 30, 2008, Pershing's net capital of $1.3 billion was 15.54% of aggregate debit balances and exceeded the minimum requirements by $1.1 billion.

Pershing is also required to provide the most recent financial information as of this statement mailing. In accordance with this requirement, on July 31, 2008, Pershing's net capital of $1.3 billion was 16.22% of aggregate debit balances and exceeded the minimum requirement by $1.1 billion.

A copy of the June 30, 2008, Statement of Financial Condition is available at www.pershing.com/footer/sofc.html. You may also request a free, printed copy by calling (888) 860-8510.

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Tampa, FL 33634-1313
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Brokerage
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JAN - 5 2009

Statement Period: 08/01/2008 - 09/30/2008

Messages *(continued)*

Although a money market mutual fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in a money market mutual fund. Please carefully read the money market mutual fund prospectus for additional information or contact your investment professional.

There are additional risks involved in trading equity securities either before or after regular market sessions. If you are considering participating in extended-hours trading, please be sure to review the Extended-Hours Trading section of Pershing's Disclosure Statement (found under Additional Disclosures). The Disclosure Statement is available at www.pershing.com/disclosurestatement.html or, if you are not able to retrieve the document online, you may call Pershing's Self-Service Hotline at (888) 860-8510. Select option 4, Disclosure Statement, where you will be prompted to either say or enter your account number. The document will then be mailed to the address of record for your account.

Clarity is the cornerstone of trust between investors and their financial representative. Please visit www.gunnallen.com and read our "Investor's Bill of Rights."

FOR ADDITIONAL INFORMATION REGARDING ORDER ROUTING PRACTICES AND THE VENUES TO WHICH YOUR GUNNALLEN FINANCIAL INC ORDERS ARE ROUTED, YOU MAY VISIT WWW.GUNNALLEN.COM AND SELECT THE LINK ENTITLED SEC RULE 606 DISCLOSURE.

UPON WRITTEN REQUEST TO GUNNALLEN FINANCIAL INC, YOU MAY OBTAIN THE IDENTITY OF THE VENUE TO WHICH YOUR ORDERS WERE ROUTED FOR THE SIX MONTHS PRIOR TO YOUR REQUEST AND THE TIME OF THE TRANSACTIONS THAT MAY HAVE RESULTED FROM SUCH ORDERS.

GUNNALLEN FINANCIAL INC SENDS CERTAIN EQUITY ORDERS TO EXCHANGES, ELECTRONIC COMMUNICATION NETWORKS, OR BROKER DEALERS DURING NORMAL BUSINESS HOURS AND DURING EXTENDED TRADING SESSIONS. CERTAIN OF THESE MARKET CENTERS PROVIDE PAYMENTS TO YOUR INTRODUCING BROKER OR CHARGE ACCESS FEES DEPENDING UPON THE CHARACTERISTICS OF THE ORDERS AND ANY SUBSEQUENT EXECUTION. IN ADDITION, YOUR INTRODUCING BROKER DEALER MAY EXECUTE CERTAIN EQUITY ORDERS AS PRINCIPAL. YOUR INTRODUCING BROKER DEALER REALIZED 100% OF ANY TRADING PROFITS GENERATED FROM TRADING WITH CLIENT ORDERS AS PRINCIPAL.

TERMS AND CONDITIONS

GENERAL INFORMATION

1. All orders and transactions shall be solely for your account and risk shall be subject to the constitution, rules, regulations, customs, usages, rulings and interpretations of the exchange or market and the clearing facility, if any, where the transactions are executed and/or settled, or if applicable, of the Financial Industry Regulatory Authority and to all applicable laws and regulations.
2. Whenever you are indebted to Pershing LLC ("Pershing") for any amount, all securities held by it for you in any account in which you have any interest shall secure all your liabilities to Pershing, and Pershing may in its discretion at any time, without tender, demand or notice to you, close or reduce any or all of your accounts by public or private sale or purchase or both of all or any securities carried in such accounts; any balance remaining due Pershing to be promptly paid by you.
3. Whenever you are indebted to Pershing for any amount, all securities carried for your account are or may be, without further notice to you, loaned or pledged by Pershing, either separately or under circumstances which will permit the commingling thereof, with other securities for any amount less than, equal to or greater than your liabilities to Pershing, but not under circumstances for an amount prohibited by law.
4. Title to securities sold to you, where Pershing has acted as principal, shall remain with Pershing until the entire purchase price is received or until the settlement date, whichever is later.
5. Any free credit balance carried for your account represents funds payable upon demand which, although properly accounted for on Pershing's books of record, are not segregated and may be used in the conduct of its business.
6. You may have received confirmations for transactions which do not appear on your statement. If so, the transactions will appear on your next periodic statement. Such transactions must be considered by you when computing the value of your account. This is especially true if you have written options which have been exercised.
7. If you maintain a margin account, this is a combined statement of your general account and a special memorandum account maintained for you under Regulation T of the Board of Governors of the Federal Reserve System. The permanent record of the separate account as required by Regulation T is available for your inspection upon request.
8. Interest charged on debit balances in your account appears on the statement. The rate of interest and period covered are indicated. The rate may change from time to time due to fluctuations in money rates or other reasons. Interest is computed as described in material previously furnished to you. Please contact your financial institution if you desire additional copies.
9. A financial statement of Pershing is available for your personal inspection at Pershing's offices. A copy of it will be mailed upon your written request or you can view it online at Pershing.com.
10. This statement should be retained for your records.
11. Dividends, interest and other distributions shown on this statement were classified as taxable or nontaxable based on certain information known as of the distribution date. This classification is subject to change and is solely intended for use as general information. After year end, Pershing is required to provide tax information to the Internal Revenue Service and other governmental authorities. At that time Pershing will provide that information on the annual tax information statement to you; use that statement to prepare your tax filings. The tax statement also includes other useful information to assist in accumulating the data to prepare your tax returns.
12. **Pershing does not provide tax, investment or legal advisory services and no one associated with Pershing is authorized to render such advice. Do not rely upon any such advice, if given. Investors are encouraged to consult their tax advisors to determine the appropriate tax treatment of their business.**
13. Pershing provides account protection for the net equity of securities positions and cash held in your account. Of this total, the Securities Investor Protection Corporation (SIPC) provides $500,000 of coverage, including $100,000 for claims for cash. Pershing provides additional protection on terms similar to SIPC for account net equity in excess of $500,000 through a commercial insurer. The account protection applies when a SIPC member firm fails financially and is unable to meet obligations to securities clients, but it does not protect against losses from the rise and fall in the market value of investments.
14. Pershing trades for its own account as a market maker, specialist, odd lot dealer, block positioner, arbitrageur and/or investor. Consequently, at the time of any transaction you may make, Pershing may have a position in such securities, which position may be partially or completely hedged.
15. If average price transaction is indicated on the front of this statement your financial institution or Pershing may have acted as principal, agent or both. Details available upon request.
16. This statement will be deemed conclusive and an account stated unless you advise Pershing in writing of any objection to it within ten days after receipt. Any such objection should be sent to Pershing at One Pershing Plaza, Jersey City, NJ 07399, Attn: Compliance.
17. You are advised to report promptly any inaccuracy or discrepancy in your account (including unauthorized trading) to your financial organization and Pershing, the custodian of your account. Please be advised that any oral communication should be re-confirmed in writing to further protect your rights, including your rights under the Securities Investor Protection Act. Your financial organization's contact information can be found on the first page of this statement. Pershing's contact information is as follows: Pershing LLC; Legal Department; One Pershing Plaza; Jersey City, New Jersey 07399; (201) 413-3330.

ERRORS AND OMISSIONS EXCEPTED.

PORTFOLIO HOLDINGS

This section includes the net market value of the securities in your account on a settlement date basis, including short positions, at the close of the statement period. The market prices have been obtained from quotation services, which we believe to be reliable; however, we cannot guarantee their accuracy. Securities for which a price is not available are marked "N/A" and are omitted from the Total.

The Annual Income, which is an estimated figure, is the current interest or most recently declared dividend for each security and is annualized. This figure particularly on equity mutual funds can vary substantially from one year to the next. As a result, actual amounts distributed may be more or less than those estimated on this statement. The Annual Income is then divided by the current Market Value to give the Estimated Yield which too could vary substantially because the income is estimated and it does not take account of your holding period. Annual Income has been obtained from sources believed to be reliable, but no assurance can be made as to accuracy.

Accrued interest represents interest earned but not yet received.

THE ROLE OF PERSHING

Pershing carries your account as clearing broker pursuant to a clearing agreement with your financial institution. Pershing may accept from your financial institution without inquiry or investigation (i) orders for the purchase and sale of securities and other property and (ii) any other instructions concerning your account. Pershing is not responsible or liable for any acts or omissions of your financial institution or its employees and it does not supervise them. Pershing provides no investment advice nor does it assess the suitability of any transaction or order. Pershing acts as the agent of your financial institution and you agree that you will not hold Pershing or any person controlling or under common control with it liable for any investment losses incurred by you.

Pershing performs several key functions at the direction of your financial institution. It acts as custodian for funds and securities you may deposit with it directly or through your financial institution or that it receives as the result of securities transactions it processes. Inquiries concerning the positions and balances in your account may only be directed to the **Pershing Customer Service Department at (201) 413-3333.** All other inquiries regarding your account or activity should be directed to your financial institution. For a description of other functions performed by Pershing please consult the Disclosure Statement provided to you upon the opening of your account.

Your financial institution is responsible for adherence to the securities laws, regulations and rules which apply to it regarding its own operations and the supervision of your account. Its sales representatives and other personnel. Your financial institution is also responsible for approving the opening of accounts and obtaining account documents; the acceptance and, in certain instances, execution of securities orders; the assessment of the suitability of those transactions, where applicable; the rendering of investment advice, if any, to you and in general, for the ongoing relationship that it has with you.

Pershing may capture and store data about you such as your financial information and investment objectives. However, Pershing is not reviewing this information and evaluating whether your investments comport with your financial status and objectives and you hereby release Pershing from any liability to do so. Similarly, Pershing may capture and store information about whether a broker or an introducing firm is registered in a given state. You hereby release Pershing from any liability to review this data or to evaluate whether a particular security is registered or exempt from registration in your State.

This notice is not meant as a definitive enumeration of every possible circumstance, but as a general disclosure. If you have any questions regarding this notice or if you would like additional copies of the Disclosure Statement, please contact your financial institution.

PAYMENT FOR ORDER FLOW PRACTICES

The following statement is provided to you as required by Rule 11Ac1-3 of the Securities Exchange Act of 1934.

Pershing sends certain equity orders to exchanges, Electronic Communication Networks, or broker-dealers during normal business hours and during extended trading sessions. Certain of these venues provide payments to Pershing or charge access fees to Pershing depending upon the characteristics of the order and any subsequent execution. In addition, Pershing may execute certain equity orders as principal. The details of these payments and fees are available upon written request. Pershing receives payments for directing listed options order flow to certain option exchanges. Compensation is generally in the form of a per option contract cash payment. Compensation is generally in the form of a per option contract cash payment. For a listing of organizations that pay Pershing for order flow, please refer to www.pershing.com/orderflow.htm.

Best Execution

Notwithstanding the previous paragraph regarding payment for order flow, Pershing selects certain market centers to provide execution of over-the-counter and exchange-listed securities transactions which agree to accept orders, transmitted electronically up to a specified size, and to execute them at or better than the national best bid or offer (NBBO). On certain larger orders, or if the designated market centers do not make a market in the subject security, Pershing directly contacts market centers to obtain an execution. The designated market centers to which orders are automatically routed are selected based on the consistent high quality of their executions in one or more market segments and their ability to provide opportunities for executions at prices superior to the NBBO.

If an order for an exchange-listed security is not immediately executable on the exchange to which it is routed, such order may be represented in the national marketplace using the various means available for price discovery. Pershing also regularly reviews reports for quality of execution purposes.

ARBITRATION

ARBITRATION DISCLOSURES:

- ALL PARTIES TO THIS AGREEMENT ARE GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY, EXCEPT AS PROVIDED BY THE RULES OF THE ARBITRATION FORUM IN WHICH A CLAIM IS FILED.
- ARBITRATION AWARDS ARE GENERALLY FINAL AND BINDING; A PARTY'S ABILITY TO HAVE A COURT REVERSE OR MODIFY AN ARBITRATION AWARD IS VERY LIMITED.
- THE ABILITY OF THE PARTIES TO OBTAIN DOCUMENTS, WITNESS STATEMENTS AND OTHER DISCOVERY IS GENERALLY MORE LIMITED IN ARBITRATION THAN IN COURT PROCEEDINGS.
- THE ARBITRATORS DO NOT HAVE TO EXPLAIN THE REASON(S) FOR THEIR AWARD.
- THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.
- THE RULES OF SOME ARBITRATION FORUMS MAY IMPOSE TIME LIMITS FOR BRINGING A CLAIM IN ARBITRATION. IN SOME CASES, A CLAIM THAT IS INELIGIBLE FOR ARBITRATION MAY BE BROUGHT IN COURT.
- THE RULES OF THE ARBITRATION FORUM IN WHICH THE CLAIM IS FILED, AND ANY AMENDMENTS THERETO, SHALL BE INCORPORATED INTO THIS AGREEMENT.

If any of the above Terms and Conditions are unacceptable to you, please notify Pershing immediately in writing by certified mail to One Pershing Plaza, Jersey City, NJ 07399, Attn: Compliance.

JAN - 5 2009

TERMS AND CONDITIONS

ARBITRATION AGREEMENT

ANY CONTROVERSY BETWEEN YOU AND US SHALL BE SUBMITTED TO ARBITRATION BEFORE THE FINANCIAL INDUSTRY REGULATORY AUTHORITY OR ANY OTHER NATIONAL SECURITIES EXCHANGE ON WHICH A TRANSACTION GIVING RISE TO THE CLAIM TOOK PLACE (AND ONLY BEFORE SUCH EXCHANGE).

NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION, NOR SEEK TO ENFORCE ANY PREDISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION; WHO IS A MEMBER OF A PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL; (I) THE CLASS CERTIFICATION IS DENIED; (II) THE CLASS IS DECERTIFIED; OR (III) THE CUSTOMER IS EXCLUDED FROM THE CLASS BY THE COURT. SUCH FORBEARANCE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN.

THE LAWS OF THE STATE OF NEW YORK GOVERN.

WRAP ACCOUNT CUSTOMERS WHO ELECTED NOT TO RECEIVE IMMEDIATE CONFIRMATION OF TRANSACTIONS

The following Terms and Conditions are applicable only if your account is a wrap fee managed account, and the trade confirmations are not sent to you (sent only to your portfolio manager) pursuant to your instruction:

1. The following information will be furnished to you upon request to your financial institution (introducing firm) ("Introducing Firm"), with respect to any transaction for which a trade confirmation was not sent to you:
   - The market upon which any transaction was executed;
   - The time of day that any transaction was executed;
   - The name of the person from whom any security was purchased, or to whom such security was sold;
   - The source and amount of other commissions received in connection with any transaction; and
   - A copy of the trade confirmation.
2. Introducing Firm effected each transaction for which a trade confirmation was not sent to you, as your agent.
3. In connection with each equity security and certain other securities sold, Introducing Firm charges to you, and remits to a regulatory organization or national securities exchange, a "Trans. Fee". Pershing calculates this Fee based on amounts paid by Introducing Firm to the applicable regulatory organization or national securities exchange. This, in turn, is based on the value of the applicable securities sold. To determine the exact amount of this Fee with respect to any transaction, please contact the Introducing Firm.
4. Introducing Firm does not receive any payment for order flow for any transaction for which a trade confirmation was not sent to you.
5. Call features may exist for securities. Call features for fixed income securities may affect yield. Complete information will be provided upon request.
6. If any transaction involves an asset-backed security, including a municipal collateralized mortgage obligation, which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, then the actual yield of such security may vary according to the rate at which the underlying receivables or other financial assets are prepaid. Information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions of underlying yield) will be furnished to you, upon request to Introducing Firm.
7. The ratings that appear in the description of some fixed income securities have been obtained from ratings services which Pershing believes to be reliable; however, Pershing cannot guarantee their accuracy. Securities for which a rating is not available are marked "UNRATED".

If any of the above Terms and Conditions are unacceptable to you, please notify Pershing immediately in writing by certified mail to One Pershing Plaza, Jersey City, NJ 07399, Attn: Compliance.

Official Business

Alaska State Legislature

Senate

Office of the Secretary

State Capitol, Room 213
Juneau, Alaska 99801-1182
Phone: (907) 465-3701
Fax: (907) 465-2832
Email:senate_secretary@legis.state.ak.us

Memorandum

TO: Senator French, Chair
Judiciary Committee

FROM: Kirsten Waid
Secretary of the Senate

DATE: January 26, 2009

SUBJECT: Confirmation of Chief Justice's Nominations
Public Members to the Select Committee on Legislative Ethics

Pursuant to AS 24.60.130, the President has referred the following names for legislative confirmation to your committee for a hearing, recommendation and report:

Select Committee on Legislative Ethics
Herman G. Walker, Jr.
Dennis "Skip" Cook

KW:lc
Attachment: Chief Justice Dana Fabe letter

Chambers of
Dana Fabe
Chief Justice

Supreme Court
State of Alaska

303 K Street
Anchorage, Alaska
99501-2013

(907) 264-0622
FAX (907) 264-0554

January 21, 2009

The Honorable Gary Stevens
Senate President
State Capitol, Room 111
Juneau, Alaska 99801-1182

The Honorable Michael Chenault
Speaker of the House
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear President Stevens and Speaker Chenault:

Alaska Statute 24.60.130(b)(3) designates the Chief Justice of the Alaska Supreme Court to nominate the five public members who sit on the Select Committee on Legislative Ethics. The terms of two current public members will expire in 2009.

In my capacity as Chief Justice, and pursuant to AS 24.60.130(b)(3), I am nominating the two incumbents whose terms are expiring for an additional term. The contact information for these nominees is as follows:

(1) Herman G. Walker, Jr. Mr. Walker is an attorney and business owner in Anchorage and can be reached at (907) 279-2889. His mailing address is 606 E Street, Suite 203, Anchorage, Alaska 99501. For purposes of determining compliance with AS 24.60.130(c), Mr. Walker is non-partisan.

(2) Dennis "Skip" Cook. Mr. Cook is an attorney in Fairbanks and can be reached at (907) 452-1855, ext. 111. His mailing address is 714 4th Avenue, Suite 200, Fairbanks, Alaska 99701. For purposes of determining compliance with AS 24.60.130(c), Mr. Cook is non-partisan.

Please let me know if I can provide you with any other information.

Sincerely,

Dana Fabe
Chief Justice

DF:jd
cc: Herman G. Walker, Jr.
Dennis "Skip" Cook
Joyce Anderson, Select Committee on Legislative Ethics

2010

CONFIRMA-TIONS

SENATE
CONFIRMATION COMMITTEE REPORT

Date: 3/29/10

In accordance with AS 39.05.080 and S 18.85.030, the Judiciary Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration:

Violent Crimes Compensation Board
Nora G. Barlow - Anchorage
Appointed: 3/1/2010 Term Expires: 3/1/2011

This does not reflect an intent by any of the members to vote for or against the confirmation of the individuals during any further sessions.

Signature:	Printed Last Name
	Wielechowski
	Coghill
	McGuire
	EGAN
Chair:	French

Please return to the Senate Secretary's Office (Room 211).

NORA G. BARLOW
DeLisio Moran Geraghty & Zobel, P.C.
943 W. 6th Avenue
Anchorage, AK 99501
(907) 279-9574

EDUCATION:

1991	University of the Pacific, McGeorge School of Law with Distinction, Order of the Coif
1989	London Institute of International Business and Commercial Law "Fundamental Rights in Europe and the United States." Hon. Anthony Kennedy, Associate Justice, United States Supreme Court
1986	University of California, Berkeley, Bachelor of Arts, Environmental Science, Emphasis Biology

EMPLOYMENT:

2006-present	DeLisio Moran Geraghty & Zobel, P.C. Associate Attorney; General civil litigation practice with an emphasis in defense of employment law cases and workers' compensation claims.
2004-2006	Russell Wagg Cooper & Gabbert, P.C., Anchorage, AK Associate Attorney; Emphasis in workers' compensation defense.
2003-2004	Attorney General's Office, Anchorage, AK Assistant Attorney General, Office of Special Prosecutions and Appeals; Environmental Prosecutor.
2002-2003	District Attorney's Office, Anchorage, AK Assistant District Attorney; Felony Prosecution of Property Crimes and Sexual Assaults.
1999-2002	Office of the County Counsel, Contra Costa County, Martinez, CA Deputy County Counsel; Assigned to Juvenile Dependency and Conservatorship Unit.
1995-1999	Heller Ehrman White & McAuliffe, San Francisco, CA and Anchorage, AK Associate Attorney; Complex civil litigation practice.
1992-1995	Burr Pease & Kurtz, Anchorage, AK Associate Attorney; General civil litigation practice.
1991-1992	Law Clerk:"Hon. H. Russell Holland, Judge, United States District Court for the District of Alaska and Hon. James M. Fitzgerald, Senior Judge, United States District Court for the District of Alaska
Summer 1990	Pillsbury Madison & Sutro, San Francisco, CA Summer Associate
BAR ADMITTANCE:	Admitted in California 1992 Admitted in Alaska 1993
COMMUNITY ACTIVITIES:	Committee Member, Annual Jewish Cultural Gala Volunteer, Bean's Café Volunteer, Aquarian Charter School Volunteer, Camp Gan Israel

SENATE
CONFIRMATION COMMITTEE REPORT

Date: _____

In accordance with AS 39.05.080 and S 18.85.030, the Judiciary Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration:

Board of Governors of the Alaska Bar
Donald McLean - Wasilla
Appointed: 3/1/2007
Reappointed: 3/1/2010 Term Expires: 3/1/2013

Board of Parole
Richard O. Larson - Palmer
Appointed: 3/1/2010 Term Expires: 3/1/2015

Public Defender
Quinlan Steiner - Anchorage
Appointed: 10/14/2005
Reappointed: 10/9/2009 Term Expires: 10/14/2013

Alaska Public Offices Commission
Elizabeth Johnston Hickerson - Anchorage
Appointed: 9/8/2006
Reappointed: 3/1/2010 Term Expires: 3/1/2015

Kathleen J. King - Anchorage
Appointed: 5/27/2009
Reappointed: 3/1/2010 Term Expires: 3/1/2014

Violent Crimes Compensation Board
Nora G. Barlow - Anchorage
Appointed: 3/1/2010 Term Expires: 3/1/2011

Gerad G. Godfrey - Eagle River
Appointed: 2/19/2003
Reappointed: 4/6/2004
Reappointed: 3/1/2007
Reappointed: 3/1/2010 Term Expires: 3/1/2013

SENATE
CONFIRMATION COMMITTEE REPORT

Date: _____

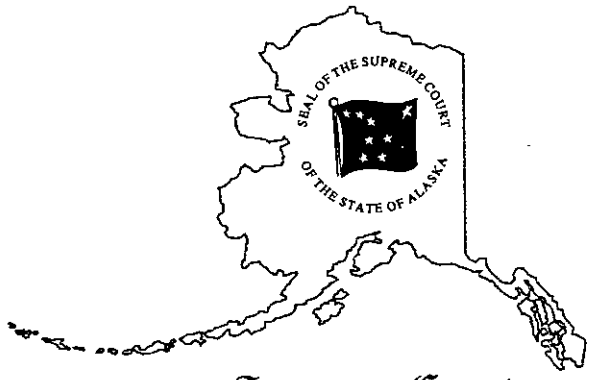
In accordance with AS 24.60.130, the Judiciary Committee reviewed the following and recommends the appointment be forwarded to the Senate floor for consideration:

Select Committee on Legislative Ethics
Antoinette Mallott
Appointed: 3/12/2010

This does not reflect an intent by any of the members to vote for or against the confirmation of the individuals during any further sessions.

Signature:	**Printed Last Name**
	Wielechowski
John Coghill	Coghill
Chair:	Stevens

Please return to the Senate Secretary's Office (Room 211).



MAR 2 2 2010

P.O. Box 114100
Juneau, Alaska
99811-4100

(907) 463-4771
Fax (907) 463-3475

Chambers of
Walter L. Carpeneti
Chief Justice

Supreme Court
State of Alaska

March 12, 2010

The Honorable Gary Stevens
Senate President
State Capitol, Room 111
Juneau, Alaska 99801-1182

The Honorable Mike Chenault
Speaker of the House
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear President Stevens
and Speaker Chenault:

In my capacity as Chief Justice, and pursuant to AS 24.60.130(b)(3), I am nominating Antoinette Mallott to serve a term as a public member of the Select Committee on Legislative Ethics.

Ms. Mallott is a retired teacher, former Chair for the Commissioner's Task Force on Native Achievement, Department of Education , and former Care Coordinator for Catholic Community Services in Yakutat. For purposes of determining compliance with AS 24.60.130(c), Ms. Mallott is a Democrat.

Ms. Mallott can be reached at (907) 586-6937 in Juneau, (907) 784-3074 in Yakutat, or by cell at (907) 321-2022. Her mailing address is 102 Cordova Street, Juneau, Alaska 99801. Please let me know if I can provide you with any other information on this matter.

Sincerely,

Walter L. Carpeneti

Walter L. Carpeneti

cc: Antoinette Mallott
Joyce Anderson

Antoinette Mallott
102 Cordova Street
Juneau, Alaska 99801
March 10, 2010

Chief Justice Dana Fabe
Alaska Supreme Court
303 K Street
Anchorage, Ak 99501-2084

Dear Chief Justice Fabe,

I am interested in serving on the Legislative Ethics Committee. Please review my resume and this letter of interest.

Currently, I reside in Juneau and Yakutat, Alaska, where we have our second home. I have lived in southeast Alaska for almost forty years. My involvement in the local native community is through my membership in Alaska Native Sisterhood and Alaska Native Brotherhood. My family has been involved in cultural and traditional events for many years. My husband and I have supported strong family values of responsibility, hard work ethics, kindness, ties to our ancestral lands and people and being a good person.

I am a registered Democrat and my voter registration is in Yakutat. I retired from teaching in 2003.

If you have any questions, please call me at the following numbers; Juneau: 586-6937, cell- 321-2022 (does not work in Yakutat) and Yakutat: 784-3074.

Thank you for your consideration.

Sincerely,

Antoinette Mallott
Antoinette Mallott

Resume
Antoinette Mallott

Residence:

102 Cordova Street
Juneau, Alaska 99801

Status:

Married: Byron I. Mallott Children: Anthony, Joseph and Benjamin

Date of Birth: October 27, 1947, Rampart, Alaska

Background:

I am an Alaskan Native and have spent my entire life in Alaska. I have been involved in education for the past thirty years, both as a teacher and parent. I strongly believe that it is imperative to develop and strengthen students' self-esteem and academic skills. It is equally important to establish a positive relationship with parents and support their involvement with their children's academic and social achievements.

My experience in the teaching profession included knowledge about the public laws of inclusion for students with learning, physical and emotional disabilities. I have worked with ESL (English Second Language) students and supported their rights to seek and obtain academic assistance in core subjects, such as reading, math and writing.

During my years of teaching at Gastineau Elementary School, I was on SCOT, a collaboration team composed of teachers, administrators and other support staff members. Our team met weekly to discuss learning and behavioral problems of students that classroom teachers were concerned about. Parents were requested to be present during these meetings. We were responsible for coming up with educational or behavioral plans to assist the students in their classrooms.

I was a Site Council member and facilitator for seven years at Gastineau. My duties included setting the monthly agendas, conducting the meetings, communication with parents, teachers and other members and carrying out the directions on decisions made for improving the school climate, safety of the students and staff and review and approval of curricula.

One of the many duties that a teacher has is writing academic and learning diagnostic reports for parents and administrators. I am confident that I possess the ability to organize, evaluate and present information effectively.

Education:

Bachelor of Elementary Education, University of Alaska, Fairbanks, 5/72
Master's in Elementary Education, University of Alaska, Juneau, 5/87

Professional Experiences:

2006 -2010	Care Coordinator for Catholic Community Services, Yakutat
1998-2003	Librarian and ESL teacher, Juneau
1990-1998	Classroom teacher, Juneau
1986-1990	Substitute teacher, Juneau
1982-1983	Chairperson for the Commissioner's Task Force on Native Achievement, Department of Education
1979-1980	3rd grade teacher, Yakutat
1978-1979	Headstart director and teacher, Yakutat
1977-1978	Resource coordinator, Indian Studies Program, Anchorage
1974-1976	2nd/3rd grade teacher, Yakutat
1972-1974	3rd grade teacher, Juneau
1970-1972	Home-School coordinator, State of Alaska Boarding Home Program, Fairbanks
1970	Summer flight attendant, TransWorld Airlines, Kansas City, Kansas
1968-1970	Travel agent, Roger's Travel Agency, Fairbanks

SENATE
CONFIRMATION COMMITTEE REPORT

Date: March 17, 2010

In accordance with AS 39.05.080 and S 18.85.030, the Judiciary Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration:

Board of Governors of the Alaska Bar
Donald McLean - Wasilla
Appointed: 3/1/2007
Reappointed: 3/1/2010 Term Expires: 3/1/2013

Public Defender
Quinlan Steiner - Anchorage
Appointed: 10/14/2005
Reappointed: 10/9/2009 Term Expires: 10/14/2013

Alaska Public Offices Commission
Elizabeth Johnston Hickerson - Anchorage
Appointed: 9/8/2006
Reappointed: 3/1/2010 Term Expires: 3/1/2015

Kathleen J. King - Anchorage
Appointed: 5/27/2009
Reappointed: 3/1/2010 Term Expires: 3/1/2014

Violent Crimes Compensation Board
Gerad G. Godfrey - Eagle River
Appointed: 2/19/2003
Reappointed: 4/6/2004
Reappointed: 3/1/2007
Reappointed: 3/1/2010 Term Expires: 3/1/2013

This does not reflect an intent by any of the members to vote for or against the confirmation of the individuals during any further sessions.

Signature:	Printed Last Name
	Brian
John Coghill	Coghill
Chair:	French

Please return to the Senate Secretary's Office (Room 211).

Alaska State Legislature

Senate

Office of the Secretary

Official Business

State Capitol, Room 211
Juneau, Alaska 99801-1182
Phone: (907) 465-3701
Fax: (907) 465-2832
Email:senate_secretary@legis.state.ak.us

Memorandum

TO: Senator French, Chair
Judiciary Committee

FROM: Kirsten Waid
Secretary of the Senate

DATE: February 3, 2010

SUBJECT: Confirmation of Governor's Appointments

Pursuant to AS 39.05.080 and AS 18.85.030, the President has referred the following names, with attached resumes, for legislative confirmation to your committee for a hearing, recommendation and report:

Board of Governors of the Alaska Bar
Donald McLean - Wasilla
Appointed: 3/1/2007
Reappointed: 3/1/2010 Term Expires: 3/1/2013

Board of Parole
Richard O. Larson - Palmer
Appointed: 3/1/2010 Term Expires: 3/1/2015

Public Defender
Quinlan Steiner - Anchorage
Appointed: 10/14/2005
Reappointed: 10/9/2009 Term Expires: 10/14/2013

Alaska Public Offices Commission
Elizabeth Johnston Hickerson - Anchorage
Appointed: 9/8/2006
Reappointed: 3/1/2010 Term Expires: 3/1/2015

Kathleen J. King - Anchorage
OK
Appointed: 5/27/2009
Reappointed: 3/1/2010 Term Expires: 3/1/2014

Violent Crimes Compensation Board
Nora G. Barlow - Anchorage
ND
Appointed: 3/1/2010 Term Expires: 3/1/2011

Gerad G. Godfrey - Eagle River
OK
Appointed: 2/19/2003
Reappointed: 4/6/2004
Reappointed: 3/1/2007
Reappointed: 3/1/2010 Term Expires: 3/1/2013

Attachment: Resumes

KW:sgf
gl#3

QUINLAN STEINER

2205 Arlington Drive ♦ Anchorage, AK ♦ 907. 317.4746

Education:

Northwestern School of Law — Portland, OR
of Lewis & Clark College — 1998
Juris Doctor

Seattle University — Seattle, WA
B.A. Business Administration — 1989

West Anchorage High School — Anchorage, AK
1984

Work Experience:

Alaska Public Defender Agency — Anchorage, AK
Director – Public Defender — 2005 – Present

Appointed to serve as the Public Defender for the State of Alaska and Director of the Alaska Public Defender Agency. The Public Defender Agency's mission is to provide constitutionally mandated legal representation to indigent individuals appointed by the courts in criminal and other state-initiated litigation.

Primary responsibilities include: directing organizational development in accordance with agency goals; personnel supervision and management; budget management; and testifying before the legislature on proposed legislation and budget proposals. Initiatives implemented: statewide case management system; regional organizational structure; new lawyer trial school; expanded recruiting program; mentoring program; and centralized appellate and post-conviction case processing.

Alaska Public Defender Agency — Anchorage, AK
Assistant Public Defender — 1998 - 2005

Appellate Attorney: drafted appellate briefs and conducted oral argument before the Alaska Court of Appeals and the Alaska Supreme Court; consulted with and advised trial attorneys on trial litigation issues; advised the Public Defender on pending legislation and other legal issues affecting the Agency.

Trial Attorney: managed a District and Superior Court trial caseload in Anchorage and for St. Paul Island; and conducted felony and misdemeanor trials. Other Activities: trained and supervised legal interns and new attorneys; served as a member of the Public Defender Training Conference Committee; personally developed and implemented training sessions on trial advocacy, motion writing, and legal analysis for the Agency's new lawyers; and participated in meetings of the Appellate Rules Committee, Pattern Jury Instruction Committee, and Appellate Delay Committee.

Alaska Public Defender Agency — Anchorage, AK
Investigator Intern / Legal Extern — 1995, 1997

Volunteered as an investigator in 1995 prior to attending law school. As a law student, served as legal extern in criminal law. Duties included conducting bail hearings, drafting appellate briefs, and conducted an oral argument before the Alaska Court of Appeals.

Intec Inc. — Anchorage, AK
Financial Assistant/Lead Backcountry Guide — 1993-1995

Duties as financial assistant included strategic planning, preparing financial statements, and bookkeeping. Duties as backcountry guide included conducting backcountry ski and glacier travel trips, trip planning, meal preparation, and ensuring safety of clients and assistant guides.

National Bank of Alaska — Juneau, AK
Loan Officer — 1990-1992

Completed management training program and worked as a loan officer in Juneau branch office. Commercial lending experience: business acquisition, lines of credit, letters of credit, equipment & inventory, commercial real estate, interim construction, SBA & BIA guaranteed, fishing boats. Consumer lending experience: automobile, boat, home equity, and personal. Participated in local branch board meetings on local and statewide financial outlook.

Northwest Deck Construction — Seattle, WA
Co-Owner — 1987-1989

Established company designing and constructing residential decks; responsible for project schedule management; preparation of financial statements and tax returns.

Activities:

Member Alaska Bar Association (1998 – present)
Criminal Rules Committee (October 2006 – present)
Member of the Criminal Justice Working Group (2008 – present)
Youth Court Bar Class Instructor – Spring 2008
Panel Member for Anchorage Mayor's Anti-Gang and Youth Violence Summit: Law Enforcement and Legal Issues Related to Gangs (November 15, 2006)
Panel Member on Ethics in Criminal Law Practice at University of Southern Maine School of Law (2005)
University of Alaska, Adjunct Professor: Criminal Procedure (2002)
Alaska Youth Court, Mock Trial Judge (2000)
Member of Denali Expedition (1994)
Member University of Colorado Ski Team (1984-1986)
Member Alyeska Ski Club (until 1984; represented Alaska at the Junior Olympics)

Boards & Commissions Factsheets

Violent Crimes Compensation

Board: Violent Crimes Compensation Board
Board identification number: 103

Department: Department of Administration

Authority: AS 18.67.020

Status: Active

Sunset date:

Requirements: Legislative Confirmation

Prohibitions: None

Term: 3 years

Description: 3 members appointed by Governor: at least 1 member must be a medical or osteopathic physician licensed to practice in Alaska, or holding a retired status license in Alaska; 1 member must be an attorney licensed to practice in Alaska, or retired from practice in Alaska; Governor designates chair; serve at pleasure of Governor.

Function: Facilitates and permits payment of compensation to innocent victims of violent crimes.

Chair: Governor selects.

Special facts: Quasi-judicial; may be removed for cause; annual report to Governor/Legislature.

Compensation: Standard Travel and Per Diem. No additional compensation.

Meetings: 4-6 times per year.

For further information contact:
Ms. Kate Hudson
Administrator
Violent Crimes Compensation Board
ADM, P.O. Box 110230 M/S 0230
Juneau, AK 99811-0230
Phone: (907) 465-5525, FAX: (907) 465-2379

Violent Crimes Compensation Roster

Go to the Violent Crimes Compensation Home page

We appreciate your interest in boards and commissions. For further information contact the boards and commissions staff at (907) 465-3500 or at **boards@alaska.gov**.

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State of Alaska

Office of Boards and Commissions Roster

VIOLENT CRIMES COMPENSATION (103)

Member	Date Appointed	Reappointed	Term Expires
Nora G. Barlow, P.C. Attorney 943 West Sixth Avenue Anchorage, AK 99501	3/1/2010		3/1/2011
Regina C. Chennault, M.D. Physician P.O. Box 1129 Soldotna, AK 99669	10/18/2005	3/1/2009	3/1/2012
Gerad G. Godfrey Public -- Chair P.O. Box 770892 Eagle River, AK 99577	2/19/2003	3/1/2010	3/1/2013

Return to the fact sheet

Gerad Godfrey
P.O. Box 770892
Eagle River, AK 99577

Hm. (907) 694-6154
Cel. (907) 229-8860

Objective:
Reappointment to serving on Alaska's Violent Crimes Compensation Board.

Strengths:
Diverse work experience throughout Alaska from laborer to administrative fields. Perpetually seeking to learn. Exceptional communicator both orally and written. Optimistic yet realistic. Creative while pragmatic. Highly motivated to help reduce the occurrence of violent crimes in Alaska and continue to aid victims through education, prevention and outreach.

Voluntary Civic Activity:
2003-Present – Appointed Chair of Alaska's Violent Crimes Compensation Board by last two Governors. Chairing a quasi-judicial board which adjudicates claims and distributes funds to innocent violent crime victims in Alaska while coordinating with full time staff in Juneau. Cultivating and nourishing fruitful relationships with local and state politicians as well as state commissioners in order to maintain board's statutory and fiscal homeostasis or augment it. Oversee preparation and submission of annual report to Alaska's legislators, select state commissioners and Governor.

2002-Present – Volunteer lobbyist for innocent victims of violent crimes. Annual trips to Juneau to meet with legislators, commissioners and the Governor's office on behalf of crime victims regarding public safety issues, legislation and fund allocation for crime victim services.

2007-Present – Created the Helping Hands Healing Hearts Program. A committee designed to consolidate the numerous victim advocacy groups in order to educate and assist the faith based community in dealing with violent crime victims by bridging the gap between faith based organizations and government/non-faith based organizations.

2002-2003 – Appointed by Mayor of Anchorage to Municipal Emergency 911 Oversight Task Force. Ad Hoc committee which explored and researched existing detriments, then potential remedies, to Anchorage's critically deficient emergency response system. Culminated with proposed upgrades and enhancements submitted to Mayor. Spoke on national television on topic.

Work Experience:
-2009-Present- Afognak Native Corporation, Legal Department, Anchorage, Alaska. Corporate Risk and Compliance. Work in the Corporation's legal department while engaging in all facets of corporate risk and compliance as it applies to all of the corporation's departments, field offices, property, projects, contracts and 6,000+ employees primarily employed in 8(a) fields of work.

Continued:

Work Experience continued:

-2006-2009- Doyon Universal Services, Security Division, Port of Anchorage. Port Security. Uphold and enforce United States Coast Guard Regulations governed by 33 CFR 105 as mandated by the Department of Homeland Security. Control Anchorage Port access points by land and water. Conduct patrols and video surveillance. Conduct vehicle/cargo screens random and for cause. Conduct declarations of security on all moored ships. Oversee security concerns of port expansion.

-2001-2006- Doyon Universal Services, Security Division, Valdez, Alaska. Port Security. Control Alyeska Marine Terminal facility access points. Patrol Alyeska property as well as the pipeline right of way. Run surveillance from land, air and water. Enforce APSC policies and procedures as well as USCG regulations. Function as field training officer. Function as step-up supervisor of 8 employees.

-1998-2001- Regional Environmental Training Center, Fort Richardson, Alaska. Facilitator. Facility oversight regarding security and integrity. Fulfill all requests of facility Executive Director. Accommodate instructors' needs to ensure they are adequately equipped and prepared to conduct their training at all times. Ensure continuity of all scheduled training.

-1997-1998 - Guardsmark Security, Anchorage, Alaska. Assistant Administrator/H.R. Specialist. Recruit and interview applicants. Conduct background checks. Hire and place new personnel at various contracts. Administer payroll and keep contracts fully staffed. Tend to logistical, technical and human resource issues of all account supervisors. Supervise all account supervisors. Deputy Administrator in overall management of all contracts within Alaska. Meet and maintain corporate headquarter goals and expectations.

-1993-1997 - Nana/Marriott Catering Service, Prudhoe Bay, Alaska. (Seasonally/College) Laborer/Prep Cook in industrial kitchens in Arctic Circle oilfield camps.

-1985-1992 - Commercial Fisherman, Kodiak, Alaska. (Seasonally/Jr.High/High School/College) Lived and worked on a 55 foot commercial fishing boat with 4 other crewmen. Skiffman then served as deck boss of crew.

Education:

-B.S. Criminal Justice/Counseling Psychology, University of Great Falls, 1996
Great Falls MT. Honors: Dean's List

-Alaska Department of Public Safety Training Academy, 1998
Sitka, AK.

-ETT Certification, 2001
Anchorage, AK.

-Public Agency Training Council NCJ First Line Supervisor Certificate 2005
Fairbanks, AK.

-2006-Current Final Year Law Student, J.D of Law, Concord Law School of Kaplan University, Los Angeles, CA. Honors: Outstanding Performance Award-Contract Law, Passed California Baby Bar Exam first attempt

References:
Carl Marrs- Phone# 360-0279

Vicki Otte- Phone# 223-3330

Regina Chennault- Phone# 244-1689

Nancy Dahlstrom- Phone# 694-4929

Gerad Godfrey
P.O. Box 770892
Eagle River, AK 99577

Cell 229-8860
Home 694-6154
geradg@gmail.com

Boards & Commissions Factsheets

Public Offices Commission

Board: Alaska Public Offices Commission (APOC)
Board identification number: 087

Department: Department of Administration

Authority: AS 15.13.020

Status: Active

Sunset date:

Requirements: Legislative Confirmation and Financial Disclosure

Prohibitions: Limited to one full term (a person appointed to fill the unexpired term of a predecessor may be appointed to a successive full five-year term); may not hold or campaign for elective office or make contributions; see AS 15.13.020 (e) for additional restrictions.

Term: 5 years

Description: 5 members appointed by Governor: 2 from each of the two political parties whose candidate for Governor received highest number of votes in the most recent preceding general election at which a Governor was elected (the two appointees from each of these two parties shall be chosen from a list of four names to be submitted by the central committee of each party); 1 member nominated by majority vote of the members of the Commission; members elect chair; vacancies filled within 30 days.

Function: Administers laws upholding the public's right to know the financial affairs of lobbyists and their employers, and of candidates and public officials at the state and municipal level. Adopts regulations, issues formal advisory opinions, recommends legislative changes, adjudicates requests to reduce civil penalties assessed by staff for late filing of disclosure reports. Assesses penalties for substantial noncompliance with reporting requirements, recommends removal from the ballot or office in accordance with law, and adjudicates complaints through approval of settlements, civil penalty assessments, and through public hearings under the Administrative Procedure Act.

Chair: Board selects.

Special facts: Quorum - 3 members; biennial report to Legislature. Quasi-judicial, regulatory agency.

Compensation: Standard Travel and Per Diem. Receive honorarium of $50 per day.

Meetings: 4-6 times per year; 15 days maximum.

For further information contact:
Ms. Holly R. Hill
Executive Director
2221 East Northern Lights Boulevard, Room 128
Anchorage, AK 99508
Phone: (907) 276-4176, FAX: (907) 276-7018

State of Alaska

Office of Boards and Commissions Roster

PUBLIC OFFICES COMMISSION (087)

Member	Date Appointed	Reappointed	Term Expires
Kathleen (Kate) Ballenger Public/Restricted/R P.O. Box 126 Kodiak, AK 99615-0126	5/7/2008		3/1/2011
Shirley R. Dean Public/Restricted/D P.O. Box 240086 Douglas, AK 99824	3/1/2007		3/1/2012
Kathleen A. Frederick, Esq. Public/Restricted/R Juneau, AK 99803	1/29/2008		3/1/2013
Elizabeth Johnston Hickerson Public/Restricted/D 1932 Forest Park Drive Anchorage, AK 99517	9/8/2006	3/1/2010	3/1/2015
Kathleen J. King APOC Nomination Arctic Slope Regional Corp. 821 Brown St Anchorage, AK 99501	5/27/2009		3/1/2014

Return to the fact sheet

ELIZABETH JOHNSTON HICKERSON
1932 Forest Park Drive
Anchorage, Alaska 99517
(907) 272-7170 home
(907) 529-4536 cell

EDUCATION

Juris Doctor, Oklahoma City University School of Law
May 1980

Bachelor of Science, University of Oklahoma
May 1973

High School Diploma, R. L. Paschal High School, Ft. Worth, Texas
May 1969

EXPERIENCE

2006 to present	Elizabeth J. Hickerson, Attorney at Law Sole practitioner Contract attorney for regulations projects: Department of Law for Health and Social Services regulations; Regulatory Commission of Alaska for Hydropower Licensing regulations
1987 to 2004	Assistant Attorney General, Department of Law State of Alaska Clients included: Alaska Public Utilities Commission/Regulatory Commission of Alaska; Department of Transportation & Public Facilities/International Airport; Division of Agriculture/ARLF/Board of Agriculture & Conservation; Division of Insurance; Department of Human Services/HIPPA Frequent continuing legal education instructor for Department of Law and Alaska Bar Association on: ethics, public records, public meetings, administrative procedure, administrative regulations

1987	Temporary staff attorney, Anchorage Equal Rights Commission
1982-1986	Counsel to Alaska State Senate
1981	Utility & transportation research assistant, Alaska Consumer Advocacy Program
1980	Assistant District Attorney, Oklahoma County, OK
1974-1977	High school social studies teacher, Norman, OK

MEMBERSHIPS

Alaska Bar Association, 1981 to present

Alaska Rules of Professional Conduct, member
Disciplinary Committee for 3rd Judicial District, member
Administrative Law Section, member

Oklahoma Bar Association, 1980 to present

APPOINTMENTS

Alaska Public Offices Commission, commissioner 2006 to present

KATHLEEN J. KING
821 Brown St., Anchorage, AK 99501
(907) 277-3497
kingkath1957@yahoo.com

PROFESSIONAL EXPERIENCE

ASRC ENERGY SERVICES, Anchorage, AK 2007-present
Senior Technical Writer

- Write winning bid proposals for oilfield support services.
- Interview subject matter experts.
- Develop content tailored to specific projects and purposes.
- Develop and edit policies and procedures for all functional business areas including business management and management systems.

ALASKA COURT SYSTEM, Anchorage, AK 2004-2007
Court Analyst / Technical Writer

- Perform substantive analytical work, staff committees, and provide consultation regarding court rules, procedure, and statute interpretation to court staff statewide.
- Participate in the development, revision, and implementation of standards of practice, policies, rules of court, and forms to improve court management and delivery of court services to the court staff and public.
- Research complex topics and issues, and prepare analytical memoranda and recommendations.
- Establish working relationships with justices, judges, court administrators, clerks of court, and a variety of professionals serving on task forces, committees, and work groups.
- Manage administrative and operational aspects of forms program, and responsible for immediate service delivery of program, both in print and electronic formats.

STATE OF ALASKA, DEPARTMENT OF LAW, Anchorage, AK 1988-2004
Associate Attorney I (advanced level paralegal)

- Perform all types of research – legal, factual, historical, and legislative – and effectively provide the results in both written and verbal formats.
- Manage multiple large or complex tasks or projects with minimal supervision.
- Establish working relationships with agency representatives, experts, and the public.
- Write winning grant proposals.

EDUCATION

UNIVERSITY OF ALASKA, Anchorage, AK
Master of Public Administration, public policy emphasis

UNIVERSITY OF TEXAS, Arlington, TX
Bachelor of Arts in communications, minor in economics

ACTIVITIES AND CERTIFICATIONS

ALASKA PUBLIC OFFICES COMMISSION, Anchorage, AK 2009 – 2012
Commissioner

- Administer laws upholding the public's right to know the financial affairs of lobbyists and public officials

- Oversee campaign finance laws
- Adopt regulations
- Issue formal advisory opinions
- Adjudicate civil penalties for late filing
- Assess penalties for noncompliance
- Recommend removal of candidates from ballot or office
- Adjudicating complaints

ALASKA BAR ASSOCIATION, Anchorage, AK 1993 - 2010
Mediator, Fee Arbitration and Disciplinary Committee

- Mediate disputes between attorneys and their clients or other persons
- Prepare written agreements outlining resolution of dispute
- Propose recommendations to bar counsel

GOVERNMENT HILL COMMUNITY COUNCIL, Anchorage, AK 1999 - 2009
Executive Board Member and Project Manager

As Project Manager:

- Maintain an understanding of regulations and other external drivers that affected project.
- Define project scope, schedule, and budget based on project proposals, contract terms, scope of work, and project objectives.
- Outline work plans, assign duties and responsibilities, and establish scope of authority.
- Control and prioritize activities to ensure project progressed on schedule and within budget.
- Negotiate and manage changes to the scope of work with the city and subcontractors.
- Coordinate communication and action plans between community council and city.
- Prepare and present project progress reports to community council and city.
- Complete contract closures and ensure formal acceptance of project deliverables.

INSTITUTIONAL REVIEW BOARD CERTIFICATION, expires January 2012

Boards & Commissions Factsheets

Ak Bar Association - Governors

Board: Board of Governors of the Alaska Bar Association
Board identification number: 010

Department: OFFICE OF THE GOVERNOR

Authority: AS 08.08.040; Chapter 196, SLA 1955

Status: Active

Sunset date: 6/30/2007

Requirements: Legislative Confirmation

Prohibitions: None

Term: 3 years

Description: 12 members: 3 non-attorneys appointed by Governor: (subject to legislative confirmation); plus 9 active members (Alaska Bar) elected by active members of Alaska Bar (2 from 1st judicial district, 4 from 3rd judicial district, 2 from 2nd/4th judicial districts and 1 at-large); triennial rotation regarding judicial districts used for appointments (see statute).

Function: Governs Alaska Bar; administers Bar exam; approves/recommends rules concerning practice of law to State Supreme Court; provides disciplinary actions; provides continuing legal education and membership services.

Chair: Members select.

Special facts: Annual report to Legislature. Legislative confirmation required for public members only.

Compensation: Standard Travel and Per Diem.

Meetings: 4 times per year; 2 day meetings; 8 days total.

For further information contact:
Ms. Deborah O'Regan
Executive Director
P.O. Box 100279
550 W. 7th Ave. Ste. 1900 (physical address only)
Anchorage, AK 99510-0279
Phone: (907) 272-7469, FAX: (907) 272-2932

Ak Bar Association - Governors Roster

Go to the Ak Bar Association - Governors Home page

We appreciate your interest in boards and commissions. For further information contact the boards and commissions staff at (907) 465-3500 or at **boards@alaska.gov**.

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State of Alaska

Office of Boards and Commissions Roster

AK BAR ASSOCIATION - GOVERNORS (010)

Member	Date Appointed	Reappointed	Term Expires
Mark Andrews Active Member/AK Bar/2nd/4th JD 1648 Cushman, Suite 300 Fairbanks, AK 99701-6228	5/15/2009		5/15/2012
Sidney K. Billingslea Active Member/AK Bar/3rd JD 134 West 15th Avenue Anchorage, AK 99501	5/31/2004	3/1/2007	5/15/2010
Christopher R. Cooke At Large 3700 Jewel Lake Road Anchorage, AK 99502	5/31/2004	3/1/2007	5/15/2010
David L. Eichler, DMD Public 3375 Badger Road, Suite 1 North Pole, AK 99705	3/1/2009		3/1/2012
Carl L. Ekstrom Public Anchorage Sportsplex, Inc. 6689 ChangePoint Drive Anchorage, AK 99518	1/29/2008		3/1/2011
Peter J. Maassen, Esq. Active Member/AK Bar/3rd JD 813 West Third Avenue Anchorage, AK 99504-2001	5/15/2009		5/15/2012
Donald W. McClintock, III, Esq. Active Member/AK Bar/3rd JD	5/15/2008		5/15/2011

1227 West Ninth Avenue, Suite 200 Anchorage, AK 99501			
Donald McLean Public 3719 East Meridian Loop, Suite B Wasilla, AK 99654	3/1/2007	3/1/2010	3/1/2013
Allison Mendel Active Member/AK Bar/3rd JD 1215 West Eigth Avenue Anchorage, AK 99501	5/31/2004	3/1/2007	5/15/2010
Mitchell A. Seaver Active Member/AK Bar/1st JD Ziegler Law Firm 307 Bawden Street Ketchikan, AK 99901	5/30/2006		5/15/2009
Hanna Sebold Active Member/AK Bar/1st JD P.O. Box 110300 Juneau, AK 99811	5/15/2008		5/15/2011
Jason A. Weiner Active Member/AK Bar/2nd/4th JD P.O. Box 71671 Fairbanks, AK 99707-1671	6/30/2005	5/15/2008	5/15/2011

Return to the fact sheet

Donald Rae McLean

P.O. Box 873836
Wasilla,Alaska 99687

Education

Bachelor of Science with Distinction Biology 1974
Virginia Polytechnic Institute and State University

Doctor of Dental Surgery 1978
Medical College of Virginia/Virginia Commonwealth University

Executive Juris Doctorate (in progress) expected completion: 2008
Concord School of Law

Professional Employment History

General Dentist (Captain) 1978-82
Elmendorf AFB,Alaska

Private Practice of Dentistry 1982-present
Wasilla,Alaska

Professional Licensure

Alaska State Dental License AK#522
Virginia State Dental License(inactive) #0401006134

Personal History

Born March 9,1952 in Hopewell,Virginia
Parents:Charles L. McLean(deceased) and Katherine J. McLean who presently resides in Lynchburg,Virginia
Married 31 years to Lynne F. McLean and 3 children; Kimberly(29 y.o.), Nicole(26 y.o.), and Christopher(20 y.o.)
Interests include agriculture,sports,education and the news

Boards & Commissions Factsheets

Parole Board

Board: State Board of Parole
Board identification number: 075

Department: Department of Corrections

Authority: AS 33.16.020

Status: Active

Sunset date: 6/30/2008

Requirements: Legislative Confirmation and Financial Disclosure

Prohibitions: Members may not be an officer or employee of the state.

Term: 5 years

Description: 5 members appointed by the Governor: appointments are made with due regard for representation of the ethnic, racial, gender and cultural populations of the state: 1 member who resides in the first judicial district, 1 in the third judicial district, and 1 member who resides in either the second or fourth judicial districts; at least 1 appointee must have experience in the field of criminal justice. Governor appoints chair.

Function: Through hearings authorizes discretionary parole releases, establishes conditions of parole, issues arrest warrants, and revokes parole for cause; conducts clemency investigations.

Chair: Governor appoints.

Special facts: Adjudicatory.Quorum - 3 members. Legislative Confirmation is required by statute, but not permissible under the Constitution.

Compensation: Standard Travel and Per Diem. Receive honorarium of $250 per day.

Meetings: Approximately 150 days per year.

For further information contact:
Mr. Ron Taylor
Executive Director
State Board of Parole
550 West Seventh Avenue, Suite 601
Anchorage, AK 99501
Phone: (907) 770-6309, FAX: (907) 770-6308

Parole Board Roster

We appreciate your interest in boards and commissions. For further information contact the boards and commissions staff at (907) 465-3500 or at **boards@alaska.gov**.

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State of Alaska

Office of Boards and Commissions Roster

PAROLE BOARD (075)

Member	Date Appointed	Reappointed	Term Expires
Lonzo Henderson Public/Restricted c/o Parole Board 550 West Avenue, Suite 601 Anchorage, AK 99501	12/29/2008		3/1/2014
Richard O. Larson Public/Restricted/Criminal Justice P.O. Box 2595 Palmer, AK 99645	3/1/2010		3/1/2015
Charles G. Moses Public/Restricted -- Chair c/o Alaska Board of Parole 550 West Seventh Ave., Suite 601 Anchorage, AK 99501	4/21/1997	1/1/2006	3/1/2011
Linda J. Smith Public/Restricted c/o Alaska Board of Parole 550 West Seventh Ave., Suite 601 Anchorage, AK 99501	2/11/2003	2/18/2008	3/1/2013
Michael J. Stark Public/Restricted c/o Alaska Board of Parole 550 West Seventh Ave., Suite 601 Anchorage, AK 99501	3/18/2002	3/1/2007	3/1/2012

Return to the fact sheet

R. Ole Larson
P.O. Box 2595 Palmer, Alaska 99645
HM. (907) 376-3658 Cell (907) 354-2651

Work history

Northwest Medical, Wasilla Alaska
Part time driver (06-01-09 to 11-30-09)
Kendall Automotive Group, Anchorage Alaska
Service Porter (6-01-08 to 05-30-09)
Geneva Woods Pharmacy, Wasilla Alaska
Part time driver (09-15-2006 to 5-30-08)
Sherrod Elementary School, Palmer Alaska
Substitute Custodian (05-01-2005 to 06-15-2005)
Mat-Su Pretrial Facility, Palmer Alaska
Superintendent (11-01-99 to 05-01-05 **retired state service**)
Fairbanks Correctional Center, Fairbanks Alaska
Superintendent (07-01-03 to 10-15-03)
Hiland Mountain/Meadow Creek Correctional Center, Eagle River Alaska
Assist. Super in charge of Ops., Adm./Support (11-15-93 to 11-01-99)
Cook-Inlet Pretrial Facility, Anchorage Alaska
Assist. Super. in charge of Adm./Support (07-30-92 to 11-15-93)
Mat-Su Pretrial Facility, Palmer Alaska
Assist. Super. of Operations (07-30-90 to 07-30-92)
Palmer Correctional Center, Sutton Alaska
Assist. Super. Of Operations, Adm./Support (11-15-87 to 07-30-90)
State Correctional Center/Annex (6th and C Jail), Anchorage Alaska
Assist. Super of Operations (08-15-85 to 11-15-87)
Palmer Correctional Center, Sutton Alaska
COI & II, Serg. (CO III), Facility Administrator (12-15-81 to 08-15-85)
McLaughlin Youth Center, Anchorage Alaska
Youth Counselor I & II (03-01-76 to 12-15-81)

College and Training

Durable Medical training, (52hrs.) (2007-2008)
National Institution of Correction, ten (week long) course studies (1987-2002)
Correctional Professional Training, (630 hrs.)
Union education and development, (136 hrs.)
Boy Scouts of America Leadership Wood badge and development (1993)
National Rural Electric Coop Association Board Certification (1992) MEA
Lutheran Youth Development Training (1984-1987)
Secondary Teaching Certification/ Univ. of Alaska at Anchorage, 1976
B.S. Biology/ Univ. of Nebr. at Omaha, 1975

Other

Mat-Su Borough School Board, Board of Directors (2008-present)
Matanuska Electric Association Inc. Board of directors (90 to 93)
Alaska Rural Electric Association Board of Directors (90 to 93)
Alaska Rural Electric Association Scholarship Board of Directors (90 to 93)
Good Shepherd Lutheran Church Co-Youth Leader (with spouse) (16 yrs)
Good Shepherd Lutheran Church Deacon for youth (3yrs.)
Boy Scouts of America Scout Master (5 yrs.)
Sports Booster Club member; grade school, middle school, high school

SENATE
CONFIRMATION COMMITTEE REPORT

Date: 2/17/10

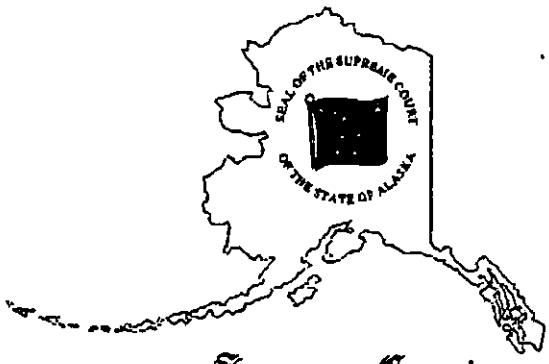
In accordance with AS 24.60.130, the Judiciary Committee reviewed the following and recommends the appointments be forwarded to the Senate floor for consideration:

Gary J. Turner
H. Conner Thomas

This does not reflect an intent by any of the members to vote for or against the confirmation of the individuals during any further sessions.

Signature:	Printed Last Name
	Wielechowski
	Coghill
Chair:	French

Please return to the Senate Secretary's Office (Room 211).



Chambers of
Walter L. Carpeneti
Chief Justice

Supreme Court
State of Alaska

P.O. Box 114100
Juneau, Alaska
99811-4100

(907) 463-4771
Fax (907) 463-3475

January 22, 2010

The Honorable Gary Stevens
Senate President
State Capitol, Room 111
Juneau, Alaska 99801-1182

The Honorable Mike Chenault
Speaker of the House
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear President Stevens
and Speaker Chenault:

In my capacity as Chief Justice, and pursuant to AS 24.60.130(b)(3), I am re-nominating Gary J. Turner to serve another term as a public member of the Select Committee on Legislative Ethics.

Mr. Turner is the Director of Kenai Peninsula College, a campus of the University of Alaska, and is also a retired Air Force officer. For purposes of determining compliance with AS 24.60.130(c), Mr. Turner is a Republican.

Mr. Turner can be reached at (907) 262-2366 (home) or (907) 262-0315 (work). His mailing address is 215 River Watch Drive, Soldotna, Alaska 99669, and his e-mail address is Gary.Turner@uaa.alaska.edu. Please let me know if I can provide you with any other information on this matter.

Sincerely,

Walter L. Carpeneti

Walter L. Carpeneti

cc: Gary Turner
Joyce Anderson

GARY J. TURNER

215 River Watch Drive
Soldotna AK 99669
(907) 262-0315 (work), 262-0316 (fax)
(907) 262-2366 (home)
Gary.Turner@uaa.alaska.edu

Qualifications Summary

Education and public affairs professional with 30 years experience in communications management in NASA, U.S. Air Force, PR agency, corporate and university environments. Extensive experience in media relations, environmental risk communication, crisis and issues management and community relations.

Professional Experience

College Director/CEO

University of Alaska, Kenai Peninsula College, Soldotna, AK; June 2002-Present

- Serve as chief academic and administrative officer for 3,000 student college system. Lead 242 employees at four locations in Anchorage, Soldotna, Homer and Seward.

Senior Vice President & General Manager

Weber Shandwick Worldwide, Seattle, WA; August 2000 – October 2001

Program Manager, Public Affairs

NASA Marshall Space Flight Center, Ai Signal Research, Inc, Huntsville, AL; June 1996 - August 2000

Coordinator and Instructor, Continuing Education and Program Development

University of Alaska Southeast, Ketchikan AK; August 1995 - June 1996

State Executive Director

Alaskans for Drug-Free Youth, Ketchikan, AK; August 1994 - April 1995

Director, Public Affairs

Eielson Air Force Base, Alaska; April 1992 - August 1994

Director, Visitor Services Division

U.S. Air Force Academy, CO; May 1991 - April 1992

Academic Instructor

U.S. Air Force Academy, CO; May 1990 - May 1991

From 1979-1990, served in variety of public affairs roles at U.S. Air Force bases in Belgium, NORAD and U.S. Space Command in Colorado Springs, and Fairchild Air Force Base, Washington.

Education

- Master of Arts, Mass Communication, University of Denver, 1989.
- Bachelor of Science, Liberal Arts, University of the State of New York, 1983.

Professional Associations

- Member, Kenai River Sportfishing Association Board of Directors; 2003-present
- Member, Kenai River Guide Advisory Board; 2007-present
- Chair, Kenai River Guide Academy; 2005-present
- Retired Air Force Public Affairs officer; Top Secret clearance at retirement.

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT
Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

FINANCIAL DISCLOSURE STATEMENT FOR: PUBLIC OFFICIALS, LEGISLATORS & CANDIDATES

EXECUTIVE BRANCH: Governor, Lt. Gov., commissioners, directors, special assistants and legislative liaisons; state boards and commissions; procurement and investment officers; city/borough officials; candidates.

JUDICIAL BRANCH: Justices, judges and magistrates.

LEGISLATIVE BRANCH: Legislators, legislative directors, Select Committee on Legislative Ethics.

FOR MORE INFORMATION, INSTRUCTIONS, BLANK FORMS, SAMPLE FORMS & QUESTIONS:
Visit APOC online at: doa.alaska.gov/apoc :

- To find detailed instructions and sample disclosures, under the heading "How do I..." click "Complete my initial, annual or final Public Official Financial Disclosure Statement"
- To find blank Financial Disclosure forms for public officials and legislators as well as a *Guide to Financial Disclosure in Alaska,* under the heading "Quick Links" click "APOC Forms"
- To find the laws and regulations that APOC administers and enforces, there is a link to "Statutes" or "APOC Statutes & Regulations" throughout the APOC Web site.

Contact APOC directly:

- ANCHORAGE: 2221 E. Northern Lights Blvd., Rm 128, Anchorage, AK 99508 / 907-276-4176 / Fax 907-276-7018
- JUNEAU: 240 Main St., Rm 500 / P.O. Box 110222, Juneau, AK 99811 / 907-465-4864 / Fax 907-465-4832
- TOLL-FREE: 800-478-4176 / Online contact info: http://doa.alaska.gov/apoc/

→ THIS IS A PUBLIC DOCUMENT ←

THIS REPORT IS A SWORN STATEMENT. YOUR SIGNATURE ON THE LAST PAGE CERTIFIES THAT THIS DISCLOSURE IS TRUE, CORRECT and COMPLETE.

NAME: Gary J. Turner

MAILING ADDRESS: 215 River Watch Dr. Soldotna AK 99669
Street address or P.O. box, city, zip code

CONTACT PHONE(S): 262-2366 (H) 262-0315 (W) Fax: 262-0316

E-MAIL: ingjt@uaa.alaska.edu

SPOUSE / DOMESTIC PARTNER: Marlene M. Turner

DEPENDENT CHILDREN: 0 NON-DEPENDENT CHILDREN LIVING WITH YOU: 0
Report number of children, including stepchildren, adoptive children. Legislative filers: List non-dependent children living with you.

ARRIVED
DEC 15 2009

NAME NON-DEPENDENT CHILDREN LIVING with YOU:

WHY ARE YOU FILING? ☒ OFFICE HOLDER or ☐ CANDIDATE

APOC-ANCH FAX FILE

Office held or sought: Select Committee on Legislative Ethics

☐ INITIAL STATEMENT: Due 30 days from appointment – for new public officials.

☒ ANNUAL STATEMENT: Due by ~~March 15~~ Jan 11 for incumbent officials.

no date stamp

☐ FINAL STATEMENT: Due 90 days after leaving office – include data up until leaving office.

☐ CANDIDATE STATEMENT: Due when filing declaration of candidacy

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE A: SOURCES OF INCOME OVER $1,000

1. SALARIED EMPLOYMENT NONE: check box → ☐

Report each employer who paid you, your spouse, domestic partner or children covered by reporting requirements more than $1,000. Include amount of income, dates of employment, terms of employment, amount of time worked. **Income means anything of value and covers all forms of compensation, including deferred income.**
DESCRIBE THE WORK PERFORMED IN SUFFICIENT DETAIL TO MAKE IT CLEAR TO A PERSON OF ORDINARY UNDERSTANDING.

EARNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $ 124,000

☒ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: Jan 1, – Dec 31, 2009

If work is not full-time, specify amount of time worked (months/days/hours): _____

Employer: University of Alaska

Address: PO Box 755140 Fairbanks AK 99775

DETAILED DESCRIPTION of SERVICES PROVIDED:

College Director, Kenai Peninsula College

EARNED BY: ☐ Filer / ☒ Spouse/domestic partner / ☐ Child / Total income: $ 33,550

☒ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: Jan 1- Dec 31, 2009

If work is not full-time, specify amount of time worked (months/days/hours): _____

Employer: Kenai Peninsula Borough

Address: 144 N. Binkley St., Soldotna AK 99669

DETAILED DESCRIPTION of SERVICES PROVIDED:

Admin Clerk in Capital Projects office

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $ _____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Employer: _____

Address: _____

DETAILED DESCRIPTION of SERVICES PROVIDED: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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DEC 15 2009

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE A: SOURCES OF INCOME OVER $1,000

2. SELF-EMPLOYMENT: NON-RETAIL NONE: check box → ☒

Disclose each client, customer or business that paid you, your spouse/domestic partner or child more than $1,000. Self-employment includes sole proprietors, partnerships, limited liability companies, professional corporations. List each source of income over $1,000 by name and amount. Exemptions: if the identity of the source of income is confidential by law, you may be excused from disclosing the source. To obtain an exemption, you must qualify under the law, you must file a written request, and you must ***receive*** an exemption from the commission. Exemption rules: Public officials, candidates: 2 AAC 50.100-102. Legislators: 2 AAC 50.775-780.

Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **Total income:** $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / **Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / Customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

_____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **Total income:** $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / **Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

_____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **Total income:** $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / **Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners.	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT
Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE A: SOURCES OF INCOME OVER $1,000

3. SELF-EMPLOYMENT – RETAIL

NONE: check box → ☒

List each self-employment retail business that was a source of income of more than $1,000. Individual retail clients/customers do ***not*** need to be disclosed with these ***exceptions.*** You must disclose (1) customers with a line of credit extending through two or more billing cycles, (2) customers with ongoing contracts to purchase goods or services, and (3) customers who are offered discounts not available to the general public.

Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **Total income: $**_____

☐ **Full-time** ☐ **Part-time** ☐ **Seasonal** ☐ **Commission** ☐ **Project** ☐ **Hourly / Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client/customer name/address (if applicable): _____

DETAILED DESCRIPTION of services provided: _____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **Total income: $**_____

☐ **Full-time** ☐ **Part-time** ☐ **Seasonal** ☐ **Commission** ☐ **Project** ☐ **Hourly / Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client/customer name/address (if applicable): _____

DETAILED DESCRIPTION of services provided: _____

_____

4. RENTAL INCOME

NONE: check box → ☐

OWNER:	TENANTS WHO PAID > $1,000 (For property outside Alaska managed by agent, list AGENT instead of tenant)	AMOUNT
☐ Filer		
☐ Spouse or domestic partner		
☐ Child		
☐ Co-owner with others		

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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DEC 16 2009

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE A: SOURCES OF INCOME OVER $1,000

5. DIVIDENDS and INTEREST

NONE: check box → ☐

Disclose source and amount of income over $1,000 from dividends and interest. Include bank accounts, capital gains, money market accounts, certificates of deposit, Native corporation dividends, Permanent Fund dividends.

RECIPIENT	SOURCE	AMOUNT
☒ Filer ☐ Child ☒ Spouse/ partner	AK PFD	2610
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		

6. OTHER INCOME

NONE: check box → ☐

List source and amount of income over $1,000 not listed elsewhere in this form, including sale of goods or property, pensions, IRA cash-outs, honorariums, alimony, child support, shared living expenses and government entitlements.

RECIPIENT	SOURCE	AMOUNT
☒ Filer ☐ Child ☐ Spouse/ partner	Air Force retirement	21,000
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		

7. GIFTS WORTH MORE THAN $250

NONE: check box → ☐

Report gifts worth more than $250 (including gifts from a single source with a cumulative value more than $250) – *except* gifts from spouse, domestic partner, parent, child, sibling, grandparent, aunt, uncle, niece or nephew. Include travel expenses, discounts not available to the public, loans forgiven or loans paid by a third party. Legislators must submit more detailed disclosure reports to the Legislative Ethics Committee.

RECIPIENT	DESCRIPTION	SOURCE	VALUE
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE".

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE B

BUSINESS INTERESTS

NONE: check box → ☐

Report business interests even if they were **NOT** a source of income, including businesses in which you/family:

- Served as stockholder, owner, officer, director, partner, proprietor, employee or held an interest.
- Had ownership interests of more than $1,000 in a publicly traded corporation.
- Had any other ownership interest in a business, including shares in non-publicly traded corporations, sole proprietorships, limited liability companies. Include options to buy.
- Include non-profit organizations, corporations, businesses, associations, trade groups.

If the business was a source of income over $1,000, it must also be reported in Schedule A.

☒ Filer / ☐ Spouse/domestic partner / ☐ Child / **Position/Type of interest:** Board of Directors

Business name: Kenai River Sportfishing Association

Business address: PO Box 1228 Soldotna AK 99669

DETAILED DESCRIPTION of business activity: Non profit sportfishing organization

☒ Filer / ☐ Spouse/domestic partner / ☐ Child / **Position/Type of interest:** Board member

Business name: Kenai River Guide Advisory Board

Business address: Kenai River Center, Funny River Rd, Soldotna Ak 99669

DETAILED DESCRIPTION of business activity: Advise Kenai River special Management Area on guide industry issues

☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **Position/Type of interest:** _____

Business name: _____

Business address: _____

DETAILED DESCRIPTION of business activity: _____

☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **Position/Type of interest:** _____

Business name: _____

Business address: _____

DETAILED DESCRIPTION of business activity: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE C

REAL PROPERTY INTERESTS **NONE: check box →** ☐

Include your home, a rent-to-own home, rental property, vacant property, recreational property, options to buy, business property and real estate interests held in a limited liability company, limited partnership or trust. Include property owned or sold during the reporting period. *If property is jointly owned, check all boxes that apply.*

OWNER(S): ☒ **Filer /** ☒ **Spouse/domestic partner /** ☐ **Child /** ☐ **Other co-owner:** _____

Street address or legal description: 215 River Watch Dr

City or borough / State: Soldotna Ak 99669

Ownership interest: Home owner

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

OWNER(S): ☒ **Filer /** ☒ **Spouse/domestic partner /** ☐ **Child /** ☐ **Other co-owner:** _____

Street address or legal description: Lot 8, Block 3, Mooring by the River, Plat 84-160

City or borough / State: Soldotna Ak 99669

Ownership interest: Vacant lot - own

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

OWNER(S): ☒ **Filer /** ☒ **Spouse/domestic partner /** ☐ **Child /** ☐ **Other co-owner:** _____

Street address or legal description: Lot 13, Block 1, Mooring by the River, Plat 84-160

City or borough / State: Soldotna Ak 99669

Ownership interest: Vacant lot - own

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

OWNER(S): ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child /** ☐ **Other co-owner:** _____

Street address or legal description: _____

City or borough / State: _____

Ownership interest: _____

OWNER(S): ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child /** ☐ **Other co-owner:** _____

Street address or legal description: _____

City or borough / State: _____

Ownership interest: _____

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

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SCHEDULE D

BENEFICIAL INTERESTS: TRUSTS & RETIREMENT ACCOUNTS over $1,000 / NONE: ☐

Report each beneficial interest in a trust or retirement account that exceeded $1,000 during the reporting period. Report stocks, bonds, mutual funds, cash accounts, CDs, deferred compensation plans, profit-sharing accounts, employee benefit accounts, retirement accounts (such as IRA, 401K, SEP or Keogh) trust funds (including blind trusts) and limited partnerships. "Managed by" means the filer, employer, business, investment entity or name of the company that manages the account. Identify individual investments if you or family members manage or personally control the investments. "Identify fund or companies" means the individual companies or accounts where you are the manager and you control the investments; if a mutual fund, investment company or other third party entity manages and controls the investments, list the name or type of fund where the assets are held. You do NOT need to list the dollar value of the assets, but you must identify the assets by owner, manager and name.

ASSETS – OWNED BY: ☒ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / PERCENT:** 100

ASSETS – MANAGED BY: Fidelity Investments

ASSETS – IDENTIFY FUND or COMPANIES: Fidelity Freedom 2020

ASSETS – OWNED BY: ☒ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / PERCENT:** 100

ASSETS – MANAGED BY: Alaska PERS

ASSETS – IDENTIFY FUND or COMPANIES: Univ. of Alaska retirement

---

ASSETS – OWNED BY: ☐ **Filer /** ☒ **Spouse/domestic partner /** ☐ **Child / PERCENT:** 100

ASSETS – MANAGED BY: Alaska PERS

ASSETS – IDENTIFY FUND or COMPANIES: Global Balanced, Brandes INTST, T. Rowe Price Smallcap, S+P 500 Stock Index, Sentinel Sustainable, Money Market Fund

ASSETS – OWNED BY: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / PERCENT:** _____

ASSETS – MANAGED BY: _____

ASSETS – IDENTIFY FUND or COMPANIES: _____

ASSETS – OWNED BY: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / PERCENT:** _____

ASSETS – MANAGED BY: _____

ASSETS – IDENTIFY FUND or COMPANIES: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE".

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE E

1. LOANS, LOAN GUARANTEES & DEBTS OVER $1,000 **NONE: check box →** ☐

Report each creditor or lender to whom more than $1,000 was owed during the reporting period. Report guarantor of each loan. List financial obligations, including mortgages on property owned or sold during the reporting period; loans that have been guaranteed; delinquent taxes; alimony; child support payments; medical bills; boat and vehicle loans; business and personal loans; escrows; student loans; signature loans and promissory notes. Loans include secured, unsecured and contingent loans. *Do NOT list credit card obligations or revolving charge accounts.*

DEBTOR: ☒ **Filer /** ☒ **Spouse/domestic partner /** ☐ **Child**

☒ **LENDER /** ☐ **CREDITOR /** ☐ **GUARANTOR / NAME:** First National Bank of Alaska

DEBTOR: ☒ **Filer /** ☒ **Spouse/domestic partner /** ☐ **Child**

☒ **LENDER /** ☐ **CREDITOR /** ☐ **GUARANTOR / NAME:** USAA

DEBTOR: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child**

☐ **LENDER /** ☐ **CREDITOR /** ☐ **GUARANTOR / NAME:** _____

DEBTOR: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child**

☐ **LENDER /** ☐ **CREDITOR /** ☐ **GUARANTOR / NAME:** _____

2. *FOR LEGISLATIVE BRANCH FILERS ONLY* **NONE: check box →** ☒

Legislative branch filers must report additional details: original amount of the obligation, the current balance owed, interest rate, length of the loan and whether a written agreement exists for a creditor or lender who:

- Lobbies or hired lobbyists
- Had contracts or sought contracts worth more than $10,000 with any state agency
- Was a municipal or local government entity
- Was affected financially – in an amount exceeding $1,000 – by an act of the legislature or state agency decision, including actions affecting professional or occupational licenses; natural resource permits or quotas; assessments; tax rates; health, safety or environmental standards; insurance or business practices.

DEBTOR: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child**

☐ **LENDER or** ☐ **CREDITOR / Name:** _____

Address: _____

Original loan: $_____ **Balance owed:** $_____ **Interest rate:** _____%

Term: ☐ _____ **years** ☐ _____ **months / WRITTEN LOAN AGREEMENT?** ☐ **Yes /** ☐ **No**

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
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SCHEDULE F

1. LEASES: GOVERNMENT CONTRACTS & LEASES

NONE: check box → ☒

List all contracts, bids and offers to contract with the state or any state or municipal agency or entity. Report contract interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company or through a corporation in which filer or family members held a controlling interest.

CONTRACTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST:** _____

☐ Bid / ☐ Offer / ☐ Held / **CONTRACT ID (name/number):** _____

CONTRACTING AGENCY: _____

CONTRACT DESCRIPTION: _____

_____

CONTRACTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST:** _____

☐ Bid / ☐ Offer / ☐ Held / **CONTRACT ID (name/number):** _____

CONTRACTING AGENCY: _____

CONTRACT DESCRIPTION: _____

_____

2. LEASES: NATURAL RESOURCE LEASES

NONE: check box → ☒

List natural resource leases – including mineral, timber, oil and gas leases – held, bid or offered during the reporting period. Report lease interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company; or corporation in which you or family (individually or together) held controlling interest.

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST:** _____

☐ Bid / ☐ Offer / ☐ Held / **LEASE ID (name/number):** _____

LEASE DESCRIPTION: _____

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST:** _____

☐ Bid / ☐ Offer / ☐ Held / **LEASE ID (name/number):** _____

LEASE DESCRIPTION: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE G

1. CLOSE ECONOMIC ASSOCIATIONS

NONE: check box → ☒

EXEMPT: Municipal and local officials are exempt from reporting close economic associations. **Members of state boards and commissions are exempt** from reporting close economic associations. **Local officials and state board/commission members do NOT have to complete this section. Check the box for NONE.**

STATE PUBLIC OFFICIALS: Disclose financial relations with legislators, other public officials and lobbyists.

LEGISLATIVE BRANCH: Disclose financial relations with public officials, lobbyists, other legislators, and legislative employees. Report close economic association detailed information to the Legislative Ethics Committee.

CLOSE ECONOMIC ASSOCIATION means a financial relationship between public officials, legislators and lobbyists, including shared interests in a business, property, association, partnership, corporation or LLC.

CHANGES: Report new close economic associations within 60 days.

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ **Filer** / ☐ **Spouse/domestic partner** / ☐ **Child**

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ **Filer** / ☐ **Spouse/domestic partner** / ☐ **Child**

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

2. FILERS WITH A LOBBYIST SPOUSE or DOMESTIC PARTNER

NONE: ☒

EXEMPT: Local officials and members of state boards and commissions are EXEMPT. Check NONE.

STATE PUBLIC OFFICIALS with a lobbyist spouse or domestic partner: Report names and addresses of each employer of the lobbyist and the total monetary value received from each of the lobbyist's employers.

LEGISLATIVE BRANCH filers with a lobbyist spouse or domestic partner: Disclose employer of lobbyist and compensation, and report details to t he Legislative Ethics Committee.

CHANGES: Report changes in lobbyist's employer within 48 hours of the change.

LOBBYIST'S EMPLOYER: NAME & ADDRESS	COMPENSATION

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners.	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and the information in this disclosure statement is, to the best of my knowledge, true, correct and complete. A person who makes a false sworn certification which he or she does not believe to be true is guilty of perjury.

SIGNATURE Gary J Turner

If you are filing online, you must have an Electronic Filing Agreement with APOC to use an electronic signature.

Gary J. Turner — NAME of FILER

12/2/09 Home — DATE &PLACE SIGNED / FILED

All officials and candidates who are required to file disclosure statements are solely responsible for filing complete, accurate and truthful statements by the deadlines.

WHERE TO FILE THIS STATEMENT

STATE OFFICIALS: File initial, annual and final statements with the Alaska Public Offices Commission.

STATE CANDIDATES: File with the Division of Elections along with Declaration of Candidacy.

BOROUGH / MUNICIPAL / CITY OFFICIALS and CANDIDATES: File with city or borough clerk where you hold or seek office.

FILE ELECTRONICALLY to APOC: doa.apoc.reports@alaska.gov

THIS IS A PUBLIC DOCUMENT

NOTE: Public officials who are required to file this disclosure statement may have additional obligations to disclose conflicts of interest or potential conflicts under state executive, legislative or judicial ethics rules or personnel rules. Legislators who are required to file this disclosure statement have additional disclosure and reporting requirements imposed by the Select Committee on Legislative Ethics. Local officials may also be governed by local ethics ordinances or personnel rules.

Disclosure forms, guidelines, laws and regulations are online: www.apoc.alaska.gov or from APOC offices

ALASKA PUBLIC OFFICES COMMISSION

ANCHORAGE OFFICE:
2221 E. Northern Lights Blvd – Rm 128
Anchorage, AK 99508-4149
907-276-4176 / Toll-free 800-478-4176
Fax 907-276-7018

JUNEAU OFFICE:
240 Main St. – Rm 500
Mail: P.O. Box 110222
Juneau, AK 99811-0222
907-465-4864 / Fax 907-465-4832

E-mail APOC: doa.apoc@alaska.gov
File electronic disclosure statements to: doa.apoc.reports@alaska.gov

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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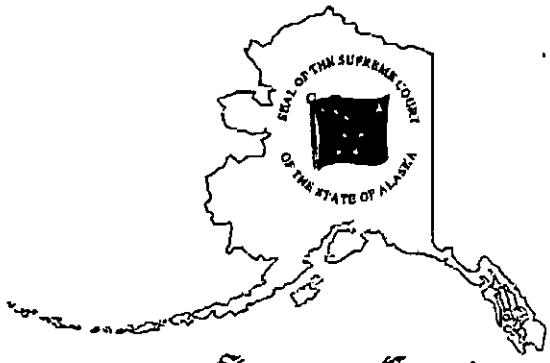

Chambers of
Walter L. Carpeneti
Chief Justice

Supreme Court
State of Alaska

P.O. Box 114100
Juneau, Alaska
99811-4100

(907) 463-4771
Fax (907) 463-3475

January 22, 2010

The Honorable Gary Stevens
Senate President
State Capitol, Room 111
Juneau, Alaska 99801-1182

The Honorable Mike Chenault
Speaker of the House
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear President Stevens
and Speaker Chenault:

In my capacity as Chief Justice, and pursuant to AS 24.60.130(b)(3), I am re-nominating H. Conner Thomas to serve another term as a public member of the Select Committee on Legislative Ethics.

Mr. Thomas is an associate and partner in a small general practice law firm, Lewis & Thomas, P.C. For purposes of determining compliance with AS 24.60.130(c), Mr. Thomas is a Democrat.

Mr. Thomas can be reached at (907) 443-5226. His mailing address is P.O. Box 865, Nome, Alaska, 99762, and his e-mail address is connernomelaw@gci.net. Please let me know if I can provide you with any other information on this matter.

Sincerely,

Walter L. Carpeneti

Walter L. Carpeneti

cc: H. Conner Thomas
Joyce Anderson

H. Conner Thomas
P.O. Box 865
Nome, Alaska 99762
907-443-5226/fax: 907-443-5098
e-mail: connernomelaw@gci.net

EDUCATION

University of Louisville, School of Law, Louisville, Kentucky, J.D. (1977)

University of Kentucky, Lexington, Kentucky, B.A. Economics (1973)

EMPLOYMENT

Lewis & Thomas, P.C., *August 1986 to present* - Nome, Alaska
Formerly Larson Timbers & Thomas P.C.
Associate and partner in a small general practice law firm

State of Alaska, Public Defender Agency, *May 1983 to August 1986* - Nome, AK
Representing indigent criminal defendants

State of Alaska Court System – Magistrate, *September 1982 to May 1983* - Nome, AK
Arraign criminal defendants, preside over misdemeanor trials, and preside as master in child in need of aid and juvenile delinquency cases

Alaska Legal Services Corporation, *October 1979 to September 1982*- Nome, AK
Staff and supervising attorney for law office representing indigent clients in civil cases

U.S. Department of Interior, *May 1979 to October 1979* – Anchorage, AK
Land adjudicator

VISTA Volunteer, *October 1977 to January 1979* – Fairbanks and Nome, AK
Staff attorney with Protection and Advocacy for developmentally disabled - Fairbanks
Staff attorney with Alaska Legal Services Corporation- Nome

ORGANIZATIONS

Legislative Ethics Committee, Public Member – January 1999 to present

Nome Kennel Club, President, Board of Directors – December 1992 to present

Alaska Civil Liberties Union, Board of Directors – April 1994 to October 1997

Citizen Review Committee, Department of Health & Social Services – October 1985 to January 1987

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

FINANCIAL DISCLOSURE STATEMENT FOR:
PUBLIC OFFICIALS, LEGISLATORS & CANDIDATES

EXECUTIVE BRANCH: Governor, Lt. Gov., commissioners, directors, special assistants and legislative liaisons; state boards and commissions; procurement and investment officers; city/borough officials; candidates.

JUDICIAL BRANCH: Justices, judges and magistrates.

LEGISLATIVE BRANCH: Legislators, legislative directors, Select Committee on Legislative Ethics.

FOR MORE INFORMATION, INSTRUCTIONS, BLANK FORMS, SAMPLE FORMS & QUESTIONS: Visit APOC online at: doa.alaska.gov/apoc:

- To find detailed instructions and sample disclosures, under the heading "How do I..." click "Complete my initial, annual or final Public Official Financial Disclosure Statement"
- To find blank Financial Disclosure forms for public officials and legislators, under the heading "Quick Links" click "APOC Forms"
- To find the laws and regulations that APOC administers and enforces, there is a link to "Statutes" or "APOC Statutes & Regulations" throughout the APOC Web site.

Contact APOC directly:

- ANCHORAGE: 2221 E. Northern Lights Blvd., Rm 128, Anchorage, AK 99508 / 907-276-4176 / Fax 907-276-7018
- JUNEAU: 240 Main St., Rm 500 / P.O. Box 110222, Juneau, AK 99811 / 907-465-4864 / Fax 907-465-4832
- TOLL-FREE: 800-478-4176 / Online contact info: http://doa.alaska.gov/apoc/

THIS IS A PUBLIC DOCUMENT – DO NOT INCLUDE CONFIDENTIAL INFORMATION
(*i.e.*, SOCIAL SECURITY NUMBERS, ACCOUNT NUMBERS)

THIS REPORT IS A SWORN STATEMENT. YOUR SIGNATURE ON THE LAST PAGE CERTIFIES THAT THIS DISCLOSURE IS TRUE, CORRECT and COMPLETE.

NAME: H. Conner Thomas

MAILING ADDRESS: P.O Box 865 Nome, Alaska 99762
Street address or P.O. Box, city, zip code

CONTACT PHONE(S): 907-443-5226 **Fax:** 907-443-5098

ARRIVED
JAN 13 2010
APOC-ANCH
PER HC FAX ELE
1-11-10

E-MAIL: connernomelaw@gci.net

SPOUSE / DOMESTIC PARTNER: Margaret A. Thomas

DEPENDENT CHILDREN: one NON-DEPENDENT CHILDREN LIVING WITH YOU: none
Report number of children, including stepchildren, adoptive children. Legislative filers: List non-dependent children living with you.

NAME NON-DEPENDENT CHILDREN LIVING with YOU:

WHY ARE YOU FILING? X☐ **OFFICE HOLDER** or ☐ **CANDIDATE**

Office held or sought: Public Member Select Committee Legislative Ethics

☐ **INITIAL STATEMENT: Due 30 days from appointment for new public officials** (and annually thereafter).

X **ANNUAL STATEMENT: Due by January 11, 2010 – for incumbent officials.**

☐ **FINAL STATEMENT: Due 90 days after leaving office – From** _____ **through** _____.
(Include all information not reported on a previously filed statement through your last day of office.)

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

☐ **CANDIDATE STATEMENT: Due when filing declaration of candidacy**

SCHEDULE A: SOURCES OF INCOME OVER $1,000

1. SALARIED EMPLOYMENT **NONE: check box →** ☐

Report each employer who paid you, your spouse, domestic partner or children covered by reporting requirements more than $1,000. Include amount of income, dates of employment, terms of employment, amount of time worked. **Income means anything of value and covers all forms of compensation, including deferred income.**
DESCRIBE THE WORK PERFORMED IN SUFFICIENT DETAIL TO MAKE IT CLEAR TO A PERSON OF ORDINARY UNDERSTANDING.

EARNED BY: ☐X **Filer / X Spouse/domestic partner / Child / Total income:** $ $33,240.9

☐ **Full-time** ☐ **Part-time X Seasonal** ☐ **Commission** ☐ **Project** ☐ **Hourly / Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Employer: Nome Public Schools

Address: P.O. Box 131, Nome, Alaska 99762

DETAILED DESCRIPTION of SERVICES PROVIDED: Title I paraprofessional

_____

_____

_____

EARNED BY: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / Total income:** $_____

☐ **Full-time** ☐ **Part-time** ☐ **Seasonal** ☐ **Commission** ☐ **Project** ☐ **Hourly / Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Employer: _____

Address: _____

DETAILED DESCRIPTION of SERVICES PROVIDED: _____

_____

_____

EARNED BY: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / Total income:** $_____

☐ **Full-time** ☐ **Part-time** ☐ **Seasonal** ☐ **Commission** ☐ **Project** ☐ **Hourly / Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Employer: _____

Address: _____

DETAILED DESCRIPTION of SERVICES PROVIDED: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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JAN 12 2010

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE A: SOURCES OF INCOME OVER $1,000

2. SELF-EMPLOYMENT: NON-RETAIL NONE: check box → ☐

Disclose each client, customer or business that paid you, your spouse/domestic partner or child more than $1,000. Self-employment includes sole proprietors, partnerships, limited liability companies, professional corporations. List each source of income over $1,000 by name and amount. Exemptions: if the identity of the source of income is confidential by law, you may be excused from disclosing the source. To obtain an exemption, you must qualify under the law, you must file a written request, and you must ***receive*** an exemption from the commission. Exemption rules: Public officials, candidates: 2 AAC 50.100-102. Legislators: 2 AAC 50.775-780.

Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY X **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / Total income: $** 108,000.00

X **Full-time** ☐ **Part-time** ☐ **Seasonal** ☐ **Commission** ☐ **Project** ☐ **Hourly / Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: Lewis & Thomas, P.C.

Client / Customer name: Attachment A

Client / customer address: Attachment A

DETAILED DESCRIPTION of services provided: Legal Services

_____

_____

EARNED BY: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / Total income: $** _____

☐ **Full-time** ☐ **Part-time** ☐ **Seasonal** ☐ **Commission** ☐ **Project** ☐ **Hourly / Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

_____

EARNED BY: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / Total income: $** _____

☐ **Full-time** ☐ **Part-time** ☐ **Seasonal** ☐ **Commission** ☐ **Project** ☐ **Hourly / Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT
Covers the reporting period Jan. 1, 2009– Dec. 31, 2009
SCHEDULE A: SOURCES OF INCOME OVER $1,000

3. SELF-EMPLOYMENT – RETAIL NONE: check box → ☐

List each self-employment retail business that was a source of income of more than $1,000. Individual retail clients/customers do ***not*** need to be disclosed with these ***exceptions.*** You must disclose (1) customers with a line of credit extending through two or more billing cycles, (2) customers with ongoing contracts to purchase goods or services, and (3) customers who are offered discounts not available to the general public.
Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client/customer name/address (if applicable): _____

DETAILED DESCRIPTION of services provided: _____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client/customer name/address (if applicable): _____

DETAILED DESCRIPTION of services provided: _____

_____

4. RENTAL INCOME NONE: check box → ☐

OWNER:	TENANTS WHO PAID > $1,000 (For property outside Alaska managed by agent, list AGENT instead of tenant)	AMOUNT
■ Filer		
■ Spouse or domestic partner		
■ Child		
■ Co-owner with others		

SCHEDULE A: SOURCES OF INCOME OVER $1,000

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT
Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

5. DIVIDENDS and INTEREST

NONE: check box → ☐

Disclose source and amount of income over $1,000 from dividends and interest. Include bank accounts, capital gains, money market accounts, certificates of deposit, Native corporation dividends, Permanent Fund dividends.

RECIPIENT	SOURCE	AMOUNT
x Filer ☐ Child x Spouse/ partner	Wells Fargo Securities Brokerage Account – See Attachments B&D	$7,302.36
☐ Filer ☐ Child ☐ Spouse/ partner	Fidelity Retirement – See Attachment C	$1,414.75
x Filer x Child x☐ Spouse/ partner	Alaska Permanent Fund Dividends	$3,915.00
x Filer xChild xSpouse/ partner	Savings Account Interest	$5.57
X Filer ☐ Child ☐ Spouse/ partner	PERS Account – See Attachment F	$1,162.13
☐ Filer ☐ Child X Spouse/ partner	New York Life – See Attachment G	$1,547.13

6. OTHER INCOME

NONE: check box → ☐

List source and amount of income over $1,000 not listed elsewhere in this form, including sale of goods or property, pensions, IRA cash-outs, honorariums, alimony, child support, shared living expenses and government entitlements.

RECIPIENT	SOURCE	AMOUNT
x Filer ☐ Child x Spouse/ partner	Wells Fargo Securities Account (Stock Sales) – Attachment B	$32,543.91
X Filer ☐ Child ☐ Spouse/ partner	Wells Fargo IRA – Attachment D	$2,124.36
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		

7. GIFTS WORTH MORE THAN $250

NONE: check box → ☐

Report gifts worth more than $250 (including gifts from a single source with a cumulative value more than $250) – *except* gifts from spouse, domestic partner, parent, child, sibling, grandparent, aunt, uncle, niece or nephew. Include travel expenses, discounts not available to the public, loans forgiven or loans paid by a third party. Legislators must submit more detailed disclosure reports to the Legislative Ethics Committee.

RECIPIENT	DESCRIPTION	SOURCE	VALUE
☐ Filer ☐ Child x Spouse/ partner	Cash	Henry Landsberger	$5,329.01
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

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SCHEDULE B

BUSINESS INTERESTS **NONE: check box →** ☐

Report business interests even if they were **NOT** a source of income, including businesses in which you/family:
- Served as stockholder, owner, officer, director, partner, proprietor, employee or held an interest.
- Had ownership interests of more than $1,000 in a publicly traded corporation.
- Had any other ownership interest in a business, including shares in non-publicly traded corporations, sole proprietorships, limited liability companies. Include options to buy.
- Include non-profit organizations, corporations, businesses, associations, trade groups.

If the business was a source of income over $1,000, it must also be reported in Schedule A.

x Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: _____

Business name: Lewis & Thomas, P.C.

Business address: P.O. Box 61, Nome, Alaska 99762

DETAILED DESCRIPTION of business activity: Law Practice

x Filer /xSpouse/domestic partner / ☐ Child / Position/Type of interest: _____

Business name: Wells Fargo Investment Account – See Attachment B

Business address: _____

DETAILED DESCRIPTION of business activity: _____

☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: _____

Business name: _____

Business address: _____

DETAILED DESCRIPTION of business activity: _____

☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: _____

Business name: _____

Business address: _____

DETAILED DESCRIPTION of business activity: _____

SCHEDULE C

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

REAL PROPERTY INTERESTS

NONE: check box → ☐

Include your home, a rent-to-own home, rental property, vacant property, recreational property, options to buy, business property and real estate interests held in a limited liability company, limited partnership or trust. Include property owned or sold during the reporting period. *If property is jointly owned, check all boxes that apply.*

OWNER(S): x Filer / x Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____

Street address or legal description: Lots, 13B, 14B, and 15B, First Addition to Banner Creek Subdivision, Cape Nome, Recording District

City or borough / State: _____

Ownership interest: Owner

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

OWNER(S): xFiler / xSpouse/domestic partner / ☐ Child / ☐ Other co-owner: _____

Street address or legal description: Lots 5,6 Melsing Creek Subdivision, Second Judicial District, Cape Nome, Recording District

City or borough / State: _____

Ownership interest: _____

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

OWNER(S): ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____

Street address or legal description: _____

City or borough / State: _____

Ownership interest: _____

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

OWNER(S): ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____

Street address or legal description: _____

City or borough / State: _____

Ownership interest: _____

OWNER(S): ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____

Street address or legal description: _____

City or borough / State: _____

Ownership interest: _____

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
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SCHEDULE D

BENEFICIAL INTERESTS: TRUSTS & RETIREMENT ACCOUNTS over $1,000 / NONE: ☐

Report each beneficial interest in a trust or retirement account that exceeded $1,000 during the reporting period. Report stocks, bonds, mutual funds, cash accounts, CDs, deferred compensation plans, profit-sharing accounts, employee benefit accounts, retirement accounts (such as IRA, 401K, SEP or Keogh) trust funds (including blind trusts) and limited partnerships. "Managed by" means the filer, employer, business, investment entity or name of the company that manages the account. Identify individual investments if you or family members manage or personally control the investments. "Identify fund or companies" means the individual companies or accounts where you are the manager and you control the investments; if a mutual fund, investment company or other third party entity manages and controls the investments, list the name or type of fund where the assets are held. You do NOT need to list the dollar value of the assets, but you must identify the assets by owner, manager and name.

ASSETS – OWNED BY: x Filer / Spouse/domestic partner / ☐ Child / PERCENT:100%

ASSETS – MANAGED BY: Fidelity (401K Plan); Wells Fargo (IRA); State of Alaska SBS & PERS;

ASSETS – IDENTIFY FUND or COMPANIES: See Attachments C, D,E, F

ASSETS – OWNED BY: ☐ Filer / x Spouse/domestic partner / ☐ Child / PERCENT:_____

ASSETS – MANAGED BY: New York Life Annuity; Sunlife Canada Annuity; Wells Fargo (IRA); State of Alaska PERS;

ASSETS – IDENTIFY FUND or COMPANIES: See Attachments G,H, I, J

ASSETS – OWNED BY: ☐ Filer / ☐ Spouse/domestic partner / x Child / PERCENT:_____

ASSETS – MANAGED BY: T. Rowe Price (529 College Savings Account)

ASSETS – IDENTIFY FUND or COMPANIES: See Attachment K

ASSETS – OWNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT:_____

ASSETS – MANAGED BY:_____

ASSETS – IDENTIFY FUND or COMPANIES:_____

ASSETS – OWNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT:_____

ASSETS – MANAGED BY:_____

ASSETS – IDENTIFY FUND or COMPANIES:_____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

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SCHEDULE E

1. LOANS, LOAN GUARANTEES & DEBTS OVER $1,000 **NONE: check box → x**

Report each creditor or lender to whom more than $1,000 was owed during the reporting period. Report guarantor of each loan. List financial obligations, including mortgages on property owned or sold during the reporting period; loans that have been guaranteed; delinquent taxes; alimony; child support payments; medical bills; boat and vehicle loans; business and personal loans; escrows; student loans; signature loans and promissory notes. Loans include secured, unsecured and contingent loans. *Do NOT list credit card obligations or revolving charge accounts.*

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER / ☐ CREDITOR / ☐GUARANTOR / NAME:_____

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER / ☐ CREDITOR / ☐GUARANTOR / NAME:_____

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER / ☐ CREDITOR / ☐GUARANTOR / NAME:_____

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER / ☐ CREDITOR / ☐GUARANTOR / NAME:_____

2. FOR LEGISLATIVE BRANCH FILERS ONLY **NONE: check box →** ☐

Legislative branch filers must report additional details: original amount of the obligation, the current balance owed, interest rate, length of the loan and whether a written agreement exists for a creditor or lender who:

- Lobbies or hired lobbyists
- Had contracts or sought contracts worth more than $10,000 with any state agency
- Was a municipal or local government entity
- Was affected financially – in an amount exceeding $1,000 – by an act of the legislature or state agency decision, including actions affecting professional or occupational licenses; natural resource permits or quotas; assessments; tax rates; health, safety or environmental standards; insurance or business practices.

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER or ☐ CREDITOR / Name: _____

Address: _____

Original loan: $_____ Balance owed: $_____ Interest rate: _____%

Term: ☐ _____ years ☐ _____ months / WRITTEN LOAN AGREEMENT? ☐ Yes / ☐ No

SCHEDULE F

1. LEASES: GOVERNMENT CONTRACTS & LEASES **NONE: check box →** ☐

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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List all contracts, bids and offers to contract with the state or any state or municipal agency or entity. Report contract interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company or through a corporation in which filer or family members held a controlling interest.

CONTRACTOR: X Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST: Professional Services Contract**

☐ Bid / ☐ Offer / XHeld / **CONTRACT ID (name/number): 2006-0200-5577 – Legal Services**

CONTRACTING AGENCY: State of Alaska; Department of Administration

CONTRACT DESCRIPTION: Court appointed Legal Services

CONTRACTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST:** _____

☐ Bid / ☐ Offer / ☐ Held / **CONTRACT ID (name/number):** _____

CONTRACTING AGENCY: _____

CONTRACT DESCRIPTION: _____

_____

2. LEASES: NATURAL RESOURCE LEASES

NONE: check box → ☐

List natural resource leases – including mineral, timber, oil and gas leases – held, bid or offered during the reporting period. Report lease interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company; or corporation in which you or family (individually or together) held controlling interest.

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST:** _____

☐ Bid / ☐ Offer / ☐ Held / **LEASE ID (name/number):** _____

LEASE DESCRIPTION: _____

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST:** _____

☐ Bid / ☐ Offer / ☐ Held / **LEASE ID (name/number):** _____

LEASE DESCRIPTION: _____

SCHEDULE G

1. CLOSE ECONOMIC ASSOCIATIONS

NONE: check box → ☐

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
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EXEMPT: Municipal and local officials are exempt from reporting close economic associations. **Members of state boards and commissions are exempt** from reporting close economic associations. **Local officials and state board/commission members do NOT have to complete this section. Check the box for NONE.**

STATE PUBLIC OFFICIALS: Disclose financial relations with legislators, other public officials and lobbyists.

LEGISLATIVE BRANCH: Disclose financial relations with public officials, lobbyists, other legislators, and legislative employees. Report close economic association detailed information to the Legislative Ethics Committee.

CLOSE ECONOMIC ASSOCIATION means a financial relationship between public officials, legislators and lobbyists, including shared interests in a business, property, association, partnership, corporation or LLC.

CHANGES: Report new close economic associations within 60 days.

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child**

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child**

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

2. FILERS WITH A LOBBYIST SPOUSE or DOMESTIC PARTNER NONE: ☐

EXEMPT: Local officials and members of state boards and commissions are EXEMPT. Check NONE.

STATE PUBLIC OFFICIALS with a lobbyist spouse or domestic partner: Report names and addresses of each employer of the lobbyist and the total monetary value received from each of the lobbyist's employers.

LEGISLATIVE BRANCH filers with a lobbyist spouse or domestic partner: Disclose employer of lobbyist and compensation, and report details to t he Legislative Ethics Committee.

CHANGES: Report changes in lobbyist's employer within 48 hours of the change.

LOBBYIST'S EMPLOYER: NAME & ADDRESS	COMPENSATION

CERTIFICATION

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

I certify under penalty of perjury that the foregoing is true and the information in this disclosure statement is, to the best of my knowledge, true, correct and complete. A person who makes a false sworn certification which he or she does not believe to be true is guilty of perjury.

SIGNATURE H. Conner Thomas

If you are filing online, you must have an Electronic Filing Agreement with APOC to use an electronic signature.

H Conner Thomas
NAME of FILER

11/10/10 Nome, Alaska
DATE &PLACE SIGNED / FILED

All officials and candidates who are required to file disclosure statements are solely responsible for filing complete, accurate and truthful statements by the deadlines.

WHERE TO FILE THIS STATEMENT

STATE OFFICIALS: File initial, annual and final statements with the Alaska Public Offices Commission.

STATE CANDIDATES: File with the Division of Elections along with Declaration of Candidacy.

BOROUGH / MUNICIPAL / CITY OFFICIALS and CANDIDATES: File with city or borough clerk where you hold or seek office.

FILE ELECTRONICALLY to APOC: doa.apoc.reports@alaska.gov

THIS IS A PUBLIC DOCUMENT

NOTE: Public officials who are required to file this disclosure statement may have additional obligations to disclose conflicts of interest or potential conflicts under state executive, legislative or judicial ethics rules or personnel rules. Legislators who are required to file this disclosure statement have additional disclosure and reporting requirements imposed by the Select Committee on Legislative Ethics. Local officials may also be governed by local ethics ordinances or personnel rules.

Disclosure forms, guidelines, laws and regulations are online: doa.alaska.gov/apoc or from APOC offices

ALASKA PUBLIC OFFICES COMMISSION

ANCHORAGE OFFICE:
2221 E. Northern Lights Blvd – Rm 128
Anchorage, AK 99508-4149
907-276-4176 / Toll-free 800-478-4176
Fax 907-276-7018

JUNEAU OFFICE:
240 Main St. – Rm 500
Mail: P.O. Box 110222
Juneau, AK 99811-0222
907-465-4864 / Fax 907-465-4832

E-mail APOC: doa.apoc@alaska.gov
File electronic disclosure statements to: doa.apoc.reports@alaska.gov

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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2009 Disclosures

Conrad Klemzak P.O. Box 1990 Nome, AK 99762	Roy Adams P.O. Box 29 Kivalina, AK 99750	Sitnasuak Native Corp. P.O. Box 905 Nome, AK 99762	Johnnie Carter c/o Alaska Court System P.O. Box 317 Kotzebue, AK 99752
Patricia Beckner P.O. Box 1817 Nome, AK 99762	Leo Douglas P.O. Box 47 Shungnak, AK 99773	Diana Ellanna P.O. Box Nome, AK 99762	Janalee Minnich P.O. Box Kotzebue, AK 99752
Charles Myers P.O. Box 125 Selawik, AK 99770	Lorin Downing P.O. Box 1074 Kotzebue, AK 99752	Barbara Keena 1045 16th Ave. S. St. Cloud, MN 56301	Sean Penetac P.O. Box 337 Nome, AK 99762
Calvin Gooden P.O. Box 2018 Nome, AK 99762	Estate of Xavier Pete c/o Box 61 Nome, AK 99762	Jake Sherman P.O. Box 878 Nome, AK 99762	Cynthia Poeppe P.O. Box 765 Kotzebue, AK 99752
Golovin Native Corporation P.O. Box 62099 Golovin, AK 99762	Ron Hunnicutt P.O. Box 472 Kotzebue, AK 99752	Jerry Austin P.O. Box 110 St. Michael, AK 99659	Elim Native Corporation P.O. Box 390910 Elim, AK 99739
Frank Lane P.O. Box 578 Kotzebue, AK 99752	Jeremiah Pete P.O. Box 1017 Stebbins, AK 99	Jeffrey Avery 189 E. Nelson Wasilla, AK 99654	Jim West, Jr. P.O. Box 967 Nome, AK 99762
Louis Warnke-Green P.O. Box 278 Nome, AK 99762	Duane Sampson P.O. Box 1088 Kotzebue, aK 99752	Bobby Frankson P.O. Box 209 Pt. Hope, AK 99766	Mario Casados P.O. Box 83 Pt. Hope, AK 99766
Mike Owens P.O. Box 1515 Nome, AK 99762	Blanche Cragle 4741 Hwy. 22 South Dickenson, ND 58601	Chester Koonuk P.O. Box 85 Pt. Hope, AK 99766	Lawrence Westlake, Jr. P.O. Box 110 Kiana, AK 99749
Sarah Kristiansen P.O. Box 444 Nome, AK 99762	Danny Aukon, Jr. P.O. Box 1968 Nome, AK 99762	Barbara Earp 21228 Lowland Ave. Eagle River, AK 99577	Brenda Green P.O. Box 1602 Nome, AK 99762
Michael West P.O. Box 751 Nome, AK 99762	Richard Patterson P.O. Box 1362 Barrow, AK 99723	Office of Public Advocacy 900 W. 5th Ave., Suite 525 Anchorage, AK 99501	Axel Odden P.O. Box 1043 Nome, AK 99762

EXHIBIT
tabbies
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JAN 1 3 2010

Kathleen Haugan c/o Alaska Court System P.O. Box 317 Kotzebue, AK 99752			

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WELLS FARGO ADVISORS

010809 02 MAAD 50 AUTO**MIXED AADC 945
H CONNER THOMAS &
MARGARET A THOMAS JTWROS
PO BOX 865
NOME AK 99762-0865

SNAPSHOT
Current period ending November 30, 2009

ACCOUNT NAME: H CONNER THOMAS &
MARGARET A THOMAS JTWROS

ACCOUNT NUMBER: [redacted]

EXHIBIT B

Your Financial Advisor:
LISA DOCHE & RALPH PAPETTI
Phone: 480-419-9600 / 800-453-6737

20551 NORTH PIMA RD
SUITE 200
SCOTTSDALE AZ 85255

JAN 13 2010

If you have more than one account with us, why not link them and receive summary information for your entire household? Contact Your Financial Advisor for more details.

Message from Wells Fargo Advisors

WELLS FARGO & CO., WAS FOUNDED ON WALL STREET MORE THAN 150 YEARS AGO, AND OPENED ITS FIRST OFFICE IN SAN FRANCISCO IN 1852. TODAY, WELLS FARGO ADVISORS CARRIES ON THE COMPANY'S STORIED TRADITION OF HELPING FAMILIES MANAGE THE IMPORTANT ASPECTS OF THEIR FINANCIAL LIFE.

Wells Fargo Advisors, LLC, member NYSE/SIPC. Brokerage accounts are carried by First Clearing, LLC (FCC), member NYSE/SIPC.

Additional information

Gross proceeds

Portfolio detail

Cash and Sweep Balances

Bank Deposit Sweep - Consists of monies he
deposited at one or more additional banks affili
FDIC rules. For additional information on the B

DESCRIPTION
Cash
BANK DEPOSIT SWEEP Interest Period 11/01/09 - 11/30/09
Total Cash and Sweep Balances

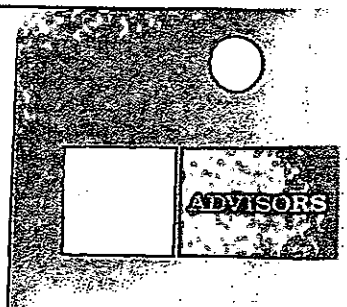
* APY measures the total amount of the interes
yield is expressed as an annualized rate, based

Stocks and Options

Stocks

DESCRIPTION
AMGEN INC AMGN Acquired 09/04/07
FIRST TRUST ETF NYSE ARCA BIOTEC FBT Acquired 07/24/07 Acquired 07/24/07
Total
GARMIN LTD GRMN Acquired 05/03/07

JAN 3 2010



Stocks and Options

Stocks continued

DESCRIPTION	C
I SHARES S&P GLOBAL TECHNOLOGY SECTOR INDEX FD IXN	
Acquired 01/11/06	2
Acquired 09/26/07	
Total	**3**
INDEX SHS INC MSCI S KOREA WEBS INDEX FUND WEBS INDEX SERIES EWY	
Acquired 09/26/07	2
ISHARES BARCLAYS TIPS BOND FUND TIP	
Acquired 07/24/09	1
MARKET VECTORS ET GLOBAL ALTERNATIVE ENERGY GEX	
Acquired 05/01/09	40
Acquired 05/13/09	20
Total	**60**
NORTEL NETWORKS CORP NRTLQ	
Acquired 06/18/08	
RYDEX S&P EQUAL WEIGHT FINANCIAL RYF	
Acquired 04/11/08	37
Acquired 06/04/08	7
Total	**45**
SECTOR SPDR TR TECHNOLOGY SELECT SECTOR XLK	
Acquired 12/19/03	50

JAN 1 3 2010

Stocks and Options

Stocks continued

DESCRIPTION Acquired 12/21/04
Total
TEVA PHARMACEUTICAL ADR INDS LTD TEVA Acquired 08/17/04
Total Stocks
Total Stocks and Options

Cost information for one or more securities is not available.

Mutual Funds

Mutual fund shares are priced at net asset value.

Open End Mutual Funds

DESCRIPTION
ALLIANCEBERNSTEIN FDS INTERNATIONAL GROWTH FUND CL A AWPAX Acquired 02/19/99 Reinvestments
Total
FIRST EAGLE FDS INC OVERSEAS FD CL A SGOVX Acquired 12/10/02 Reinvestments
Total

JAN 1 8 2010

Mutual Funds

Open End Mutual Funds continue

DESCRIPTION
GOLDMAN SACHS TR FINL SQUARE MONEY MKT FD INSTL CLASS FSMXX Acquired 07/25/06 Acquired 12/20/07 Reinvestments
Total
HARTFORD FORTIS FUNDS SMALLCAP GRWTH CL A HSLAX Acquired 09/15/05 Acquired 03/31/06 Reinvestments
Total
HARTFORD MUT FDS INC CAP APPREC FD CL A ITHAX Acquired 09/15/05 Acquired 04/24/08 Reinvestments
Total
KEELEY FUNDS INC SMALL CAP VALUE FUND CLASS A SHARES KSCVX Acquired 09/27/07 Acquired 10/15/09 Reinvestments
Total
PIMCO FDS PAC INVT MGMT SER-COMMODITY REAL RETURN STRAT FD INSTL CL PCRIX Acquired 12/01/03 Acquired 10/15/09 Reinvestments
Total

JAN 1 3 2010

Mutual Funds

Open End Mutual Funds continued

DESCRIPTION
VAN KAMPEN MID CAP GROWTH FUND CLASS A VGRAX Acquired 07/14/05 Reinvestments
Total
VAN KAMPEN AMERICAN FRANCHISE FUND CLASS A Acquired 08/04/09
WT MUT FD CRM MID CAP VALUE FD INSTL CL Acquired 09/15/05 Reinvestments
Total
Total Open End Mutual Funds

Closed End Mutual Funds

DESCRIPTION
BLACKROCK REAL ASSET EQUITY TR BCF Acquired 07/09/07 Acquired 07/09/07 Acquired 07/09/07 Acquired 07/09/07 Acquired 05/13/09
Total
COHEN & STEERS WORLDWID REALTY INCOME FUND INC RWF Acquired 06/04/09

JAN 1 3 2010

Mutual Funds

Closed End Mutual Funds continu

DESCRIPTION
ADVENT/CLAYMORE GLOBAL CONVERTIBLE SECURITIES & INCOME FUND AGC Acquired 06/04/08 Acquired 06/04/08 Acquired 10/15/09
Total
NUVEEN INSD MUN OPPTY FD INC NIO Acquired 12/27/94 Acquired 09/26/07 Acquired 02/18/09
Total
Total Closed End Mutual Funds
Total Mutual Funds

Bank Deposit Sweep Allo

Monies on deposit at each bank, together bank in accordance with FDIC rules for a and therefore not covered by SIPC. Settl that occurs after 2 PM ET on the last busir

DESCRIPTION
WELLS FARGO BANK, N.A.
Total Bank Deposits

JAN 1 8 2010

WSP

Lewis & Thomas, P.C. 401(K) Profit Sharing Plan

Fidelity INVESTMENTS

Retirement Savings Statement

March 1, 2009 - May 31, 2009

[redacted]

H CONNER THOMAS
P.O. BOX 865
NOME, AK 99762

For information virtually 24 hours a day call:
1-800-835-5097
Internet Address: http://netbenefits.401k.com
Representatives are available 8:30 AM - 8:00 PM

Your Account Summary

Beginning Balance	
Your Contributions	
Change in Market Value	
Ending Balance	

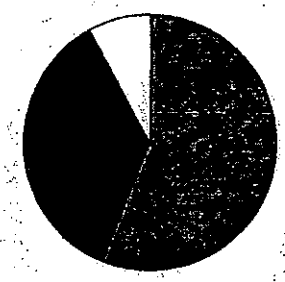
Additional Information
- Vested Balance
- Dividends & Interest

Your Personal Rate of Return

This Period	19.2%
Year to Date	7.5%

Your Personal Rate of Return is calculated with a time-weighted formula, widely used by financial analysts to calculate investment earnings. It reflects the results of your investment selections as well as any activity in the plan account(s) shown. There are other Personal Rate of Return formulas used that may yield different results. Remember that past performance is no guarantee of future results.

Your Asset Allocation



Your account is currently allocated among the asset classes specified above. Percentages and totals may not be exact due to rounding.

The Additional Fund Information section lists the allocation of your blended funds.

Market Value of Your Account

Displayed in this section is the value of your account for the statement period, in both shares and dollars.

Investment	Shares on 02/28/2009	Shares on 05/31/2009	Price on 02/28/2009	Price on 05/31/2009	Market Value on 02/28/2009	Market Value on 05/31/2009
Blended Investment*						
Fid Freedom 2015			$7.72	$9.16		
Account Total						

Remember that a dividend payment to fund shareholders reduces the share price of the fund, so a decrease in the share price for the statement period does not necessarily reflect lower fund performance.

* Some of your investments are classified as a Blended Investment. Blended Investments may include a mixture of stocks, bonds, and/or short term assets. Please refer to the "Additional Investment Information" section to determine the allocation of your blended investments' underlying assets. The asset breakdown of your portfolio is reflected in the pie chart in the "Asset Allocation" section.

Please read this statement carefully. Any error must be reported to Fidelity Inv

JAN 13 2010

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Market Value of Your Account (continued)

Please refer to NetBenefits and other Plan information, such as your SPD, for a description of your right to direct investments under the Plan. For information on any plan restrictions on those rights, please contact your benefits office.

To help achieve long-term retirement security, you should give careful consideration to the benefits of a well-balanced and diversified investment portfolio. Spreading your assets among different types of investments can help you achieve a favorable rate of return, while minimizing your overall risk of losing money. This is because market or other economic conditions that cause one category of assets, or one particular security, to perform very well often cause another asset category, or another particular security, to perform poorly. If you invest more than 20% of your retirement savings in any one company or industry, your savings may not be properly diversified. Although diversification is not a guarantee against loss, it is an effective strategy to help you manage investment risk.

In deciding how to invest your retirement savings, you should take into account all of your assets, including any retirement savings outside of the Plan. No single approach is right for everyone because, among other factors, individuals have different financial goals, different time horizons for meeting their goals, and different tolerances for risk. It is also important to periodically review your investment portfolio, your investment objectives, and the investment options under the Plan to help ensure that your retirement savings will meet your retirement goals. Visit the Department of Labor website http://www.dol.gov/ebsa/investing.html for information on individual investing and diversification.

Your Contribution Elections as of 06/05/2009

This section displays the funds in which your future contributions will be invested.

Investment	*Percent*
Fid Freedom 2015	100%
Total	**100%**

Contributions	*Employee Deferral*	*Profit Sharing*	*Rollover*
This Period	[redacted]	$0.00	$0.00
Year To Date	[redacted]	$0.00	$0.00
Inception To Date	[redacted]	$0.00	$0.00
Vested Percent	**100.00**	**100.00**	**100.00**
Total Account Balance	[redacted]	[redacted]	[redacted]
Total Vested Balance	[redacted]	[redacted]	[redacted]

Your Account Activity

Use this section as a summary of transactions that occurred in your account during the statement period.

Activity	*Fid Freedom 2015*
Beginning Balance	[redacted]
Your Contributions	[redacted]
Change in Market Value	[redacted]
Ending Balance	[redacted]
Dividends & Interest	[redacted]

A Message from Fidelity Investments

To access performance information on the investment options available in your Plan - log onto NetBenefits at www.401k.com or call your plan's toll-free number.

Before investing in any mutual fund, please carefully consider the investment objectives, risks, charges and expenses. For this and other information, call or write Fidelity for a free prospectus. Read it carefully before you invest.

Fidelity Brokerage Services LLC, Member NYSE, SIPC, 300 Puritan Way, Marlborough, MA 01752.

JAN 1 3 2010

WELLS FARGO ADVISORS

009656 02 MAAD 43 AUTO**MIXED AADC 945
H CONNER THOMAS IRA
FCC AS CUSTODIAN
PO BOX 865
NOME AK 99762-0865

SNAPSHOT
Current period ending November 30, 2009

43,053
JAN 13 2010

ACCOUNT NAME: H CONNER THOMAS IRA
FCC AS CUSTODIAN

ACCOUNT NUMBER: [redacted]

EXHIBIT D

Your Financial Advisor:
LISA DOCHE & RALPH PAPETTI
Phone: 480-419-9600 / 800-453-6737

20551 NORTH PIMA RD
SUITE 200
SCOTTSDALE AZ 85255

If you have more than one account with us, why not link them and receive summary information for your entire household? Contact Your Financial Advisor for more details.

Message from Wells Fargo Advisors

WELLS FARGO & CO., WAS FOUNDED ON WALL STREET MORE THAN 150 YEARS AGO, AND OPENED ITS FIRST OFFICE IN SAN FRANCISCO IN 1852. TODAY, WELLS FARGO ADVISORS CARRIES ON THE COMPANY'S STORIED TRADITION OF HELPING FAMILIES MANAGE THE IMPORTANT ASPECTS OF THEIR FINANCIAL LIFE.

Wells Fargo Advisors, LLC, member NYSE/SIPC. Brokerage accounts are carried by First Clearing, LLC (FCC), member NYSE/SIPC.

Additional information

Gross proceeds

Portfolio detail

Cash and Sweep Balances

Bank Deposit Sweep - Consists of monies deposited at one or more additional banks a FDIC rules. For additional information on the

DESCRIPTION
Cash
BANK DEPOSIT SWEEP Interest Period 11/01/09 - 11/30/09
Total Cash and Sweep Balances

* APY measures the total amount of the intere yield is expressed as an annualized rate, bas

Stocks and Options

Stocks

DESCRIPTION
VANGUARD UTILITIES ETF VPU Acquired 08/07/09
Total Stocks
Total Stocks and Options

JAN 1 3 2010

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Mutual Funds

Mutual fund shares are priced at net asset v

Closed End Mutual Funds

DESCRIPTION
BLACKROCK FLOATING RATE INCOME TRUST FRA Acquired 09/14/06 Acquired 06/27/07
Total
BLUE CHIP VALUE FD INC BLU Acquired 08/07/09
EVERGREEN INCOME ADV FD EAD Acquired 08/17/04 Acquired 06/27/07
Total
Total Closed End Mutual Funds
Total Mutual Funds

Bank Deposit Sweep Allocati

Monies on deposit at each bank, together with a bank in accordance with FDIC rules for a total o and therefore not covered by SIPC. Settlement that occurs after 2 PM ET on the last business da

DESCRIPTION
WELLS FARGO BANK, N.A.
Total Bank Deposits

JAN 1 3 2010

Division of Retirement & Benefits
C/O Great-West Retirement Services
P.O. Box 173764
Denver, CO 80217-3764

STATE OF ALASKA

H C THOMAS
BOX 865
NOME AK 99762

Statement Period: 07/01/2009 - 09/30/2009
Participant ID: [redacted]
Plan: 98214
State of Alaska

98214-01 457 Plan = Alaska Deferred Compensation Plan (DCP) \ 98214-03 401(a) Plan = Alaska Supplemental Benefits-Annuit Plan (SBS-AP)

Account Summary

	98214-03 401(a) Plan
Balance as of June 30, 2009	$[redacted]
Change in Value	[redacted]
Expenses	[redacted]
Balance as of September 30, 2009	$[redacted]

Up to date account information, investment returns, and plan highlights can be obtained 24 hours a day online at **www.alaska.gov/drb**.

GREEN IS TWICE-AS-NICE! You re already saving the green by investing in your retirement plan, but did you know that you can als receive your quarterly statements and stuffers electronically? Visit our website today to sign up for Online File Cabinet.

Investment Selection for Future Contributions

All future contributions will be directed as follows:

100% Alaska Balanced Trust

JAN 1 3 2010

Great-West
RETIREMENT SERVICES®
"Securities, when offered, are offered through GWFS Equities, Inc., a wholly owned subsidiary of Great-West Life & Annuity Insurance Company."
Great-West Retirement Services
P.O. Box 173764 , Denver, CO 80217-3764

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STATE OF ALASKA

H C THOMAS
[redacted]

Account Summary by Investment Option

	Beginning Balance	Deposits	Change in Value	Transfers	Withdrawals /Expenses	Ending Balance	Endin Unit Share
Alaska Balanced Trust	[redacted]		[redacted]		[redacted]	[redacted]	[redacted]
Totals	[redacted]		[redacted]		[redacted]	[redacted]	

Account Summary by Contribution Source

	Beginning Balance	Deposits	Change in Value	Transfers	Withdrawals /Expenses	Ending Balance
Employee Before Tax	[redacted]		[redacted]		[redacted]	[redacted]
Employer Before Tax	[redacted]		[redacted]		[redacted]	[redacted]
Totals	[redacted]		[redacted]		[redacted]	[redacted]

Beneficiary Information

Great-West Retirement Services does not currently hold a beneficiary designation on your account. You may update this information by visiting your plan s website at www.state.ak.us/drb. Log in to your account and click on the "Change Beneficiary" link under the Change Account menu option.

General Information

	Employee	Employer	Total
2008 Year-End Balance:	[redacted]	[redacted]	[redacted]

JAN 1 3 2010

Alaska Public Employees' Retirement System

2009 Annual Benefit Statement

The account and service information contained in this statement is based on data reported by your employer(s). Please contact your employer(s) about any discrepancies. The benefit information shown is an estimate. While every effort has been made to ensure the accuracy of your statement, please know it does not have the force and effect of the law, rule, or regulations governing the payment of benefits. All benefits will be paid under the provisions of the applicable Alaska Statutes and Federal law.

H CONNOR THOMAS
PO BOX 865
NOME, AK 99762-0865

The Alaska Division of Retirement & Benefits is pleased to provide you with this personalized benefit statement highlighting the financial security you are building for the future. It also summarizes the protection you and your family have against financial losses that may occur because of your disability or death. This statement is produced using data as of 6/30/2009. Please review the statement carefully, verifying total years of service and personal data such as birth date, marital status, etc.

Your benefits are a significant portion of your compensation package. The value of your benefits will continue to increase over time and you will want to compare this statement with those you receive in the future to measure your progress. Most financial planners suggest you need 80% to 85% of your current monthly income to maintain your standard of living at retirement. When you are two years away from retirement, visit our website or contact the Division of Retirement and Benefits to enroll in a retirement planning seminar.

Personal Information

Name: H CONNOR THOMAS
Retirement ID Number: R000142157
BirthDate: 12/20/1951 Marital Status: M

Account Summary as of 6/30/2009

- Our records indicate you are in Tier 1
- Your total service is 3.12328 years
- You are not vested in PERS
- Your estimated average monthly earnings are $[redacted]
- You currently have no service indebtedness

Annual Contribution Summary

7/1/2008 Account Balance:	$[redacted]
Mandatory Contributions Made:	$0.00
Mandatory Interest Earned:	$[redacted]
6/30/2009 Account Balance:	$[redacted]

Projected Retirement Summary

Your current PERS status means that you must be 55 years old and be vested or have 30 years of service to be eligible for normal retirement.

Monthly plan benefits shown on this statement were estimated under the normal retirement option, which provides you with a monthly income for your lifetime. Surviving beneficiaries are eligible to receive money from the PERS. If a retiree was eligible for health insurance benefits at the time of death, their surviving spouse may continue to be eligible for the same health insurance benefits.

JAN 1 3 2010

EXHIBIT
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Retirement & Benefits PO Box 110203 Juneau, AK 99811-0203 Fax: (907) 465-3086 TDD: (907) 465-2805 Phone: (907) 465-4460 Toll Free: (800) 821-2251

New York Life Insurance and Annuity Corporation
(A Delaware Corporation)
PO Box 130539
Dallas, TX 75313
(800) 695-1314

The Company You Keep

NEW YORK LIFE

ANNIVERSARY NOTICE

MRS MARGARET A THOMAS
PO BOX 865
NOME, AK 99762-0865

Agent/Representative
JOHN LUKEHART CLU CHFC
701 W 8TH AVE STE 900
ANCHORAGE, AK 99501-3467
(907) 257-5213

Welcome to your Single Premium Retirement Annuity-2 Update! This notice is designed to keep you in touch with your policy as it continues to grow in value.

CLIENT ID	POLICY NUMBER	POLICY DATE	ANNUITANT
[redacted]	[redacted]	1/13/1992	MRS MARGARET A THOMAS

TOTAL PREMIUM	ANNIVERSARY DATE
$18,388.23	1/13/2009

CASH VALUE AS OF 1/13/2008:	$ [redacted]
INTEREST EARNED FOR POLICY YEAR:	[redacted]
WITHDRAWAL(S) DURING POLICY YEAR:	0.00
SURRENDER CHARGES INCURRED DURING POLICY YEAR:	0.00
CASH VALUE AS OF 1/13/2009:	$ [redacted]

INITIAL PREMIUM EFFECTIVE ANNUAL YIELD GUARANTEED TO 1/13/2010: 4.00%

Your continued satisfaction is important to us. Both your agent and I will be happy to answer any questions you may have. Just give us a call!

Sincerely,

George E. Wilson

George E. Wilson, FLMI
Service Center Vice President

JAN 13 2010

EXHIBIT
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Sun Life Financial®

Sun Life Assurance Company of Canada
P.O. Box 9133 Wellesley Hills, MA
Tel: (800) 752-
Website: www.sunlife-us

QUARTERLY STATEM

January 1, 2009 to September 30,

PREPARED FOR:

101729-11

MARGARET A THOMAS 403B PLAN
PO BOX 865
NOME AK 99762-0865

BROKER/DEALER:

LISA L DOCHE
WACHOVIA SECURITIES LLC
20551 N PIMA RD
STE 200
SCOTTSDALE AZ 85255

Sun Life Assurance Company of Canada (U.S.) (Sun Life) is a member of the Sun Life Financial group of companies. Sun Life provides this confirmation on behalf of the broker/dealer of record, who is acting as agent of Sun Life.

12/31/2008 Value	09/30/2009 Value
$[redacted]	$[redacted]

CONTRACT INFORMATION

Contract No. [redacted] **Compass 3 Fixed/Variable Annuity**

Issue Date:	January 07, 1992	**Agent Number:**	3000-235611
Annuitant Name:	MARGARET A THOMAS	**Dealer Number:**	01094-021178
Primary Beneficiary:	H CONNER THOMAS		

CURRENT INVESTMENT PERFORMANCE

Variable Investment Option	Beginning Value 12/31/2008	Current Year Net Activity	Number of Units	Unit Value	Ending Value 09/30/2009	Net Change in Value
Total Return	$[redacted]	$[redacted]	4104.71330	$[redacted]	$[redacted]	$[redacted]
Grand Total	$[redacted]	$[redacted]			$[redacted]	$[redacted]

HISTORICAL TRANSACTION SUMMARY

Investment Option	January 07, 1992 - September 30, 2009 (Issue Date to Present) Investments	Withdrawals	January 01, 2009 - September 30, 2009 (Year to Date) Investments	Withdrawals
Total Return	$[redacted]	$0.00	$0.00	$0.00
Government Securities	$[redacted]	$0.00	$0.00	$0.00
Total	$[redacted]	**$0.00**	**$0.00**	**$0.00**

If you find an error in this statement, you should notify us at the address or telephone number provided on the statement. Unless we receive notice of any such error from you within 60 days of the period ending date of this statement, we may not be responsible for correcting the error.

DEATH BENEFIT INFORMATION

Listed below are the applicable death benefit values for your contract:

- Account Value [redacted]
- Net Purchase Payments [redacted]
- 7th Anniversary Account Value [redacted]

JAN 1 3 2010

Greatest of above amounts is: 7th Anniversary Account Value

Total Death Benefit amount as of statement date [redacted]

ADDITIONAL CONTRACT INFORMATION

No fund transfer(s) processed during this contract year. Please refer to the trans of your prospectus for more information about the policy.

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WELLS FARGO ADVISORS

SNAPSHOT
Current period ending September 30, 2009

ACCOUNT NAME: MARGARET A THOMAS IRA R/O
FCC AS CUSTODIAN

ACCOUNT NUMBER: [redacted]

EXHIBIT I

Your Financial Advisor:
LISA DOCHE & RALPH PAPETTI
Phone: 480-419-9600 / 800-453-6737

20551 NORTH PIMA RD
SUITE 200
SCOTTSDALE AZ 85255

JAN 13 2010

If you have more than one account with us, why not link them and receive summary information for your entire household? Contact Your Financial Advisor for more details.

Message from Wells Fargo Advisors

THE WACHOVIASEC.COM WEB SITE IS MOVING. BEGINNING OCT. 19, THE WACHOVIASEC.COM WEB ADDRESS WILL TAKE YOU TO WELLSFARGOADVISORS.COM. YOU CAN ACCESS YOUR ACCOUNT(S) AS WELL AS VALUABLE INFORMATION ABOUT THE MARKETS AND OUR PRODUCTS AND SERVICES ON THAT WEB SITE.

031043 02 MAAD 140 AUTO**MIXED AADC 945
MARGARET A THOMAS IRA R/O
FCC AS CUSTODIAN
PO BOX 865
NOME AK 99762-0865

WELLS FARGO ADVISORS

Portfolio detail

Cash and Sweep Balances

Bank Deposit Sweep - Consists of monies l
deposited at one or more additional banks af
FDIC rules. For additional information on the

DESCRIPTION
BANK DEPOSIT SWEEP Interest Period 09/01/09 - 09/30/09
Total Cash and Sweep Balances

* APY measures the total amount of the intere
yield is expressed as an annualized rate, base

Mutual Funds

Mutual fund shares are priced at net asset valu

Open End Mutual Funds

DESCRIPTION
PRINCIPAL INVESTORS SAM COM GROWTH PORTFOLIO A SAGPX Acquired 11/08/05 Acquired 11/14/05 Reinvestments
Total
Total Open End Mutual Funds
Total Mutual Funds

JAN 13 2010

WSP63RLD

Alaska Public Employees' Retirement System

2009 Annual Benefit Statement

The account and service information contained in this statement is based on data reported by your employer(s). Please contact your employer(s) about any discrepancies. The benefit information shown is an estimate. While every effort has been made to ensure the accuracy of your statement, please know it does not have the force and effect of the law, rule, or regulations governing the payment of benefits. All benefits will be paid under the provisions of the applicable Alaska Statutes and Federal law.

MARGARET A THOMAS
PO BOX 865
NOME, AK 99762-0865

The Alaska Division of Retirement & Benefits is pleased to provide you with this personalized benefit statement highlighting the financial security you are building for the future. It also summarizes the protection you and your family have against financial losses that may occur because of your disability or death. This statement is produced using data as of 6/30/2009. Please review the statement carefully, verifying total years of service and personal data such as birth date, marital status, etc.

Your benefits are a significant portion of your compensation package. The value of your benefits will continue to increase over time and you will want to compare this statement with those you receive in the future to measure your progress. Most financial planners suggest you need 80% to 85% of your current monthly income to maintain your standard of living at retirement. When you are two years away from retirement, visit our website or contact the Division of Retirement and Benefits to enroll in a retirement planning seminar.

Personal Information

Name: MARGARET A THOMAS
Retirement ID Number: [redacted]
BirthDate: 5/4/1957 Marital Status: M

Projected Retirement Summary

Your current PERS status means that you must be 55 years old and be vested or have 30 years of service to be eligible for normal retirement.

Monthly plan benefits shown on this statement were estimated under the normal retirement option, which provides you with a monthly income for your lifetime. Surviving beneficiaries are eligible to receive money from the PERS. If a retiree was eligible for health insurance benefits at the time of death, their surviving spouse may continue to be eligible for the same health insurance benefits.

Account Summary as of 6/30/2009

- Our records indicate you are in Tier 1
- Your total service is 5.11095 years
- Your service has been calculated using the alternate PERS option for school district employees
- You are vested in PERS
- Your estimated average monthly earnings are $[redacted]
- You currently have no service indebtedness
- Amount previously refunded to you is $[redacted]
- Your 2008 Reported Earnings were $[redacted]

Annual Contribution Summary

7/1/2008 Account Balance:	$[redacted]
Mandatory Contributions Made:	$[redacted]
Mandatory Interest Earned:	$[redacted]
6/30/2009 Account Balance:	$[redacted]

JAN 1 8 2010

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THE UNIVERSITY OF ALASKA COLLEGE SAVINGS PLAN

THEY DREAM. YOU PLAN. WE HELP.

P.O. Box 17479, Baltimore, MD 21297-1479 • 1-800-478-0003 • uacollegesavings.com

ACCOUNT STATEMENT
January 1, 2009 to December 31, 2009

ACCOUNT HOLDER OR CUSTODIAN

H CONNER THOMAS
PO BOX 865
NOME AK 99762-0865

[redacted]

YEAR-TO-DATE ACCOUNT SUMMARY

2009 Beginning Balance		$[redacted]
+	YTD Contributions	$[redacted]
-	YTD Distributions	$0.00
+/-	Gain/Loss	$[redacted]
Total Ending Balance		$[redacted]

This year when you check "yes" on line 6 of your 2010 PFD application and contribute to the U A College Savings Plan, you'll be entered to win a $25,000 scholarship account or one of four $2,500 scholarship accounts awarded by the Education Trust of Alaska. Certain restrictions apply, visit uacollegesavings.com for more information.

ACCOUNT SUMMARY BY BENEFICIARY

BENEFICIARY NAME	YEAR TO DATE CONTRIBUTIONS	YEAR TO DATE DISTRIBUTIONS	ENDING BALANCE
MALSIE E THOMAS	[redacted]	$0.00	[redacted]
	[redacted]	**$0.00**	[redacted]

JAN 13 2010

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Alaska State Legislature

Select Committee on
Legislative Ethics

716 W. 4th, Suite 230
Anchorage AK
(907) 269-0150
FAX: 269-0152

Mailing Address:
P.O. Box 101468
Anchorage, AK.
99510 - 1468

February 2, 2010

Senator Hollis French
Chair, Judiciary Committee
State Capitol, Room 417
Juneau AK 99801

Dear Senator French:

RE: Confirmation Hearings – Public Members of the Legislative Ethics Committee

On January 22, 2010, Chief Justice Walter Carpeneti nominated H. Conner Thomas and Gary J. Turner for another term on the ethics committee (see attached letter). Attached are their resumes and 2010 Legislative Financial Disclosures.

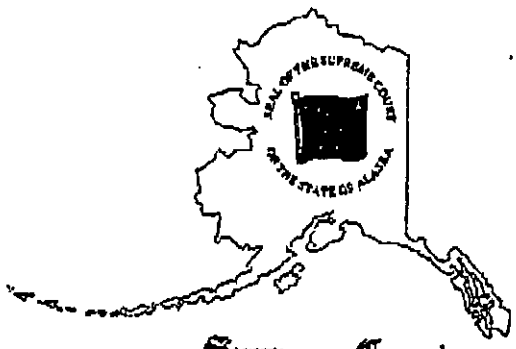
Senate President Stevens referred their names to your committee for confirmation hearings. Both individuals will be in Juneau on Wednesday, February 17, for an ethics committee meeting and would be available to meet with the Senate Judiciary committee on that date. They have not scheduled any appointments or meetings between 1 p.m. and 3 p.m. I have also notified the House Judiciary chair, Representative Ramras, of the public members' schedule. Is it possible to hold a joint Judiciary committee meeting with the House?

The chief justice has not appointed the third public member to the ethics committee as of today but it is my hope that an appointment will be made and referred to your committee prior to the 17th.

Please let me know if this date and timeframe works for the committee.

Sincerely,

Joyce Anderson
Administrator, Ethics Committee



Chambers of
Walter L. Carpeneti
Chief Justice

Supreme Court
State of Alaska

P.O. Box 114100
Juneau, Alaska
99811-4100

(907) 463-4771
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January 22, 2010

The Honorable Gary Stevens
Senate President
State Capitol, Room 111
Juneau, Alaska 99801-1182

The Honorable Mike Chenault
Speaker of the House
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear President Stevens
and Speaker Chenault:

In my capacity as Chief Justice, and pursuant to AS 24.60.130(b)(3), I am re-nominating Gary J. Turner to serve another term as a public member of the Select Committee on Legislative Ethics.

Mr. Turner is the Director of Kenai Peninsula College, a campus of the University of Alaska, and is also a retired Air Force officer. For purposes of determining compliance with AS 24.60.130(c), Mr. Turner is a Republican.

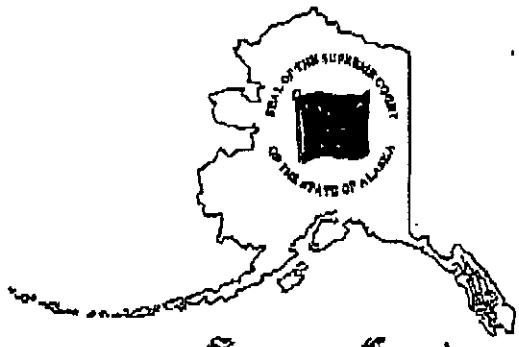
Mr. Turner can be reached at (907) 262-2366 (home) or (907) 262-0315 (work). His mailing address is 215 River Watch Drive, Soldotna, Alaska 99669, and his e-mail address is Gary.Turner@uaa.alaska.edu. Please let me know if I can provide you with any other information on this matter.

Sincerely,

Walter L. Carpeneti

Walter L. Carpeneti

cc: Gary Turner
Joyce Anderson



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The Honorable Gary Stevens
Senate President
State Capitol, Room 111
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The Honorable Mike Chenault
Speaker of the House
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear President Stevens
and Speaker Chenault:

In my capacity as Chief Justice, and pursuant to AS 24.60.130(b)(3), I am re-nominating H. Conner Thomas to serve another term as a public member of the Select Committee on Legislative Ethics.

Mr. Thomas is an associate and partner in a small general practice law firm, Lewis & Thomas, P.C. For purposes of determining compliance with AS 24.60.130(c), Mr. Thomas is a Democrat.

Mr. Thomas can be reached at (907) 443-5226. His mailing address is P.O. Box 865, Nome, Alaska, 99762, and his e-mail address is connernomelaw@gci.net. Please let me know if I can provide you with any other information on this matter.

Sincerely,

Walter L. Carpeneti

Walter L. Carpeneti

cc: H. Conner Thomas
Joyce Anderson

Alaska State Legislature

Senate

Office of the Secretary

State Capitol, Room 211
Juneau, Alaska 99801-1182
Phone: (907) 465-3701
Fax: (907) 465-2832
Email:senate_secretary@legis.state.ak.us

Official Business

Memorandum

TO: Senator French, Chair
Judiciary Committee

FROM: Kirsten Waid
Secretary of the Senate

DATE: January 27, 2010

SUBJECT: Confirmation of Chief Justice's Nomination(s)
Public Members to the
Select Committee on Legislative Ethics

Pursuant to AS 24.60.130, the President has referred the following names for legislative confirmation to your committee for a hearing, recommendation and report:

Select Committee on Legislative Ethics
Gary J. Turner
H. Conner Thomas

Attachments

KW:sgf

SB 19

Alaska State Legislature

Senator Hollis French

SB 19 - Complaints Against Peace Officers/VPSOs

Senate Bill 19 establishes a framework that allows the Department of Public Safety to provide investigation status updates to complainants about grievances they file against peace officers. The legislation protects personnel information and the confidentiality of investigative processes while also allowing the department to provide evidence that a complaint is being taken seriously and getting reviewed for potential disciplinary action.

When a citizen files a complaint against a peace officer, the law must balance the confidentiality of the process with the legitimate need to inform the complainant about the status of the department's investigation. In instances where wrong doing has actually occurred, silence by the department may result in greater mistrust of the system, particularly if it lasts for months.

This legislation provides citizens with more information about how their government responds to their concerns, without reducing protections on confidential personnel files or hindering the objective of completing unbiased investigation processes. I ask for your support on this important piece of legislation.

Relevant Statutes:

Sec. 39.25.080. Personnel records confidential; exceptions.

(a) State personnel records, including employment applications and examination and other assessment materials, are confidential and are not open to public inspection except as provided in this section.

(b) The following information is available for public inspection, subject to reasonable regulations on the time and manner of inspection:

(1) the names and position titles of all state employees;

(2) the position held by a state employee;

(3) prior positions held by a state employee;

(4) whether a state employee is in the classified, partially exempt, or exempt service;

(5) the dates of appointment and separation of a state employee;

(6) the compensation authorized for a state employee; and

(7) whether a state employee has been dismissed or disciplined for a violation of AS 39.25.160 (l) (interference or failure to cooperate with the Legislative Budget and Audit Committee).

(c) A state employee has the right to examine the employee's own personnel files and may authorize others to examine those files.

(d) An applicant for state employment who appeals an examination score may review written examination questions relating to the examination unless the questions are to be used in future examinations.

(e) In addition to any access to state personnel records authorized under (b) of this section, state personnel records shall promptly be made available to the child support services agency created in AS 25.27.010 or the child support enforcement agency of another state. If the record is prepared or maintained in an electronic data base, it may be supplied by providing the requesting agency with access to the data base or a copy of the information in the data base and a statement certifying its contents. The agency receiving information under this subsection may use the information only for child support purposes authorized under law.

(c) The division may not assemble, or provide information respecting, individual records for commercial purposes that are outside the scope of this chapter. [Emphasis added].

It appears that this statute is inartfully drafted because it does not require a "governmental agency" that wishes to obtain an employee's medical records to establish any showing of necessity for the records. This issue arose in the present case when it was thought that someone in Governor Palin's office may have obtained copies of Trooper Michael Wooten's workers' compensation file. As drafted, any state governmental agency may obtain medical records of an injured employee by simply making the request. No showing of necessity is required. The problem is compounded because AS 23.30.395, the statute that defines terms of use for Chapter 30, does not define the term "governmental agency."

For this reason, the legislature should consider amending AS 23.30.107 (b)(1) to require that a "governmental agency" that seeks to acquire medical or rehabilitation records of an employee first establish a reasonable relationship between the request for the records and the purpose for obtaining the records.

THE SECOND RECOMMENDATION

The legislature should consider amending AS 39.25.080 to permit those who file complaints against peace officers to receive some feedback about the status and outcome of their complaint.

Sec. 39.25.080 Personnel records confidential; exceptions.
(a) State personnel records, including employment applications and examination and other assessment materials, are confidential and are not open to public inspection except as provided in this section.
(b) The following information is available for public inspection, subject to reasonable regulations on the time and manner of inspection:
(1) the names and position titles of all state employees;
(2) the position held by a state employee;
(3) prior positions held by a state employee;
(4) whether a state employee is in the classified, partially exempt, or exempt service;
(5) the dates of appointment and separation of a state employee;
(6) the compensation authorized for a state employee; and
(7) whether a state employee has been dismissed or disciplined for a violation of AS 39.25.160 (l) (interference or failure to cooperate with the Legislative Budget and Audit Committee).

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AS 39.25.900. is captioned "Penalties" and provides as follows:

(a) A person who wilfully violates a provision of this chapter or of the personnel rules adopted under this chapter is guilty of a misdemeanor.

(b) A state employee who is convicted of a misdemeanor under this chapter or the personnel rules adopted under this chapter immediately forfeits the employee's office or position.

Discussion

In this case, there has been much said about the level of frustration that existed on the part of Sarah Palin's father Chuck Heath who filed the original complaint against Trooper Michael Wooten, and on the part of Sarah and Todd Palin, who attempted to learn the status of the investigation only to be told by Colonel Grimes that the matter was confidential by reason of AS 39.25.080. I believe their frustration was real as was their skepticism about whether their complaints were being zealously investigated. The irony is that the complaints were taken very seriously, and a thorough investigation was underway. However, the law prevented the Troopers from giving them any feedback whatsoever.

When a citizen files a complaint against a peace officer, there should be a balance in our law that on the one hand seeks to protect the confidentiality of the investigative process, but on the other recognizes that someone may have been aggrieved. At the very least, the law should provide for the release of some information to the complainant regarding the status of the case. When citizens are told no information can be released, it has the potential of engendering skepticism about whether the complaint

was taken seriously. There is likewise a great potential that the confidence we need to have in our law enforcement agencies will be undermined, and respect for those institutions will be eroded. This is especially so because in most instances, as was the case here, the officer is an employee of the very same agency that was conducts the investigation.

In sum, AS 39.25.080 should be studied to determine whether some relaxation of the law is possible to allow some feedback to a person who files a complaint against a law enforcement officer.

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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

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Wrangell
Pres. Wrangell Chapter

February 17, 2009

Senator Hollis French
Alaska State Senate
State Capitol
Juneau AK 99801-1182

Dear Senator French:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing Senate Bill 19, an act relating to complaints concerning peace officers and village public safety officers and to notification to persons filing complaints.

The APOA State Board and Legislative Committee reviewed this proposed legislation and unanimously support this bill.

Thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

SB

46

26-LS0279\T
Mischel
3/25/10

CS FOR SENATE BILL NO. 46( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR KOOKESH

A BILL

FOR AN ACT ENTITLED

"An Act relating to child support awards; and repealing Rule 90.3, Alaska Rules of Civil Procedure."

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

*** Section 1.** AS 25 is amended by adding a new chapter to read:

Chapter 28. Child Support Awards.

Sec. 25.28.010. Guidelines; primary physical custody. (a) A tribunal shall calculate a child support award in a case in which one parent is awarded primary physical custody as an amount equal to the adjusted annual income of the noncustodial parent multiplied by a percentage specified in (b) of this section.

(b) To calculate the child support award, the tribunal shall multiply the noncustodial parent's adjusted annual income by the following percentages:

(1) 20 percent for one child;

(2) 27 percent for two children;

(3) 33 percent for three children; and

(4) an additional three percent for each additional child.

(c) The tribunal may allow the obligor parent to reduce child support payments by up to 75 percent for a period in which the obligor parent has extended visitation of more than 27 consecutive days. The order must specify the amount of the reduction that is allowable if the extended visitation is exercised.

(d) The tribunal may calculate child support based on a determination of the potential income of a parent who voluntarily and unreasonably is unemployed or underemployed. A determination of potential income may not be made for a parent who is physically or mentally incapacitated, or who is caring for a child under two years of age to whom the parents owe a joint legal responsibility. Potential income shall be based on the parent's work history, qualifications, and job opportunities. The tribunal also may impute potential income for nonincome producing or low income producing assets.

(e) In this section, "adjusted annual income" means the parent's total income from all sources less

(1) mandatory deductions, including

(A) federal, state, and local income tax;

(B) social security tax or the equivalent contribution to an alternate plan established by a public employer, and self-employment tax;

(C) Medicare tax;

(D) mandatory union dues;

(E) mandatory contributions to a retirement or pension plan;

(2) voluntary contributions to a retirement or pension plan or account in which the earnings are tax-free or tax-deferred, except that the total amount of these voluntary contributions plus any mandatory contributions under (1)(E) of this subsection may not exceed 7.5 percent of the parent's gross wages and self-employment income;

(3) child support and alimony payments arising from previous relationships that are required by another tribunal and actually paid;

(4) child support for children from prior relationships living with the parent, calculated by using the formula under this chapter; and

(5) work-related child care expenses for the child who is the subject of the child support order.

Sec. 25.28.020. Guidelines; shared, divided, and hybrid custody awards. (a) The tribunal shall calculate shared, divided, and hybrid physical custody awards as provided in this section.

(b) The tribunal shall calculate a child support award in a case in which the parents are awarded shared physical custody by

(1) calculating the annual amount each parent would pay to the other parent under AS 25.28.010 assuming the other parent had primary custody; in this calculation, the income limit in AS 25.28.030(c) and the minimum support amount in AS 25.28.030(d) apply;

(2) multiplying the amount determined under (1) of this subsection for each parent by the percentage of time the other parent has physical custody of the child; however, if the tribunal finds that the percentage of time each parent will have physical custody does not accurately reflect the ratio of funds each parent will directly spend on supporting the child, the tribunal shall vary this percentage to reflect its findings;

(3) determining which parent has the greater amount under (2) of this subsection; the parent with the greater amount under (2) of this subsection is the obligor parent, and the annual award is equal to the difference between the two amounts under (2) of this subsection multiplied by 1.5; however, if this amount is greater than the amount of support calculated under AS 25.28.010 assuming the obligor parent has primary custody, the annual support is the amount calculated under AS 25.28.010.

(c) The child support award for shared custody under (b) of this section must be paid in 12 equal monthly installments, except that if

(1) shared custody is based on the obligor parent's having physical custody for periods of 30 consecutive days or more, the total annual award may be paid in equal installments over those months in which the obligor parent does not have physical custody; or

(2) the obligor parent's income is seasonal, the tribunal may order

unequal monthly support payments as provided in AS 25.28.030(g) and (h).

(d) The child support order must state that failure to exercise sufficient physical custody to qualify for shared physical custody under (b) or (c) of this section is grounds for modification of the child support order. Denial of visitation by the custodial parent is not cause to increase a child support award.

(e) The tribunal shall

(1) calculate a child support award in a case in which the parents are awarded divided custody by determining the amount each parent would pay to the other parent for support of a child for whom that parent has primary physical custody under AS 25.28.010, taking into account the income limit in AS 25.28.030(c) and the minimum support amount in AS 25.28.030(d), and offsetting those amounts; and

(2) consider whether the amount determined under (1) of this subsection should be varied under AS 25.28.030(b).

(f) The tribunal shall

(1) calculate a child support award in a case in which the parents are awarded hybrid custody by

(A) applying AS 25.28.010, taking into account the income limit in AS 25.28.030(c) and the minimum support amount in AS 25.28.030(d), to determine support for a child in the primary physical custody of each parent;

(B) applying (b) of this section to determine support for a child in the shared physical custody of the parents;

(C) adjusting pro rata the percentages provided in AS 25.28.010(b) based on the number of children to which each type of custody applies; and

(D) combining the amounts to determine the net obligation; and

(2) consider whether the amount determined under (1) of this subsection should be varied under AS 25.28.030(b).

Sec. 25.28.030. Exceptions to support awards. (a) Notwithstanding the requirements in AS 25.28.010 and 25.28.020, the tribunal may vary the award for the reasons stated in this section.

(b) The tribunal may vary the child support award as calculated under the other provisions of this chapter for good cause on proof by clear and convincing evidence that manifest injustice would result if the support award were not varied. The tribunal shall specify in writing the reason for the variation, the amount of support that would have been required but for the variation, and the estimated value of any property conveyed instead of support calculated under the other provisions of this chapter. Good cause may include a finding that unusual circumstances exist that require variation of the award in order to award an amount of support that is just and proper for the parties to contribute toward the nurture and education of their children. The tribunal shall consider the custodial parent's income in this determination.

(c) The calculation for primary physical custody under AS 25.28.010 does not apply to the extent that the parent has an adjusted annual income of more than $105,000. The tribunal may make an additional award only if it is just and proper, taking into account the needs of the child, the standard of living of the child, and the extent to which that standard should reflect the supporting parent's ability to pay.

(d) Except as provided in AS 25.28.010(c) and 25.28.020, the minimum child support amount that may be ordered is $50 a month or $600 a year.

(e) In addition to ordering a parent to pay child support as calculated under this chapter, the tribunal may, in appropriate circumstances and when the parents are minors as described in (f) of this section, order one or more grandparents of a child to pay child support to an appropriate person in an amount determined by the tribunal to serve the best interests of the child; however, the amount may not exceed the lesser of

(1) a proportionate share of the amount required to provide care in a supervised setting to the grandchild, as determined by the tribunal; or

(2) the amount that would have been awarded if the child's parents had the incomes of the child's grandparents and AS 25.28.010 and 25.28.020 were applied.

(f) An order under (e) of this section may be issued only with respect to a child whose parents are both minors, and the order terminates when either parent becomes 18 years of age. The tribunal shall specify in writing the reasons it considers it to be appropriate to order a grandparent to pay child support under this subsection and the factors considered in setting the amount of the child support award. In this

subsection, "grandparent" means the natural or adoptive parent of the minor parent.

(g) If the noncustodial parent's income is seasonal, the tribunal may order that the annual support amount be paid in unequal monthly payments, with higher payments during the months the parent expects to receive higher income and lower payments in other months; the tribunal may not make an unequal payment order unless

(1) the tribunal finds that the burden of budgeting for periods of unequal income should be placed on the obligee rather than the obligor; and

(2) the obligee agrees.

(h) An order of the tribunal for unequal payments under (g) of this section must specify the annual support amount, the average monthly support amount, and the amount due for each month. The order must provide that variations from the average monthly amount begin with monthly payments in excess of the average monthly amount so that a deficit situation cannot occur. Until the excess payments begin, the tribunal shall order payment of the average monthly amount.

Sec. 25.28.040. Health care expenses. (a) The tribunal shall include in the order coverage of the child's health care needs and require health insurance for the child if insurance is available to either parent or both parents at a reasonable cost. The tribunal shall consider whether the child is eligible for services through the Indian Health Service, any other entity, or other insurance coverage before ordering either parent or both parents to provide health care coverage through insurance, cash medical support, or other means. A court shall find that health insurance is available only if the dependent child has reasonable geographic access to the covered services or the insurance includes the coverage of transportation needed for the services.

(b) The tribunal shall allocate equally the cost of insurance between the parents unless the tribunal orders otherwise for good cause. An obligor's child support obligation shall be decreased by the amount of the obligee's portion of health insurance payments ordered by the tribunal and actually paid by the obligor. The tribunal shall increase a child support award by the obligor's portion of health insurance if the obligee is ordered to, and actually does, obtain and pay for insurance.

(c) The cost of insurance is the cost attributable to the child for whom support is paid. If the cost to the employee of covering the employee alone is the same as the

cost to the employee of covering the employee and dependents, then there is no additional cost to the employee for adding the child and no portion of the cost of coverage may be allocated to the child. If dependent coverage can be added for a single cost, rather than for each dependent, and the dependent coverage covers dependents in addition to the child subject to the order, the cost of the dependent coverage shall be allocated equally among the dependents covered. If there is reason to believe that there is an incremental cost to the employee for insuring dependents but evidence of that incremental cost is unavailable, the cost of insurance is determined by dividing the total cost of coverage by the number of family members covered and multiplying that amount by the number of children subject to the order.

(d) The tribunal shall allocate equally between the parties the cost of reasonable health care expenses not covered by insurance unless the tribunal orders otherwise for good cause. A party shall reimburse the other party for the party's share of the uncovered health care expenses within 30 days after receipt of the bill for the health care, payment verification, and, if applicable, a health insurance statement indicating what portion of the cost is uncovered. The tribunal shall allocate the reasonable, uncovered health care expenses exceeding $5,000 in a calendar year based on the parties' relative financial circumstances when the expenses occur.

(e) For the purpose of establishing a monthly support obligation for health care expenses, a court shall find that the cost of cash medical support or private health insurance is reasonable under this section if the cost to the responsible parent does not exceed five percent of the responsible parent's gross income. In calculating the percentage for purposes of health insurance coverage, the cost is the cost of adding the dependent child to the existing insurance coverage or the difference between self-only and family coverage.

(f) In this section,

(1) "cash medical support" means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise, or for other health care expenses not covered by insurance;

(2) "health care expenses" includes medical, dental, vision, and mental health counseling expenses.

Sec. 25.28.050. Child support affidavit and documentation. (a) Subject to the confidentiality requirements of Rule 90.1(f), Alaska Rules of Civil Procedure, each parent in a proceeding of a tribunal at which child support is involved shall file a statement under oath, accompanied by documentation verifying the statement, that states the parent's adjusted annual income and the components of adjusted annual income as described in AS 25.28.010(e). This statement and documentation must be filed with a party's initial pleading in superior court, including the dissolution petition, divorce complaint or answer, motion to modify, and any response to a motion to modify. The documents must be redacted to delete social security numbers and to provide only partial financial account information as provided in Rule 90.1(f), Alaska Rules of Civil Procedure. The statement must state whether the parent has access to health insurance for the children and, if so, the additional cost to the parent of the children's health insurance.

(b) While there is an ongoing monthly support obligation, each party shall provide to the other party, within 30 days after a written request, documents such as tax returns and pay stubs showing the party's income for the prior calendar year. The party making the request shall provide documentation of the party's annual income for the same period at the time the request is made. A request under this section may not be made more than once a year. This section does not preclude discovery under the Alaska Rules of Civil Procedure.

(c) Unless the information has already been provided to the tribunal under Rule 90.1(f), Alaska Rules of Civil Procedure, a statement under (a) of this section must be accompanied by a confidential information sheet as described in Rule 90.1, Alaska Rules of Civil Procedure. Once a complete confidential information sheet has been submitted to the tribunal listing names, dates of birth, and social security numbers as required, the parties shall omit or redact social security numbers from documents subsequently filed in the action unless otherwise ordered by the tribunal.

(d) The tribunal may withhold or assess costs or attorney fees for a violation of this section as the circumstances and discouragement of like conduct in the future may require. Costs and attorney fees may be imposed on offending attorneys or parties.

Sec. 25.28.060. Travel expenses. After determining an award of child support under this chapter, the court shall allocate between the parties reasonable travel expenses that are necessary to exercise visitation as may be just and proper for the parties to contribute.

Sec. 25.28.070. Modification; defense against arrearages. (a) A tribunal may modify a final child support award on a showing of a material change of circumstances as provided by state law. A material change of circumstances shall be presumed if support as calculated under this chapter is more than 15 percent greater or less than the outstanding support order. An award may be modified to require cash medical support regardless of whether insurance is available to either parent if neither parent has purchased health insurance. In this subsection, support includes health insurance payments or cash medical support made under AS 25.28.040.

(b) A tribunal may not modify a child support arrearage retroactively, except as authorized by AS 25.27.166(d). A modification that is effective on or after the date that a motion for modification, or a notice of petition for modification by the child support services agency, is served on the opposing party is not considered a retroactive modification.

(c) The tribunal may find that a parent and a parent's assignee are precluded from collecting arrearages for support of a child that accumulated during a time period exceeding nine months for which the parent agreed or acquiesced to the obligor exercising primary custody of the child. A finding that preclusion is a defense must be based on clear and convincing evidence.

Sec. 25.28.080. Third-party custody. (a) When the state, or another third party entitled to child support, has custody of all children of a parent, the parent's support obligation to the third party is an amount equal to the adjusted annual income of the parent multiplied by the percentage specified in AS 25.28.010(b). If the third party has custody of some but not all children, the parent's support obligation to the third party is an amount equal to the adjusted annual income of the parent, multiplied by the percentage specified in AS 25.28.010(b) for the total number of the parent's children, multiplied by the number of the parent's children in third-party custody, divided by the total number of the parent's children. In this subsection, the number of

the parent's children includes only children of the parent who live with the parent, are substantially supported by the parent, or are in custody of the third party entitled to support.

(b) If, in addition to a support obligation to a third party, one or both parents retain primary or shared physical custody of at least one of their children, the support obligation between the parents is calculated under the other provisions of this chapter, without consideration of the third-party custodian or any children in the custody of the third-party custodian, except that the percentage in AS 25.28.010(b) must be adjusted pro rata for the number of children in the primary custody of a parent, or shared custody of the parents, compared to the total number of children. After that calculation is completed, any support owed may be offset with support owed to a third-party custodian under (a) of this section in order to minimize transactions.

Sec. 25.28.090. Support order forms. All court orders for payment or modification of child support shall be entered on a form developed by the administrative director of the court. A party may lodge a duplicate of the tribunal form produced by a laser printer or similar device. A device may also print, in a contrasting typestyle equivalent to that produced by a typewriter, text that otherwise would have been entered by a typewriter or word processor. A party or attorney who lodges a duplicate certifies by lodging the duplicate that it is identical to the current version of the court form.

Sec. 25.28.100. Dependent tax deduction. The court may allocate the dependent tax deduction for each child between the parties as is just and proper and in the child's best interests. The allocation must be consistent with AS 25.24.152 and federal law.

Sec. 25.28.300. Definitions. In this chapter,

(1) "child support" and "child support obligation" have the meaning given "duty of support" in AS 25.27.900;

(2) "divided custody" means that one parent has primary physical custody of one or more children of the relationship and the other parent has primary custody of one or more other children of the relationship, and the parents do not share physical custody of any of their children;

(3) "hybrid custody" means that at least one parent has primary physical custody of one or more children of the relationship, and the parents have shared physical custody of at least one child of the relationship;

(4) "primary physical custody" or "primary custody" means that a child resides with the other parent for a period, specified in the custody order, of less than 30 percent of the year;

(5) "shared physical custody" or "shared custody" means that a child resides with one parent for a period, specified in writing in the custody order, of at least 30 percent but not more than 70 percent of the year, regardless of the status of legal custody;

(6) "tribunal" means the superior court or the child support services agency created in AS 25.27.010.

*** Sec. 2.** AS 47.10.120(a) is amended to read:

(a) When a child in need of aid is committed under this chapter, the court or the child support services agency created in AS 25.27.010 shall, after giving the parent a reasonable opportunity to be heard, require that the parent pay to the department in a manner that the court or the child support services agency directs a sum to cover in full or in part the maintenance and care of the child. The support obligation shall be calculated under **AS 25.28** [RULE 90.3(i) OF THE ALASKA RULES OF CIVIL PROCEDURE].

*** Sec. 3.** AS 47.12.230(a) is amended to read:

(a) When a delinquent minor is committed under this chapter, the court or the child support services agency created in AS 25.27.010 shall, after giving the parent a reasonable opportunity to be heard, require that the parent pay to the department in a manner that the court or the child support services agency directs a sum to cover in full or in part the maintenance and care of the minor. The support obligation shall be calculated under **AS 25.28** [RULE 90.3(i) OF THE ALASKA RULES OF CIVIL PROCEDURE].

*** Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REPEAL OF COURT RULE. Rule 90.3, Alaska Rules of Civil Procedure, is repealed.

*** Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

NONAPPLICABILITY OF TWO-THIRDS VOTE REQUIREMENT. Because the rule repealed in sec. 4 of this Act is a substantive rule rather than a rule of practice or procedure, the repeal of the rule takes effect even if sec. 4 of this Act does not receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

SEAN PARNELL, GOVERNOR
1031 W 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907) 269-5100
FAX: (907) 278-3458

March 23, 2010

Honorable Albert Kookesh
Senate
Capital Building
MS 3100, Room 11
Juneau, AK 99801-1182

RE: Child Support Awards
CS SB 46

Dear Senator Kookesh:

Thank you for the opportunity to provide comments about CS SB 46 Child Support Awards (CS SB 46 26-LS0279\P). This bill moves the child support guidelines from the court rule (Civil Rule 90.3) to statute. The committee substitute resolves some of the legal issues with the prior version, but raises some new issues. Attached is a page and line number summary of the small changes to the bill (Attachment 1). The main area of concern is section 25.28.040 addressing health care expenses.

The prior version of SB 46 did not include the 2008 federally mandated provisions addressing medical support. CS SB 46 cures two previously deficient areas: defining the reasonable cost of health insurance and defining the accessibility of health insurance. The third area is cash medical support. CS SB 46 now includes cash medical support (page 7, lines 27-29) and the reasonable cost of cash medical support (Page 7, lines 20-25), but these additions now make the section internally inconsistent and subject to several different interpretations. Here are some examples:

- Paragragh (b) provides cash medical support (i.e. uncovered medical costs) will be equally allocated between the parents which conflicts with section (d) that provides that uncovered health care expenses will be allocated equally between the parents unless the cost exceeds $5,000 in a calendar year, then the costs are allocated based on the parents' relative financial circumstances.
- Paragraph (b) provides the obligor can decrease his/her support obligation by the amount of "cash medical support" paid. As currently defined, the obligor can deduct 50% of all medical expenses he/she pays. This could result in no child support payment to the custodian or possibly the custodian paying the non-

custodial parent. Also, as written, the custodian would effectively pay 75% of the child's uncovered expenses.

- Paragraph (e) defines the reasonable cost of private health insurance or cash medical support. It limits cash medical support to 5% of the responsible parent's gross income. The paragraph does not address circumstances when the uncovered medical costs exceed the 5% standard—who pays the health care provider if the bill exceeds each parent's 5% of gross income. As written, the custodian may be burdened with all bills that exceed 5% the obligor's gross income. This paragraph also conflicts with paragraph (d).
- Cash medical support as defined only includes uncovered "medical costs"; Health care expenses are defined broadly including not only "medical" expenses, but also dental, vision, and mental health counseling expenses.

I have included an example to reflect these issues and application of the health care section. (See attachment 2).

Also, the health care expense section does not require the court to order cash medical support if health insurance is not available to either parent at a reasonable cost or accessible to the child.

The federal requirements for medical support are complicated and many states have struggled with complying with the new federal mandates. The discussion in the Federal Register anticipates that a tribunal would order a cash medical support payment when accessible health insurance is not available to the child at a reasonable cost. Thus, a parent would either pay for health insurance each month (and receive a corresponding 50% adjustment in health insurance) or pay the other parent a set cash sum each month.

If you have any questions, please do not hesitate to contact me. I will also be available for questions at the Senate Judiciary committee hearing scheduled for March 24 at 1:30 pm. I will be participating from the Legislative Information Office in Anchorage.

Sincerely yours,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: Stacy K Steinberg
Stacy K. Steinberg
Chief Assistant Attorney General

//

SKS

Enclosures:
45 CFR 302.56
45 CFR 303.31
45 CFR 308.2
Federal Register Vol 73, No 140 (July 21, 2008)

CC: CSSD Director John Mallonee
DOR—Ginger Blaisdell
Sen Hollis French, Chair Senate Judiciary Committee

Attachment 1

CS SB 46 Recommended amendments [26-LS0279\P]:

By Stacy K. Steinberg, Chief Assistant Attorney General (see letter attached)

Page 8, line 5: after "AS 25.28.010(e)" **add** and must be accompanied by documentation verifying the income.

Page 8, line 8: after "modify" **delete** and must be accompanied by documentation verifying the income.

Page 9, line 13: **change** court to tribunal

Page 10, line 13 after "All" **add** court (Alternatively Sec. 25.28.090 could be deleted).

Page 10, line 13 **change** tribunal to court (Alternatively Sec. 25.28.090 could be deleted).

Page 6, line 15-**Page 7**, line 31 Sec. 25.28.040 Health Care Expenses. This section is internally inconsistent and needs to be revised.

Attachment 2

Medical Support				
Example: Primary Custody				
Mom has primary custody of Johnny				
Mom earns $25,000/year (42% of total parents' incomes)				
Dad earns $35,000/year (58% of total parents' incomes)				
Dad is the "obligor" and pays $480/mo in child support ($5,760/year)				
Johnny breaks his arm and has $10,000 in medical bills				
If insurance, insurance pays for $8,000 and $2,000 uncovered				
	Senario #1	**Senario #2**	**Senario #3**	**Senario#4**
	Current 90.3(d): Dad has health ins $100; Uncovered meds $2,000	Current 90.3(d) Dad has no health ins; uncovered meds $10,000	CS SB46 25.28.40: Dad has health ins $100/mo; Uncovered meds $2,000	CS SB 46 25.28.40: Dad has no health ins; Uncovered meds $10,000
Basic Monthly Support	$480	$480	$480	$480
Health Ins. 50%	($50)	$0	($50)	$0
Total Monthly Support	$430	$480	$430	$480
Uncovered Medicals	Dad pay $1,000 (50%)	Dad pay $5,800 (58%)	Dad pay $1,000 (50%)	Does dad pay $5,000 meds (50%)? or $5,800 meds (58%)? or $1,750 meds (5% gross income)?
New Support	$1,000 meds plus $430/mo support	$5,800 meds plus $480/mo support	$1,000 meds--subtract from support and pays $346/mo in support?? ($5,760-$1,000)	$5,000 meds? or $5,800 meds? or $1,750 meds? **PLUS** $63/mo for support ($5,760-$5,000)? or $0/mo for support ($5,760-$5,800)? or $334/mo for support ($5,760-$1,750) in support? Or mom pays dad $3/mo ($5,760-$5,800)?

ALASKA STATE LEGISLATURE
Senator Albert M. Kookesh

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Kasaan
Katalla
Kennicott
Kenny Lake
Klawock
Klukwan
Koyukuk
Labouchere Bay
Lake Minchumina
Lime Village
Livengood
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Slana
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Strelna
Takotna
Tanacross
Tanana
Tatitlek
Tazlina
Telida
Tenakee Springs
Tetlin Junction
Tok
Tonsina
Tyonek
Utopia Creek
Venetie
View Cove
Waterfall
Whale Pass
Wiseman
Yakutat

March 15, 2010

Senator Hollis French, Chair
Senate Judiciary Committee
State Capitol Bldg., Rm. 417
Juneau, AK 99801

Dear Senator French, Hollis

I respectfully request a hearing for Senate Bill 46 "An act relating to child support awards; and repealing Rule 90.3, Alaska Rules of Civil Procedure." This bill simply puts the rule into statute. In 1987, the Alaska Supreme Court enacted Civil Rule 90.3. The court frankly admitted that this was a substantive law and recognized the courts are not supposed to pass substantive laws that are the Legislature's job. In the 23 years since then, the Legislature has not replaced Civil Rule 90.3 with an actual law. This bill proposes to correct this long standing deficiency.

Thank you for your consideration and if you have any questions don't hesitate in contacting me personally or my staff Dorothy Shockley at 465-3018.

Respectfully,

Albert

Senator Albert Kookesh

Att: Sponsor Statement
CSSB 46
Letter of Support

Attachment 1

CS SB 46 Recommended amendments [26-LS0279\P]:

By Stacy K. Steinberg, Chief Assistant Attorney General (see letter attached)

Page 8, line 5: after "AS 25.28.010(e)" **add** and must be accompanied by documentation verifying the income.

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Page 6, line 15-**Page 7**, line 31 Sec. 25.28.040 Health Care Expenses. This section is internally inconsistent and needs to be revised.

is made in the month, the assignment is no longer in effect and there are no longer any assigned arrearages, or the conditions in paragraph (b) of this section are met.

(2) The monthly notice must list separately payments collected from each noncustodial parent when more than one noncustodial parent owes support to the family and must indicate the amount of current support collected, the amount of arrearages collected and the amount of support collected which was paid to the family.

(b)(1) The Office may grant a waiver to permit a State to provide quarterly, rather than monthly, notices, if the State:

(i) Until September 30, 1997, does not have an automated system that performs child support enforcement activities consistent with § 302.85 or has an automated system that is unable to generate monthly notices; or

(ii) Uses a toll-free automated voice response system which provides the information required under paragraph (a) of this section.

(2) A quarterly notice must be provided in accordance with conditions set forth in paragraph (a)(1) of this section and such notice must contain the information set forth in paragraph (a)(2) of this section.

[57 FR 30681, July 10, 1992, as amended at 61 FR 67241, Dec. 20, 1996; 64 FR 6249, Feb. 9, 1999; 68 FR 25303, May 12, 2003]

§ 302.55 Incentive payments to States and political subdivisions.

Effective October 1, 1985, in order for the State to be eligible to receive any incentive payments under § 304.12 and part 305 of this chapter, the State plan shall provide that, if one or more political subdivisions of the State participate in the costs of carrying out the activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share of any incentive payments made to the State for such period, as determined by the State in accordance with § 303.52 of this chapter, taking into account the efficiency and effectiveness of the political subdivision in carrying out the activities under the State plan.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32309, Aug. 4, 1989; 65 FR 82208, Dec. 27, 2000]

§ 302.56 Guidelines for setting child support awards.

(a) Effective October 13, 1989, as a condition of approval of its State plan, the State shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State.

(b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts.

(c) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into consideration all earnings and income of the noncustodial parent;

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and

(3) Address how the parents will provide for the child(ren)'s health care needs through health insurance coverage and/or through cash medical support in accordance with § 303.31 of this chapter.

(d) The State must include a copy of the guidelines in its State plan.

(e) The State must review, and revise, if appropriate, the guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.

(f) Effective October 13, 1989, the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(g) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

(h) As part of the review of a State's guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

(Approved by the Office of Management and Budget under control number 0960–0385)

[50 FR 19649, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 56 FR 22354, May 15, 1991; 73 FR 42441, July 21, 2008]

§ 302.60 Collection of past-due support from Federal tax refunds.

The State plan shall provide that:

(a) The IV-D agency has in effect procedures necessary to obtain payment of past-due support from Federal tax refunds as set forth in section 464 of the Act, § 303.72 of this chapter, and regulations of the Internal Revenue Service at 26 CFR 304.6402–1; and

(b) The IV-D agency shall take the steps necessary to implement and use these procedures.

(Approved by the Office of Management and Budget under control number 0960–0253)

[47 FR 7428, Feb. 19, 1982]

§ 302.65 Withholding of unemployment compensation.

The State plan shall provide that the requirements of this section are met.

(a) *Definitions.* When used in th tion:

Legal process means a writ, summons or other similar proc the nature of a garnishment, wh issued by a court of competent ju tion or by an authorized official ant to an order of such court or ant to State or local law.

State employment security agen SESA means the State agency ch with the administration of the unemployment compensation la accordance with title III of the Ac

Unemployment compensation any compensation payable under unemployment compensation lav cluding amounts payable in accor with agreements under any Feder employment compensation law). cludes extended benefits, unem ment compensation for Federal ployees, unemployment compens for ex-servicemen, trade readjust allowances, disaster unemployme sistance, and payments under the wood National Park Expansion Ac

(b) *Agreement.* The State IV-D ag shall enter into a written agree with the SESA in its State for the pose of withholding unemploy compensation from individuals unmet support obligations being forced by the IV-D agency. The agency shall agree only to a holding program that it expects cost-effective and to reimburse for the SESA's actual, increm costs of providing services to the agency.

(c) *Functions to be performed by th D agency.* The IV-D agency shall:

(1) Determine periodically from formation provided by the SESA u section 508 of the Unemployment pensation Amendments of 1976 whe individuals applying for or recei unemployment compensation owe port obligations that are being forced by the IV-D agency.

(2) Enforce unmet support ob tions by arranging for the withhol of unemployment compensation b on a voluntary agreement with th dividual who owes the support, o appropriate cases which meet the selection criteria established u paragraph (c)(3), through legal pro

SENATOR ALBERT M. KOOKESH
ALASKA STATE LEGISLATURE SENATE DISTRICT C
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Sponsor Statement

CSSB 46

SB 46 puts the Child Support Civil Rule 90.3 guidelines into statute. In 1987, the Alaska Supreme Court enacted Civil Rule 90.3. The Supreme Court admitted that this was a substantive law that the Legislature could replace at anytime. In the 23 years since then, the Legislature has not replaced civil rule 90.3 with an actual law. This bill proposes to correct that long-standing deficiency.

One of the major problems with having the child support guidelines set by a court rule is the people affected by the current guidelines never have the chance to speak to the individuals who have the power to make changes. Instead every four years they are encouraged to write letters or testify before a review committee made up of lawyers and judges who then submit their recommendations to the Supreme Court Justices who make the final decisions. With the rule in statute, individuals can talk to the law makers directly.

The bill proposes enactment of the current rule, into statute. Under this model of child support guidelines, the non-custodial parent's support obligation is based solely on his or her income, without regard to what the other parent makes. The current rule works reasonably well, and with a statue in place, proposals to amend it can be made in the future, through the legislative process.

CSSB 46 changes the word court to tribunal in some cases back to court and adds number (6) to definition in Sec. 25.28.300 (page 11) to read "tribunal" means the superior court or the child support services agency created in AS 25.27.010. It also includes changes made by SB 96 addressing medical support.

The Child Support Services Division has no objections to the bill. I would appreciate your prompt and favorable action on this bill.

From: Dorothy Shockley
Sent: Monday, March 01, 2010 10:42 AM
To: Celeste Hodge
Subject: SB 46 Child Support Awards--legal comments

Hi Celeste....here's Ken's letter (I just got it!) thanks, ~D

Ms. Shockley: Here is a copy of Mr. Kirk's letter to you of 2/22/10.

February 22, 2010

Office of Senator Albert Kookesh

Attn: Dorothy J. Shockley

State Capitol, Room 11

Juneau, AK 99801

Re: SB 46

Dear Senator:

I am writing to express my support for the proposed SB 46, which, if passed, would finally enact a child support guideline into statute.

The lack of a child support guideline has been a blot on our constitutional system for over 20 years. In 1987 the Alaska Supreme Court adopted Civil Rule 90.3, which I am sure they intended to be only a short-term solution to avoid loss of federal benefits until the legislature replaced the rule with an actual statute. Unfortunately the justices, who predictably do not have a very good collective ear for political realities, did not realize that when you take a hot potato away from the legislature, you tend to get stuck with the hot potato for life. And so in 23 years, no legislator (until now) has even introduced a bill to enact a specific guideline. In the meantime the Supreme Court, with its typical inability to admit when it is wrong, has whitewashed the fact that this is a substantive law enacted by the judiciary, by trying to claim that it is "merely a guideline" even though its own cases require that the guideline be followed.

The Alaska Constitution gives the judiciary the authority to enact administrative and procedural rules, and to decide individual cases. It has no right or ability to enact substantive laws. For the judiciary to enact a substantive law, is a terrible precedent which threatens the structure of separation of powers. And so I implore you to remedy this embarrassment by enacting a substantive child-support law to replace 90.3.

That said, if this bill gets a committee hearing you will be provided with a lot of options, some of them probably better than what you have here. SB 46 essentially adopts the present system of child support guidelines, which is generally referred to as a "percentage of income" system. It does have the advantage of being consistent with the way we have done this in Alaska for the past 23 years, so that the many people who have to apply these rules (judges, attorneys, and CSSD workers) do not have to start all over again. On the other hand most states have adopted the "income shares" system, under which both parents' incomes are taken into account. Our system takes into account, in most cases, only the income of the noncustodial parent. There are good arguments on both sides, and you may want to consider using the income shares system instead. Likewise, there are many desirable changes which could be made to the guidelines, even if the basic structure is kept intact.

Please consider the many changes which are likely to be presented, and keep an open mind to them, but at the end of the day please pass something. Under the current system, the people who are affected by this substantive law can never talk to the people who can change it, because the justices who actually decide on changes do not talk to people. Every four years, the justices appointed a review committee, a group of lawyers who then solicit comments for change, and hold public hearings. However the review committee does not make the final decision, and the justices have been anything but a rubber stamp for the committee's recommendations. I have been on two of the review committees over the years, and many of the changes we proposed were either rejected, or dramatically revised, by the Supreme Court.

The current system is undemocratic. You have the option of changing it into a system which is democratic, in which people

can petition their legislators if they believe further changes should be made. Please take some such action. The exact details of how child support is calculated, is less important than that our system of democratic government is able to continue operating the way it should.

Please feel free to contact me if there are any other questions you, or any of your fellow legislators, have for me.

Sincerely,

Kenneth Kirk

SB 47

Joelle Casteix
18 Starfish Ct.
Newport Beach, CA 92663
(949) 322-7434

My name is Joelle Casteix. I am 38 and live in southern California. I am a victim of childhood sexual abuse and the Southwest Regional Director of SNAP, the Survivors' Network of those Abused by Priests. In that role, I have worked with hundreds of sex abuse victims, including many in the villages of western Alaksa. Most importantly, I am a mother of a 2-and-a-half-year-old son, whose beauty, light and innocence make my goal here the most important of my life.

Carolyn Jessup, wrote the book "Escape," which chronicles her flight from the FLDS compound in Colorado City. In her words: "Child sexual abuse is not about religion. It is about crime." Criminals seek environments where they will not be caught and where a child's fear, naivete, lack of education and fear of punishment and retribution will not only keep them quiet, but keep them in the dark about the crimes against them.

Unfortunately, religions like the Roman Catholic Church provide the best haven for a predator to hone his skills.

Why? Because the predator will not be punished.

I am here today because

- I am an example of why Senate Bill 47 is essential to the safety of Alaska' children TODAY.
- I can show you how similar California and Delaware laws have saved thousands of children from abuse, exposed predators across the state and the country, aided law enforcement and prosecutors in numerous states to put molesters behind bars and unearthed a cover-up that shocked and disgusted the nation.
- I can show how this law will protect thousands of Alaska's vulnerable children RIGHT NOW who will still be at risk if these predators are not been exposed, and
- how, because of a bill such as this, I was able to publicly expose my predator, expose the men and women who covered up his criminal activities, unearth thousands of pages of document about my perpetrator and at least a dozen other predators at my high school, and do my best to make sure that these men never hurt another child.

I have to be here … for the children of Alaska, my soul and for my son, I have to be here.

My Story

Allow me to briefly tell my story.

Like many of the survivors you have heard and will hear today, I was a vulnerable child. I came from an alcoholic home and suffered from severe emotional disturbances because of the home life I had to endure.

My high school and the church were my sanctuaries.

I attended Mater Dei High School, a diocesan high school in Santa Ana, California.

What my parents and I didn't know at the time was that the school was a den of sexual abuse. Eleven men at my high school, including the principal, a vice principal, two choir directors and cross country coach were credibly accused and/or sued for abuse. Documents were released for all of them.

My Perpetrator

I was molested by choir director Thomas Hodgman. The prior director had informed Hodgman of my home life, and told him that I was vulnerable. Hodgman seized the opportunity and had complete control and power over me.

He asked my parents if I could go to his house with some other kids to help him move. When I arrived, I was the only child there. He told me that he couldn't wait to have me all to himself. I had never been more than kissed by a boy before then, so when he cornered me in his bedroom and tore off my shirt, I was scared, lost and alone. When he was done, I was bruised and bloody. And I had nowhere to turn.

"If you tell anyone, I'll kill you," he told me. "No one will believe you, anyway."

I was repeatedly raped during a two-year period – from when I was 15 until I was 17 years old.

Like many survivors, I couldn't go to my parents, even when my panties were bloody and my body bruised. I couldn't go to my friends, who, after learning of the abuse said that I wanted it.

So I went to school officials.

The vice principal told me "Gee, Joelle, isn't it wonderful to be in love?" I was told to keep my secret, because most people wouldn't understand. She said that I might be sent to a psychiatric facility. Or perhaps the police would blame me and I would have to go to juvenile hall – she had seen it all and she knew. And I believed her. I was indoctrinated.

I had no idea that Hodgman was also molesting my friend, Kristin. But the administrator knew.

Right before graduation, I found out I was pregnant.

I had nowhere to go, and nowhere to turn. So, using a fake name, I walked to an abortion clinic, alone, and ended my pregnancy.

After the procedure, a nurse told me that I had a sexually transmitted disease, vaginal warts, that could lead to cervical cancer and sterility. I spent the next three months having growths burned off of my genitalia.

No one called the police and no one told my parents until I did a few years later. And when I told, the pain only increased.

I was completely alienated from my friends and family who all blamed me – a 15-year-old innocent child – for "seducing" a man in his 30s. I was told that even though I didn't even know what sex was before I met Tom Hodgman, that I was an evil person who sinned and hurt a good man because I was "loose."

I was told that I was going to hell. But what these people didn't know was that I was *already* in hell.

Like most victims of childhood sexual abuse, I suffered endlessly for the next ten years. I watched my mother kill herself with alcohol over the pain and shame of what had happened to me. I trusted no one. I suffered from bad relationships, intimacy issues, suicidal thoughts, and an overwhelming shame. I hated who I was, and it seemed that there was no solution and no way out. I only knew pain, abuse and betrayal.

One day, I made a decision – I could die and let my abuser win, or heal and be the person that I had always wanted to be.

I chose to live.

I got help, forgave and forgot my issues with my family and tried to move on. But somehow I knew that there was still something horribly wrong with a place that told kids to be quiet about sexual abuse. But I just couldn't prove it.

In 2001, a boy who had been abused by my high school principal sued the Diocese of Orange and won a $5.2 million settlement. I was enraged when I heard the news.

I couldn't believe they allowed it to happen to another child.

So I wrote a letter to my high school and offered to help. In response, an attorney for the diocese invited me to lunch. And didn't tell me she was a lawyer. Had I been more naive, who knows what she could have done to me?

She said she had no records of my allegations, and that school officials had no idea that I had been abused. She even doubted my claims.

But, she said, I could serve on the diocese lay review board. I could help the bishop and show the county that there is no other abuse in the Diocese of Orange.

I seized the opportunity. I honestly thought that I could make a difference.

During the six months I was on the committee, we did not review a single case. We were told to ignore press reports. Instead, we sat around a table and discussed how horrible the clergy abuse scandal was for priests.

They used religion and their power to impress us, shame us, and silence us. In fact, during the time I was on the board, at least 30 people came forward to report abuse. But we were never told. I had to learn from press reports.

Church "reforms" were yet another sham to ensure that victims never reported to law enforcement. And many didn't.

What a sad day it was for me to learn that the only way to get the truth was to use our landmark civil window to sue the church. I wanted them to do the right thing, but they wouldn't. Instead, it took a state law to shine a bright light on a past and present of sin, crime and corruption that would have continued were it not for brave lawmakers and the civil courts.

Again, they called me a liar … but this time in the media. They used political connections to attempt to silence and discredit me.

Fortunately, I didn't care, and the truth was on my side.

After two years of mediation, stalling, and mudslinging, 87 cases against the Diocese of Orange were settled. But the financial settlement was simply a slap on the wrist for the church. The diocese was debt free less than a year after the settlements. The true punishment and the true justice lay in the 10,000 pages of files that exposed the scope and scale of abuse across the diocese.

Not only did documents show that the church knew about abuse, but showed that church officials didn't care about kids. Or me. Or anyone but themselves. Priests, clergy, volunteers and employees were transferred, asked to resign, and quietly hidden. And the kids had to pay the price.

An entire generation of children was destroyed to protect a few men from scandal.

Dozens of men were exposed – exposed working in schools, day care centers, and volunteering with youths. They were exposed grooming their target populations, lying to parents and trying to infiltrate other organizations.

And most importantly, California's, Arizona's, Mexico's and Nevada's children are safer because we exposed the predators who were allowed to go free to abuse and rape and destroy.

The most important part: girls will now be safer from Hodgman. The church didn't care enough to protect them, but I did. And I did it through a law like SB 47.

No one can call me a liar anymore.

The Documents

But let's get back to the immediate danger here in Alaska.

In the files for my case there were quite a few interesting documents that I provide for you today.

There was the signed confession where Hodgman admits to raping me and my friend Kristin. It's also signed by the principal, who never called the police.

There is the back-dated document, signed by the vice principal and Hodgman, that says that she knew about the abuse a year earlier, and did nothing.

There is the letter, written by the principal, Fr. John Weling, to the superintendent of schools. He said he reported to child services, but my parents were never called and child services has no record.

Where is the compassion? Where is the law?

Only the truth will protect children.

SB 47 and its one-year window is that window to the truth - righ tnow, there is no other way possible to force organizations to do the right thing

We were able to expose 150 perpetrators that the church had tried to hide from public disclosure. We exposed "rings" of priest shuffling between California, Idaho, Arizona, and Nevada – all the way to Mexico.

Last year in Delaware, a similar law – a two-year window - has done the same thing. We have exposed dozens of men still working in schools, exposed a multi-state conspiracy to protect men from prosecution, and aided law enforcement in three states to help put predators behind bars.

Now, let me address the three perceived challenges in bill:

1) Opponents say that the bill will encourage false allegations

False allegations can happen. But false allegations against clergy are extremely rare. Don't take my word on it. Patrick Schiltz of Minnesota is the Catholic church's No. #1 expert in this field. For 20 years, he's defended accused priests as a lawyer. By his own count, he's handled more than 500 cases.

On August 28, 2002, he was asked by Sam Dillon of the New York Times about false allegations. Guess what he said? Of the more than 500 alleged child molesting priests Schiltz represented, he admitted, in print, that less than three were false allegations.

Don't believe me. Look it up. August 28, 2002, New York Times.

Finally, this law does not change the burden of proof. Victims will be required to meet the standards that any civil lawsuit of this type requires

2) Opponents say that the bill is unconstitutional:

But according to Marci A. Hamilton, the Paul R. Verkuil Chair in Public Law and the Benjamin N. Cardozo School of Law, the law is constitutional.

3) Opponents say that the law will force more organizations into bankruptcy.

If the only organizations declaring bankruptcy due to this law are the ones like the Jesuits and the Diocese of Fairbanks who acknowledge that they allowed scores of men to rape hundreds of children, they refused to stop it, and that they expect the state of Alaska to clean up the mess and pay for services for their victims, I think that bankruptcy reorganization is pretty close to a "free pass."

Opponents may say that the lawsuits will take money away from other services – vital services that they provide. But I ask, does that give them permission to "pass the trash" and not be held accountable for crimes they have acknowledged committing? A murderer may be the world's greatest soup kitchen director, but that doesn't mean that he doesn't have to pay his debt to society.

Now, let me tell you what this law WILL do:

1) This bill will expose predators and those who have covered up for them

In California and Delaware, we have exposed more than 150 predators. These were men and women who escaped the criminal and civil statues of limitations. Civil windows allowed victims to use the court system to name their abuser, warn communities and give younger victims the strength to come forward and report WITHIN the criminal statute.

2) This bill will help law enforcement put serial molesters behind bars

Former priests Michael Baker and Michael Wempe are two of the worst pedophiles in California. Both men escaped criminal prosecution because their victims were abused too long ago.

But because of the civil window, victims of both of these men were able to pursue their cases in civil court.

And something interesting happened – younger victims – victims who never would have had the bravery to come forward before – reported their abuse to law enforcement. They also had solid evidence that has led to the arrest of both of these men.

And now, these men and many others like them are behind bars. That never would have happened without the window.

In Delaware, law enforcement in numerous OTHER states, including Pennsylvania, South Carolina, Florida and Wisconsin, have used documents and depositions in DELAWARE'S civil window cases to investigate and prosecute predators, including Robert Yugel and Paul Daleo.

Without the civil suits, these men never would have been exposed. If their victims named them publicly – without the backing of the courts - the abusers could have sued them for slander. The media would have ignored their claims, and more kids would have been hurt and forced to suffer in silence.

3) This bill will help pay for services that before have fallen onto the lap of Alaska's taxpayers.

The state of Alaska is grappling with the aftereffects of child sexual abuse every day. I have seen the human wreckage in the Villages. You pay for police, jails, court costs, counseling, parole, probation, poverty assistance, anger management, physical abuse, substance abuse, mental health care, hospitals, foster homes, child services, life skills education, nutrition assistance, unemployment, travel to essential services, death benefits and other needs that aid entire villages of adults who were sexually abused as children. Why? Because groups such as the Jesuits, the Diocese of Fairbanks and other organizations refuse to be accountable and take responsibility for what they have done. Because they claim that they run other essential services? Why are you paying for this? Why are other victims and the state the only people will to help? What is more essential than the list I just read?

Now, at no cost to the state, those responsible can provide services and care to the people that they knowingly and willingly destroyed. Victims can help themselves.

And finally, if even one known molester – even one man who allowed a predator to rape children - is exposed – at no expense to taxpayers, isn't it worth it?

As lawmakers, it seems you have only one option:

Open the courthouse doors to sex crime victims and let them access the time-tested civil justice system to expose molesters, warn communities about the danger these men pose, get them removed from jobs in teaching and coaching and the ministry, and punish those who helped them - all with little or virtually no cost to Alaska's taxpayers.

So at the end of the day, who wins with the one-year window?

- Men and women like me - Victims who feel suicidal, who'll never get married, who'll never have children, who desperately need in-patient drug and alcohol rehab. . .they'll get what they need.
- Men and women like me - Victims who can't sleep, who obsess over where their perpetrator is now, who he's molesting now, and how they can warn unsuspecting moms and dads and neighbors about this dangerous man. . .they'll get what they need.
- Parents like me - Citizens who desperately want to know if there's a child molester in their school or church or youth group. . . they'll get what they need.
- Law enforcement officials, who know lots of sexual predators escape detection and prosecution, and whose hearts ache for victims left out in the cold - they'll see victims exposing molesters and warning parents and getting better.

Carolyn Jessop in her book "Escape" says that it took her until she was 35 to escape religious indoctrination and realize and understand that plural marriage, wife beating and a life of imprisonment was wrong, illegal and against her rights.

If it took her that long, can you imagine how long it takes a victim of childhood sexual abuse to come to terms with the pain and the shame – only to find out that they have no recourse to make sure that their predator never hurts another child?

Please, please don't let what happened to me happen to another child. But please give Alaska's children the power that the civil window gave me.

I will be leaving you with documents to help you in your decision-making. They include the documents I have referenced in my case, as well as the list of the coalition behind the Delaware civil window, including the Delaware State Attorney, Governor, the State Academy of Pediatrics, the Delaware Ecumenical Council, and a former director of the FBI. These folks believe in a TWO-year window. You should too. It simply makes sense.

I also recommend two books, including William Lobdell's Memoir, "Losing My Religion: How I lost my faith reporting on religion in America, and found peace," and Carolyn Jessop's "Escape," both of which can be found at any bookstore. William is a close friend of mine, and dedicates his book to victims of child sexual abuse, whose stories changed his life.

Child Victims Voice.com

Protect children now. Give child sexual abuse victims their day in court.

Delaware Senate Bill 29

LEARN MORE

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-- Make a call

-- Post a flyer

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GET HELP NOW

SURVIVORS' WISDOM

Who supports it?

Coalition to support the Child Victim's Act (Senate Bill 29):

American Academy of Pediatrics Delaware Chapter
American Association of University Women (Coastal-Georgetown branch)
Associated Builders and Contractors [DE]
Bethel Baptist Church (Wilmington, Delaware)
Big Brothers Big Sisters of Delaware
Carl Schnee, Esq. Former U.S. Attorney
Charles F. Gallagher III, Deputy District Attorney, Philadelphia District Attorney's Office
Child, Inc.
Children & Families First
Christopher A. Coons, New Castle County Executive
Common Cause of Delaware
Concord Presbyterian Church, Wilmington, Del.
ContactLifeline, Inc.
Daybreak Counseling Services
Dee's Gift
Delaware Association for Children of Alcoholics
Delaware Coalition Against Domestic Violence
Delaware Governor Dale E. Wolf
Delaware Governor Russell W. Peterson
Delaware Governor Sherman W. Tribbitt
Delaware Nurses Association
Delaware Ecumenical Council on Children and Families
Delaware Mental Health Counselors Association
Delaware State Dental Society
Delaware State AFL-CIO
Delaware State Fraternal Order of Police
Doris Schnee, LCSW
Dr. Carol A. Tavani, neuropsychiatrist
Dr. Michael F. Whitworth
Dr. Richard Gartner, author, psychologist, past president of National Organization on Male Sexual Victimization
FixtheLaw.org
Foundation To Abolish Sex Abuse, Inc.
Fritz Ackerman, pastor, Concord Presbyterian Church
Girls Incorporated of Delaware
J. Roy Cannon, CADC, LPCMH, ACS -- Counseling Resource Associates, Inc.
Jack A. Markell, Delaware State Treasurer
Jewish Family Services
James and Susan Kallstrom, former Assistant Director of the FBI
James L. Ford III - Mayor of Lewes
James M. Walsh, PhD, LPCMH
Jesus House Prayer & Renewal Center
Joseph and Lori Ozdowy, plant manager, DaimlerChrysler Newark Assembly Plant, Newark, Del.
Joseph W. Mitchell, president, Mitchell's Inc. (Mitchell's Trains, Toys & Hobbies)
Judge Louis Freeh, former FBI Director
Lawrence M. Sullivan, Esq.
Lieutenant Governor John Carney
Limen House for Men

Limen House for Women
Marilyn Van Derbur, former Miss America, incest survivor, advocate for all victims of child sexual abuse
Martha H. Ireland, Ph.D., RN, CS, CEDS -- ADE, Inc.
Matthew P. Denn, Delaware's Insurance Commissioner
Matthias B. Donelan, M. D., associate professor of surgery, Harvard Medical School
Members of Ocean View Presbyterian Church
Michael P. Walsh, Sheriff Of New Castle County
National Eating Disorders Association
PA-C.A.R.E.S. (Pennsylvania Child Abuse Reporting and Enforcement Strategy)
Prevent Child Abuse Delaware
Prison Ministries of Delaware, Inc.
Professor Marci A. Hamilton, Constitutional law expert
Progressive Democrats for Delaware
Rabbi Sanford Dresin, president of the Rabbinical Association of Delaware
Reginald C. Irby, executive director of Limen House for Men
Rescue & Recovery International, Inc.
Rev. Jonathan Baker, senior pastor, Aldersgate United Methodist Church, Wilmington, Del.
Reverend Thomas P. Doyle, O.P., author, canon lawyer
Richard and Bernard Kenny, owners of The Kenny Family ShopRites of Delaware
Richard T. Christopher, president of Patterson-Schwartz Real Estate
Sara E. Whitworth, RN
Sexual Abuse Prevention Network
Sister Jeanne F. Cashman, OSU, executive director of Sojourners' Place
Sister Maureen Paul Turlish SNDdeN, victims' advocate
SNAP (Survivors Network of Those Abused by Priests)
SOAR, Inc. (Survivors of Abuse in Recovery, Inc.)
Sojourners' Place, Wilmington, Del.
Stop Child Predators.org
Supporting K.I.D.D.S.
Susan O'Connor, RN
The Police Athletic League of Delaware, Inc.
The Presbytery of New Castle
Ulster Project Delaware
Voice of the Faithful Affiliate of New Castle County
Voice of the Faithful Coastal Delmarva
Wayne A. Smith, former House majority leader
Women's Democratic Club of Delaware
YMCA of Delaware
YWCA Delaware

Many more to come!

Senate
Sponsors:
Senator Karen E. Peterson (SB 29 author): Voted YES, with no amendments.
Senator David B. McBride: Voted YES, with no amendments.
Co-sponsors:
Senator Liane M. Sorenson (Senate Minority Whip): Voted YES, with no amendments.
Senator David P. Sokola: Voted YES, with no amendments.
Senator George H. Bunting: Voted YES, with no amendments.
Senator Patricia M. Blevins (Senate Majority Whip): Voted YES, with no amendments.
Senator Dorinda A. "Dori" Connor: Voted YES, with no amendments.
Senator Charles L. Copeland (Senate Minority Leader): Voted YES, with no amendments.
Senator Margaret Rose Henry: Voted YES, with no amendments.
Senator Nancy W. Cook: Voted YES, with no amendments.
Senator Catherine L. Cloutier: Voted YES, with no amendments.
Senator Robert I. Marshall: Voted YES, with no amendments.
Senator Steven H. Amick: Voted YES, with no amendments.
Non-sponsors who voted for SB 29:

Senator Thurman Adams (President Pro Tempore): Voted YES, with no amendments.
Senator Anthony J. DeLuca (Senate Majority Leader): Voted YES, with no amendments.
Senator Harris B. McDowell: Voted YES, with no amendments.
Senator F. Gary Simpson: Voted YES, with no amendments.
Senator John C. Still: Voted YES, with no amendments.
Senator Robert L. Venables: Voted YES, with no amendments.

House
Main sponsors:
Representative Deborah Hudson
Representative Gregory F. Lavelle
Co-sponsors:
Representative Terry R. Spence (Speaker of the House)
Representative Robert F. Gilligan (House Minority Leader)
Representative John L. Mitchell
Representative Helene M. Keeley (House Minority Whip)
Representative Bruce C. Ennis
Representative Michael P. Mulrooney
Representative James Johnson
Representative Diana M. McWilliams
Representative Melanie George Marshall
Representative Teresa Schooley
Representative Bethany A. Hall-Long
Representative John A. Kowalko
Representative Valerie Longhurst
Representative Hazel D. Plant
Representative V. George Carey
Representative Richard C. Cathcart (House Majority Leader)
Representative Gerald W. Hocker
Representative Clifford G. "Biff" Lee (House Majority Whip)
Representative Pamela S. Maier
Representative Nick T. Manolakos
Representative Joseph E. Miro
Representative Daniel B. Short
Representative Robert J. Valihura
Representative Gerald L. Brady
Representative J. Benjamin Ewing
Representative Vincent A. Lofink

Many more to come!

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Child Victim's Voice Bill

Document 1

Mater Dei High School
1202 West Edinger Avenue
Santa Ana, California 92707-2191
714/754-7711

November 7, 1989

Official documentation - November 3, 1989 meeting.

Attending: Mr. Thomas Hodgman, [redacted] (1988 graduate), [redacted] (1988 graduate) and Mrs. Lucretia Dominguez

Chaired by Mrs. Lucretia Dominguez, Assistant Principal

A meeting was arranged on Friday afternoon, November 3, 1989 in my office.

Mr. Hodgman showed me an article written by Joelie Casteix in the October 18, 1989 issue of the Daily Nexus about an abortion she had in July of 1988. This was the first time Mr. Hodgman had any knowledge of her pregnancy and abortion. Concern was warranted because the father of the child was not stated but certainly reference was made to Mr. Hodgman.

[redacted] stated that this was the first time she ever discussed this matter openly and directly with Mr. Hodgman. She was aware of the dating because her friend, Joelie, had kept her informed. When asked why she waited so long to discuss this matter she said she did not know what to do. She was angry and confused.

She wanted to meet with me to find out what action the school had taken. My reply was that I did not know that there was a serious issue yet to be dealt with. The only information I had ever received was from Mr. Hodgman in June of 1988 regarding dating a student. I have never received any complaint or charge filed against Mr. Hodgman by any student, staff or parent. We simply discussed his behavior, and I was assured that it would never happen again. This article and additional information, not factual, have not come to our attention before this date.

I was aware that [redacted] were going to meet with Fr. Weling on Saturday and no attempts on Mr. Hodgman's or my part were made to prevent them from doing so.

I also told Mr. Hodgman that I was quite sure that Fr. Weling would want to meet with him to discuss this matter. Mr. Hodgman stated that he feels it would be important for Fr. Weling to hear his side of the story.

Lucretia L. Dominguez — 11-7-89
Lucretia L. Dominguez — Date

Thomas Hodgman — 11/7/89
Thomas Hodgman — Date

000087

Document 2

Mater Dei High School
1202 West Edinger Avenue
Santa Ana, California 92707-2191
714/754-7711

November 7, 1989

Official documentation - June 1988 meeting with Mr. Thomas Hodgman.

This statement is to document a meeting initiated by Mr. Tom Hodgman with me in June, 1988.

At this meeting Mr. Hodgman stated that since he decided not to resign that he would like me to know of a situation in which he was involved during the last semester of the 1987-88 school year.

Foolishly he dated a senior girl, Joelle Casteix. Her parents called him and asked him to stop dating their daughter. They also requested that he keep the matter quiet because they did not want the school to be aware of the situation. They would prefer that their daughter not be dragged into any kind of a situation at school.

Mr. Hodgman stated that he kept his promise to the Casteix family by not calling, seeing, dating or discussing the matter with anyone.

He stated he was in counseling to help him with this and other problems he was experiencing at the time. He recognized what a big mistake it was and vowed that it would never happen again.

No record of this meeting was placed in his personnel file, and it is only at the request of the Principal that it is now being documented.

Lucretia L. Dominguez — 11-7-89
Date

Thomas Hodgman — 11/7/89
Date

Document 3

Mater Dei High School
1202 West Edinger Avenue
Santa Ana, California 92707-2191
714 / 754-7711

OFFICE OF THE PRINCIPAL

REVEREND JOHN B. WELING

November 8, 1989

Official documentation - November 7, 1989 meeting with Mr. Tom Hodgman

This is to document my meeting with Mr. Tom Hodgman on Tuesday, November 7, 1989.

I met with Mr. Hodgman to discuss allegations made by four Mater Dei graduates (Class of 1988), [redacted] These former students met with me on Saturday, November 4, 1989, to share their concern about past relationships Mr. Hodgman allegedly had had with two of their classmates. The first situation involved Joelle Casteix during the semester before she graduated. [redacted] the summer after graduation. They brought a copy of an article written by Joelle Casteix published in the UCSB student newspaper, Daily Nexus, on Wednesday, October 18, 1989. This article states that Joelle not only entered into a close relationship with one of her high school teachers, but became pregnant by that relationship and subsequently decided to have an abortion.

The students stated that they knew about the sexual relationships Mr. Hodgman had with these two former students because of direct information they were given by Joelle and [redacted]

In my meeting with Mr. Hodgman, he admitted to not only dating these two students [redacted] but having sexual intercourse with them. He had not been aware of the possibility of the abortion until he read the article.

Mr. Hodgman reassured me that he had undergone extensive counseling and had taken many steps in his personal and professional life to ensure that he would never make this terrible mistake again. He swore that this sort of problem has not occurred again with any students.

Rev. John B. Weling

11/9/89
Date

Thomas Hodgman

11/9/89
Date

[redacted]

Document 4

November 20th, 1989

To: The Administrative Board
Mater Dei High School

From: Thomas M. Hodgman
Director of Choral Music, MDHS

Dear Friends:

It is with great regret that I must inform you of my resignation as director of choral music at Mater Dei High School. I have greatly enjoyed my work here, and I shall miss it tremendously.

I feel I am leaving the program in good standing and in excellent hands with my accompanist, Mr. Pro Mojica and my replacement, Mr. Tom Flannery. They are both fine musicians and are familiar with the demands and expectations of this job.

I look forward to hearing beautiful music from this program in the future. The school is to be commended for its incredible support of the choir program over the past four years, and I am confident that this enthusiasm will continue into the future.

Good luck in all that you do, and thank you for the many wonderful gifts and opportunities which you gave to me during my time here. I will miss you all very much. Thank you.

Sincerely,

Thomas M. Hodgman

51?0047

The following information should be paraphrased to the students (and, if possible, the parents) of the Mater Dei Choral Program:

--- Mr. Hodgman has resigned as director of choral music music at Mater Dei High School.

--- He has chosen to do so for personal reasons. (Rumors of physical, mental or emotional illness are incorrect and need to be discouraged).

--- Mr. Hodgman is planning to continue his Graduate Studies in the Spring of 1990.

--- Mr. Hodgman is confident that the students and parents of the Mater Dei Choral Program have the strength and ability to carry out the years' pl plans under the guidance of the new director and present accompanist.

--- Mr. Hodgman will always be with the members of the Mater Dei Choirs in their music. Music is the world which the students and Mr Hodgman shared together, and will continue to share for the rest of their lives.

--- Mr. Hodgman loves you; he misses you; and most of all, he expects you to carry on the tradition of musical excellence which you have established yourselves, over the past four years.

Good luck.

51?00043

Document 6

Mater Dei High School
1202 West Edinger Avenue
Santa Ana, California 92707-2191
714/754-7711

OFFICE OF THE PRINCIPAL

REVEREND JOHN B. WELING

November 29, 1989

Memorandum

To: Faculty and Staff

From: Rev. John B. Weling

Re: Personnel Changes

This is to inform you that Mr. Tom Hodgman has resigned from his position of Choir Director. He has chosen to do so for personal reasons. He is planning to continue his graduate studies.

In his three years at Mater Dei, Tom's enthusiasm, dedication and far-reaching talent has taken the choir program to new heights. He will be sorely missed by all of us.

Please welcome his interim replacement, Mr. Tom Flannery, who comes to us highly recommended by Tom Hodgman. Mr. Flannery has a degree in music from Chapman College. Prior to joining the Mater Dei family he worked for the Anaheim School District. He is also Music Director at St. George's Episcopal Church, Laguna Hills and Music Director at the Phoenix Club, Anaheim. He was president of the Chapman College Choral Organization for two years. Tom also speaks German fluently.

We especially appreciate Mr. Flannery's willingness to take over the program on such short notice.

JBW/r

Document 7

Mater Dei High School

1202 West Edinger Avenue
Santa Ana, California 92707-2191
714/754-7711

OFFICE OF THE PRINCIPAL

REVEREND JOHN B. WELING

CONFIDENTIAL

December 12, 1989

Sr. Celine Leydon, S.S.L.
Superintendent of Catholic Schools
Diocese of Orange
2811 East Villa Real Drive
Orange, CA 92667

Dear Sister Celine:

This is to inform you about two personnel matters we have been dealing with recently. In case you are ever contacted about these situations the enclosed information might be of assistance.

1. [redacted]

2. A past situation involving our choir director, Tom Hodgman, and one of our senior girls at the time was brought to my attention by four of our graduates. They gave me the enclosed copy of an article this student wrote in her UCSB school paper. At this time we have no evidence that she was pregnant and had an abortion. We are aware of her past history of serious emotional problems. When confronted with this alleged situation, Mr. Hodgman admitted to me that he did have a relationship with this student, prior to her graduation, which included sexual intercourse. The student was under eighteen at the time which necessitated my report to the Child Abuse Registry. Mr. Hodgman subsequently resigned and has no further association with our choir program or students.

Both cases have been handled with the advise from [redacted] office.

As you can see, there is never a dull moment at the corner of Bristol and Edinger! If you wish to discuss either of these matters further, please let me know.

Sincerely yours in Christ,

Rev. John B. Weling

JBW/r
Enclosures

cc: Most Reverend Norman McFarland
Rev. John Urell

Alaska State Legislature

Senator Hollis French

SB 47 - Statute of Limitations for Sexual Offenses

Senate Bill 47 creates a one year period in which civil action may be brought in felony sexual assault cases that have been time barred by the formerly restrictive statute of limitation laws in Alaska. During the 2001 legislative session, both the House and Senate voted unanimously to remove the statute of limitations for felony sexual offenses that were still open to prosecution at that time. For instances of felony sexual assault where the statute of limitations had expired, no recourse was given to the victims of the crime.

SB 47 allows the victims of felony sexual assault to have their day in court. Experts have found there are several reasons that a victim, especially a child, will not report sexual abuse for years after it occurred. Multiple studies have shown:

- Victims of childhood sexual assault are often extremely embarrassed by the abuse, and may not disclose the crime against them until adulthood.
- Children who are victims will often fail to report sexual abuse due to fear of the consequences; a child may also feel guilty for reporting the perpetrator or fear retaliation from his or her abuser.
- It can take years for a victim to understand the connection between the problems they are experiencing as an adult and the abuse they experienced as a child.
- Among victims of sexual assault, an inability to trust is common. This inability can prevent many victims from disclosing abuse.
- Many victims of childhood sexual abuse have repressed all memory of the abuse for years; it is often only under the guidance of professional counseling or therapy that the victim may come to realize that a crime against them took place.

SB 47 allows past victims of sexual abuse the same rights they would have under today's law - the right to file charges against their perpetrators no matter when the abuse occurred. I urge your support for this important bill that provides closure for victims of sexual assault, while holding the perpetrators for these crimes accountable.

Cited and amended in the bill:

Sec. 09.10.065. Commencement of actions for acts constituting sexual offenses.

(a) A person may bring an action at any time for conduct that would have, at the time the conduct occurred, violated provisions of any of the following offenses:

(1) felony sexual abuse of a minor;

(2) felony sexual assault; or

(3) unlawful exploitation of a minor.

(b) Unless the action is commenced within three years of the accrual of the claim for relief, a person may not bring an action for conduct that would have, at the time the conduct occurred, violated the provisions of any of the following offenses:

(1) misdemeanor sexual abuse of a minor;

(2) misdemeanor sexual assault;

(3) incest; or

(4) felony indecent exposure.

Cited in the bill:

Sec. 09.10.140. Disabilities of minority and incompetency.

(a) Except as provided under (c) of this section, if a person entitled to bring an action mentioned in this chapter is at the time the cause of action accrues either (1) under the age of majority, or (2) incompetent by reason of mental illness or mental disability, the time of a disability identified in (1) or (2) of this subsection is not a part of the time limit for the commencement of the action. Except as provided in (b) of this section, the period within which the action may be brought is not extended in any case longer than two years after the disability ceases.

(b) An action based on a claim of sexual abuse under AS 09.55.650 that is subject to AS 09.10.065 (b) may be brought more than three years after the plaintiff reaches the age of majority if it is brought under the following circumstances:

(1) if the claim asserts that the defendant committed one act of sexual abuse on the plaintiff, the plaintiff shall commence the action within three years after the plaintiff

discovered or through use of reasonable diligence should have discovered that the act caused the injury or condition;

(2) if the claim asserts that the defendant committed more than one act of sexual abuse on the plaintiff, the plaintiff shall commence the action within three years after the plaintiff discovered or through use of reasonable diligence should have discovered the effect of the injury or condition attributable to the series of acts; a claim based on an assertion of more than one act of sexual abuse is not limited to plaintiff's first discovery of the relationship between any one of those acts and the injury or condition, but may be based on plaintiff's discovery of the effect of the series of acts.

(c) In an action for personal injury of a person who was under the age of eight years at the time of the injury, the time period before the person's eighth birthday is not a part of the time limit imposed under AS 09.10.070 (a) for commencing the civil action.

Sec. 09.10.150. Death of a party before expiration of limitation period. [Repealed, Sec. 5 ch 78 SLA 1972].

Repealed or Renumbered

5 of 51 DOCUMENTS

Caution
As of: Mar 27, 2007

MICHAEL LENT, Plaintiff and Appellant, v. JOHN DOE, Defendant and Respondent.

No. C018471.

COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT

40 Cal. App. 4th 1177; 47 Cal. Rptr. 2d 389; 1995 Cal. App. LEXIS 1297; 95 Cal. Daily Op. Service 9344; 95 Daily Journal DAR 16237

December 5, 1995, Decided

PRIOR HISTORY: [***1] Superior Court of Shasta County, No. 120206, Richard A McEachen, Judge.

DISPOSITION: The judgment is reversed. The matter is remanded to the trial court with directions to overrule defendant's demurrer and reinstate plaintiff's complaint. Plaintiff is to recover costs on appeal.

SUMMARY: CALIFORNIA OFFICIAL REPORTS SUMMARY

A person who alleged that he was sexually abused by his uncle over a 3-year period beginning when he was 12 sued the uncle for personal injury and negligent infliction of emotional distress in January 1994 when he was 31 years old. Defendant demurred, arguing that the complaint on its face disclosed the action was barred by the statute of limitations. The trial court rejected plaintiff's theory of delayed discovery, sustained defendant's demurrer without leave to amend, and entered judgment of dismissal. (Superior Court of Shasta County, No. 120206, Richard A McEachen, Judge.)

The Court of Appeal reversed and remanded with directions to overrule defendant's demurrer and reinstate plaintiff's complaint. The court held that Code Civ. Proc., § 340.1 (action for childhood sexual abuse to be commenced within eight years of date plaintiff attains age of majority or within three years of date plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after age of majority was caused by sexual abuse, whichever period expires later), as amended in 1994 to apply to any action filed on or after Jan. 1, 1991, and to include any action otherwise barred by the prior period of limitations, revived plaintiff's previously time-barred action. Also, the Court of Appeal was not required to affirm the trial court's ruling upholding defendant's demurrer, even though the ruling was prior to the effective date of the statutory amendments. The court further held that the action was timely filed under Code Civ. Proc., § 340.1, since it was commenced within three years of the date plaintiff discovered or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse. Although plaintiff alleged that he had suffered actual and appreciable injury at the time of the abuse, that was not relevant, since, under Code Civ. Proc., § 340.1, subd. (a), the delayed discovery provisions of the statute relate to injuries occurring after the age of majority. Also, that plaintiff did not repress the memories of the abuse inflicted on him did not mean that he could not take advantage of the delayed discovery provisions of the statute, since nothing in the statute requires that memories of abuse be repressed as a prerequisite to a delayed discovery claim. Plaintiff adequately pleaded facts supporting delayed discovery by alleging that notwithstanding the psychological injury and illness he suffered as an adult resulting from defendant's sexual misconduct, he did not discover the connection between such illness and the acts of misconduct until he began counseling 27 months before filing the action, and by alleging numerous facts establishing the reasonableness of the delay in discovering the connection between his adult illness or injury and the childhood sexual

abuse. (Opinion by Puglia, P. J., with Nicholson and Raye, JJ., concurring.)

HEADNOTES: CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports

(1) Limitation of Actions § 43--Torts--Action for Childhood Sexual Abuse--Extension of Limitations Period Until Discovery of Injury--Purpose of Statute. --The obvious goal of the amendment to Code Civ. Proc., § 340.1, which extended the limitations period for an action based on childhood sexual abuse to within eight years of the date the plaintiff attains the age of majority or within three years of the date plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever occurs later, is to allow sexual abuse victims a longer time period in which to become aware of their psychological injuries and remain eligible to bring suit against their abusers.

(2) Limitation of Actions § 12--Construction--Retroactive Effect--Revival of Time-barred Cause of Action--Power of Legislature. --The Legislature has the power to make a statute of limitations retroactive so as to revive a civil cause of action time-barred under the former statute of limitations. There is no constitutional impediment to revival in the case of a traditional common law cause of action where the Legislature makes express its intent that the law be given retrospective application. This is consistent with the niche in our civil law occupied by statutes of limitations. The principle is well established that statutorily imposed limitations on actions are technical defenses which should be strictly construed to avoid the forfeiture of a plaintiff's rights. There is a strong public policy that litigation be disposed of on the merits wherever possible.

[See 3 **Witkin,** Cal. Procedure (3d ed. 1985) Actions, § 332 et seq.]

(3) Limitation of Actions § 12--Construction--Retroactive Effect--Action Pending on Appeal at Time Statute Becomes Effective. --In an action based on childhood sexual abuse, the Court of Appeal was not required to affirm the trial court's ruling upholding defendant's demurrer on the ground that the statute of limitations had run, even though the ruling was prior to the effective date of amendments to Code Civ. Proc., § 340.1, reviving the previously time-barred action. Statutes of limitations in civil actions are procedural, not substantive, and are not subject to the general rule against statutory retroactivity. While the amendments to § 340.1 were not in effect at the time the trial court ruled on the demurrer, the amended statute applied to the proceeding in the Court of Appeal because it was pending on appeal at the time the legislative enactment became effective.

(4) Limitation of Actions § 43--Torts--Action for Childhood Sexual Abuse--Extension of Limitations Period Until Discovery of Injury--Sufficiency of Allegations to Support Delayed Discovery Claim: Lewdness, Indecency, and Obscenity § 20--Lewd Acts With Children. --An action which was based on the sexual abuse of plaintiff over a 3-year period beginning when he was 12, and which was commenced when he was 31, was timely filed under Code Civ. Proc., § 340.1, allowing such an action if commenced within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse. Although plaintiff alleged that he had suffered actual and appreciable injury at the time of the abuse, that was not relevant, since, under Code Civ. Proc., § 340.1, subd. (a), the delayed discovery provisions of the statute relate to injuries occurring after the age of majority. Also, that plaintiff did not repress the memories of the abuse inflicted on him did not mean that he could not take advantage of the delayed discovery provisions of the statute, since nothing in the statute requires that memories of abuse be repressed as a prerequisite to a delayed discovery claim. Plaintiff adequately pleaded facts supporting delayed discovery by alleging that notwithstanding the psychological injury and illness he suffered as an adult resulting from defendant's sexual misconduct, he did not discover the connection between such illness and the acts of misconduct until he began counseling 27 months before filing the action, and by alleging numerous facts establishing the reasonableness of the delay in discovering the connection between his adult illness or injury and the childhood sexual abuse.

[See 3 **Witkin,** Cal. Procedure (3d ed. 1985) Actions, § 422A.]

COUNSEL: Mary R. Williams for Plaintiff and Appellant.

California Women Lawyers, Dawn M. Schock and Mary Ann Soden as Amici Curiae on behalf of Plaintiff and Appellant.

Moss & Enochian, Stewart C. Altemus and Darryl L. Wagner for Defendant and Respondent.

JUDGES: Opinion by Puglia, P. J., with Nicholson and Raye, JJ., concurring.

OPINION BY: PUGLIA, P. J.

OPINION: [*1180] [**390]

PUGLIA, P. J.

I

In his complaint, plaintiff Michael Lent alleges he was sexually abused by his uncle, defendant Doe, over a three-year period beginning when plaintiff was twelve. Plaintiff filed his action in January 1994 when he was 31 years old. Defendant demurred, arguing the complaint on its face disclosed the action is barred by the statute of limitations. The trial court rejected plaintiff's theory of delayed discovery, sustained defendant's demurrer without leave to amend and entered judgment of dismissal. [***2] We shall reverse.

The period of limitations for an action based on childhood sexual abuse is set forth in Code of Civil Procedure section 340.1 (hereafter statutory references to sections of an undesignated code are to the Code of Civil Procedure). It requires an action for childhood sexual abuse to be commenced "within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later." (§ 340.1, subd. (a)) These time limits were first enacted in 1990 and were made applicable to any action commenced on or after January 1, 1991. (§ 340.1, subd. (k) as enacted by Stats. 1990, ch. 1578, § 1, p. 7550.) n1

n1 The 1990 statute specified the period of limitations would expire at the end of either eight years or three years depending upon "whichever occurs later." (§ 340.1, former subd. (a).) In 1994, this phrase was changed to "whichever period expires later." (Stats. 1994, ch. 288, § 1.)

[***3]

Section 340.1 was amended in 1994, effective January 1, 1995 (hereafter the 1994 amendments). The 1994 amendments, inter alia, expressly applied [*1181] the periods of limitations in section 340.1, subdivision (a) to "*any* action otherwise barred by the period of limitations in effect prior to January 1, 1991, thereby reviving those causes of action which had lapsed or technically expired under the law existing prior to January 1, 1991." (§ 340.1, subd. (o) added by Stats. 1994, ch. 288, § 1, italics added.)

It has been held the Legislature has the power retroactively to extend the period of limitations for civil causes of action arising from childhood sexual abuse, thus reviving causes of action such as plaintiff's which theretofore were time barred under the former statute. (*Liebig v. Superior Court* (1989) 209 Cal. App. 3d 828, 831-834 [257 Cal. Rptr. 574].)

We shall conclude that plaintiff's complaint is sufficient to withstand demurrer in that it [**391] adequately alleges that plaintiff commenced his action within three years of the date he discovered or reasonably should have discovered "that psychological injury or illness occurring after the age of majority [***4] was caused by the [childhood] sexual abuse." (§ 340.1, subd. (a).)

II

Plaintiff was born in March 1962. He commenced this action in January 1994. The complaint contains two counts: personal injury, i.e., sexual molestation, and negligent infliction of emotional distress. Plaintiff alleges he was sexually abused by defendant over a three-year period beginning when plaintiff was twelve. n2 The incidents occurred during the summer months when plaintiff stayed with his uncle and aunt for extended periods of time. The acts of molestation, which continued until approximately 1975, consisted primarily of defendant fondling plaintiff's genitals, including one incident in which plaintiff ejaculated. As a result of defendant's acts, plaintiff developed feelings of "deep shame, self-blame and self-loathing[.]" Although plaintiff never repressed his memories of the abuse, he "buried [his memories] as far as he could out of [his] conscious mind. [He] used alcohol and drugs increasingly, dropped out of high school at age seventeen, became addicted to cocaine and speed, and became an angry, alienated and sometimes suicidal person."

n2 In the trial court defendant moved to enjoin plaintiff from substituting defendant's real name for the "Doe" designation contained in the complaint. In opposition, plaintiff submitted a declaration further detailing his allegations of sexual abuse. Later, both parties joined in requesting the court to take judicial notice of plaintiff's declaration in ruling on the demurrer and the court did so. (See generally, *Del E. Webb Corp.* v. *Structural Materials Co.* (1981) 123 Cal. App. 3d 593, 604 [176 Cal. Rptr. 824].) We likewise take judicial notice of plaintiff's declaration in evaluating the sufficiency of the complaint to withstand demurrer. (Evid. Code, § 459, subd. (a).)

[***5]

Plaintiff further alleges that as a result of defendant's actions, he became subject to psychological mechanisms of denial and dissociation, "which by [*1182] their natural operation reasonably and justifiably prevented plaintiff from being able to know the psychological and emotional injuries which were occurring and would in the future continue to occur and develop in him . . . . Said mechanisms naturally and reasonably prevented plaintiff from being able to discover that psychological injuries occurring in his adult life were causally connected to the sexual abuse, and from being able to discover the wrongfulness of defendant's conduct, until on or after approximately September 1, 1991," when plaintiff underwent counseling.

In sustaining the demurrer without leave to amend, the trial court ruled that delayed discovery did not apply given plaintiff's allegations suggesting he knew of the wrongfulness of defendant's conduct when it occurred and that he suffered appreciable injury at that time. The trial court concluded the limitations period expired on plaintiff's 19th birthday in March 1981.

III

Prior to 1987, the period of limitations applicable to claims of personal [***6] injury, including sexual abuse, was prescribed by section 340, subdivision (3), which provides a one-year period of limitations. (*DeRose* v. *Carswell* (1987) 196 Cal. App. 3d 1011, 1015 [242 Cal. Rptr. 368]; *Trube v. Katz* (1923) 60 Cal. App. 474, 476 [213 P. 264].) However, if the plaintiff was a minor when the one-year period would otherwise expire, the statute was tolled until the plaintiff reached the age of majority. (§ 340, subd. (3), 352; *Debbie Reynolds Prof. Rehearsal Studios* v. *Superior Court* (1994) 25 Cal. App. 4th 222, 229 [30 Cal. Rptr. 2d 514] (*Debbie Reynolds*); *David A.* v. *Superior Court* (1993) 20 Cal. App. 4th 281, 283 [24 Cal. Rptr. 2d 537].) Under section 340, subdivision (3), plaintiff's cause of action would have expired in March 1981 when he turned 19. (See *David A.* v. *Superior Court*, *supra*, 20 Cal. App. 4th at p. 283.)

In 1986, the Legislature added section 340.1, which prescribed a threeyear limitations period for sexual abuse against a child under the age of fourteen where such abuse was committed by a member of the child's household or family. (Stats. 1986, ch. 914, § 1, pp. 3165-3166.)

[**392] In 1990, [***7] section 340.1 was amended to apply to all civil causes of action arising from childhood sexual abuse--not just those involving household or family members. The 1990 amendments extended the limitations period to within eight years of the date the plaintiff attains the age of majority or within three years of the date plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, "whichever occurs later." (Stats. [*1183] 1990, ch. 1578, § 1, p. 7550.) The 1990 amendments apply to any action commenced on or after January 1, 1991. **(1)** "The obvious goal of amended section 340.1 is to allow sexual abuse victims a longer time period in which to become aware of their psychological injuries and remain eligible to bring suit against their abusers." (*Debbie Reynolds*, *supra*, 25 Cal. App. 4th at p. 232.)

Plaintiff's action was commenced in 1994. The 1990 amendments were specifically made applicable to any action commenced on or after January 1, 1991. However, if section 340.1 as amended in 1990 were still the law, it would arguably have availed plaintiff nothing. His action might well [***8] have remained time-barred under section 340, subdivision (3) as of his 19th birthday in 1981 because it does not unambiguously appear the Legislature intended by the 1990 amendments to revive time-barred claims.

The 1994 amendments to section 340.1, effective January 1, 1995, reenacted the limitations periods set forth in the 1990 amendments, continued their appplicability to any action filed on or after January 1, 1991, and expanded that category of actions to include "any action otherwise barred by the period of limitations in effect prior to January 1, 1991," thereby reviving those causes of action which had lapsed or technically expired under the law existing prior to January 1, 1991. (§ 340.1, subd. (o).) To dispell any possible remaining uncertainty, the Legislature added subdivision (p) to section 340.1, which states: "The Legislature declares that it is the intent of the Legislature, in enacting the amendments to this section exacted at the 1994 portion of the 1993-94 Regular Session that the express language of revival added to this section by [these] amendments shall apply to any action commenced on or after January 1, 1991."

The legislative intent is clear. **(2)** The question [***9] remains whether the Legislature has the power retroactively to revive a civil cause of action time-barred under the former statute of limitations.

The federal rule has long been established. In *Campbell v. Holt* (1885) 115 U.S. 620, 627-628 [29 L. Ed. 483, 486-487, 6 S. Ct. 209], the court held the retroactive revival of time-barred claims is constitutionally permissible as long as it does not interfere with vested title to real or personal property. (See also *Chase Securities Corp.* v. *Donaldson* (1944) 325 U.S. 304, 314 [89 L. Ed. 1628, 1635-1636, 65 S. Ct. 1137] [reaffirming *Campbell* and holding that revival of a personal cause of action which does not involve the creation of title does

not offend notions of due process: "[The] shelter [of the statute of limitations] has never been regarded as . . . a 'fundamental' right . . . ."].) [*1184]

In 1985, Witkin described the state of the law in California as "unsettled." (3 Witkin, Cal. Procedure (3d ed. 1985) Actions, § 332, p. 362, and authorities cited therein; see also *Gallo v. Superior Court* (1988) 200 Cal. App. 3d 1375, 1378 [246 Cal. Rptr. 587] ["California law is unsettled regarding whether [***10] the Legislature *may* make a statute of limitations retroactive in the sense that it revives a claim which is already time-barred." (Italics in original.)].) That issue has since been addressed in *Liebig v. Superior Court*, *supra*, 209 Cal. App. 3d 828 which considered the language of revival contained in the original version of section 340.1 which was enacted in 1986 and applied only to causes of action arising from childhood sexual abuse by a household or family member. n3 The *Liebig* court found no constitutional impediment to revival in the [**393] case of a traditional common law cause of action where, as here, the Legislature makes express its intent the law be given retrospective application: "We adopt the distinction . . . between statutory and common law causes of action, and . . . hold that the Legislature has the power to expressly revive time-barred civil common law causes of action. This holding is consistent with the niche in our civil law occupied by statutes of limitations. 'The principle is . . . well established that "[s]tatutorily imposed limitations on actions are technical defenses which should be strictly construed to avoid the forfeiture of [***11] a plaintiff's rights. . . ." [Citation.] [T]here is a "strong public policy that litigation be disposed of on the merits wherever possible." ' [Citations.]" (209 Cal. App. 3d at p. 835.)

n3 Subdivision (e) of the 1986 version of section 340.1 provided that the new three-year period of limitations would apply not only to actions pending as of its effective date, January 1, 1987, but to "[a]ny action commenced on or after January 1, 1987, including any action which would be barred by application of the period of limitation applicable prior to January 1, 1987."

Defendant argues *Liebig* was wrongly decided, claiming it misconstrued earlier California decisions in which the issue of extending the statute of limitations to lapsed claims was considered. We have reviewed those decisions, as well as other authorities cited in *Liebig* and by defendant, and find the *Liebig* court's conclusions regarding the power of the Legislature to revive lapsed claims are clearly supported by the authorities cited [***12] in that decision. (See also *Nelson v. Flintkote Co.* (1985) 172 Cal. App. 3d 727, 733-734 [218 Cal. Rptr. 562].) It would serve no useful purpose to engage in a duplicative analysis. Suffice it to say defendant fails to persuade us that *Liebig* was wrongly decided and should not be followed.

(3) In a related claim, defendant argues that because the trial court ruled on the demurrer prior to the effective date of the 1994 amendments to section 340.1, the trial court's order must be affirmed. We disagree. Statutes of limitations in civil actions are procedural, not substantive (3 Witkin, Cal. [*1185] Procedure, *op. cit. supra*, § 308, p. 337; *Talei v. Pan American World Airways* (1982) 132 Cal. App. 3d 904, 909 [183 Cal. Rptr. 532]), and are not subject to the general rule against statutory retroactivity. (See *Nelson v. Flintkote Co.*, *supra*, 172 Cal. App. 3d 727, 733; *Republic Corp.* v. *Superior Court* (1984) 160 Cal. App. 3d 1253, 1257 [207 Cal. Rptr. 241].) While the 1994 amendments to section 340.1 were not in effect at the time the trial court ruled on the demurrer, the amended statute applies to this proceeding because it "was pending on appeal [***13] at the time the legislative enactment became effective." (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal. 3d 917, 931 [154 Cal. Rptr. 503, 593 P.2d 200] and see authorities cited therein; *Nelson* v. *Flintkote Co.*, *supra*, 172 Cal. App. 3d 727, 733; *Manquero v. Turlock etc. School Dist.* (1964) 227 Cal. App. 2d 131, 135-137 [38 Cal. Rptr. 470].)

IV

(4) Defendant argues that even if the 1994 amendments to section 340.1 are applicable, this action is barred by those limitation provisions. As amended in 1994, section 340.1 allows an action to be commenced "within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later." Plaintiff commenced this action when he was 31 years of age, i.e., more than 8 years after the date he attained the age of majority. (§ 340.1, subd. (a).)

Nonetheless, plaintiff's action is timely if it falls within the three-year delayed discovery provisions of section 340.1. Defendant argues [***14] there can be no claim of delayed discovery given plaintiff's allegations that he suffered actual and appreciable injury at the time of the abuse, coupled with plaintiff's admission he never repressed his memory of the events. n4 We disagree.

n4 In his declaration, plaintiff admits he never repressed his memory of the abuse, although he

does claim he buried such memories "as far as [he] could out of [his] conscious mind." Plaintiff also states that after the incident wherein he ejaculated, he suffered emotionally, and was so distraught over the incident that he left defendant's residence and hitchhiked home.

First, whether plaintiff suffered an actual or appreciable injury at the time of the abuse is not relevant to delayed discovery claims made under the *present* version of [**394] section 340.1. (See *Marsha V.* v. *Gardner* (1991) 231 Cal. App. 3d 265, 280-282 [281 Cal. Rptr. 473] (dis. opn. of Johnson, J.); cf. *DeRose v. Carswell, supra*, 196 Cal. App. 3d at pp. 1017-1019) Subdivision [***15] (a) of section 340.1 could not be more clear: the delayed discovery provisions of section 340.1 relate to injuries occurring *after the age of majority.* [*1186] (§ 340.1, subd. (a); see generally, *Delaney v. Superior Court* (1990) 50 Cal. 3d 785, 798 [268 Cal. Rptr. 753, 789 P.2d 934] [In determining the intent of the lawmakers, we look first to the words of the statute; if the language is clear and unambiguous, there is no need for construction.].)

Second, that plaintiff did not repress the memories of the abuse inflicted upon him does not mean he cannot take advantage of the delayed discovery provisions of section 340.1. Nothing in section 340.1 requires that memories of abuse be repressed as a prerequisite to a delayed discovery claim.

To the contrary, to satisfy delayed discovery plaintiff need only allege the onset of psychological injury or illness after the age of majority and that he commenced his action within three years of the time he discovered or reasonably should have discovered such psychological injury or illness was caused by the childhood sexual abuse. (§ 340.1, subd. (a).)

Plaintiff has adequately pleaded facts supporting delayed discovery. [***16] Plaintiff alleges that notwithstanding the psychological injury and illness he suffered as an adult resulting from defendant's sexual misconduct, plaintiff did not discover the connection between such illness and the acts of misconduct until he began counseling in September 1991. Moreover, plaintiff has alleged numerous facts establishing the reasonableness of the delay in discovering the connection between his adult illness or injury and the childhood sexual abuse i.e. his age and relationship to defendant at the time of the abuse, the ways in which defendant used his familial relationship of trust to manipulate plaintiff into allowing the sexual touching, and how, as a result of defendant's conduct, plaintiff internalized feelings of shame and self-blame while blocking out and dissociating from those feelings, rendering him unable to perceive the injurious nature of defendant's conduct. For purposes of withstanding demurrer, such allegations are sufficient. (See *Dujardin v. Ventura County Gen. Hosp.* (1977) 69 Cal. App. 3d 350, 356 [138 Cal. Rptr. 20].)

We are not unsympathetic to the plight of defendants who find themselves forced to defend an action years, possibly even [***17] decades, after the alleged acts of abuse are said to have occurred. The potentially devastating impact of accusations of sexual molestation cannot be minimized, particularly when coupled with the obvious difficulty in defending an action where evidence has been lost, memories have faded, and witnesses have long since disappeared. (See generally, *Prudential-LMI Com. Insurance v. Superior Court* (1990) 51 Cal. 3d 674, 684 [274 Cal. Rptr. 387, 798 P.2d 1230]; *Duty v. Abex Corp.* (1989) 214 Cal. App. 3d 742, 748-749 [263 Cal. Rptr. 13].)

It is not for this court, however, to strike the appropriate balance between the policies implemented by statutes of limitation granting repose from stale [*1187] claims, and the policies favoring a remedy for victims of childhood sexual abuse the consequences of which, due to the tender age of the victims and the lingering psychological effect of the injury, will sometimes remain unredressed unless the reality of delayed discovery of its cause is recognized. The Legislature, whose prerogative it is, has resolved these competing policy considerations through the present version of section 340.1. (See *Marsha V.* v. *Gardner, supra* [***18] , 231 Cal. App. 3d at pp. 283-284 (dis. opn. of Johnson, J.)) "[T]he Legislature [has] struck the balance in favor of allowing recovery of late-discovered causes of action in child sex abuse cases . . . ." (*Id.*, at p. 284.) In light thereof, it is the function of this court simply to apply the statute as written. (*Blakey v. Superior Court* (1984) 153 Cal. App. 3d 101, 107 [200 Cal. Rptr. 52].) n5

n5 Plaintiff's request that we take judicial notice of the legislative history surrounding the 1994 amendments to section 340.1 is denied. Because section 340.1 is clear on its face, there is no need to consider extraneous materials. (*Delaney v. Superior Court, supra*, 50 Cal. 3d at p. 798.)

[**395] The judgment is reversed. The matter is remanded to the trial court with directions to overrule defendant's demurrer and reinstate plaintiff's complaint. Plaintiff is to recover costs on appeal.

Nicholson, J., and Raye, J., concurred.

Respondent's petition for review by the Supreme Court was [***19] denied February 22, 1996.

CDVSA
Council on Domestic Violence & Sexual Assault
Safety • Prevention • Accountability

State of Alaska
Department of Public Safety
Council on Domestic Violence & Sexual Assault

Sarah Palin, Governor
Joseph A. Masters, Commissioner

March 25, 2009

Dear Senator French:

The Council on Domestic Violence and Sexual Assault thanks you for introducing SB 47: Statute of Limitation for Sexual Offenses. We fully support this legislation to permit victims of felony sexual offenses a time period in which to seek civil action against the perpetrators of these heinous crimes.

As you know, victims of sexual assault, both children and adults, often do not disclose the abuse for years because of the shame and trauma they feel. It is important that individuals who were victimized prior to the lifting of Alaska's statute of limitations on these crimes be provided an avenue to pursue truth and justice. We applaud your efforts to create a way for them to do so.

This legislation is also important to victims because the ability to have the abuse recognized and condemned is a key to healing. Many victims who have not seen their assailants held accountable by the criminal justice system and seek justice through civil legal action speak to the healing effects the process affords them. We thank you for sponsoring SB 47; for your support of those victims who want their stories told in the civil justice system; and, for providing another tool to use in holding sex offenders responsible for their crimes.

Sincerely,

Chris Ashenbrenner

Chris Ashenbrenner
Executive Director

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To: Senator French, Chair of the Senate Judiciary Committee

From: Kari Robinson & Christine Pate, Directors/Attorneys, Legal Advocacy Project
Robin Bronen, Executive Director, Alaska Immigration Justice Project
Andy Harrington, Executive Director, Alaska Legal Services Corporation

Re: Opportunity to present on the state of legal services for victims of domestic violence and sexual assault in Alaska

The Network's Legal Advocacy Project (LAP), the Alaska Immigration Justice Project (AIJP) and Alaska Legal Services (ALSC) provide vital assistance to alleviate the crisis of domestic violence and sexual assault affecting too many Alaskan families. We would like to share information with the Legislature of our activities and of the continuing need for victims to have access to legal services.

As you know only too well, domestic violence and sexual assault are overwhelming problems in our state. Alaska has the highest sexual assault rates in the nation with rates twice the national average. In 2007, Alaska had the nation's seventh-highest rate of violence, according to the FBI's new Uniform Crime Report.

Legal assistance is a vital component of the protection victims need to pursue safe and healthy lives. ALSC, the state's general-purpose legal aid agency since 1966 with its focus on low-income Alaskans, has long recognized domestic violence as one of the most pressing problems in the array of legal issues faced by our state's indigent families. The LAP, since its inception in 1996, has provided victims with attorneys specializing in representation of domestic violence victims, as well as training and mentoring volunteer attorneys especially for these cases. AIJP, since its creation in 2005, has focused on provided protecting the human rights of low income immigrants and refugees, serving victims of violence, unaccompanied abused and neglected children, victims of human trafficking and persons fleeing torture in their home countries. Unfortunately, the demand for legal services for victims of domestic violence is greater than the existing resources of these three agencies.

The ability of the LAP, AIJP and ALSC are able to assist victims in crisis helps ensure a healthy future for Alaskan families by breaking the cycle of violence and creating safe custody and visitation situations. Preventing future violence and keeping families safe is a wise investment in Alaska's future.

We would appreciate the opportunity to present our work to your committees in the near future. Please contact Ms. Robinson to arrange a meeting time at your convenience.

ALASKA WOMEN'S LOBBY

AWL Mission: To defend and advance the rights and needs of Women, Children and Families in Alaska

P.O. Box 20891
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Letter of Support
SB 47: Statute of Limitations for Sexual Offenses

The Alaska Women's Lobby, a statewide group defending and advancing the rights and needs of women, children and families, supports SB 47. It gives an important window of time to certain victims of felony sexual assault.

The statute of limitations for felony sexual assault was eliminated in 2001 for cases that were open at the time and for sexual assault that occurred after the passage of the bill. Unfortunately, the limitation was not lifted for those victims who were assaulted and the statute of limitations had already run. We applaud Senator French for introducing SB 47 which allows a one year period of time in which those victims may bring a civil action against the perpetrators who committed the sexual assault.

Sometimes civil actions are the only legal means to recover some measure of personal loss caused by the trauma of sexual assault and its emotional effects. The perpetrator or those responsible for an assault can be held accountable. The victim has a chance to tell her/his story and confront the perpetrator. The case can put the community on notice about the perpetrator. Having the perpetrator formally held accountable for his/her actions may provide relief to the victim and restore a sense of balance that has been missing for too long.

Creating this window of opportunity for justice and closure is the least we can do for those who continue to suffer in silence without a recourse that is available to anyone who has been assaulted since 2001. Please pass SB 47 this session.

POSITION STATEMENT IN OPPOSITION TO SB 47

The Society of Jesus, Oregon Province

Senate Bill 47 seeks to make a retroactive change to the statute of limitations for certain civil claims alleging felony sexual abuse. Sexual abuse is a serious crime which must be eradicated from our society. SB 47, however, does not assist with that goal. SB 47 does not deter or prevent sexual abuse. Instead, it seeks to create a retroactive suspension of the statute of limitations to allow lawsuits to be filed to collect monetary damages for acts that took place many decades ago on claims which have already expired under existing law.

The Society of Jesus, Oregon Province ("Province") has been dealing with claims arising out of alleged sexual abuse of minors; claims date back to the 1940s and continue through the early 1990s. The vast majority of the claims are from 30-40 years ago. Alaska law has a series of statutes of limitations which have been interpreted by our courts so as to strike a balance between insuring claimants have enough time to file a claim and protecting persons from due process concerns that arise when subjected to stale claims.

Courts (and common sense) long have recognized that adjudications become less reliable with the passage of time; both our Alaska Supreme Court and the United States Supreme Court have said so. Over time, the risk grows that evidence may be lost or that key witnesses may disappear or die. The testimony of available witnesses also becomes less reliable over time as memories fade and recollections of events are colored by intervening experiences.

What SB 47 does is create a one year period of time where no statute of limitations whatsoever would apply. If this bill were to become law, it would pose serious problems for the State of Alaska, as well as public and private organizations within the state. The problems generally are as follows:

- Retroactively suspending the statute of limitations would impair the integrity of Alaska's judicial system for dispute resolution. Retroactive suspension would allow plaintiffs to make allegations of past wrongdoing without any consideration to how long ago the alleged wrongdoing occurred. As a result, the State of Alaska, public entities (such as, schools, correctional facilities foster care programs, municipalities—any government program where adults work with minors under age 18) and non-profit entities that work with children (such as the Boy and Girl Scouts, Boys and Girls Clubs, sports and religious organizations) will be subjected to defending claims alleging misconduct many decades ago.

- SB 47 would significantly increase the risk of inaccurate adjudications or potentially fraudulent claims. Although a plaintiff making an allegation necessarily would be alive and available to testify, the passage of time makes it likely that other key witnesses and evidence would be unavailable to disprove plaintiff's allegations. Documents about supervision and attendance (or potential insurance) are regularly discarded over time. Our system of justice works only when witnesses on both sides can be heard and one party is not deprived of important evidence. Reviving decades-old claims where an important witness or party has died or is unable to testify as to the allegations is inherently unfair.

- Strong arguments exist that SB 47 is unconstitutional. Due process and other constitutional considerations weigh against, and sometimes prohibit, retroactive revival of time-barred claims.

The primary beneficiaries of SB 47 are not necessarily real victims of abuse. It is public knowledge that in the 2008 settlement the Province made with more than 100 plaintiffs in Northern Alaska, $20 million of the $50 million settlement went to two private law firms. Moreover, in testimony before the Alaska Senate Judiciary Committee in 2007, the Executive Director of a victim's advocacy group testified that the normal recovery to victims of sexual abuse is approximately 30% on every dollar.

The Alaska legislature previously modified the statute of limitations to allow claims for felony sexual abuse to be initiated at any time for any claim arising after October 1, 2001. In addition, under the current state of the law (and as the Province is well aware), access to the courts for child sexual abuse is still possible with the understanding that claimants are required to demonstrate why their claims are timely under the law as it presently exists.

While the Province has recently filed for protection under Chapter 11 of the Bankruptcy Code, the fact remains that numerous claims are outstanding and remain to be decided and ultimately handled through the legal processes available under the law. The full impact of SB 47 is being evaluated, but at this point in time, the Province believes, as it did in years past, that SB 47 does not serve the public good of state, private and public institutions, as well as religious institutions. Thus, the Province believes that SB 47 is a bill that should not be passed into law.

Prevent Child Abuse America
Chicago, Illinois

Total Estimated Cost of Child Abuse and Neglect in the United States

Ching-Tung Wang, Ph.D. and John Holton, Ph.D.

Child abuse and neglect are preventable, yet each year in the United States, close to one million children are confirmed victims of child maltreatment. An extensive body of research provides promising and best practices on what works to improve child safety and well-being outcomes and reduce the occurrence of child abuse and neglect. These efforts are essential as child abuse and neglect have pervasive and long-lasting effects on children, their families, and the society. Adverse consequences for children's development often are evident immediately, encompassing multiple domains including physical, emotional, social, and cognitive. For many children, these effects extend far beyond childhood into adolescence and adulthood, potentially compromising the lifetime productivity of maltreatment victims (Daro, 1988).

It is well documented that children who have been abused or neglected are more likely to experience adverse outcomes throughout their life span in a number of areas:

- Poor physical health (e.g., chronic fatigue, altered immune function, hypertension, sexually transmitted diseases, obesity);
- Poor emotional and mental health (e.g., depression, anxiety, eating disorders, suicidal thoughts and attempts, post-traumatic stress disorder);
- Social difficulties (e.g., insecure attachments with caregivers, which may lead to difficulties in developing trusting relationships with peers and adults later in life);
- Cognitive dysfunction (e.g., deficits in attention, abstract reasoning, language development, and problem-solving skills, which ultimately affect academic achievement and school performance);
- High-risk health behaviors (e.g., a higher number of lifetime sexual partners, younger age at first voluntary intercourse, teen pregnancy, alcohol and substance abuse); and
- Behavioral problems (e.g., aggression, juvenile delinquency, adult criminality, abusive or violent behavior) (Child Welfare Information Gateway, 2006; Goldman, Salus, Wolcott, & Kennedy, 2003; Hagele, 2005).

The costs of responding to the impact of child abuse and neglect are borne by the victims and their families but also by society. This brief updates an earlier publication documenting the nationwide costs as a result of child abuse and neglect (Fromm, 2001). Similar to the earlier document, this brief places costs in two categories: direct costs, that is,

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those costs associated with the immediate needs of children who are abused or neglected; and indirect costs, that is, those costs associated with the long-term and/or secondary effects of child abuse and neglect. All estimated costs are presented in 2007 dollars. Adjustments for inflation have been conducted using the price indexes for gross domestic product published by the Bureau of Economic Analysis (http://www.bea.gov).

Based on data drawn from a variety of sources, the estimated annual cost of child abuse and neglect is **$103.8 billion** in 2007 value. This figure represents a conservative estimate as a result of the methods used for the calculation. First, only children who could be classified as being abused or neglected according to the Harm Standard in the Third National Incidence Study of Child Abuse and Neglect (NIS-3) are included in the analysis. The Harm Standard requirements, compared to the Endangerment Standard requirements used in NIS-3, are more stringent (Sedlak & Broadhurst, 1996). Second, only those costs related to victims are included. We have not attempted to quantify other costs associated with abuse and neglect, such as the costs of intervention or treatment services for the perpetrators or other members of the victim's family. Third, the categories of costs included in this analysis are by no means exhaustive. As examples, a large number of child victims require medical examinations or outpatient treatment for injuries not serious enough to require hospitalization; maltreated children are at greater risk of engaging in substance abuse and require alcohol and drug treatment services; and youth with histories of child abuse and neglect may be at greater risk of engaging in risky behaviors such as unprotected sexual activities as well as greater risk of teen pregnancy. We were not able to estimate these types of costs as data are not readily available.

Although the economic costs associated with child abuse and neglect are substantial, it is essential to recognize that it is impossible to calculate the impact of the pain, suffering, and reduced quality of life that victims of child abuse and neglect experience. These "intangible losses", though difficult to quantify in monetary terms, are real and should not be overlooked. Intangible losses, in fact, may represent the largest cost component of violence against children and should be taken into account when allocating resources (Miller, 1993).

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References

Bureau of Economic Analysis, U.S. Department of Commerce. National Income and Product Accounts (NIPA) Tables – Table 1.1.4. Price Indexes for Gross Domestic Product. Retrieved September 4, 2007 from http://www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=4&FirstYear=2005&LastYear=2007&Freq=Qtr

Child Welfare Information Gateway (2006). *Long-term consequences of child abuse and neglect.* Retrieved January 30, 2007, from http://www.childwelfare.gov/pubs/factsheets/long_term_consequences.cfm

Daro, D. (1988). *Confronting child abuse: Research for effective program design.* New York: Free Press.

Fromm, S. (2001). *Total estimated cost of child abuse and neglect in the United States: Statistical evidence.* Chicago, IL: Prevent Child Abuse America. Retrieved September 4, 2007 from http://member.preventchildabuse.org/site/DocServer/cost_analysis.pdf?docID=144

Goldman, J., Salus, M.K., Wolcott, D., & Kennedy, K.Y. (2003). *A coordinated response to child abuse and neglect: The foundation for practice.* Child Abuse and Neglect User Manual Series. Washington, DC: Government Printing Office. Retrieved January 29, 2007, from http://www.childwelfare.gov/pubs/usermanuals/foundation/foundation.pdf

Hagele, D.M. (2005). The impact of maltreatment on the developing child. *North Carolina Medical Journal, 66,* 356-359. Retrieved September 11, 2007 from http://www.ncmedicaljournal.com/sept-oct-05/Hagele.pdf

Miller, R.M., Cohen, M.A., & Wiersema, B. (1996). *Victim costs and consequences: A new look.* The National Institute of Justice. Retrieved August 27, 2007 from http://www.ncjrs.gov/pdffiles/victcost.pdf.

Sedlak, A.J., & Broadhurst, D.D. (1996). *The third national incidence study of child abuse and neglect (NIS-3).* U.S. Department of Health and Human Services. Washington, DC.

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Total Annual Cost of Child Abuse and Neglect in the United States
DIRECT COSTS

Direct Costs	Estimated Annual Cost (in 2007 dollars)
Hospitalization *Rationale: 565,000 maltreated children suffered serious injuries in 1993[1]. Assume that 50% of seriously injured victims require hospitalization[2]. The average cost of treating one hospitalized victim of abuse and neglect was $19,266 in 1999[3].* *Calculation: 565,000 x 0.50 x $19,266 = $5,442,645,000*	**$6,625,959,263**
Mental Health Care System *Rationale: 25% to 50% of child maltreatment victims need some form of mental health treatment[4]. For a conservative estimate, 25% is used. Mental health care cost per victim by type of maltreatment is: physical abuse ($2,700); sexual abuse ($5,800); emotional abuse ($2,700) and educational neglect ($910)[4]. Cross referenced against NIS-3 statistics on number of each incident occurring in 1993[1].* *Calculations: Physical Abuse – 381,700 x 0.25 x $2,700 = $257,647,500; Sexual Abuse – 217,700 x 0.25 x $5,800 = $315,665,000; Emotional Abuse – 204,500 x 0.25 x $2,700 = $138,037,500; and Educational Neglect – 397,300 x 0.25 x $910 = $90,385,750; Total = $801,735,750.*	**$1,080,706,049**
Child Welfare Services System *Rationale: The Urban Institute conducted a study estimating the child welfare expenditures associated with child abuse and neglect by state and local public child welfare agencies to be $23.3 billion in 2004[5].*	**$25,361,329,051**
Law Enforcement *Rationale: The National Institute of Justice estimated the following costs of police services for each of the following interventions: physical abuse ($20); sexual abuse ($56); emotional abuse ($20) and educational neglect ($2)[4]. Cross referenced against NIS-3 statistics on number of each incident occurring in 1993[1].* *Calculations: Physical Abuse – 381,700 x $20 = $7,634,000; Sexual Abuse – 217,700 x $56 = $12,191,200; Emotional Abuse – 204,500 x $20 = $4,090,000; and Educational Neglect – 397,300 x $2 = $794,600; Total = $24,709,800*	**$33,307,770**
Total Direct Costs	***$33,101,302,133***

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[1] Sedlak, A.J, & Broadhurst, D.D. (1996). *The third national incidence study of child abuse and neglect (NIS-3).* U.S. Department of Health and Human Services. Washington, DC.

[2] Daro, D. (1988). *Confronting child abuse: Research for effective program design.* New York: Free Press.

[3] Rovi, S., Chen, P.H., & Johnson, M.S. (2004). The economic burden of hospitalizations associated with child abuse and neglect. *American Journal of Public Health, 94,* 586-590. Retrieved September 7, 2007 from http://www.ajph.org/cgi/reprint/94/4/586?ck=nck

[4] Miller, T.R., Cohen, M.A., & Wiersema, B. (1996) *Victim costs and consequences: A new look.* The National Institute of Justice. Retrieved August 27, 2007 from http://www.ncjrs.gov/pdffiles/victcost.pdf

[5] Scarcella, C.A., Bess, R., Zielewski, E.H., & Geen, R. (2006). *The cost of protecting vulnerable children V: Understanding state variation in child welfare financing.* The Urban Institute. Retrieved August 27, 2007 from http://www.urban.org/UploadedPDF/311314_vulnerable_children.pdf

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Total Annual Cost of Child Abuse and Neglect in the United States
INDIRECT COSTS

Indirect Costs	Estimated Annual Cost (in 2007 dollars)
Special Education *Rationale: 1,553,800 children experienced some form of maltreatment in 1993[1]. 22% of maltreated children have learning disorders requiring special education[6]. The additional expenditure attributable to special education services for students with disabilities was $5,918 per pupil in 2000[7].* *Calculation: 1,553,800 x 0.22 x $5,918 = $2,022,985,448*	**$2,410,306,242**
Juvenile Delinquency *Rationale: 1,553,800 children experienced some form of maltreatment in 1993[1]. 27% of children who are abused or neglected become delinquents, compared to 17% of children in the general population[8], for a difference of 10%. The annual cost of caring for a juvenile offender in a residential facility was $30,450 in 1989[9].* *Calculation: 1,553,800 x 0.10 x $30,450 = $4,731,321,000*	**$7,174,814,134**
Mental Health and Health Care *Rationale: 1,553,800 children experienced some form of maltreatment in 1993[1]. 30% of maltreated children suffer chronic health problems[6]. Increased mental health and health care costs for women with a history of childhood abuse and neglect, compared to women without childhood maltreatment histories, were estimated to be $8,175,816 for a population of 163,844 women, of whom 42.8% experienced childhood abuse and neglect[10]. This is equivalent to $117 [$8,175,816 / (163,844 x 0 .428)] additional health care costs associated with child maltreatment per woman per year. Assume that the additional health care costs attributable to childhood maltreatment are similar for men who experienced maltreatment as a child.* *Calculation: 1,553,800 x 0.30 x $117 = $54,346,699*	**$67,863,457**
Adult Criminal Justice System *Rationale: The direct expenditure for operating the nation's criminal justice system (including police protection, judicial and legal services, and corrections) was $204,136,015,000 in 2005[11]. According to the National Institute of Justice, 13% of all violence can be linked to earlier child maltreatment[4].* *Calculations: $204,136,015,000 x 0.13 = $26,537,681,950*	**$27,979,811,982**
Lost Productivity to Society *Rationale: The median annual earning for a full-time worker was $33,634 in 2006[12]. Assume that only children who suffer serious injuries due to maltreatment (565,000[1]) experience losses in potential lifetime earnings and that such impairments are limited to 5% of the child's total potential earnings[2]. The average length of participation in the labor force is 39.1 years for men and 29.3 years for women[13]; the overall average 34 years is used.* *Calculation: $33,634 x 565,000 x 0.05 x 34 = $32,305,457,000*	**$33,019,919,544**
Total Indirect Costs	***$70,652,715,359***
TOTAL COST	$ 103,754,017,492

[6] Hammerle, N. (1992). *Private choices, social costs, and public policy: An economic analysis of public health issues.* Westport, CT: Greenwood, Praeger.

[7] Chambers, J.G., Parrish, T.B., & Harr, J.J. (2004). *What are we spending on special education services in the United States, 1999-2000?* Palo Alto, CA: American Institutes for Research. Retrieved August 28, 2007 from http://www.csef-air.org/publications/seep/national/AdvRpt1.PDF

[8] Widom, C.S., & Maxfield, M.G. (2001). *An update on the "cycle of violence".* U.S. Department of Justice, the National Institute of Justice. Retrieved August 27, 2007 from http://www.ncjrs.gov/pdffiles1/nij/184894.pdf

[9] U.S. Bureau of the Census (1993). *Statistical abstract of the United States, 1993* (113th edition.) Washington, DC: Government Printing Office. Retrieved September 6, 2007 from http://www2.census.gov/prod2/statcomp/documents/1993-03.pdf

[10] Walker, E.A., Unutzer, J., Rutter, C. Gelfand, A., Saunders, K., VonKorff, M., Koss, M., & Katon, W. (1999). Costs of health care use by women HMO members with a history of childhood abuse and neglect. *Archives of General Psychiatry, 56,* 609-613. Retrieved August 22, 2007 from http://archpsyc.ama-assn.org/cgi/reprint/56/7/609?ck=nck

[11] U.S. Deaprtment of Justice (2007). *Key facts at a glance: Direct expenditures by criminal justice function, 1982-2005.* Bureau of Justice Statistics. Retrieved September 5, 2007 from http://www.ojp.usdoj.gov/bjs/glance/tables/exptyptab.htm.

[12] U.S. Department of Labor (2007). *National compensation survey: Occupational wages in the United States, June 2006.* U.S. Bureau of Labor Statistics. Retrieved September 4, 2007 from http://www.bls.gov/ncs/ocs/sp/ncbl0910.pdf

[13] Smith, S.J. (1985). Revised worklife tables reflect 1979-80 experience. *Monthly Labor Review,* August 1985, 23-30. Retrieved September 4, 2007 from http://www.bls.gov/opub/mlr/1985/08/art3full.pdf

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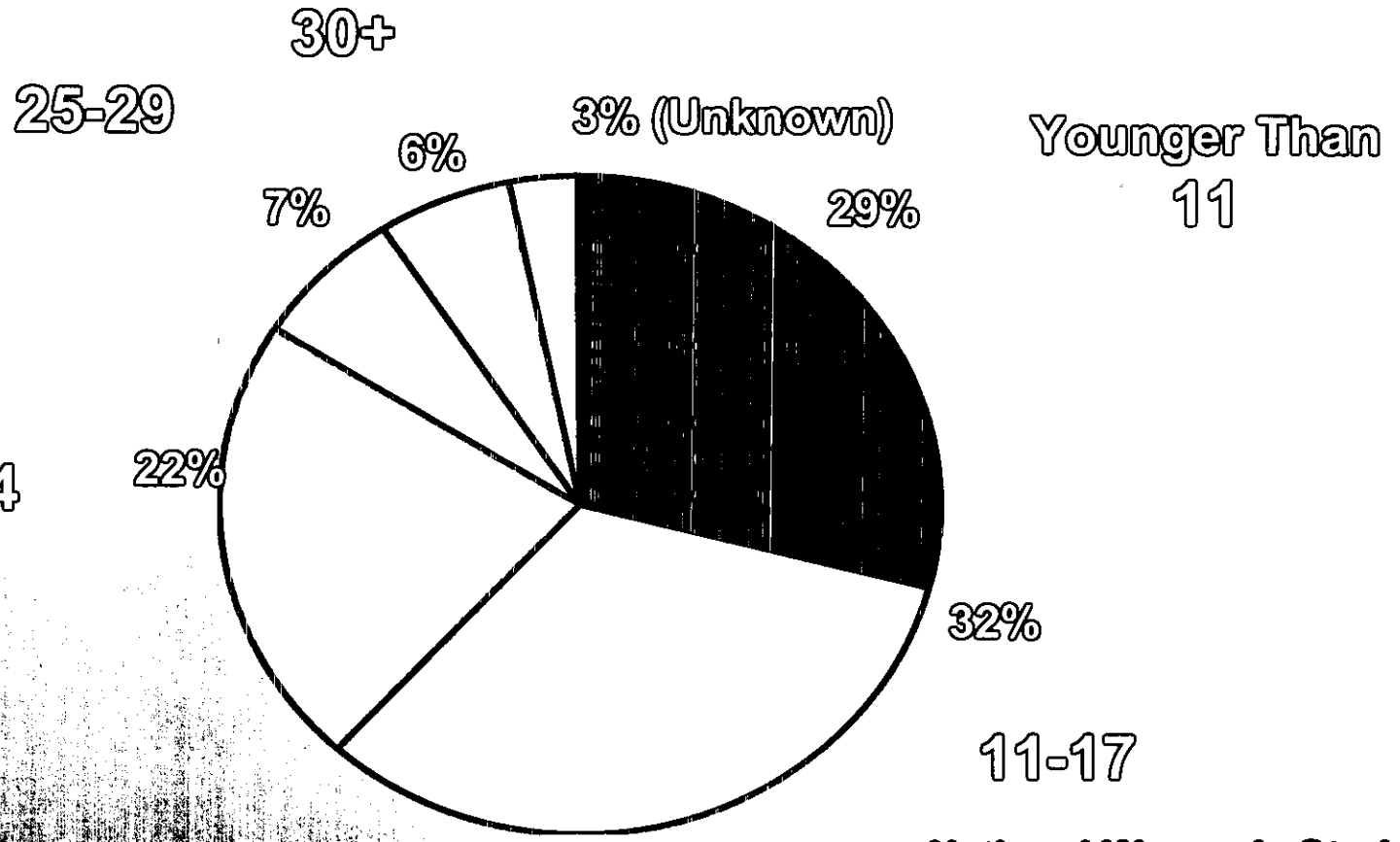
Most Victims Are Young

61% of rapes victims are 17 years old or younger

Age at Time of Rape



National Women's Study (n=714)

Most Victims Know the Perpetrator

- Children
  - Fear of being disbelieved, punished or unprotected (Lawson & Chaffin, 1992)
  - Fear or experience of being blamed for break up of family
    - Often the outcome is more devastating to the child than to the perpetrator
    - Child is held responsible for the father's absence from the family
    - Almost 100% of children said they would not report the incident if they were molested again

(William Marshal presentation, Ass. Of the TX of Sex Abusers 1995)

Lag Time for Detection

Study	Type of Offender	# of Years
Freeman-Longo(1985)	Rapist	6
	Child Molester	13
Elliot (1986)	Paraphiliacs	10
Ahlmeyer et al.(2000)	Rapists and Child Molesters	16

PERSONAL & SOCIAL COSTS

- More than half of victims have been raped more than once
- Victims of sexual assault are:
  - 6x more likely to develop Post-Traumatic Stress Disorder
  - 3x more likely to develop major depression
  - 13x more likely to attempt suicide
  - 25 - 50% of rape and child sexual abuse victims receive some sort of mental health treatment as a result of the victimization (Miller, 1996)

Kilpatrick et al., 1992, Rape in America: Report to the Nation 1992

The New York Times

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March 12, 2009

Religious Leaders Battle Abuse Bill in New York

By PAUL VITELLO

Roman Catholic and Orthodox Jewish officials in New York are mounting an intense lobbying effort to block a bill before the State Legislature that would temporarily lift the statute of limitations for lawsuits alleging the sexual abuse of children.

A perennial proposal that has been quashed in past years by Republicans who controlled the State Senate, the bill is now widely supported by the new Democratic majority in that chamber, and for the first time is given a good chance of passing.

If signed by Gov. David A. Paterson, a longtime supporter, the bill would at minimum revive hundreds of claims filed in recent years against Catholic priests and dioceses in New York, but dismissed because they were made after the current time limit, which is five years after the accuser turns 18. Similar legislation has passed in Delaware and in California, where a 2003 law led to claims that have cost the church an estimated $800 million to $1 billion in damages and settlements.

The rekindled prospects of the New York bill, known as the Child Victims Act, come at a delicate juncture for the Archdiocese of New York, the nation's flagship see, where Cardinal Edward M. Egan is scheduled to hand over the reins in April. His successor, Archbishop Timothy M. Dolan of Milwaukee, was so hard hit by settlements for past abuse by priests in that archdiocese that he was forced to put its headquarters up for sale.

"We believe this bill is designed to bankrupt the Catholic Church," said Dennis Poust, spokesman for the New York State Catholic Conference, a group representing the bishops of the state's eight dioceses. He said that Cardinal Egan and Bishop Nicholas A. DiMarzio of Brooklyn visited Albany this week to voice their opposition, and that a statewide network of Catholic parishioners had bombarded lawmakers via e-mail.

But while the Catholic Church is leading the opposition, in recent months a loose coalition of disparate groups has also joined the effort. They include leaders of the Hasidic and Sephardic Jewish institutions in Brooklyn, which could face equally costly abuse claims. The New York Civil Liberties Union and the criminal defense bar oppose lifting statutes of limitation as unfair to the accused, who must defend themselves against claims of transgressions decades old.

Under the Albany measure, which Assemblywoman Margaret M. Markey, a Queens Democrat, has shepherded to Assembly approval in each of the last three sessions, people claiming they were sexually abused as children would be given a one-year exemption from the statute of limitations. Regardless of how long ago the alleged abuse occurred, they could file suit in civil court.

At the year's end, time limits on such claims would be restored, but with a wider window: Instead of a five-year period after turning 18, victims would have 10 years to file claims.

The bill would not lift the statute of limitations for criminal prosecutions of child abuse, which in most cases are the same as for civil complaints. For violent assaults like rape, there are no time limits on prosecution.

Many children's advocates say guilt, shame and fear of the emotional toll on family members have often deterred victims from reporting sexual abuse until well into adulthood. The revelations of past abuse by priests that became a national scandal starting in 2002 prompted some to seek redress, only to discover they were barred by the statutes of limitation.

Marci A. Hamilton, a professor at the Benjamin N. Cardozo School of Law at Yeshiva University who has argued that states should remove all statutes of limitation on child sex abuse claims, said the principle is comparable to the way industrial pollution is treated under the law. "The consequences of toxic pollution may not be known or felt for years after the fact," she said. "The same is often true for children who are sexually abused."

But opponents of such unlimited time frames of liability contend that decades-old memories of childhood events are not reliable.

Foes of Assemblywoman Markey's bill also say it unfairly singles out religious and private institutions, while leaving public schools virtually immune to the same potential liability.

The disparity is built into the legal protections granted under existing state law to all public workers and agencies: to sue a public employee or agency for damages of any kind, a person is required to file a claim within 90 days of the alleged injury. A victim of childhood sex abuse by a public school teacher, for instance, has 90 days after turning 18 to file notice of a claim.

Since the Markey bill would not extend that window, opponents claim that it discriminates. The Rev. Kieran E. Harrington, spokesman for Bishop DiMarzio, said that "a fair piece of legislation would treat all victims equally, and this bill does not do that."

In response to those objections, Assemblyman Vito J. Lopez, a Brooklyn Democrat, introduced an alternative bill last month that would eliminate the proposed one-year suspension of the statute of limitations. Under his measure, the window for filing claims would be extended to seven years after the accuser turns 18, rather than the 10 years in Assemblywoman Markey's bill.

Though he voted for her bill twice in past sessions, he said he had not realized the inequities in the new law until after a series of meetings he held in recent months. They included face-to-face talks with Bishop DiMarzio, he said, as well discussions with civil liberties advocates, members of the Legal Aid Society, and representatives of the Sephardic Community Federation and the United Jewish Organizations of Williamsburg, Brooklyn, which is in his district.

"You have three or four times as many kids in the public schools as in the Catholic schools," Mr. Lopez said. "How is it fair if the law only penalizes these religious and private schools?"

Senator Eric T. Schneiderman of Manhattan, chairman of the Senate Codes Committee, which is scheduled to take up the bill as early as next week, said the disparity might be addressed in future legislation. But he added, "Just because it does not broaden the rights of victims 100 percent does not mean we should not try to broaden their rights somewhat."

In past years, Assemblywoman Markey's bill was never scheduled for discussion in any Senate committee, reflecting the unwavering opposition of the longtime Senate Republican majority leader, Joseph L. Bruno. He did not seek re-election in November, when Democrats won control of the Senate; the new majority leader, Malcolm A. Smith, supports the bill.

Asked for Archbishop Dolan's view of the bill, and its potential impact on his tenure in New York, a spokesman for the New York Archdiocese said Wednesday that the archbishop was not immediately available to comment. Archbishop Dolan spoke out last year against similar legislation in Wisconsin. But at a news conference last month, he said he had not had time to study the New York bill.

Calls to representatives of the United Jewish Organizations of Williamsburg and the Sephardic Community Federation on Wednesday were not returned.

Senator Thomas K. Duane, a Manhattan Democrat and the bill's lead sponsor in the Senate, said he was "extremely optimistic" about its chances.

He said that opponents' claims of unfairness were not compelling, and that warnings of bankruptcy for religious institutions, which he dismissed as unlikely, missed the point.

"It's not about money," he said. "It's about giving people the right to seek justice."

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SB 48

26-LS0293\P
Kane
3/30/09

CS FOR SENATE BILL NO. 48( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS THERRIAULT, Thomas

A BILL

FOR AN ACT ENTITLED

"An Act exempting municipal service area boards from the requirements of conducting meetings open to the public when a meeting is administrative or managerial in nature; and amending the definition of 'meeting' as it relates to public governmental meetings."

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

*** Section 1.** AS 44.62.310(d) is amended to read:

(d) This section does not apply to

(1) a governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff;

(5) meetings of the governmental body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications,

privileges, or discipline;

(6) staff meetings or other gatherings of the employees of a public entity, including meetings of an employee group established by policy of the Board of Regents of the University of Alaska or held while acting in an advisory capacity to the Board of Regents; [OR]

(7) meetings held for the purpose of participating in or attending a gathering of a national, state, or regional organization of which the public entity, governmental body, or member of the governmental body is a member, but only if no action is taken and no business of the governmental body is conducted at the meetings; **or**

(8) meetings of municipal service area boards established under AS 29.35.450 - 29.35.490 when meeting solely to act on matters that are administrative or managerial in nature.

*** Sec. 2.** AS 44.62.310(h)(2) is amended to read:

(2) "meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) **more than three members or a majority of the members, whichever is less, are present,** the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act, and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

Amendment

CSSB 48(CRA) – Open Meetings: Exception & Definition

Version 26-LS0293\E

I. Page 2, Lines 12 – 14: Amend as follows

(8) meetings ~~by~~ **of** municipal **service area** boards~~, committees, commissions, or other similar bodies~~ **established under AS 29.35.450 – 29.35.490** when meeting solely to act on matters that are administrative or managerial in nature.

Purpose: This change addresses the issue of the language being too broad and removes the uncertainty as to what groups would qualify for this exemption.

II. Page 2, Line 15 – Page 3, Line 9: Delete the following

Sec. 2. AS 44.62.310(h)**(2)** is amended to read:

~~(h) In this section,~~

~~(1) "governmental body" means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; "governmental body" includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members;~~

(2) "meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) **more than three members or a majority of the members, whichever is less, are present,** the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act**,** and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

~~(3) "public entity" means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; it does not include the court system or the legislative branch of state government.~~

Purpose: The legislature's legal department has determined that the struck language above is not needed in the bill. Deleting these two definitions is a technical change that would make this bill identical to the House version, HB153.

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Alaska State Legislature

Senate

While in session
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SENATE DISTRICT F

Sponsor Statement

Committee Substitute for Senate Bill 48 (CRA)

"An Act exempting municipal boards, committees, commissions, or other similar bodies for the requirements of conducting meetings open to the public when a meeting is administrative or managerial in nature; and amending the definition of 'meeting' as it relates to public governmental meetings."

Established under Article X Section 5 of the Alaska State Constitution and AS 29.35.450-490, service area districts provide essential road maintenance, fire protection, and park and recreation services to residents living within established cities and boroughs. In keeping with America's federalist foundations, service area boards and commissions promote local governance by encouraging residents to join together and take responsibility for providing basic community services.

AS 44.62.310(d) prevents a service area from efficiently responding to time sensitive issues such as adverse weather related road conditions without first complying with the Open Meetings Act's requirement of a noticed and held public hearing.

Senate Bill 48 was originally introduced to exempt road service districts from the open meetings requirement so they could quickly respond to unforeseen weather events without having to hold public hearings. Following multiple communications with the Fairbanks North Star Borough, Committee Substitute for Senate Bill 48 {CSSB 48 (CRA)}was introduced to expand the open meetings exemption to all municipal boards, committees, commissions, and other similar bodies meeting solely to conduct administrative or managerial business.

CSSB 48 (CRA) also streamlines the definition of "meeting" as defined in AS 44.62.310(h)(2). Under current statutory language, meeting requirements for advisory bodies are more stringent than those for policy setting bodies. By requiring the same open meetings requirements for advisory bodies as are required for government agencies authorized to establish public policy, members will be able to conduct public meetings in a more clear and uniform manner.

Email: Senator_Gene_Therriault@legis.state.ak.us

26th ALASKA STATE LEGISLATURE
SENATE REPUBLICAN CAUCUS

www.aksenateminority.com

SENATOR GENE THERRIAULT, MINORITY LEADER
STATE CAPITOL, ROOM 427, 465-4797 (FAX 465-3884)

SENATOR CON BUNDE
SENATOR FRED DYSON
SENATOR TOM WAGONER

Fact Sheet for : CSSB 48 (CRA) **Contact: Ernest Prax, 465-4797**
Sponsor: Senator Gene Therriault

Short Title: Meetings of Road Service Area Boards

Summary:

- CSSB 48 (CRA) expands SB 48's original exemption of road service areas from the Alaska's open meetings act (AS 44.62.310-312) to now include all municipal boards, committees, commissions, and other similar bodies meeting solely for the purpose to conduct administrative or managerial business.
- Establishes a uniform definition of "meeting" under AS 44.62.310(h)(2) for both policy setting and advisory government bodies.

Benefits:

- Grants municipal bodies the legal authority to efficiently carry out in a timely manner such administrative duties as responding quickly to unforeseen road conditions that may cause damage to a road system and subsequent danger.
- Preserves the spirit of an informed and involved citizenry when formulating local public policy. Municipal bodies will still be required to schedule and hold public meetings when discussing policy issues such as contract negotiations and local tax rates.

Background:

- Established under Article X Section 5 of the Alaska State Constitution and AS 29.35.450-490, municipal service areas districts provide essential road maintenance, fire protection, and park and recreation services. In keeping with America's federalist foundations, service districts promote local governance through residents joining together and taking responsibility for providing basic community services.
- AS 44.62.310-312 limits a road service area's ability to efficiently respond to road conditions caused by adverse weather. Unless a public meeting is first scheduled and held, board members cannot discuss and act upon time sensitive issues.
- Under AS 44.62.310(h)(2), meeting requirements for advisory bodies are more stringent than those for policy setting bodies. CSSB 48 (CRA) places the same open meetings requirements on advisory bodies as are on government agencies authorized to establish public policy.

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Committee Substitute for Senate Bill 48 (CRA) Sectional Analysis

Page 2, lines 12-14
AS 44.62.310(d):

(8) "...meetings by municipal boards, committees, commissions, or other similar bodies when meeting solely to act on matters that are administrative or managerial in nature."

Explanation: CSSB 48 (CRA) expands SB 48's original road conditions exemption to now include administrative and managerial duties which fall within a municipality's purview.

Page 2, lines 30-31
AS 44.62.310(h)(2):

(B) "...more than three members or a majority of the members, whichever is less, are present,..."

Explanation: AS 44.62.310(2) defines the constitution of an "open public meeting" between members of a governmental body. AS 44.62.310(2)(A) mandates that "...more than three members or a majority of the members, whichever is less..." constitutes a meeting for governmental bodies responsible for formulating and establishing public policy. However, AS 44.62.310(2)(B) does not require this same prerequisite for advisory-only bodies; the meeting needs only to be pre-arranged. Consequentially, meeting requirements for advisory bodies (e.g.: local service district) are more stringent than those for policy making bodies (e.g.: borough assembly). CSSB 48 (CRA) establishes a uniform public meetings requirement by placing the same open meetings requirements on advisory bodies as are on government agencies authorized to establish public policy.

By: Randy Frank
Introduced: 08/21/08
Adopted: 08/21/08

FAIRBANKS NORTH STAR BOROUGH

RESOLUTION NO. 2008-34

A RESOLUTION URGING THE ALASKA STATE LEGISLATURE TO REQUEST A STATE LAW CHANGE TO THE OPEN MEETINGS ACT WITH REGARDS TO ROAD SERVICE AREA COMMISSIONS

WHEREAS, there are a variety of rules, regulations, and procedures in Alaska State Law governing the conduct of public meetings, which are intended to ensure that decisions made and actions taken are public knowledge and represent the will of the public that the governing body serves. One of these is the state's Open Meetings Act; and

WHEREAS, the Open Meetings Act requires that all meetings of public bodies are open to the public and that the public body must provide reasonable notice of its meetings. In essence, the Open Meetings Act protects the public's right to know. To accomplish this, the act requires that:

- All deliberations and action taken by a public entity must be done in public view, with limited exceptions;
- The public must be provided prior knowledge of all steps occurring in the decision making process, with limited exceptions; and
- Individual actions of an official are made known.

WHEREAS, in order for these requirements to have full effect, meetings must occur as provided in the notice; and, with few exceptions, the public must be allowed to involve itself in the meeting; the public must also have access to materials being considered during the meeting; and

WHEREAS, with regard to advisory only bodies such as the Fairbanks North Star Borough Road Service Area Commissions, current law dictates that a meeting is:

- a gathering
- of any number of members of the body
- prearranged
- for the purpose of considering any matter upon which the body is empowered to act; and

WHEREAS, Service Area Commissions have management and maintenance duties to perform, requiring some discussion between commissioners thus making compliance with current state law difficult to comply with; and

WHEREAS, exemption from and/or amendments to the following areas of the Act are requested:

- Specify the number of members of an advisory body required for action to constitute a meeting as defined in AS 44.62.310(h)(2)(B);
- Include an exemption in AS 44.62.310(d) when governmental bodies such as Service Area Commissions meet to act on behalf of the borough to supervise and manage the affairs of the service area, to implement policies and programs to protect the safety of the public and preserve the service area's capital assets in a fiscally prudent manner, and other duties considered managerial in nature;

NOW, THEREFORE, BE IT RESOLVED by the Fairbanks North Star Borough Assembly requests that a recommendation be made to the Alaska State Legislature to amend state law to change the Open Meetings Act to allow Road Service Area Commissions to effectively conduct business within their areas.

BE IT FURTHER RESOLVED that the FNSB Assembly Road Service Area Committee supports a change to the Open Meetings Act.

BE IT FURTHER RESOLVED that a copy of this resolution shall be forwarded to the Alaska Interior Delegation.

PASSED AND APPROVED THIS 21st DAY OF AUGUST 2008.

Nadine Winters
Presiding Officer

ATTEST:

Mona Lisa Drexler, MMC
Municipal Borough Clerk

Ayes: Brown, Beck, Frank, Musick, Sattley, Stringer, Hopkins, Foote, Winters
Noes: None

Fairbanks North Star Borough

Request for Legislation

AMEND THE OPEN MEETINGS ACT FOR MUNICIPAL ADVISORY BOARDS AND COMMISSIONS WHILE PRESERVING THE INTENT AND PURPOSE OF THE ACT

The proposed legislation attempts to solve two typical problems encountered by volunteer advisory boards and commissions when attempting to comply with the Open Meetings Act. The proposed changes make the law more workable while maintaining the intent and purposes of the Act.

1. The first issue arises because some municipal volunteer boards and commissions perform managerial and administrative functions. Examples include both fire and road service area commissioners who are responsible, once the assembly approves the service area budget, to supervise and manage the affairs of the service area. These include decisions concerning when to plow the streets, whether a pothole needs to be fixed, etc. In implementing these duties commissioners are really fulfilling the role of municipal employees.

Current state law exempts most administrative and managerial activities by exempting staff meetings and gatherings. This exemption recognizes that it would be impossible to apply the Act to the everyday transactions of governmental employees confronting day-to-day issues and problems. This exemption, however, does not currently extend to members of governmental bodies that also have administrative and managerial responsibilities. Thus, volunteer boards and commissions that try to supervise and manage the affairs of a governmental entity, like a service area, often find that they must choose between complying with the Act or providing delayed and unresponsive services.

Exempting these boards and commissions when they meet only to fulfill their administrative and managerial functions allows them to effectively conduct business without harming any of the purposes or intent of the Open Meetings Act. These advisory bodies are still required to comply with the Act whenever they meet to make or discuss legislative or policy decisions, including recommending their annual budget and tax levy, adopting strategic plans, or discussing any other legislative policies.

2. The second issue arises due to an anomaly in state law. Although state law prescribes a minimum number of members necessary to constitute a meeting for policy-making bodies, this exception does not exist for advisory-only bodies. All that is required for a meeting of an advisory body is that the meeting be prearranged. Accordingly, a meeting exists under the Act if only two of a 12 member advisory body decide to meet to discuss to consider the business of the body. In this circumstance the rule for advisory bodies is **more** stringent than the rule governing actual policy-making bodies. The proposed change removes this anomaly by allowing two members of an advisory board to have a prearranged meeting as long as it does not result in a violation of the "three or a majority" rule applicable to policy-making bodies.

Article 06. OPEN MEETINGS OF GOVERNMENTAL BODIES

AS 44.62.310. Government meetings public

(d) This section does not apply to

(1) a governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff;

(5) meetings of the governmental body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline;

(6) staff meetings or other gatherings of the employees of a public entity, including meetings of an employee group established by policy of the Board of Regents of the University of Alaska or held while acting in an advisory capacity to the Board of Regents; or

(7) meetings held for the purpose of participating in or attending a gathering of a national, state, or regional organization of which the public entity, governmental body, or member of the governmental body is a member, but only if no action is taken and no business of the governmental body is conducted at the meetings.

(8) meetings by boards, committees, commissions or other similar bodies when meeting solely to act upon matters that are administrative or managerial in nature.

(h) In this section,

(1) "governmental body" means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; "governmental body" includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members;

(2) "meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) the gathering is either (i) prearranged by more than two members, or (ii) more than three members or a majority of the members, whichever is less, are present for the purpose of considering a matter upon which the governmental body is empowered to act and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

(3) "public entity" means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; it does not include the court system or the legislative branch of state government.

Fairbanks Daily News-Miner

The voice of Interior Alaska since 1903

Open and effective

Published September 3, 2008

A request by some local **road service area** commissioners for greater leeway under the state **open meetings** law seems worthy of consideration. Newspapers usually opine in favor of greater openness in government and tighter rules to make it happen. Strict application of the current law, though, causes nearly impossible problems for the small, volunteer commissions that keep many of our borough **roads** passable.

Wet summers, such as the one just concluding, can make a mess of the **roads**, especially those with gravel surfaces. Potholes are unavoidable. Washouts and soft spots are common.
Some of these problems must be fixed rapidly to avoid accidents and damage to vehicles.
Legally, commissioners must discuss and make decisions at quarterly **meetings** that are **open** to the public and announced in advance. That's reasonable and advisable.

However, Mother Nature doesn't play by the same rules. Rain clouds don't advertise in the newspaper.
Those clouds can cause damage that requires immediate work. That work may be too expensive to fit within the agreed-upon plan. Commissioners cannot legally talk with each other to reach a consensus about what to do in such situations, though, without holding a public **meeting**.

The Fairbanks North Star Borough's guidelines for **service area** commissioners explain the rules: 'If you need to speak to each other, you have enough business for a public **meeting**. To discuss work and make decisions about what will be done in the **service area** outside of a public **meeting** is a violation of the **Open Meetings** Act.'
Perhaps the problem could be solved by giving the commissions authority to delegate some actions. If not, the law may need some tweaking, because the current situation obviously doesn't provide the kind of flexibility that **road service** commissions need to do their jobs.
The revisions should be limited in scope, though. Not all **road service areas** are informal little neighborhood operations. Some spend large amounts of money. For those reasons, their actions should be not only effective but **open** to public scrutiny.

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Memorandum

To: The Honorable Senator Hollis French
Chair Senate Judiciary Committee

From: Senator Gene Therriault

Date: March 10, 2009

Re: CSSB 48 (CRA) Hearing Request

CSSB 48 (CRA) amends AS 44.62.310(d) by adding a new section to exempt municipal boards, commissions, and other similar bodies from Alaska's Open Meetings Act when meeting solely to conduct administrative and managerial business. The legislation also clarifies an abnormality in state statute regarding the definition of a "meeting." Meeting requirements for advisory bodies are currently more stringent than those for policy setting bodies. CSSB 48 (CRA) places the same open meetings requirements on advisory bodies as are on government agencies authorized to establish public policy.

AS 44.62.310-312 prevents municipal government bodies from conducting administrative duties such as responding to unforeseen road conditions without first triggering the open meetings act. Unless a public meeting is first scheduled and held, board members may not discuss and act upon time sensitive issues. CSSB 48 (CRA) will grant service area boards and commissions the necessary legal authority to more efficiently implement their duties and responsibilities and respond quickly to unforeseen local events like heavy snowfall or flooding.

CSSB 48 (CRA) also resolves an unintended consequence caused by the definition of "meeting." Under the current language, meeting requirements for advisory bodies are more stringent than those for policy setting bodies. The committee substitute places the same open meetings requirements on advisory bodies as are on government agencies authorized to establish public policy.

I respectfully request you schedule CSSB 48 (CRA) for a Senate Judiciary Committee hearing.

Email: Senator_Gene_Therriault@legis.state.ak.us

SB 51

Alaska State Legislature

Senator Hollis French

SB 51 - Motor Vehicle Window Tinting

Sponsor Statement

Illegally tinted motor vehicle windows create numerous safety concerns in Alaskan communities across the state. For peace officers, dark tints can completely block an outside view of a driver and passengers, hiding potential threats and essentially 'blindfolding' officers conducting traffic stops. For pedestrians, bikers and motorcyclists, illegal window tinting prevents eye contact with a driver, which is the most effective way to confirm that a driver has seen them as they share the roads.

Alaska law, like all other states in the country, currently limits how dark window tinting can be on vehicles operated on roads in the state. Alaska differs from some other states, however, in that it doesn't currently penalize the professional businesses that make a profit installing illegal window tinting. This bill makes it an infraction to install illegal window tinting.

On top of posing a safety hazard to pedestrians and peace officers, tinting windows illegally can also be a costly endeavor for consumers. After paying hundreds of dollars for a custom tint job, a citation for driving with illegal window tinting runs at $150. While a first citation is often a correctible offense, removing professional window tinting requires a second visit to a tinting business, since the product is difficult to pull off windows. While the consumer is out hundreds of dollars, a tinting business makes even more money.

In Anchorage alone, over 1,200 citations were given out for illegal tinting during 2006. Senate Bill 51 is an act that will protect peace officers, pedestrians and consumers, and I urge your support.

LEGISLATIVE RESEARCH REPORT

MARCH 12, 2007

REPORT NUMBER 07.150

PUNISHMENT FOR ILLEGAL AUTOMOBILE WINDOW TINTING IN OTHER STATES

PREPARED FOR SENATOR HOLLIS FRENCH

BY CHUCK BURNHAM, LEGISLATIVE ANALYST

You asked about other states' laws regarding automobile window tinting. Specifically, you wanted to know what punishments other states impose on individuals or businesses that illegally install window tinting.[1]

Our review of the applicable laws of ten western states found that the punishment for illegal installation of window tinting ranged from a fixed fine of $57 in Idaho to a maximum fine of $1,000 and up to one year in jail in California and Nevada.[2] It is important to note, however, that eight of the states whose laws we reviewed allow courts the discretion to set penalties at any level below the maximum amounts prescribed in statute. The following table shows statutory citations, crime classifications, and the associated penalties for illegal installation of window tinting for the ten states we reviewed.

[1] The term "window tinting" is used in this report to describe transparent material that is applied to automobile windows to reduce or filter the amount of light coming through the windows. This material is variously described in other states' laws as "sunscreen" or "sun-shade."

[2] We reviewed the laws of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Washington. We include copies of the applicable laws of these states as Attachment A.

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Alaska Legislature
Legislative Research Services
w3.legis.state.ak.us/Research/research_home.htm

State Capitol
Juneau, AK 99801

Selected States' Laws Regarding Illegal Installation of Window Tinting			
State	**Statutes**	**Crime Classification**	**Maximum Penalty**
Arizona	A.R.S. § 28-959.01 (Prohibition) A.R.S. § 28-121 (Classification) A.R.S. § 13-802 (Penalty)	Class 2 Misdemeanor	$750 fine
California	Cal. Veh. Code § 26708.5 (Prohibition) Cal. Veh. Code § 42002 (Penalty)	Misdemeanor	$1,000 fine and/or six months in jail
Colorado	C.R.S. § 42-4-227	Misdemeanor	$500 (minimum) to $5,000 fine
Idaho	Idaho Code § 49-944 (Prohibition) Idaho Infraction Rule 9 (Penalty)	Infraction	$57.00 fine set by Court Rule
Montana	Mont. Code § 61-9-429 (Prohibition) Mont. Code § 46-18-212 (Penalty)	Misdemeanor	$500 fine and/or six months in jail
Nevada	Nev. Rev. Stat. § 484.6195 (Prohibition) Nev. Rev. Stat. § 484.999 (Classification) Nev. Rev. Stat. § 193.150 (Penalty)	Misdemeanor	$1,000 fine and/or six months in jail
New Mexico	N.M. Stat. § 66-30846.1	Petty Misdemeanor	$75 fine
Oregon	O.R.S. § 815.221 (Prohibition) O.R.S. § 815.222 (Penalty) O.R.S. § 153.138 (Fine Schedule) O.R.S. § 153.800 (Violations Clerk)	"Illegal Window Tinting"	Fine amount set by the Violations Bureau of the presiding Court
Utah	Utah Code § 41-6a-1635 (Prohibition) Utah Code § 41-6a-202 (Classification) Utah Code § 76-3-301 (Penalty)	Class C Misdemeanor	$750 fine
Washington	RCW § 46.37.430 (Prohibition) RCW § 46.37.435 (Classification) RCW § 9A.20.021 (Penalty)	Misdemeanor	$1,000 fine and/or ninety days in jail

Notes: All but two of the states we reviewed allow courts the discretion to set actual penalties at any level below the statutory maximum. Two states--Idaho and Oregon--have fixed fines. Idaho sets its fine in Court Rule while Oregon allows fines to be set by the "Violations Bureau" of each local jurisdiction.
Source: *Lexis* database of states' laws.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

OPINION

Anchorage Daily News (AK) - April 6, 2007
Author: *Staff*
Too dark

Why is it legal to sell this product?

In Alaska, it is illegal to drive a car with tinted front **windows** that screen out more than 30 percent of the light. Back **windows** can screen out no more than 60 percent of the light.

However, it is not illegal for an Alaska business to install **window tinting** that violates the law.

This makes no sense. It's like saying, "It's illegal to smoke marijuana, but if you want to sell it to somebody -- sure, go ahead. You're not breaking the law. Your customers are."

There are good reasons for limiting how dark a vehicle's front **windows** can be. At about sunrise and sunset, dark **tinting** makes it harder for drivers to see potential hazards. In many situations, safety requires pedestrians, bicyclists and other motorists to make eye contact with another driver.

Heavily tinted **windows** are also a threat to police officers when they need to stop a vehicle. Officers can't see whether the motorist is going to be cooperative or draw a weapon.

Anchorage Sen. Hollis French wants to close the loophole that allows **window - tinting** businesses to profit from selling an illegal product. His measure, Senate Bill 78, would stop the problem at the source, instead of requiring police to chase down customers who might not know they had spent their hard-earned money to break the law.

Sen. French's original proposal made it a misdemeanor to sell illegally tinted **window** installations. That was probably too harsh, and it would have been too cumbersome to enforce. The latest version of his bill fixes that flaw by letting police issue a ticket to the business doing the installing.

After police write a few tickets, businesses should get the message: There's no profit in selling a product that violates the law.

BOTTOM LINE: Tinted car **windows** are illegal and businesses shouldn't profit from installing them.

FAIRBANKS
Daily News - Miner

Opera Fairbanks ready to add new voices to local arts scene

By Dermot Cole
Published March 13, 2007

NEW GROUP: The opera arrives in Fairbanks this weekend with the inaugural production of Opera Fairbanks, "A Touch of Opera."

Assisted by members of the Fairbanks Youth Symphony, the new company will perform arias and ensembles from favorite operas. The performances are Friday at 8 p.m. and Sunday at 3 p.m. in the Pioneer Park civic center.

The show is to feature Fairbanks singers Morgan Reed, Brandon Michael and Cassandra Tilly, along with Anchorage performers Anastasia Jamieson and Marlene Bateman and visiting bass singer Michael Douglas Jones.

Tickets are $25 for adults, $20 for senior citizens and military and $12 for students.

As part of his visit, Jones is to present "Opera Outside the Box," a workshop Saturday at Pioneer Park from 1 to 4 p.m. The workshop is open to 15 participants for a $35 fee or $10 for those who attend the production.

For more information and registration, go to www.operafairbanks.org or call 456-7573.

Tickets are available at New Horizons Gallery, the Artworks and Holm Town Nursery.

TINTED WINDOWS: For about 13 years, we've had a state law that limits tinted windows in automobiles. But many drivers ignore this law, as you can tell by walking through a crowded parking lot.

Going overboard on tinted windows creates hazards for pedestrians, bicyclists and other drivers who can't tell if the driver with illegal windows is watching the road, blabbing on a cell phone or looking the other way.

Anchorage Sen. Hollis French has proposed a bill that would close a loophole by making it illegal for businesses to install tinted windows in excess of the legal limits.

The Senate Judiciary Committee has scheduled a teleconference hearing on SB 78 Wednesday at 1:30 p.m.

French said at an earlier hearing that many after-market businesses where window tints are applied are not aware of the state laws and this new requirement will go a long way toward preventing the problem from getting worse.

In 2006, Anchorage police issued 1,201 citations for drivers with illegal windows. In Fairbanks, there were 174 citations.

OIL TAXES: An oil industry representative took me to task for writing Sunday that there have been "a couple" of tax increases on the oil industry in the past 26 years. I took issue with Exxon's claim that the state has raised taxes 13 times in 20 years.

Thinking some more about this, perhaps I should have written that there have been three or four major increases in oil taxes in the past 26 years.

This includes the change to the ELF statute in 1989, the nickel-a-barrel fee after the Exxon Valdez disaster, the move by former Gov. Frank Murkowski to aggregate North Slope fields in 2005 and the new oil tax system approved by the Legislature last year.

That's hardly a track record of fiscal instability.

WALK ON: Karl Bushby plans to leave Fairbanks and resume his walk around the world in Russia by Thursday, accompanied by Dmitry Keiffer, he told the Moscow Times. He has ambition, but not a lot of money.

"When we hit the ground in Russia, we're basically broke," he told the paper.

WATER EXPO: We may still be surrounded by water in a solid form, but the 2007 Water Expo is on the way.

The two-day event, March 24-25, is set for Hamme Pool, featuring a variety of activities geared to events that take place when the water is free flowing.

For more information and registration, drop by Hamme Pool on Monday through Friday from 1 to 9 p.m.

MEETING: The Filipino American Society of Fairbanks is to hold its annual meeting and elect new officers during a potluck March 24 at 6 p.m. at Pioneer Park.

MUSIC: Four UAF music students won awards at the National Association of Teachers of Singing competition in Anchorage.

They are: Janene Mickel, Vanessa Cox, Gwendolyn Brazier and Walter Fourie.

NewsBank inc. America's Newspapers

Paper: Charlotte Observer, The (NC)
Title: TEEN CHARGED IN DEATH OF PEDESTRIAN - DRIVER'S VISION PARTLY BLOCKED BY TINTING ON WINDOWS, POLICE SAY
Date: September 20, 2006

A Mooresville teenager who struck and killed a pedestrian earlier this month was charged Tuesday with misdemeanor death by vehicle, said Mooresville Police Chief John Crone.

Lake Norman High School student Kristina Lawson, 17, has told police she didn't see Janet Bush, 56, walking in the Morrison Plantation subdivision before she struck her.

Crone said Lawson's vision was obstructed because of tinting on her front and side car windows. Lawson had been previously cited for her window tinting and had it removed before the car was inspected in June, Crone said.

Some time after the inspection and before the Sept. 5 wreck, she put the tinting back on, Crone said.

The tinting and Lawson's failure to yield to the pedestrian's right-of-way in a crosswalk contributed to Bush's death, Crone said.

The impact of the crash hurled Bush 110 feet down Morrison Plantation Parkway.

If convicted, Lawson could face up to one year in prison, Crone said.

Lawson faces an unrelated charge of underage alcohol possession in Mecklenburg County, records show. A previous charge of reckless driving to endanger had been dismissed in Iredell County.

Morrison Plantation residents have been pushing for a traffic signal at the intersection where Bush died. It links the residential and retail sides of the development, which includes about 500 homes, Lowe's YMCA, a Harris Teeter and other businesses.

But town officials and the developers of Morrison Plantation have disagreed about who's responsible for improvements at the intersection. The parkway is a private road that belongs to the developers, but motorists use it as a cut-through between Brawley School Road and N.C. 150

A memorial service for Bush is planned for Friday at St. Therese Catholic Church, 217 Brawley School Road.
Caption:
PHOTO:1
Caption:
Bush

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Author: KATHRYN THIER, KTHIER@CHARLOTTEOBSERVER.COM, WCNC NEWS REPORTER ALEX REED CONTRIBUTED.
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Page: 2B
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NewsBank inc. America's Newspapers

Paper: San Antonio Express-News
Title: SHOOT.SIDE Premonition prompted patrolman to go home, get bulletproof vest
Date: May 19, 1992

San Antonio Patrolman **Gilbert Tovar** routinely wears his bulletproof vest only on high-crime weekend nights, but an eerie sense of foreboding prompted him to don the protective shield early Monday.

He called it a life-saving premonition.

Three hours into his overnight shift, **Tovar** stopped a motorist who fired a bullet through the tinted driver's window and into **Tovar's** chest.

The slug dented **Tovar's** metal nameplate before its deadly path was deflected by the officer's vest.

"I might not be alive right now if I hadn't worn my vest," the 29-year-old officer said Monday afternoon from his home, where he was recovering from the shooting.

Other than feeling "kind of sore" from the impact of the .38-caliber bullet slamming into his body at close-range and nursing superficial neck wounds caused by glass shards and bullet fragments, **Tovar** was in good health and in good spirits.

"I thank the Lord I'm still alive," said the **San Antonio** native, whose two-year police career is the realization of a dream that began his freshman year in high school.

With his parents at his side, **Tovar** spent Monday "just trying to rest up," adding that he planned to take his first shooting "as a learning experience."

One thing he has learned, he said, is that every night is a potentially dangerous night for a police officer.

"I only wore my vest on Friday and Saturdays. That was wrong," **Tovar** said. "It could happen anytime. Last night proved that's right."

The officer can't explain his death-defying forewarning.

"Last night, something didn't feel right," he said. "I just didn't feel right about the night."

So two hours after he began patrolling downtown streets, **Tovar** returned home to get his vest.

"It just so happens it saved my life," he said.

Authorities said **Tovar** pulled over a car that was driving erratically about 2 a.m. on the West Side. **Tovar**, unaware the motorist was a suspect in the slaying of a **San Antonio** College professor, walked up to the car and was shot.

"He caught me totally off guard," **Tovar** said. "He shot right through the window. He didn't roll the window down."

As the car sped sped away, the injured officer fired at it and then radioed for help. Police said the motorist, whom they arrested after a brief pursuit, suffered a minor graze wound in the thigh from the round fired by **Tovar**.

"I thank God that nothing happened to my son, and I'm grateful to God that that young man is OK, too," said **Tovar's** mother, Olga **Tovar**.

Mrs. **Tovar** said her son called from the ambulance to say he was injured, but all right.

"He told me not to be scared," she said.

Despite his close call, **Tovar** who became a police officer for the "challenge" and opportunity to help people will continue to proudly wear the blue uniform.

He added: "I'm going to wear my vest every night from now on, too."

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Author: Marty Sabola
Page: 1A
Copyright 1992, 2002 San Antonio Express-News

Paper: Tulsa World
Title: Motorist Killed by Train
Date: February 7, 1995

Excessive **window tinting** may have been a factor in the **death** of a teen motorist Monday morning who apparently tried to beat a train at a railroad crossing, an Oklahoma Highway Patrol trooper said.

Eric Sean Dearinger, 19, of Sand Springs was crossing a railroad intersection at South 154th West Avenue and Oklahoma 51 at about 8 a.m. when his 1991 LX Ford Mustang was struck by a train, said trooper Toby McClellan

"From all indications it looks like the driver tried to beat the train," McClellan said.

The train was travelling about 48 mph.

The **windows** on the car were tinted darker than the law allows, McClellan said.

"When **tinting** is too dark on the **windows**, this can effect the depth perception of the driver," McClellan said.

Witnesses told troopers that after the 36-car Burlington Northern freight train hit the car, the car was airborne for about 50 feet. The driver was ejected when the car landed, witnesses said

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SB 52

Information Regarding SB52

To the members of the Senate Judiciary committee,

Contained in this 20 page packet is a summary of information about Salvia divinorum to help you make a more informed decision regarding SB52. I find that Senator Therriault and his aid seem to make arguments referencing news articles and correlations as evidence. As a student of many different scientific fields I find that actual, documented, scientific evidence proves much more valuable when seeking the truth about a subject. This bill threatens religious freedom as well as personal privacy and liberty. Our state has not experienced any ill effects from the legal status of this plant.

-Jack Degenstein
asjkd7@uaa.alaska.edu

SALVIA TRUTH: The Regulation of Salvia divinorum

It is with great consideration that we give the recommendation to regulate instead of criminalizing Salvia divinorum.

This would not only be sensible and cost-effective, but would generate tax revenues and allow our already thinly stretched Law Enforcement and Judicial Agencies to concentrate on combating drugs that have actually been proven to be very harmful (Meth, Crack, Heroine, Cocaine, etc). Online public opinion polls have also shown that more than 75% of citizens oppose the scheduling of Salvia divinorum, supporting instead to regulate it.

We have created a short executive summary that dispels the grossly inaccurate information used to pass several bills in other states. We also have detailed the medicinal properties, effects of criminalization, and the solution of regulating and taxing Salvia divinorum.

Salvia divinorum has been available in the US for over 40 years, and used by millions of Americans. This, in and of itself, is a testament to the amazing safety of this medicinal plant. Many scientific studies have also shown Salvia divinorum to be a remarkably safe herb with incredible medicinal uses and a very low potential for abuse or dependence.

According to a survey of Law Enforcement Agencies, Hospitals, Colleges, Universities, and Rehab Clinics across the United States, in that time, there have been ZERO incidents of Salvia divinorum being directly related to any:

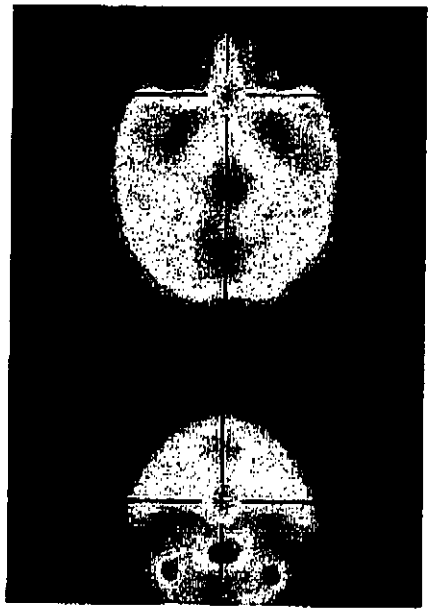
- Crimes
- Addictions
- Accidents
- Injuries

2

- Overdoses
- Deaths

Salvia divinorum has been SCIENTIFICALLY proven to:

- Be Completely ANTI-ADDICTIVE.
- Be Completely NON-TOXIC.
- Be short-acting with no negative long-term effects.
- Be non-euphoric, with higher dose effects being similar to taking a short nap and dreaming.
- Be an effective tool for psychotherapy due to its ability to enhance self-awareness.
- Be incredibly safer than alcohol, tobacco, or even marijuana.
- Be an effective natural medicinal herb.



Studies have shown Salvia divinorum may effectively treat:

- Severe Depression (long-term persistent relief)
- Post Traumatic Stress Disorder (PTSD)
- Drug addictions (crack, cocaine, meth, heroine)
- Obsessive Compulsive Disorder (OCD)
- Anxiety Dicorder
- Schizophrenia
- Chronic Pain
- Arthritis
- Congestive Heart Failure
- Stomach Disorders
- Sleep Disorders
- Bipolar Disorder
- ADD / ADHD
- Alzheimer's
- HIV / AIDS
- Cancer

The criminalization of Salvia divinorum will:

- Cost states millions upon millions per year in enforcement, prosecution and imprisonment.
- Break up and destroy otherwise healthy families through prosecution and imprisonment.
- Punish children for making a 'mistake' by tarnishing their records.
- Cause college students to lose financial aid as a result of a "drug" conviction.
- Prevent sick patients from obtaining organ transplants by branding them as a "drug"

abuser.

- Contribute to the already growing problem of prison overcrowding.
- Put our trust and the well-being of our children into the hands of drug dealers.
- Infringe upon the religious freedoms and rights of those who consider Salvia divinorum a divine sacrament.
- Violate the Religious Freedom Restoration Act (RFRA) established by the Supreme Court Case #04-1084
- Criminalize thousands of gardeners, forcing them to uproot their plants.
- Criminalize therapists who are successfully utilizing Salvia divinorum psychotherapeutically in their practices.
- Punish nonviolent medicinal users of Salvia divinorum.
- Promote unregulated, even unsafe use.
- Encourage a large black market.

The regulation of Salvia divinorum would:

- Protect our children by using the same guidelines currently used for Tobacco and Alcohol sales.
- Promote proper labeling of the product that would protect people more effectively than jails or prisons.
- Promote responsible adult use by criminalizing the sale to minors, effectively protecting our children.
- Prevent irresponsible adult use by utilizing current DWI/DUI, and public intoxication and endangerment laws.
- Be modeled off of the state of Maine which has successfully regulated Salvia divinorum.
- Implement the recommendations of studies that proved regulation is far more effective than criminalizing.
- Allow gardeners to continue utilizing Salvia divinorum as a decorative garden hedge.
- Utilize already established businesses to guard Salvia divinorum from our children via carding.
- Free up our Law Enforcement Officers to target drugs proven dangerous (Meth, Crack, Cocaine, Heroine).
- Allow psychotherapists to continue treating their patients with Salvia divinorum under their supervised care.
- Accommodate the Religious Freedom Restoration Act (RFRA) by allowing the religious use of Salvia divinorum.
- Effectively address the problem at hand, preventing children from having easy access to Salvia divinorum.
- Generate healthy amounts of tax revenues.

Scheduling is intended for substances that have a high potential for abuse, a lack of accepted safety, and no currently accepted medical use. Scientifically speaking, Salvia divinorum does not meet any of these criteria and is an excellent candidate for regulation rather than criminalization.

In Summary, we recommend, as citizens working for the public good, and also as active voters concerned about the erosion of personal liberties in America, that you not criminalize Salvia divinorum. I wholeheartedly agree with the state of Maine: "Selling or providing Salvia divinorum or salvinorin-A to anyone under the age of 18 would be a criminal offense. Possession by a minor would be a civil violation, punishable by a fine, community service, or both".

We are not against laws being passed in respect to the regulation of this plant. We just wished to convey the most complete set of facts with which to make the best laws with.

MEDICAL & MEDICINAL PROPERTIES

The genus name Salvia is derived from the Latin salvare, meaning "to heal" or "to save." The words salvation and savior also come from this same root. Salvia divinorum is endemic to the Mazatec Sierra of central Mexico, where it has a long history of medicinal use. It is used both for its psychoactive properties and as an effective treatment for arthritis, headache, and eliminatory complaints. The validity of each of these different applications is well supported by recent pharmacological findings.

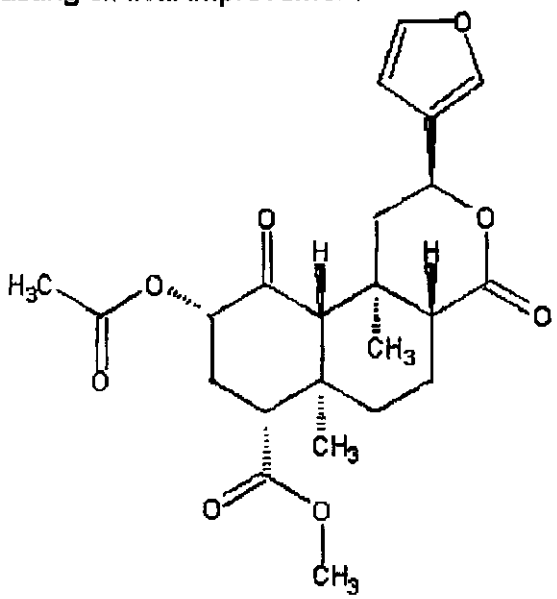
To summarize recent findings: Salvinorin A is a unique and highly selective kappa-opioid receptor agonist, and as such, it has tremendous potential for the development of a wide variety of valuable medications. The most promising of these include safe non-addictive analgesics, antidepressants, short-acting anesthetics that do not depress respiration, and drugs to treat disorders characterized by alterations in perception, including schizophrenia, Alzheimer's disease, chronic depression, and bipolar disorder (Roth et al., 2002).

Kappa-opioid receptor agonists are of particular interest to pharmacologists because they provide effective pain medications that are not habit forming and do not produce dependence. In fact, there is a growing body of evidence that indicates that kappa-opioid receptor agonists are actually "aversive"—the opposite of addictive. There are numerous case reports in which people testify to the effectiveness of this herb for managing pain. The ability of salvinorin A to block perception of pain also suggests that it proves quite useful as a general anesthetic. The fact that it does not depress respiration indicates that salvinorin A could be much safer than most general anesthetics currently in use. The traditional Mazatec use of Salvia divinorum to treat headaches and arthritis also attests to its efficacy as an analgesic.

Dr. Karl Hanes published a case report in the Journal of Clinical Psychopharmacology, in

which he describes a patient that obtained relief from chronic depression by using Salvia divinorum (Hanes, 2001). Many accounts can be found online of people who have recovered from serious, life-threatening depression with the help of this herb. It is especially interesting that these people are able to obtain persistent relief from their depression after only a few treatments. Quite unlike the continuous medication regime required with conventional antidepressants such as Prozac—which in most cases only offer symptomatic relief from depression—Salvia divinorum often produces long-lasting clinical improvement.

Because salvinorin A alters various perceptual modalities by acting on kappa-opioid receptors, it is clear that these receptors play a prominent role in the modulation of human perception. This suggests the possibility that novel psychotherapeutic compounds derived from salvinorin A would be useful for treating diseases manifested by perceptual distortions (e.g. schizophrenia, dementia, and bipolar disorders). This is a promising area of research that is important to pursue further.



Salvinorin A

Salvia divinorum has several properties that make it useful in psychotherapy: it produces a state of profound self-reflection, it improves one's ability to retrieve childhood memories, and it provides access to areas of the psyche that are ordinarily difficult to reach. There are many psychotherapists who have used this herb in their practice and are impressed with its effectiveness as a psychotherapeutic tool. It has even been used to successfully treat Post Traumatic Stress Disorder (PTSD). This is not new—the Mazatecs have long used Salvia divinorum to treat psychological complaints.

There are many popular misconceptions about Salvia divinorum. Many of these misconceptions have their origin in a few sensationalistic articles that have appeared in the popular press, and others derive from the absurd advertising claims of unethical herb vendors who deliberately exaggerate the effects of Salvia divinorum in an effort to increase sales.

The fact is that the effects of Salvia divinorum are not appealing to recreational drug users. The majority of people who try it find that they do not enjoy its effects and do not continue using it. People who use it medicinally take it infrequently. It is not euphoric or stimulating. It is not a social drug. Since it increases self-awareness, it is useless as an escapist drug. It is most useful as a natural medicinal herb.

Salvia divinorum is not addictive or habit forming. Its mechanism of action indicates that it is actually anti-addictive. Many people have reported that Salvia divinorum helped them to overcome substance abuse problems. This has included, but is not limited to, addictions of alcohol, caffeine, crack, cocaine, heroin, marijuana, methamphetamine, nicotine, and XTC.

CULTURAL & RELIGIOUS PROTECTIONS

[redacted] Salvia is primarily used

as a sacrament for spiritual ceremonies by the Mazatec peoples of Mexico and for other remedies. Hispanic women routinely use the leaves in a tea to help rid menstrual cramps, many also chew leaves to aid in pain relief or to act as a analgesic. Hispanic mothers have also been known to make a mild, highly effective, elixir for their children to help with colic and minor infections. Hispanics and people of Mexican descent have been using salvia for generations and this plant has been, and still is, a major part of Mexican culture.

There are also religious organizations within the United States which utilize Salvia Divinorum as a literal divine sacrament. They believe it is a plant that was put here, by God, to not only further spiritual enlightenment but to heal our minds, body and souls. It is the foundational basis of their beliefs and is crucially essential to the pursuits of the religion. Adult members utilize Salvia divinorum medicinally and also ritually as a divine spiritual sacrament that is approached with sincere reverence and protection. The act of cultivation is also a major part of this ritual for most followers. Many of these practices and beliefs are several hundred years old, derived from Mazatec spiritual practices. A small church in New Mexico (UDV) recently won a Supreme Court case upholding the use of certain other plants as religious sacraments (Case #04-1084). This gives guaranteed protection under the Religious Freedom Restoration Act (RFRA) that prevents interference and restriction of religious practices.

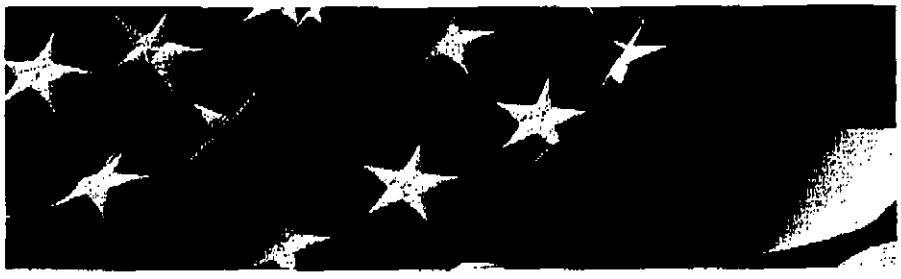
GENERAL SAFETY

Salvia divinorum is completely non-toxic. Toxicological studies have been performed by Dr. Leander Valdés at the University of Michigan, Jeremy Stewart at the University of Mississippi, Dr. Frank Jaksch of Chromadex Inc., and Wayne Briner of the University of Kansas. Neither Salvia divinorum nor salvinorin A showed toxicity in any of these studies. There is a vast body of empirical evidence that indicates Salvia divinorum is a remarkably safe herb. Indeed, the Mazatecs, who have used S. divinorum for hundreds of years, do not attribute any toxic properties to this plant.

Even after over 40 years of scrutiny the plant is still considered harmless. It has no lingering effects like a hangover, and no one, the DEA included, has heard of a person overdosing or experiencing long-term consequences. Calls to law enforcement agencies, hospitals, rehab clinics, colleges and universities across the United States, failed to reveal Salvia divinorum as a problem or a direct contributor to any addictions, conditions, accidents, injuries, crimes, or deaths. In short, Salvia divinorum is not, and will not be, a danger to anyone.

CONCLUSIONS

Salvia divinorum is a relatively obscure medicinal herb with no significant abuse potential. It does not present a risk to public health or safety.



Criminalizing it would
only serve to create a problem where one did not previously exist. The regulation of herbal medicines is a matter handled by the FDA, not the Controlled Substances Act. There is no reasonable justification for making Salvia divinorum a controlled substance. Placing it in schedule I would deprive people of a safe and useful natural medicinal herb, hamper promising medical research, and deprive people of their religious freedoms.

There are also already many laws currently in place that can, and should, be enforced against 'reckless salvia users' that would address the issues of concern and not punish responsible users. This includes, but is not limited to, laws that prohibit public endangerment, public intoxication, reckless driving, and driving under the influence. A more sensible approach would be to regulate Salvia divinorum similar to alcohol or tobacco, moving towards regulating it to individuals 18 years of age or older, making selling or providing it to anyone under the age of 18 a criminal offense with possession by a minor being a civil violation. This would even generate tax revenue during a time when funds are lean and will also save money from the costs of enforcement and legal defense funds. Imprisoned citizens are expensive and deprive states of tax dollars. This is especially true with the costs of housing prisoners on the rise.

Many well meaning bills are based on inaccurate information about Salvia divinorum. Scheduling is intended for substances that have a high potential for abuse, a lack of accepted safety, and no currently accepted medical use. Salvia divinorum does not meet any of these criteria.

ADDITIONAL RESOURCES

Source: http://en.wikipedia.org/wiki/Salvia_divinorum

- *Baca, Rep. Joe (Oct 2002). "To amend the Controlled Substances Act to place Salvinorin A in Schedule I (H.R.5607)". Bills, Resolutions. The Library of Congress (THOMAS). Retrieved on 2007-10-14.*
- Baggott, Matthew & Erowid, E. & F. (June 2004), "A Survey of *Salvia divinorum* Users", *Erowid Extracts* **6**: 12–14, <http://www.erowid.org/general/newsletter/erowid_newsletter6.pdf>. Retrieved on 4 May 2007
- Bigham, Andrea K.; Munro, Thomas A.; Rizzacasa, Mark A. & Robins-Browne, Roy M. (July 2003), "Divinatorins A-C, New Neoclerodane Diterpenoids from the Controlled Sage *Salvia divinorum*.", *Journal of Natural Products* **66**(9): 1242–1244, doi:10.1021/np030313i, <http://www.sagewisdom.org/divinatorinsa-c.pdf>. Retrieved on 25 June 2007
- *Blosser, Brett. "Lessons in The Use of Mazatec Psychoactive Plants". The Salvia divinorum Research and Information Center. Retrieved on 2007-10-19.*
- *Boire, Richard Glen; Russo, Ethan & Fish, Adam Richard et al. (Oct 2002). "Salvia divinorum ~ Information Concerning the Plant and its Active Principle—(re. H.R. 5607)". The Salvia divinorum Defense Fund. Center for Cognitive Liberty & Ethics (CCLE). Retrieved on 2007-10-16.*
- *Burchett, Sen. Tim (2006). "Senate Bill No. 3247". Public Acts, 2006, Chapter No. 700. The General Assembly the State of Tennessee. Retrieved on 2007-10-16.*
- Carlezon, William A.; Béguin, Cécile & DiNieri, Jennifer A. (October 2005), "Depressive-Like Effects of the κ-Opioid Receptor Agonist Salvinorin A on Behavior and Neurochemistry in Rats", *Journal of Pharmacology And Experimental Therapeutics* **316**

(1): 440–447, doi:10.1124/jpet.105.092304, PMID 16223871, <http://jpet.aspetjournals.org/cgi/content/abstract/316/1/440>. Retrieved on 4 May 2007

- *CCLE (2002). "HR 5607 Archive". The Entheogens and Drug Policy Project. Center for Cognitive Liberty & Ethics. Retrieved on 2007-10-14.*
- *DEA (US Dept. Justice) (Jan 2002). "21 USC Sec. 812 01/22/02". Controlled Substances Act—Title 21—Food and Drugs Chapter 13—Drug Abuse Prevention and Control Subchapter I—Control and Enforcement Part B—Authority To Control; Standards and Schedules—Section 812. Schedules of controlled substances. U.S. Drug Enforcement Administration (DEA). Retrieved on 2007-10-06.*
- DEA (US Dept. Justice) (Jun 2003). "Information Bulletin: Salvia Divinorum". *Microgram Bulletin* **XXXVI** (6). Office of Forensic Sciences Washington, D.C.: U.S. Drug Enforcement Administration (DEA). Retrieved on 2007-10-14.
- *DEA (US Dept. Justice) (Jun 2008). "Salvia Divinorum and Salvinorin A". Drugs and Chemicals of Concern. Office of Diversion Control—U.S. Drug Enforcement Administration (DEA). Retrieved on 2008-09-15.*
- *Dweck, Anthony C. (1997) Chapter One: The Folklore and Cosmetic Use of Various Salvia Species. Retrieved July 21, 2007.*
- *Erowid. "Salvia Legal Status". Erowid. Retrieved on 2007-10-14.*
- *Erowid (August 2007). "Cacahuaxochitl". Retrieved on 2007-08-16.*
- Hanes, Karl R. (December 2001), "Antidepressant Effects of the Herb Salvia Divinorum: A Case Report", *Journal of Clinical Psychopharmacology* **21**(6): 634–635, doi:10.1097/00004714-200112000-00025, <http://www.sagewisdom.org/jclinpsych.html>. Retrieved on 8 May 2007
- Harding, Wayne W.; Schmidt, Matthew & Tidgewell, Kevin (January 2006), "Synthetic Studies of Neoclerodane Diterpenes from Salvia divinorum: Semisynthesis of Salvinicins A and B and Other Chemical Transformations of Salvinorin A", *Journal of Natural Products* **69**(1): 107–112, doi:10.1021/np050398i, PMID 16441078, <http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?db=pubmed&cmd=Retrieve&dopt=AbstractPlus&list_uids=16441078&query_hl=15&itool= Retrieved on 24 March 2007
- Hingson, Ralph; Timothy Heeren, Michael Winter & Henry Wechsler (Apr 2005). "Magnitude of Alcohol-Related Mortality and Morbidity Among U.S. College Students Ages 18-24: Changes from 1998 to 2001". *Annual Review of Public Health* **26**: 259–279. doi:10.1146/annurev.publhealth.26.021304.144652. PMID 15760289. *figures cited by the Marin Institute*
- Imanshahidi, Mohsen & Hosseinzadeh, Hossein (April 2006), "The Pharmacological Effects of *Salvia* species on the Central Nervous System", *Phytotherapy Research* **20**: 427–437, doi:10.1002/ptr.1898, <http://www3.interscience.wiley.com/cgi-bin/abstract/112593742/ABSTRACT>. Retrieved on 24 March 2007
- *Lizard (2001). "Green Gnosis (from Salvia Divinorum Inspired Arts)". The Salvia divinorum Research and Information Center. Retrieved on 2007-06-28.*
- Lopez, Alan D (Apr 2005). "The evolution of the Global Burden of Disease framework for disease, injury and risk factor quantification: developing the evidence base for national, regional and global public health action". *Globalization and Health* **1** (5): 5. BioMed Central Ltd. doi:10.1186/1744-8603-1-5. PMID 15847690. *Table 2. Global burden of disease and injury attributable to selected risk factors, 1990.*
- *Madison, James et al. The Bill of Rights, the First Amendment (with regard to the United States Constitution), approved September 25, 1789, ratified December 15, 1791.*
- *Mann, John (MP) (Oct 2005). "EDM 796—Salvia divinorum". Early Day Motion. Parliamentary Information Management Systems (pims). Retrieved on 2007-10-14.*

- Marushia, Robin (June 2003), "*Salvia divinorum*: The Botany, Ethnobotany, Biochemistry and Future of a Mexican Mint", *Ethnobotany*, <http://216.239.59.104/search?q=cache:2DxTYfAd0UAJ:maya.ucr.edu/pril/ethnobotany/image/Salvia.pdf>. Retrieved on 4 May 2007
- Medana, Claudio; Massolino, Cristina; Pazzi, Marco & Baiocchi, Claudio (December 2005), "Determination of salvinorins and divinatorins in *Salvia divinorum* leaves by liquid chromatography/multistage mass spectrometry", *Rapid Communications in Mass Spectrometry* **20**(2): 131–136, doi:10.1002/rcm.2288, <http://www3.interscience.wiley.com/cgi-bin/abstract/112163281/ABSTRACT>. Retrieved on 4 May 2007
- *Mercury House Publishing Home Page. Mercury House Authors: Dale Pendell. Retrieved July 21, 2007.*
- Munro, Thomas A. & Rizzacasa, Mark A. (April 2003), "Salvinorins D-F, New Neoclerodane Diterpenoids from *Salvia divinorum*, and an Improved Method for the Isolation of Salvinorin A", *Journal of Natural Products* **66**(5): 703–705, doi:10.1021/np0205699, <http://www.sagewisdom.org/salvinorind-f.pdf>. Retrieved on 25 June 2007 supporting information
- Mowry, Mark; Mosher, Michael & Briner, Wayne (July 2003), "Acute Physiologic and Chronic Histologic Changes in Rats and Mice Exposed to the Unique Hallucinogen Salvinorin A", *Journal of Psychoactive Drugs* **35**(3): 379–382, PMID 14621136, <http://www.sagewisdom.org/mowryetal.pdf>. Retrieved on 4 May 2007
- *Nance, Rep. John (2006). "House Bill No. 2485". 2nd Session of the 50th Legislature. The State of Oklahoma. Retrieved on 2007-10-16.*
- *NIAAA (Aug 2001). "Number of deaths and age-adjusted death rates per 100,000 population for categories of alcohol-related (A-R) mortality, United States and States, 1979-96.". Database Resources / Statistical Tables. National Institute on Alcohol Abuse and Alcoholism (NIAAA). Retrieved on 2007-10-20.*
- Nutt, David; King, Leslie; Saulsbury, William & Blakemore, Colin (March 2007), "Development of a rational scale to assess the harm of drugs of potential misuse", *The Lancet* **369**(9566): 1047–1053, doi:10.1016/S0140-6736(07)60464-4, <http://www.thelancet.com/journals/lancet/article/PIIS0140673607604644/abstract>. Retrieved on 23 March 2007
- Ott, Jonathan (1995). "Ethnopharmacognosy and Human Pharmacology of Salvia divinorum and Salvinorin A". *Curare* **18** (1): 103–129. Retrieved on 2007-08-16.
- Pendell, Dale (1995). "The Salvia divinorum chapter", *Pharmako/Poeia: Plant Powers, Poisons, and Herbcraft*. San Francisco: Mercury House. ISBN 1-56279-069-2. Retrieved on 2007-06-28.
- *Peterson, Sen. Karen (2006). "Chapter 256—Formerly Senate Bill No 259 (aka "Brett's Law")". An Act to Amend Title 16 of the Delaware Code Relating to the Uniform Controlled Substances Act. The General Assembly of the State of Delaware. Retrieved on 2007-10-16.*
- Prisinzano, Thomas E. (2005), "Psychopharmacology of the hallucinogenic sage *Salvia divinorum*", *Life Sciences* **78**: 527–531, <http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6T99-4H8FR4X-3&_coverDate=12%2F22%2F2005&_alid=512807284&_rdoc=1&_fmt=&_orig=search&_qd=1&_cdi=5109&_sort=d&\ Retrieved on 21 December 2006
- *Reboletti, Rep. Dennis (Jan 2007). "Full Text of HB0457". Cont Sub-Salvia divinorum. Illinois General Assembly. Retrieved on 2007-10-16.*
- *Reboletti, Dennis (Mar 2007). "Reboletti Passes First Bill, Bans "Magic Mint"". Illinois State Representative Dennis M. Reboletti (R) 46th District. Archived from the original on*

2007-06-08. Retrieved on 2007-06-08.

- Reisfield, Aaron S. (1993), "The botany of Salvia divinorum (Labiatae)", *SIDA, Contributions to Botany* **15**(3): 349–366, <http://www.sagewisdom.org/reisfield.html>. Retrieved on 4 May 2007
- Roth, Bryan L.; Baner, Karen; Westkaemper, Richard; Siebert, Daniel; Rice, Kenner C.; Steinberg, SeAnna; Emsberger, Paul & Rothman, Richard B. (September 2002), "Salvinorin A: A potent naturally occurring nonnitrogenous kappa κ opioid selective agonist", *PNAS* **99**(18): 11934–11939, doi:10.1073/pnas.182234399, PMID 12192085, <http://www.pnas.org/cgi/content/full/99/18/11934>. Retrieved on 24 March 2007- supporting info table 1, table 2, table 3.
- *Roth, Bryan L. (Jul 2007). "Fast Moving Fronts—Comments by Professor Bryan Roth". Essential Science Indicators (ESI). Retrieved on 2007-10-06.*
- Rothman, RB; DA Gorelick & SJ Heishman et al. (April 2000). "An open-label study of a functional opioid kappa antagonist in the treatment of opioid dependence". *Journal of Substance Abuse Treatment* **18** (3): 277–281. doi:10.1016/S0740-5472(99)00074-4.
- *Sak, Rep. Michael (Feb 2008). "House Bill 5700". Michigan Legislature. Retrieved on 2007-10-16. - Full Text of HB5700*

- *SAMHSA (Feb 2008). "The NSDUH Report: Use of Specific Hallucinogens: 2006". Substance Abuse and Mental Health Services Administration, Office of Applied Studies. Retrieved on 2008-05-09.*
- Schenk, S. & Partridge, B. (April 2001), "Effect of the kappa-opioid receptor agonist, U69593, on reinstatement of extinguished amphetamine self-administration behavior.", *Pharmacol Biochem Behav.* **68**(4): 629–34, doi:10.1016/S0091-3057(00)00478-0, PMID 11526958, <http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=11526958&dopt=abstract>. Retrieved on 20 May 2007
- Schultes, Richard Evans; Albert Hofmann (1992). *Plants of the Gods: Their Sacred, Healing and Hallucinogenic Powers*. Rochester, Vermont: Healing Arts Press. ISBN 0-89281-406-3. Retrieved on 2007-06-27.
- Shulgin, Dr. Alexander; Ann Shulgin (1997). "LSD-25", *PiHKAL*. Berkeley: Transform Press. ISBN 0-963-00969-9. Retrieved on 2008-09-12.
- *Shulgin, Dr. Alexander (Jun 2003). "Ask Dr. Shulgin Online". Salvia Divinorum, Law, & Medicine. Center for Cognitive Liberty & Ethics. Retrieved on 2007-10-14.*
- Siebert, Daniel (June 1994), "Salvia divinorum and salvinorin A: new pharmacologic findings", *Journal of Ethnopharmacology* **43**(1): 53–56, doi:10.1016/0378-8741(94)90116-3, PMID 7526076, <http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=pubmed&dopt=Abstract&list_uids=7526076>. Retrieved on 4 May 2007
- *Siebert, Daniel (2002). "A Prominent Salvia Divinorum Researcher Speaks Out: Letter to Congress (RE: Bill H.R. 5607)". The Entheogens and Drug Policy Project. Center for Cognitive Liberty & Ethics. Retrieved on 2007-10-16.*
- *Siebert, Daniel. "How to obtain effects from smoked Salvia divinorum". The Salvia divinorum Research and Information Center. Retrieved on 2007-06-19.*
- *Siebert, Daniel. "The Salvia divinorum FAQ". The Salvia divinorum Research and Information Center. Retrieved on 2007-07-05.*
- *Sage Student; Daniel Siebert. "The Salvia divinorum User's Guide". The Salvia divinorum Research and Information Center. Retrieved on 2007-06-27.*
- *Siebert, Daniel. "Salvia Divinorum Inspired Arts". The Salvia divinorum Research and Information Center. Retrieved on 2007-06-28.*

//

- *Siebert, Daniel. "The Legal Status of Salvia divinorum". The Salvia divinorum Research and Information Center. Retrieved on 2007-03-04.*
- *Strain, Rep. Michael G. (2005). "Louisiana Law, Revised Statues, Rule Number 40, Section Number 989.1 — Unlawful production, manufacture, distribution, or possession of hallucinogenic plants". The Louisiana State Legislature. Retrieved on 2008-09-15.*
- *Teel. (Apr 2006) Assemblymen Jack Conners and Herb Conaway. Retrieved from PoliticsNJ.com on July 21, 2007.*
- Tidgewell, Kevin; Harding, Wayne; Holden, Ken; Dersch, Christina; Butelman, Eduardo; Rothman, Richard & Prisinzano, Thomas (September 2004), "Neoclerodane Diterpenes as Potential Drug Abuse Therapeutics", *The AAPS Journal* **6**(Theme issue:Drug Addiction—From Basic Research to Therapies (AAPS-NIDA Symposium Frontiers in Science)), <http://www.aapspharmsci.org/theme_issues/abstracts/view.asp?art=Front-04-00022&pdf=yes>. Retrieved on 20 May 2007
- Turner, D.M. (August 1996). "Effects and Experiences", *Salvinorin—The Psychedelic Essence of Salvia Divinorum*. San Francisco, CA: Panther Press. ISBN 0-9642636-2-9. Retrieved on 2007-05-20.
- Valdés, Leander J. III; Díaz, José Luis & Paul, Ara G. (May 1983), "Ethnopharmacology of ska María Pastora (Salvia divinorum, Epling and Játiva-M)", *Journal of Ethnopharmacology* **7**(3): 287–312, doi:10.1016/0378-8741(83)90004-1, <http://www.salvia-divinorum-scotland.co.uk/salvia/ethnopharmacology.htm>. Retrieved on 4 May 2007
- Valdés, Leander J. III (2001). "The Early History of Salvia divinorum". *The Entheogen Review* **X** (1): 73–75. Retrieved on 2007-08-16.
- Wasson, R. Gordon (November 1963), "Notes on the Present Status of Ololiuhqui and the Other Hallucinogens of Mexico", *Botanical Museum Leaflets, Harvard University* **20** (6): 161–212, <http://pages.prodigy.com/GBonline/liquix.htm>. Retrieved on 15 September 2007
- *YouTube (2008). "YouTube Community Guidelines". YouTube. Retrieved on 2008-09-17.*
- Zhang, Yong; Butelman, Eduardo R.; Schlussman, Stefan D.; Ho, Ann & Kreek, Mary Jeanne (May 2005), "Effects of the plant-derived hallucinogen salvinorin A on basal dopamine levels in the caudate putamen and in a conditioned place aversion assay in mice: agonist actions at κ-Opioid receptors", *Psychopharmacology* **179**(3): 551–558, doi:10.1007/s00213-004-2087-0, <http://www.springerlink.com/content/2e2e65wvctqbenvl/>. Retrieved on 4 May 2007

Further research

Source: http://en.wikipedia.org/wiki/Salvia_divinorum

- Epling, Carl & Játiva-M, Carlos D. (December 1962), "A New Species of *Salvia* from Mexico", *Botanical Museum Leaflets, Harvard University* **20**(3), <http://www.sagewisdom.org/epling&jativa.html>. Retrieved on 8 May 2007
- Hanes, Karl R. (Spring 2003), "*Salvia divinorum:* Clinical and Research Potential", *Multidisciplinary Association for Psychedelic Studies* **13**(1): 18–20, <http://www.maps.org/news-letters/v13n1/13118han.html>. Retrieved on 19 May 2007
- Hofmann, Albert (1980). "Chapter 6. The Mexican Relatives of LSD", *LSD—My Problem Child*. New York: McGraw-Hill. ISBN 0-07-029325-2.
- Sherratt, Dr Andrew (Presenter); Sarah Marris (Producer); with Daniel Seibert, Dr Françoise Barbira-Freedman, Dr Tim Kendell, Dr Jon Robbins and Sean Thomas. (1998). *Sacred Weeds: Salvia divinorum* (video) [Documentary]. UK: TVF Productions

(for Channel 4). Retrieved on 2007-08-08.
- Wasson, R. Gordon (December 1962), "A New Mexican Psychotropic Drug from the Mint Family", *Botanical Museum Leaflets, Harvard University* **20**(3): 53–56, <http://www.sagewisdom.org/wasson1.html>. Retrieved on 6 May 2007

Articles from Scientific Journals and Other Publications
All the resources cited below are to be found at: http://www.sagewisdom.org

- *Salvia divinorum* and Salvinorin A: New Pharmacologic Findings.
by Daniel Siebert. *Journal of Ethnopharmacology.* 43: 53–56 (1994).
- Localization of Salvinorin A and Related Compounds in Glandular Trichomes of the Psychoactive
by Daniel Siebert. *Annals of Botany* 93(6): 763–771 (2004).
- High Performance Liquid Chromatographic Quantification of Salvinorin A from Tissues of *Salvia* c
by Gruber JW, Siebert DJ, Der Marderosian AH, and Hock RS. *Phytochemical Analysis* 10(1):22-
- Salvinorin A: A Potent Naturally Occurring Nonnitrogenous Kappa Opioid Selective Agonist.
by Roth BL, Baner K, Westkaemper R, Siebert D, Rice KC, Steinberg S, Ernsberger P, and Rothı
PNAS. 99(18): 11934–11939 (2002).
Supporting information: table 3, table 4, table 5.
- Salvinorin A, an Active Component of the Hallucinogenic Sage *Salvia divinorum,* is a Highly Effic
Kappa Opioid Receptor Agonist: Structural and Functional Considerations.
by Chavkin C, Sud S, Jin W, Stewart J, Zjawiony JK, Siebert DJ, Toth BA, Hufeisen SJ, and Roth
The Journal of Pharmacology and Experimental Therapeutics. 308(3): 1197–1203 (2004).
- Comparison of Pharmacological Activities of Three Distinct Kappa-Ligands (Salvinorin A, TRK-82
on opioid receptors *in vitro* and their antipruritic and antinociceptive activities *in vivo.*
by Wang Y, Tang K, Inan S, Siebert DJ, Holzgrabe U, Lee DYW, Huang P, Li JG, Cowan A, and
The Journal of Pharmacology And Experimental Therapeutics. 312(1): 220–230 (2005).
- 2-Methoxymethyl-Salvinorin B is a Potent Kappa Opioid Receptor Agonist with Longer-Lasting Ac
by Wang Y, Chen Y, Xu W, Lee DY, Ma Z, Rawls SM, Cowan A, Liu-Chen LY.
The Journal of Pharmacology And Experimental Therapeutics. [Epub ahead of print December 1
- The Hallucinogenic Herb *Salvia divinorum* and Its Active Ingredient Salvinorin A Inhibit Enteric Ch
Pig Ileum.
by Capasso R, Borrelli F, Capasso F, Siebert DJ, Stewart DJ, Zjawiony JK, Izzo AA.
Neurogastroenterology and Motility. 18: 69–75 (2006).
- The Hallucinogenic Herb *Salvia divinorum* and Its Active Ingredient Salvinorin A Reduce Inflamm
by Capasso R, Borrelli F, Zjawiony J, Kutrzeba L, Aviello G, Samelli G, Capasso F, Izzo AA.
Neurogastroenterology and Motility. [Epub ahead of print Sep 4, 2007].
- Antinociceptive and Hypothermic Effects of Salvinorin A are Abolished in a Novel Strain of KOR-
by Ansonoff MA, Zhang J, Czyzyk T, Rothman RB, Stewart J, Xu H, Zjwiony J, Siebert DJ, Yang
The Journal of Pharmacology and Experimental Therapeutics. 318(2): 641-648 (2006).
- Daniel Siebert Speaks...
Interviewed by Will Beifuss. *The Entheogen Review.* Vol. 8 No. 3, Autumn 1999.
- The History of the First *Salvia divinorum* Plants Cultivated Outside of Mexico.
by Daniel Siebert. *The Entheogen Review.* Vol. 12 No. 4, Winter 2003.

13

- Salvinorin A: The 'Magic Mint' Hallucinogen Finds a Molecular Target in the Kappa Opioid Rece by Sheffler DJ and Roth BL. *Trends in Pharmacological Sciences.* Vol.24 No.3 March 2003.
- Salvinorin A: A Novel and Highly Selective Kappa-Opioid Receptor Agonist. by Yan F and Roth BL. *Life Sciences.* Vol.75 No.22 (2004).
- Salvinorin A: From Natural Product to Human Therapeutics. by Vortherms TA and Roth BL. *Molecular Interventions.* Vol.6 No.5 (2006).
- Differential Helical Orientations Among Related G Protein-Coupled Receptors Provide a Novel M Studies with Salvinorin A and the Kappa-Opioid Receptor. by Vortherms TA, Mosier PD, Westkaemper RB, Roth BL. *Journal of Biological Chemistry.* 282(5): 3146–3156 (2007).
- Acute Physiologic and Chronic Histologic Changes in Rats and Mice Exposed to the Unique Halli by Mowry M, Mosher M, Briner W. *Journal of Psychoactive Drugs.* 35(3): 379–382 (2003).
- The Plant-Derived Hallucinogen, Salvinorin A, Produces Kappa-Opioid Agonist-like Discriminativ by Butelman E, Harris T, and Kreek MJ. *Psychopharmacology (Berl).* 172(2): 220–224 (2004).
- Effects of Salvinorin A, a Kappa-Opioid Hallucinogen, on a Neuroendocrine Biomarker Assay in Nonhuman Primates With High Kappa-Receptor Homology to Humans. by Butelman ER, Mandau M, Tidgewell K, Prisinzano TE, Yuferov V, Kreek MJ. *Journal of Pharmacology and Experimental Therapeutics.* 320(1): 300–306 (2007).
- A New Species of *Salvia* from Mexico. by Carl Epling and Carlos D. Játiva–M. *Botanical Museum Leaflets Harvard University* (1962).
- A New Mexican Psychotropic Drug From the Mint Family. by R. Gordon Wasson. *Botanical Museum Leaflets Harvard University* (1962).
- Notes on the Present Status of Ololiuhqui and the Other Hallucinogens of Mexico. by R. Gordon Wasson. *Botanical Museum Leaflets Harvard University* (1963).
- A Mazatec girl preparing *Salvia divinorum* leaves on a *metate.* Photo taken in 1962 by R. Gordon Wasson.
- In Search of the Magic Plant "*Ska Maria Pastora*" in the Mazatec Country. by Albert Hofmann. From: *LSD: My Problem Child* (1979).
- Salvinorin, A New *trans*-Neoclerodane Diterpene from *Salvia divinorum* (Labiatae). by Ortega A, Blount JF, Manchand PS. *Journal of the Chemical Society Perkins Transactions I* (1
- Ethnopharmacology of Ska Maria Pastora (*Salvia divinorum*, Epling and Játiva-M.). by L.J. Valdés J III, *et al. Journal of Ethnopharmacology* (1983).
- Etnofarmacologia di Ska Maria Pastora (*Salvia divinorum*, Epling and Játiva-M.) An Italian transla
- Divinorin A, a Psychotropic Terpenoid, and Divinorin B from the Hallucinogenic Mexican Mint, *Sa* by L.J. Valdés III, *et al. Journal of Organic Chemistry* (1984).
- Loliolide from *Salvia divinorum.* by L.J. Valdés III. *Journal of Natural Products* (1986).
- Studies of *Salvia divinorum* (Lamiaceae), an Hallucinogenic Mint from the Sierra Mazateca in Oa by L.J. Valdés III, *et al. Economic Botany* (1987).
- *Salvia divinorum* and the Unique Diterpene Hallucinogen, Salvinorin (Divinorin) A. by L.J. Valdés III. *Journal of Psychoactive Drugs* (1994).
- "Divinorin C," a New Neoclerodane Diterpene from a Bioactive TLC Fraction of *Salvia divinorum.* Lab notes from the desk of L. J. Valdés III. *The* Salvia divinorum *Research and Information Cent*
- Salvinorin C, a New Neoclerodane Diterpene from a Bioactive Fraction of the Hallucinogenic Me by L.J. Valdés III, *et al. Organic Letters* (2001).

- The Early History of *Salvia divinorum.*
  by L. J. Valdés III. *The Entheogen Review* (2001) X(2): [73-75]
- Some photos of *Salvia divinorum* from the *Sierra Mazateca.* by L.J. Valdés III
- The Absolute Stereochemistry of Salvinorins.
  by Koreeda, M., *et al. Chemistry Letters* (1990).
- Kappa-Opioid Receptor-Mediated Effects of the Plant-Derived Hallucinogen, Salvinorin A, on Inv
  Mouse.
  by Fantegrossi WE, Kugle KM, Valdis LJ III, Koreeda M, Woods JH.
  Behavioural pharmacology. 16(8): 627-633 (2005).
- Salvinorins D-F, New Neoclerodane Diterpenoids from *Salvia divinorum,* and an Improved Metho
  And supporting information. by Munro TA, Rizzacasa MA.
  Journal of Natural Products. 66(5): 703-705 (2003).
- Divinatorins A-C, New Neoclerodane Diterpenoids from the Controlled Sage *Salvia divinorum.* Ar
  by Bigham AK, Munro TA, Rizzacasa MA, Robins-Browne RM.
  Journal of Natural Products. 66(9): 1242-1244 (2003).
- Studies Toward the Pharmacophore of Salvinorin A, a Potent Kappa Opioid Receptor Agonist.
  And supporting information.by Munro T, Rizzacasa M, Roth BL, Toth B, Yan F
  Journal of Medicinal Chemistry. 48(2): 345–348 (2005).
- Autoxidation of Salvinorin A under Basic Conditions.
  And supporting information.by Munro T, Goetchius G, Roth BL, Vortherms T, Rizzacasa M.
  Journal of Organic Chemistry. 70(24): 10057-10061 (2005).
- 8-*epi*-Salvinorin B: Crystal Structure and Affinity at the Kappa Opioid Receptor.
  by Munro TA, Duncan KK, Staples RJ, Xu W, Liu-Chen LY, Beguin C, Carlezon WA Jr, Cohen BI
  Beilstein Journal of Organic Chemistry. Epub ahead of print (2007).
- The Chemistry of *Salvia divinorum.*
  by Thomas Munro. PhD dissertation.
- Standard Protecting Groups Create Potent and Selective Kappa Opioids: Salvinorin B Alkoxymet
  by Munro TA, Duncan KK, Xu W, Wang Y, Liu-Chen LY, Carlezon WA Jr, Cohen BM, Beguin C.
  Bioorganic and Medicinal Chemistry. [Epub ahead of print October 24, 2007].
- Antidepressant Effects of the Herb *Salvia divinorum:* a Case Report.
  by Karl R. Hanes, PhD. *Journal of Clinical Psychopharmacology* (2001).
- *Salvia divinorum:* Clinical and Research Potential.
  by Hanes KR. *MAPS Bulletin* 13(1): 18–20 (2003).
- *Salvia divinorum* and Salvinorin A: An Update on Pharmacology and Analytical Methodology.
  by Grundmann O, Phipps SM, Zadezensky I, Butterweck V.
  Planta Medica 73(10): 1039–1046 (2007).
- Use of Nonprohibited Hallucinogenic Plants: Increasing Relevance for Public Health?
  A case report and literature review on the consumption of *Salvia divinorum* (Diviner's Sage).
  by Bócheler R, Gleiter CH, Schwoerer P, and Gaertner I.
  Pharmacopsychiatry. 38(1): 1–5 (2005).
- A Facile Method for the Preparation of Deuterium Labeled Salvinorin A: Synthesis of [2,2,2-$^2H_3$]-I
  by Kevin Tidgewell, Wayne W. Harding, Mark Schmidt, Kenneth G. Holden, Daryl J. Murry, and T
  Bioorganic and Medicinal Chemistry Letters. 14(20): 5099-5102 (2004).
- Salvinicins A and B, New Neoclerodane Diterpenes from *Salvia divinorum.*
  by Harding WW, Tidgewell K, Schmidt M, Shah K, Dersch CM, Snyder J, Parrish D, Deschamps
  Organic Letters. 7(14): 3017–3020 (2005).

- Neoclerodane Diterpenes as a Novel Scaffold for Mu Opioid Receptor Ligands.
  by Harding WW, Tidgewell K, Byrd N, Cobb H, Dersch CM, Butelman ER, Rothman RB, Prisinzai
  Journal of Medicinal Chemistry. 48(15): 4765–4771 (2005).
- An Opioid Agonist That Does Not Induce Mu-Opioid Receptor–Arrestin Interactions or Receptor I
  by Groer CE, Tidgewell K, Moyer RA, Harding WW, Rothman RB, Prisinzano TE, Bohn LM.
  Molecular Pharmacology. 71(2): 549–557 (2007).
- Salvinorin A: Allosteric Interactions at the Mu-Opioid Receptor.
  by Rothman RB, Murphy DL, Xu H, Godin JA, Dersch CM, Partilla JS, Tidgewell K, Schmidt M, P
  Journal of Pharmacology and Experimental Therapeutics. 320(2): 801–810 (2007).
- Determination of Salvinorin A in Body Fluids by High Performance Liquid Chromatography-Atmos
  by Schmidt MS, Prisinzano TE, Tidgewell K, Harding W, Butelman ER, Kreek MJ, and Murry DJ.
  Journal of Chromatography. B. 818(2): 221–225 (2005).
- Pharmacokinetics of the Plant-Derived Kappa-Opioid Hallucinogen Salvinorin A in Nonhuman Pri
  by Schmidt MD, Schmidt MS, Butelman ER, Harding WW, Tidgewell K, Murry DJ, Kreek MJ, Pris
  Synapse. 58(3): 208–210 (2005).
- Psychopharmacology of the Hallucinogenic Sage *Salvia divinorum.*
  by Prisinzano TE.
  Life Sciences. 78(5): 527-531 (2005).
- Synthetic Studies of Neoclerodane Diterpenes from *Salvia divinorum:* Semisynthesis of Salvinicir and Other Chemical Transformations of Salvinorin A.
  by Harding WW, Schmidt M, Tidgewell K, Kannan P, Holden KG, Gilmour B, Navarro H, Rothmar
  Journal of Natural Products. 69(1): 107–112 (2006).
- Synthetic Studies of Neoclerodane Diterpenes from *Salvia divinorum:* Selective Modification of th
  by Harding WW, Schmidt M, Tidgewell K, Kannan P, Holden KG, Dersch CM, Rothman RB, Prisi
  Bioorganic & Medicinal Chemistry Letters. 16(12): 3170–3174.
- Synthesis of Salvinorin A Analogues as Opioid Receptor Probes.
  by Tidgewell K, Harding WW, Lozama A, Cobb H, Shah K, Kannan P, Dersch CM, Parrish D, De
  TE.
  Journal of Natural Products. 69(6): 914–918 (2006).
- Synthetic Studies of Neoclerodane Diterpenes from *Salvia divinorum:* Preparation and Opioid Re
  by Simpson DS, Katavic PL, Lozama A, Harding WW, Parrish D, Deschamps JR, Dersch CM, Pa
  Prisinzano TE.
  Journal of Medicinal Chemistry. [ePublished ahead of print Jun 20, 2007].
- Synthetic Studies of Neoclerodane Diterpenes from *Salvia divinorum:* Exploration of the 1-Positio
  by Holden KG, Tidgewell K, Marquam A, Rothman RB, Navarro H, Prisinzano TE.
  Bioorganic and Medicinal Chemistry Letters. . 17(22): 6111–6115 (2008).
- Neo-clerodane Diterpenes from the Hallucinogenic Sage *Salvia divinorum.*
  And errata. by Shirota O, Nagamatsu K, Sekita S.
  Journal of Natural Products. 69(12): 1782–1786. (2006).
- Asymmetric Synthesis of Salvinorin A, a Potent Kaapa Opioid Receptor Agonist.
  by Scheerer JR, Lawrence JF, Wang GC, Evans DA.
  Supporting information here (4 MB file).
  Journal of the American Chemical Society. [ePublished ahead of print June 30, 2007].
- Total Synthesis of the Hallucinogenic Neoclerodane Diterpenoid Salvinorin A.
  by Nozawa M, Suka Y, Hoshi T, Suzuki T, Hagiwara H.
  Organic Letters. [ePublished ahead of print March 1, 2008].
- Quantification of the Plant-Derived Hallucinogen Salvinorin A in Conventional and Non-Conventic
  by gas chromatography/mass spectrometry after *Salvia divinorum* smoking.

16

by Pichini S, Abanades S, Farre M, Pellegrini M, Marchei E, Pacifici R, Torre RD, and Zuccaro P.
Rapid Communications in Mass Spectrometry. 19(12): 1649–1656 (2005).

- Synthesis and In Vitro Pharmacological Evaluation of Salvinorin A Analogues Modified at C(2).
by Beguin C, Richards MR, Wang Y, Chen Y, Liu-Chen LY, Ma Z, Lee DY, Carlezon WA Jr, and
Bioorganic and Medicinal Chemistry Letters. 15(11): 2761–2765 (2005).
- Synthesis and In Vitro Pharmacological Studies of New C(2) Modified Salvinorin A Analogues.
by Lee DY, Karnati VV, He M, Liu-Chen LY, Kondaveti L, Ma Z, Wang Y, Chen Y, Beguin C, Carl
Bioorganic and Medicinal Chemistry Letters. 15(16): 3744–3747 (2005).
- Synthesis and In Vitro Pharmacological Studies of C(4) Modified Salvinorin A Analogues.
by Lee DY, He M, Kondaveti L, Liu-Chen LY, Ma Z, Wang Y, Chen Y, Li JG, Beguin C, Carlezon
Bioorganic and Medicinal Chemistry Letters. Jul 25, 2005 [Epub ahead of print].
- New Neoclerodane Diterpenoids Isolated From the Leaves of *Salvia divinorum* and Their Binding
Receptors.
by Lee DY, Ma Z, Liu-Chen LY, Wang Y, Chen Y, Carlezon WA Jr, Cohen B.
Bioorganic and Medicinal Chemistry Letters. Aug 3, 2005 [Epub ahead of print].
- Synthesis and In Vitro Pharmacological Studies of New C(4)-Modified Salvinorin A Analogues.
by Lee DY, He M, Liu-Chen LY, Wang Y, Li JG, Xu W, Ma Z, Carlezon WA Jr, Cohen B
Bioorganic and Medicinal Chemistry Letters. 16(21): 5498–5502 (2006).
- Depressive-like Effects of the Kappa-Opioid Receptor Agonist Salvinorin A on Behavior and Neur
by Carlezon Jr WA, Beguin C, Dinieri JA, Baumann MH, Richards MR, Todtenkopf MS, Rothman
Journal of Pharmacology and Experimental Therapeutics 316(1): 440–447 (2006)
- Synthesis and In Vitro Evaluation of Salvinorin A Analogues: Effect of Configuration at C(2) and S
by Beguin C, Richards MR, Li JG, Wang Y, Xu W, Liu-Chen LY, Carlezon WA Jr, Cohen BM.
Bioorganic and Medicinal Chemistry Letters. 16(17): 4679–4685 (2006).
- Revised Structure of Deacetyl-1,10-didehydrosalvinorin G.
by Ma Z, Lee DY.
Tetrahedron Letters. 48(31): 5461–5464 (2007).
- N-Methylacetamide Analogue of Salvinorin A: A Highly Potent and Selective Kappa Opioid Recep
by Beguin C, Potter DN, Dinieri JA, Munro TA, Richards MR, Paine TA, Berry L, Zhao Z, Roth BL
Cohen BM.
The Journal of Pharmacology and Experimental Therapeutics. 324(1): 188–195 (2008).
- Exposure to the Selective Kappa-Opioid Receptor Agonist Salvinorin A Modulates the Behavioral
Rats.
by Chartoff EH, Potter D, Domoz-Worne D, Cohen BM, Carlezon WA Jr
Neuropsychopharmacology. [Epub ahead of print Jan 9, 2008].
- Identification of the Molecular Mechanisms by Which the Diterpenoid Salvinorin A Binds to Kappa
by Yan F, Mosier PD, Westkaemper RB, Stewart J, Zjawiony JK, Vortherms TA, Sheffler DJ, Roth
Biochemistry. 44(24): 8643–8651 (2005).
- Unambiguous NMR Spectral Assignments of Salvinorin A.
by Giner JL, Kiemle DJ, Kutrzeba L, Zjawiony J.
Magnetic Resonance in Chemistry. 45(4): 351–354 (2007).
- Biosynthesis of Salvinorin A Proceeds via The Deoxyxylulose Phosphate Pathway.
by Kutrzeba L, Dayan FE, Howell J, Feng J, Giner JL, Zjawiony JK.
Phytochemistry. 68(14): 1872–1881 (2007).
- Convenient synthesis and in vitro pharmacological activity of 2-thioanalogs of salvinorins A and B
by Bikbulatov RV, Yan F, Roth BL, Zjawiony JK.
Bioorganic and Medicinal Chemistry Letters. 17(8): 2229–2232 (2007).
- Short Synthesis of a Novel Class of Salvinorin A Analogs with Hemiacetalic Structure.

by Bikbulatov RV, Stewart J, Jin W, Yan F, Roth BL, Ferreira D, Zjawiony JK
Tetrahedron Letters. 49: 937–940 (2008).

- Studies Towards the Synthesis of Salvinorin A.
by Lingham AR, Högel HM, Rook TJ.
Australian Journal of Chemistry. 59(5): 340–348 (2006).
- Determination of Salvinorins and Divinatorins in *Salvia divinorum* Leaves by Liquid Chromatograp
by Medana C, Massolino C, Pazzi M, Baiocchi C.
Rapid Communications in Mass Spectrometry. 20(2): 131–136 (2005).
- Analysis of the Psychoactive Terpenoid Salvinorin A Content in Five *Salvia divinorum* Herbal Pro
by Wolowich WR, Perkins AM, Cienki JJ.
Pharmacotherapy. 26(9): 1268–1272(2006).
- The Antinociceptive Effect of Salvinorin A in Mice.
by Trentini, John F., Larry G. French, and Joseph S. Erlichman.
European Journal of Pharmacology. 545 (2–3): 129–133 (2006).
- Antinociceptive Profile of Salvinorin A, a Structurally Unique Kappa Opioid Receptor Agonist.
by McCurdy CR, Sufka KJ, Smith GH, Warnick JE, Nieto MJ.
Pharmacology, Biochemistry, and Behavior. [Epub ahead of print Jan 20, 2006].
- A Unique Binding Epitope for Salvinorin A, a Non-Nitrogenous Kappa Opioid Receptor Agonist.
by Kane BE, Nieto MJ, McCurdy CR, Ferguson DM.
FEBS Journal. 273(9): 1966–1974 (2006).
- Toward a Structure-Based Model of Salvinorin A Recognition of the Kappa-Opioid Receptor.
by Kane BE, McCurdy CR, Ferguson DM.
Journal of Medicinal Chemestry. [ePublished ahead of print Feb 23, 2008].
- A Combined Ligand-Based and Target-Based Drug Design Approach for G-Protein Coupled Rec
Application to Salvinorin A, a Selective Kappa Opioid Receptor Agonist.
by Singh N, Chevé G, Ferguson DM, McCurdy CR.
Journal of Computer-Aided Molecular Design. 20(7–8): 471–493 (2006).
- The Hallucinogen Derived from *Salvia divinorum,* Salvinorin A, has κ-Opioid Agonist Discriminati
by Willmore-Fordham CB, Krall DM, McCurdy CR, Kinder DH.
Neuropharmacology. 53(4): 481–486 (2007).
- Discriminative Stimulus Effects of 1-(2,5-dimethoxy-4-methylphenyl)-2-aminopropane (DOM) in R
by Li JX, Rice KC, France CP.
Journal of Pharmacology and Experimental Therapeutics. [Epub ahead of print Novevember 9, 2
- Intramolecular Diels-Alder/Tsuji Allylation Assembly of the Functionalized Trans-Decalin of Salvin
by Burns AC, Forsyth CJ.
Organic Letters. 10(1): 97–100 (2008).
- PCR and PCR-RFLP of the 5S-rRNA-NTS Region and Salvinorin A Analyses for the Rapid and L
divinorum.
by Bertea CM, Luciano P, Bossi S, Leoni F, Baiocchi C, Medana C, Azzolin CM, Temporale G, L
Phytochemistry. 67(4): 371–378 (2006).
- Authentication and Ultra Performance Liquid Chromatography (UPLC)/MS Analysis of Magic Min
Plants.
by Maruyama T, Kamakura H, Kikura-Hanajiri R, Goda Y.
Yakugaku Zasshi. 128(1): 179–183 (2008).
- Hallucinatory and Rewarding Effect of Salvinorin A in Zebrafish: Kappa-Opioid and CB1-Cannabi
by Braida D, Limonta V, Pegorini S, Zani A, Guerini-Rocco C, Gori E, Sala M.
Psychopharmacology. 190(4): 441–448 (2007).
- Involvement of Kappa-Opioid and Endocannabinoid System on Salvinorin A-Induced Reward.

by Braida D, Limonta V, Capurro V, Fadda P, Rubino T, Mascia P, Zani A, Gori E, Fratta W, Parc
Biological Psychiatry. 63(3): 286–292 (2008).

- Opioid Receptors and Legal Highs: *Salvia divinorum* and Kratom.
by Babu KM, McCurdy CR, Boyer EW.
Clinical Toxicology (Philadelphia, PA). 46(2): 146–152 (2008).
- Ethnopharmacognosy and Human Pharmacology of *Salvia divinorum* and Salvinorin A.
by Jonathan Ott. *Curare.* 18(1): 103-129 (1995).
- Psychoactive Card IV. *Salvia divinorum* Epling et Játiva: Leaves of the Shepherdess.
by Jonathan Ott. Eleusis, n. 4, pp. 31-39, 1996.
- Scheda Psicoattiva IV. *Salvia divinorum* Epling et Játiva: Foglie della Pastora An Italian translatio
- Dose-Response Effects of Salvinorin A on Basal Dopamine Levels in the Caudate Putamen of C
by Zhang Y, Butelman ER, Schlussman SD, Ho A, Kreek MJ.
- Effects of the Plant-Derived Hallucinogen Salvinorin A on Basal Dopamine Levels in the Caudate and in a Conditioned Place Aversion Assay in Mice: Agonist Actions at Kappa Opioid Receptors.
by Yong Zhang Y, Butelman ER, Schlussman SD, Ho A, Kreek MJ.
Psychopharmacology (Berl). 179(3): 551–558 (2005).
- Pharmacokinetics of the Potent Hallucinogen, Salvinorin A in Primates Parallels the Rapid Onset Humans.
by Hooker JM, Xu Y, Schiffer W, Shea C, Carter P, Fowler JS.
Neuroimage. ePublished ahead of print March 15, 2008.
- Effects of Acute and Repeated Administration of Salvinorin A on Dopamine Function in the Rat D
by Gehrke BJ, Chefer VI, Shippenberg TS.
Psychopharmacology (Berl). [ePublished ahead of print Feb 2, 2008].
- A Select Set of Opioid Ligands Induce Up-Regulation by Promoting the Maturation and Stability of the Rat Kappa Opioid Receptor in Human Embryonic Kidney 293 Cells.
by Wannemacher KM, Yadav PN, Howells RD.
Journal of Pharmacology and Experimental Therapies. [Epub ahead of print Aug 24, 2007].
- Pharmacological Characterization of the Novel Kappa Opioid Agonist Salvinorin A in the Mouse
This study demonstrates that salvinorin A is active in vivo at kappa opioid receptors.
- The Rise of a New Psychoactive Agent: *Salvia divinorum.*
by Appel J, Kim-Appel D.
International Journal of Mental Health and Addiction. 5: 248–253 (2007).
- Use of *Salvia divinorum,* an Unscheduled Hallucinogenic Plant: A Web-Based Survey of 500 Use
This survey characterized the reasons, methods, and reported consequences of *Salvia divinorum*
- Pattern of Use and Subjective Effects of *Salvia divinorum* Among Recreational Users.
by González D, Riba J, Bouso JC, Gómez-Jarabo G, Barbanoj MJ.
Drug and Alcohol Dependence. 85(2): 157–162 (2006).
- *Salvia divinorum*–Präsenz einer neuen Droge im Internet. [*Salvia divinorum*—Representation of a
[Abstract in English and German. Article in German only].
by Siemann H, Specka M, Schifano F, Deluca P, Scherbaum N.
Gesundheitswesen. 68(5): 323–327 (2006).
- Internet Access to *Salvia divinorum:* Implications for Policy, Prevention, and Treatment.
by Hoover V, Marlowe DB, Patapis NS, Festinger DS, Forman RF.
Journal of Substance Abuse Treatment. [Epub ahead of print Oct 9, 2007].
- College student use of *Salvia divinorum.*
by Lange JE, Reed MB, Croff JM, Clapp JD.
Drug and Alcohol Dependence. [Epub ahead of print Dec 17, 2007].

- *Salvia divinorum* Epling et Játiva-M. (Labiatae): An Ethnopharmacological Investigation. by Sherry A. Rovinsky. *McNair Scholarly Review* (1998).
- *Salvia divinorum:* An Hallucinogenic Mint Which Might Become a New Recreational Drug in Switz Giroud et al. *Forensic Science International.* 112(2–3): 143–150 (2000).
- Salvinorin: The Psychedelic Essence of *Salvia divinorum.* An extraordinary book by D.M.Turner (
- The Mushrooms of Language by Henry Munn. This essay provides valuable insight into the Maze
- NovaScreen® receptor selectivity report on salvinorin-A.
- Sage Wisdom: *Salvia divinorum* Branches Out. by Robert Campbell. An article from TRP Magazi
- Cultivating Diviner's Sage by Will Beifuss. An article from TRP Magazine (1997).
- Under the Spell of the Magic Mint. by Christopher Ketcham. Published in GQ magazine. June, 20

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Senator Gene Therriault

Sponsor Statement

Senate Bill 52

Salvia Divinorum (pronounced Div-i-nor-um) is very powerful a hallucinogenic substance primarily grown in the mountainous regions of Mexico. It has a history of use as a vision inducing substance by the Mazatec Indians of the region. Because it is so easy to misuse and can produce long-lasting psychological effects, it is banned or tightly controlled in at least 6 countries and an ever growing number of states.

The leaves of this perennial herb, once processed can be eaten, drunk as a tea, or inhaled. Salvia is presently available to persons in Alaska who choose to order it over the Internet. Although purchasers of this substance are asked to certify they are over the age of 18, we know such restrictions are loosely applied. Sellers and their web sites promise mind-altering experiences, but experts warn that depression and schizophrenia are very real risks with this drug. (www.intheknowzone.com)

As with all items that enter the pop drug culture, Salvia Divinorum is enjoying a rise in use due to the lack of restrictions. We have an opportunity to get ahead of this powerful substance and reduce the risk to our young people by following the lead of other states and countries in declaring Salvia a dangerous substance and adding it to our Schedule II list of illegal drugs. Such action would place it in the same category as Mescaline and Peyote.

I urge your support for this important action.

Email: Senator_Gene_Therriault@legis.state.ak.us

delawareonline The News Journal

http://www.delawareonline.com/apps/pbcs.dll/article?AID=/20060226/NEWS/602260356/1006

Legal high new worry for parents

LSD-like herb blamed in Delaware teen's suicide

BY MIKE CHALMERS
THE NEWS JOURNAL
02/26/2006

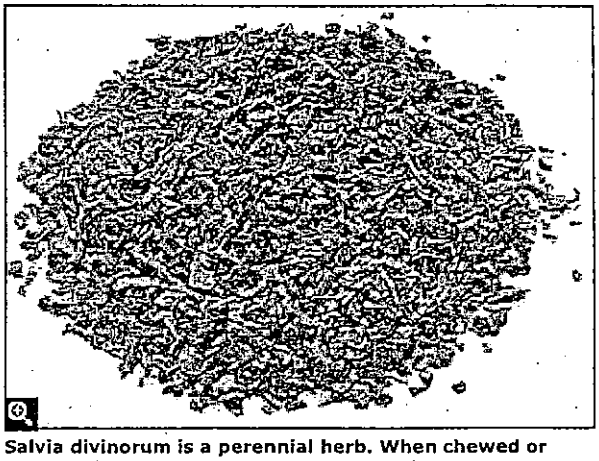
In the daily search for reasons behind their 17-year-old son's suicide, Dennis and Kathy Chidester keep coming back to the same answer: salvia divinorum.

The herb, a cousin of the flowering sages enjoyed by backyard gardeners, contains the world's most potent natural hallucinogen, as strong as LSD. The drug is legal in most states, including Delaware, and easily available through hundreds of Internet sites, including eBay.

That aura of legitimacy lulled Brett Chidester, a straight-A senior at Salesianum School, into thinking smoking salvia leaves was safe, even while convincing himself that he had gained incredible insights into the universe, his parents said.

COURTESY OF THE CHIDESTER FAMILY

Bret Chidester's parents are certain that smoking salvia divinorum led him to take his own life.



Salvia divinorum is a perennial herb. When chewed or smoked, it produces LSD-type hallucinations.

"Salvia allows us to give up our senses and wander in the interdimensional time and space," Brett wrote in an essay his parents found after his death. "Also, and this is probably hard for most to accept, our existence in general is pointless. Final point: Us earthly humans are nothing."

Brett acted on that belief Jan. 23.

Dennis Chidester had been trying to call Brett all day with no luck. He came home at 5 p.m., opened the garage door and saw a tent pitched inside -- an odd sight that he didn't process right away.

"I just ran upstairs calling his name," Chidester remembered. "Now my heart's pounding. He's not in his room. I go downstairs, I go into the garage and I open up that tent.

"That's the one thing I didn't want to do," he said, his voice cracking. "I found him in there, dead. He had taken a charcoal grill and ... carbon monoxide poisoning."

Brett's essay, suicide note and actions before his death still

About the time Brett Chidester started smoking salvia, his parents say, he began falling into moods of anger or melancholy.

leave his parents with more questions than answers.

"We just won't have any answers, and we have to learn to accept that," Kathy Chidester said. "But my gut feeling is it was the salvia. It's the only thing that can explain it."

Abuse concerns DEA

Mazatec Indians have used salvia divinorum to divine spiritual truths for hundreds or thousands of years, experts said. Outsiders discovered it in the 1960s, but it remained a relatively obscure drug until popularized on the Internet, beginning in the 1990s. It's now sold as live plants that can be grown indoors, dried leaves or liquid extracts, from tiny bags costing a few dollars to wholesale shipments for hundreds of dollars.

"You type 'salvia divinorum' in a search engine and you get 10,000 hits, most of which are head shops on the Internet," said Thomas E. Prisinzano, a medical researcher at the University of Iowa. "That's not good. People are going to abuse it."

Experts and users say when the leaves are chewed or smoked, they produce powerful visions that make users believe they're in an alternate place and time. Despite its growing popularity online, law enforcement and health officials, as well as several teenagers and their parents, said salvia is not a common drug in Delaware.

Since 2003, the federal Drug Enforcement Agency has considered salvia divinorum a "drug of concern" because of its wide availability, potential for abuse and unknown long-term effects. Louisiana, Missouri and several countries have outlawed it, but congressional attempts to control it in the United States have failed, in part because of a reluctance to infringe on the religious freedoms of American Indians.

"It's dangerous," DEA spokeswoman Rogene Waite said. "Just because it's not a controlled substance, people shouldn't think it's OK to use it."

Dennis and Kathy Chidester, who divorced when Brett was 3, are uncomfortable talking publicly about their son's salvia use and suicide. But, they said, they are more uncomfortable remaining silent and letting other parents learn through tragedy.

"If other states can [regulate] it, why do we have to wait for a nationwide law?" Dennis Chidester said. "States should act on their own."

Delaware should consider outlawing salvia, two state legislators said. Sen. Karen E. Peterson, chairwoman of the Senate Combat Drug Abuse Committee, and Rep. Pamela S. Maier, chairwoman of the House Health and Human Development Committee, had not heard of the herb but said they would look at the laws in Louisiana and Missouri.

COURTESY OF THE CHIDESTER FAMILY

SALVIA Q&A

Is it legal?

It is not a controlled substance, so it is legal to own, use and distribute salvia divinorum in Delaware and most states. Louisiana, Missouri and several countries have outlawed salvia.

What are the effects?

The DEA considers salvia divinorum a "drug of concern" because its full effects are not known. Researchers said they do not know the long-term effects of using salvia.

Is it addictive?

Researchers and users said salvia is not addictive.

Who uses it?

Mazatec Indians have chewed salvia divinorum for ritual divination and healing for hundreds of years. Westerners discovered it in the 1960s, and its popularity has grown among teenagers and young adults since the 1990s because of availability over the Internet.

Does it have other uses?

Medical researchers are interested in the herb's potential to treat pain without addiction and to better understand Alzheimer's, Parkinson's and other diseases that alter a patient's perception of reality.

How is it sold?

Web sites and Internet vendors sell salvia divinorum as live plants, dried leaves, crushed leaves and a liquid extract.

Legislators in those states banned salvia last year over concerns about teenagers' abuse of it and other hallucinogenic plants.

"It was being marketed to high school kids," said Scott Lipke, a Missouri state representative. "It's not a widespread problem, but we were trying to be out in front on it."

Delaware police said they know little about salvia. "I don't think we'd even know what it is," said Sgt. William Wells, Wilmington police spokesman.

Health officials said it hasn't hit their radar screen, either.

"If it's not an FDA-regulated drug, we couldn't track it any more than we could track someone using ginkgo biloba," said Heidi Truschel-Light, spokeswoman for the Delaware Division of Public Health.

Local merchants who sell glass pipes and other smoking supplies said they don't sell salvia, even though customers ask for it and wholesalers have urged them carry it.

"Kids come in here all the time and ask for it," said Randy Neil, a cashier at Frolic in Newark. "But we don't mess with it. As far as I know, the only place you can get it is the Internet. Probably the reason it's legal now is most people don't know about it."

'Getting deep'

Dennis and Kathy Chidester had never heard of salvia until Brett's cousin told them last summer that she was worried about his salvia use.

About the same time, a friend showed Kathy Chidester Brett's site on MySpace.com, an Internet service where teenagers can chat and share pictures and music. Brett's site contained a video of him and a friend smoking salvia. She confronted him.

"He kept saying, 'Mom, it's legal. It's just an herb. The Indians used to use it to divine knowledge of the universe,' " she remembered. He told them he stopped using salvia, and they believed him.

Still, when Brett was out with friends, his parents would stay up until he came home.

"I thought, if he's doing this stuff or he's drinking, I'm going to know," Kathy Chidester said. "And when he came home, he would be normal, always normal."

Experts said salvia's effects last from a few minutes to an hour or two, with no hangover or other symptoms. Daniel Siebert, a California botanist who sells the herb online and promotes its "responsible" use, described the experience as similar to a vivid

dream. "It's like your mind is on autopilot," Siebert said. "Your brain is generating images that have some kind of narrative line to them. It puts your mind in a very introspective place. It's a way of getting deep inside yourself."

Siebert said crowds and loud music make a salvia-induced trip unpleasant, so it's unlikely people would use it as a "party drug" more than once or twice. He supports some regulations on salvia, such as age restrictions and penalties for driving under the influence of salvia.

"People take their experiences way too literally and read too many things into it," Siebert said. "If you take it literally, you really believe you've traveled to other dimensions and met other beings that told you things. Minors are particularly prone to not understanding that."

That doesn't stop some Internet merchants from billing salvia as a legal, albeit more expensive, alternative to illicit recreational drugs.

The site where Brett Chidester got at least one batch sells it in packages dubbed "mind bender," "mood mix" and "freshman selection." It sells a "party pack" of three different strengths of extract, plus four ounces of leaves, for $207.90.

Promising medical use

Salvia does have legitimate research value.

Prisinzano, who earned a bachelor's degree in chemistry from the University of Delaware in 1995, is studying whether salvia's main ingredient, salvinorin A, could be used to create a nonaddictive painkiller. Also, he said, understanding the way salvia creates hallucinations could help scientists better understand Alzheimer's disease and mental illnesses that alter patients' perceptions of reality.

"It's actually become a hot area of research," said Bryan Roth, a leading salvia researcher at Case Western Reserve University in Cleveland. In 2002, he discovered how salvinorin A travels through the brain.

One salvia user described watching a mountain lake turn into a desert, Roth said. Another said she found herself in a room with an alternate future behind each door. She picked one door and saw the death of her child, he said.

"Depending on the dose, it can cause a mild sense of distortion," Roth said. "In the extreme, people are basically shot out into another reality, another place and time."

A changed son

Dennis and Kathy Chidester think that's what happened to Brett.

About the time Brett began using salvia, he became more melancholy and had trouble sleeping, his parents said. He was sometimes angry for no reason. Because Brett had never displayed typical teenager moodiness, they thought he was just catching up to his peers.

"He definitely changed," Kathy Chidester said. "It wasn't a drastic change. I just figured well, this is the other shoe dropping. This is what teenagers are like and we haven't experienced it."

The week before Brett's suicide, Kathy Chidester called him from Austria, where she was leading an annual ski trip for the Wilmington Ski Club. Brett said he was fine and probably was going to make the Salesianum honor roll again.

The next Saturday night, Jan. 21, Brett went to his girlfriend's homecoming dance. In the few months they had been dating, the relationship had become serious, his parents said. Brett noted in his daily planner that he was going to buy her flowers and take her to dinner for Valentine's Day.

Brett spent much of the weekend writing college application essays, hoping to become an architect. Brett was off work Monday, Jan. 23, from his job in the dining room of Cokesbury Village, an assisted living facility.

He was still sleeping when his father left the house that morning.

"Mom and Dad, don't worry about me," Brett wrote in his suicide note. "Please don't cry. I love you guys so much. I always have. Take a vacation. You deserve it. Please do not be sad. I want you to carry on your lives. Remember me and be happy when you think of me, not sad. Tell yourselves I'm in a better place, because I am. I'm sorry I didn't get to say goodbye before this, but I love you."

Contact Mike Chalmers at 324-2790 or mchalmers@delawareonline.com.

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SALVIA DIVINORUM

(Hallucinogenic) sage, Salvia divinorum, salvia, the matrix

Salvia is derived from the American plant *Salvia divinorum*, a member of the mint family. It is used by the Mazatecs and others in Meso America. It is marketed in the UK under many guises. In head and sex shops it is often sold as herbal ecstasy, using names such as Eclipse. It is also sold as a dried natural high, intended for smoking (in variable amounts) or as a herbal remedy under its botanical name, or as the matrix or 'hallucinogenic sage'.

"Salvinorin A" the active component of Salvia Divinorum, is most effective when vaporized and inhaled, but the most common way to take it is by swallowing or smoking. Its effects are more hallucinatory than other legal highs - though high doses of the raw plant are usually needed to achieve these effects.

A dose of 200-500 mcg produces profound hallucinations that last from 30 minutes to an hour or two, while doses over 2mg are effective for much longer. According to the literature, doses greater than 500 mcg can cause the user to become completely unaware of their surroundings and enter a state of uncontrollable delerium during which they must be watched carefully. [1]

[1] *Salvia Divinorum and the Unique Diterpene Hallucinogen Salvinorin (Divinorin) A.*, Valdes, L.J., From: Journal of Psychoactive Drugs, vol.26 (3), 1994. p.277-283.

Updated October 2003

Powerful but legal, hallucinogenic under scrutiny

USA Today

A little-known hallucinogenic leaf that is legal in most of the USA is the target of new calls for a ban after the suicide of a teenager who smoked it.

Salvia, a relative of flowering sages enjoyed by many gardeners, is the most powerful natural hallucinogen known — almost as strong as LSD, experts say. Known as "diviner's sage," salvia has been used for centuries by the Mazatec Indians in Mexico. In the USA it is sold in leaf and liquid form by websites and head shops and is available to anyone at any age.

"Kids fall into a false sense of security because it's legal," says state Sen. Karen Peterson, a Delaware Democrat. "We control LSD, and we should control this."

Peterson has filed a bill to make Delaware the third state to designate *Salvia divinorum* a banned substance like marijuana and heroin. Louisiana and Missouri have already taken such action.

Her action came in response to the suicide of Brett Chidester, 17, of Wilmington, Del., whose family blames the drug.

Brett was a straight-A student who ranked top in his state in Spanish and was making plans for college and to buy his girlfriend roses for Valentine's Day, his family says. On Jan. 23 he put a charcoal grill inside a tent in his father's garage, lit the grill and crawled inside the tent.

A suicide note described revelations that echoed descriptions of salvia experiences posted by users to various salvia-related websites. "How can I go on living after I learned the secrets of life," he wrote. "It took me 17 years, but I finally figured it out. I can't tell you that here because that kind of information can cause chaos."

His mother, Kathleen Chidester, says her son bought salvia on a website. His father, Dennis, says police took salvia from his room. Kathleen Chidester says she believes Brett was depressed and used salvia because it was legal. His suicide note left no doubt in her mind that salvia had something to do with his death.

Despite salvia's powerful nature, the Drug Enforcement Administration has not recommended that it be banned as a dangerous drug. The DEA has been collecting information for years on the leaf, says Rogene Waite, a spokeswoman for DEA. The process involves measuring its availability, potential for abuse and medical uses.

November 13, 2005

Salvia: It's intense, it's dangerous, it's inexpensive ... and it's legal

Salvia is a powerful, legal herb from Mexico that produces vivid, often terrifying hallucinations. The drug is sold in Magic Man in various strengths.

Mail Tribune / Bob Pennell

By JOHN DARLING
for the Mail Tribune

Few police, teachers or counselors have even heard of it, but the drug salvia — a powerful psychedelic herb from Mexico — is legal in the U.S. and easily purchased over the counter in Medford or on eBay.

Also known as Diviner's Sage or Sally-D, salvia divinorum is extremely intense, say those who have tried it. They say it is as powerful or more so than LSD and produces vivid, often terrifying hallucinations and out-of-body experiences lasting five to 10 minutes. Effects vary widely; a few users report little or no effect.

The herb is sold at Magic Man in the Bear Creek Shopping Center in various strengths for $11.95 to $44.95. In Ashland, Zen Den doesn't sell it and Puff's used to but stopped.

Theresa Jermain of Medford called police when a 17-year-old high school student, for whom she is guardian, bought salvia at Magic Man and, after smoking it, told her he "got real high" and it was "way too strong."

After checking out the shop, police reported back to Jermain that the drug was not illegal and there was nothing they could do, she said.

The student, "Chris," who asked not to be identified by his full name, said he smoked it with 15 fellow South Medford High School students and that only three of them had a "good trip" – the rest being "very bad." Students, he added, are little aware of the drug and it's not being much used there.

He described his experience as an "out-of-body experience in a totally different world" followed by a bad "body high," in which he felt sick and awkward and couldn't move. With a cell phone, he videoed another student on salvia hallucinating and trying to crawl out the back window of a car, he said.

Sheriff's Lt. Dewey Patten, commander of the Jackson County Narcotics Enforcement Team, said he wasn't aware of the drug. "I don't know what we'd do if we found someone whacked on it, because it's not illegal," he said.

Jan Janssen, community outreach officer with Ashland Police, said she'd never encountered it, but after consulting the drug Web site erowid.org, said it's surprising that it's legal, considering that most users report unfavorable experiences. Ashland officers trained as drug recognition experts do know the drug and can spot its effects, she said.

Patten consulted a comprehensive drug reference, "Uppers, Downers and All-Arounders," co-written by Ashlander William Cohen, who also lectures and makes films about psychoactive drugs.

Salvia, wrote Cohen, is similar to PCP and originates among the Mazatec Indians of Oaxaca, Mexico, who use it to induce dreamlike hallucinations, delirium and out-of-body experiences, so as to seek out the causes of illness.

The effects, or "trip," last up to 10 minutes, tapering off over half an hour, with the nature of the trip dependent on the person's mind-set and surroundings.

"Cliff," a 19-year-old from Ashland who asked not to be identified, called salvia an "anti-drug drug" because his trip was so intense that it turned him off alcohol and drugs.

"In my first trip, my legs turned to a waterfall of tears," said Cliff. "The second time, I thought, seriously, that I had died and that my soul was being sucked out of me. It was the most intense thing I've ever done. Coming off it, I felt needles were coming out of my body. It definitely had teaching value because I was abusing (alcohol and drugs) and it gave me a lot of insight about what I was doing."

Magic Man owner John Hopf said salvia is sold as an incense or meditative aid like sage — and that customers learn about it on the Internet and come in to buy it. Although Hopf said he knows of no psychedelic properties for the plant, his store had a stack of printouts from a government Web site warning that salvia is a powerful hallucinogen.

"Pete," 27, another Medford resident who used salvia and asked not to be identified, said he had bought salvia from Magic Man seven or eight times. He described it as "a meditative thing that helps you feel a reality outside the ordinary reality and become one with yourself, as a unity."

He added, "It's very personal, not smoke-a-bowl-and-relax."

"Max," an 18-year-old senior at North Medford High School who bought salvia last week at Magic Man and declined to be identified, said friends suggested he try it. "I'm curious. I'll probably feel good for a while and hallucinate. They said it was worth the money for the feeling you get."

The federal Drug Enforcement Administration has the plant under review based on its potential abuse, availability and effects on users, said DEA public affairs officer Lauren Alder in Washington, D.C.

"The DEA lists it as 'of concern,' but just because it's not listed as a controlled substance doesn't mean it's healthy or safe," said Alder. "The medical profession stresses the danger of it."

The DEA Web page on salvia — www.usdoj.gov/dea/pubs/states/newsrel/newark_intel_bulletin_salvia.html — classifies it as a psychoactive terpenoid, a family that includes marijuana. It produces "profound hallucinations," with effects similar to mescaline, the DEA bulletin said.

The DEA welcomes comments at its Drug and Chemical Evaluation Section: 202-307-8570 (fax) or 202-307-7183 (phone).

Three years ago, staff Oregonian columnist Margie Boule branded salvia "the most powerful natural hallucinogen known on earth."

"Salvia divinorum is a wild ride," wrote Boule. "This is not a drug that simply makes people play Beatles' records backward. It induces powerful hallucinations that sometimes are terrifying."

Salvia is illegal in Australia, Italy, Denmark, Norway and South Korea. California Rep. Joe Baca in

2002 introduced a bill to ban it in the U.S., but, says erowid.org, it is chemically different from schedule I and II drugs, so it is not covered by the federal law used to ban drugs.

SALVIA

salvia divinorum

- **Other names**: Diviner's Sage, Sally-D
- **Cost**: Sold in various strengths for from $11.95 to $44.95 a bag
- **Use**: Similar to PCP, intense hallucinations lasting for 5-10 minutes when the drug is smoked
- **Legal use**: An incense or meditative aid, akin to sage
- **Federal position**: The U.S. Drug Enforcement Administration has the plant under review. The government classifies it as a psychoactive terpenoid, with effects similar to mescaline
- **Why is it still legal?** Chemically differences from schedule I and II drugs mean it is not covered by the federal law used to ban drug
- **Where is it banned?** Australia, Italy, Denmark, Norway and South Korea
- **Salvia web site**: erowid.org
- **DEA information**: www.usdoj.gov/dea/pubs/states/newsrel/newark_intel_bulletin_salvia.html
- **Comments**: The DEA welcomes comments at its Drug and Chemical Evaluation Section: 202-307-8570 (fax) or 202-307-7183 (phone).

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You can find this story online at:
http://www.mailtribune.com/archive/2005/1113/local/stories/11local.htm

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The Legal Hallucinogen Targeted to Teens

Couples Company.com

By Laura Dawn Lewis

Salvia Divinorum (Salvia) or *Salvinorin A*, street names *Salvia, Divine Sage* and *Magic Mint* is a legal, powerful natural hallucinogen marketed to and easily accessed by teens on the web and at times, health and spirituality stores. Health care and law enforcement officials described Salvia as the organic hallucinogen as potent as LSD. Users dispute the comparing of Salvia to LSD and insist that it is a mild, harmless perception and spirituality enhancer.

Generally it takes science a few years to catch up with new herbal remedies that create potentially harmful reactions. This may be why even the DEA cannot respond to many questions regarding *Salvia Divinorum*. Though the DEA may not be able to junior high, high school and college students can.

Salvia Divinorum is currently legal in every country but Australia. The Australian government banned Salvia effective as of June 2002. Salvia is a member of the sage family and a common garden plant. To date, the Divinorum species of Salvia seems to be the only member of this family with perception-altering or intoxicating capabilities. Divinorum seeds are rare.

NEW Salvia Divinorum Special

IN STOCK!!!!
Get the best of both worlds with 1/2 oz. of Prime Salvia Leaves & 1 gm Salvia standardized 5x Extract
For a limited time $36

Salvia Divinorum Leaves -Prime Oaxacan Harvest Leaves

The leaves are harvested fresh in the high mountains of Oaxacan by the native people of that region, then dried, cured & blessed. Oaxacan salvia leaves are known to be 50% more potent than Hawaiian or other grown salvia leaves. These are the highest potency and quality leaves you can get anywhere.

$20 for 1/2 oz. (14 g) of Prime Salvia Divinorum Leaves
$35 for 1 oz. (28 g) of Prime Salvia Divinorum Leaves

Actual Sales Copy from a Salvia Dealers Web site

Salvia Divinorum is not a new drug or plant. Classified in the sage/mint family the Mazatec Indians of Northern Mountains in Oaxaca, Mexico have been using the leafy plant in healing and in religious ceremonies for centuries. The drug itself provides a trip for the user that can range from mild to extreme. Cases have been documented of users falling asleep while driving and walking through glass walls while under its influence.

Referring to the above cases, a 23-year-old Salvia defender in Pittsburgh, PA commented, *"You state things like, it could cause a user to fall asleep while driving. What idiot would use this while trying to drive a car?"*

Users argue that the effect lasts only about five minutes. One responded to this article by stating, *"When salvia is smoked the "trip" only lasts about 3 minutes."* The few medical sources we were able to find with some

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> background on Salvia placed intoxication closer to thirty to forty minutes. Several aficionados also insist that the effects *"Aren't much more "intense" than smoking tobacco"*.

User sites dispute our reader's assertion that Salvia highs are no more intense than smoking tobacco. Search and you will see notations referring the 5th and 6th levels of intoxication, called immaterial and amnesiac. These notations dispute what many of the users are stating and do warn of the potential hazards and need for supervision. These are stressed for the highest level, Amnesiac.

"User remains conscious but loses accurate perception of actual surroundings. At this point the person should not be left alone and must have a sober person in the room. The user is in an altered reality, will wander and encounter brief periods of unconsciousness and blackouts."

The DEA's limited information on Salvia describes its use as follows: *"Salvia is being smoked to induce hallucinations, the diversity of which are described by its users to be similar to those induced by ketamine, mescaline, or psilocybin. It is being widely touted on internet sites aimed at young adults and adolescents eager to experiment with these types of substances."*

Access

Obtaining this drug is as simple as entering a store or visiting eBay. Users adamantly defend its virtues and their right to partake in its pleasures. The following came in to Couples Company from a reader. We found this letter interesting because unlike the others it wasn't angry but it does illustrate the allure. The writer is also mature and in his mid-thirties, showing the appeal to this drug transcends generations.

> Dear Couples Company.
>
> Thank you for bringing this subject to parents' attention. I wonder, why would the parents be the last to know about this plant? In answer to my own question, I say the parents are too comfortable in their lives and they don't want to know. Answering your question - I do know what salvia is. My first experience took place last December. Even though I had been reading what other people posted about their encounters with salvia for a few months before I got enough courage to try it myself (unfortunately, I am not a teenager any more). It was so unexpected, so moving, so out-of-this-world that you wouldn't believe. That experience that lasted no more than 5 minutes of Earth time changed my outlook on life in general and my life in particular. I set up a site to collect any salvia related posts that were ever published online - SalviaDivinorumCorps.org, started a discussion group "SalviaD Alliance" on Yahoo and recently formed "Salvia Buyers Club" to provide good quality salvia at wholesale prices to salvia community. My advice to the parents - take it into your hands, "say once to salvia" and be the judges what is good for your children.

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Sincerely,
Slava M 37,
Potomac Falls, VA

Salvia is not just an intercity drug issue; like crack or ecstasy it is in small towns and the big cities. This legal consciousness-altering drug is being used in small towns and major cities around the world. The Internet makes it accessible by overnight delivery to anyone with a credit card, checking account or money order. About half of the 30 web sites we visited selling this drug were based in Germany. The rest are US based.

"Some drugs alter reality in such a way that you come face to face with thoughts that which you have been afraid to confront. There is a reason these substances have been (some still are) researched for psychiatric application," states an anonymous reader of Couples Company.

"This is an escape drug? You are totally wrong, unless you consider 3 minutes of calm an escape. No, alcohol is an escape drug," comments another reader.

Though users argue the drug does not offer an escape from reality, their web sites, comments and culture contradict this through the act of assigning varying descriptions to levels of intoxication or the exaltation of the trips; the creation of a special language for the drug and its altered states of reality. The documentation of experiences under the influence of the drug as exceptional, extraordinary and life-changing. These actions dispute and disprove claims of non-escapism or of a drug with little impact on the user.

Targeting Teens

The target market for Salvia is teens and twenty-something's and it taps into the issues, insecurities and confusion this age group struggles with and identifies with. Salvia ads promise to deliver spiritual enlightenment and bliss to the user. Testimonials from other users further convince and persuade potential users of the benefits of using the product. Many Salvia sales web sites includes step-by-step instructions for smoking the product, while enthusiastically showcasing the results through affirming statements, user trip reports and other personal accounts of the experiences. The following is the introduction from one of the largest legal Salvia dealers on the web:

General FAQ's

A typical ounce usually contains 100 – 200
One ounce = 4 to 12 doses

To achieve moderately strong effects from 1/2 gram of average potency leaf, or 1/4 gram of stronger material.

Salvinorin A is the fortified leaf

"Salvia Divinorum has been steadily growing in popularity over the last few years due to the incredible visionary, mystical experiences people are having. Many People are discovering Salvia Divinorum as a powerful tool for soul searching, exploration of consciousness and pure bliss."

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From this copy it is easy to see why many people refer to Salvia as the legal LSD Travel back in time to the 1960's and this same statement, nearly verbatim could be heard emanating from the lips of those enjoying or promoting LSD. Many *Salvia Trip Reports* are also eerily similar to the trip descriptions recorded by those on LSD.

> *"There were beautiful closed eye visuals: a dome composed of ribs of light forming arched groining like that of a Gothic cathedral. The colors were the iridescent rainbow in a peacock's tail. This "reality" opened into another one: a narrow red rock canyon with a fast moving river plunging over rocks.*
>
> *I then felt that I was no longer a specific individual, but was an awareness that opened into every individual's consciousness everywhere, forever. I had the feeling that there was a lesson to be learned."*
>
> Salvia Trip Report

Also like LSD, Salvia users have created their own language, logic and culture based around the experiences and consumption of the drug.

Salvia & Health

Salvia is endorsed and marketed by dealers as healthy with spiritual significance. Spirituality is empowered through the action of blessing the dried and cured leaves by an Indian Shaman. Then the leaves are consumed by smoking or chewing.

The health claims are easily disproved by the fact that the leaves are smoked. To date no scientific evidence exists to prove a medicinal purpose for this drug. It also must be noted that scientists have been unable to determine how it works. It does not appear to alter the nervous system and scientists speculate its effects can range from hormonal to affecting a gland yet to be studied. It is possible at a later date a medical purpose may be discovered. Claiming health benefits at this time has no foundation and is simply marketing.

Salvia is also marketed in high-potency drops referred to as Emerald Essence. The drops enter blood stream through the cells in the mouth where it is held for a period of time. Users insist the drops have no effect if ingested or added to food. Currently no scientific research or evidence exists to either prove or disprove this statement.

Salvia & Spirituality

The faith claim for Salvia is stronger than the health claims. As one reader points out, *"For countless millennia, Shamanic traditions have used plant medicines and plant teachers for ceremonial and spiritual use."*

Ancient Indian religions may use Salvia as part of their worship, but the majority of people using the drug today do not subscribe to Shamanic traditions and are not using it

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for religious purposes. Cocaine, peyote, opium and other drugs have also been used in religious observances in the past. To claim and use the drug as a religious necessity, users would need to convert and practice the Mazatec Indian's faith and then only use it for ceremonial purposes.

What Salvia Does:

Salvia Divinorum provides the user with an escape, or as users prefer, an enhancement of his or her reality. The drug creates a sense of well being within the user when the experience is positive. Negative experiences can be living nightmares and cause blackouts.

The 3 Degrees of Use

- **General inebriation, (a few hits):** Similar to mushrooms with brighter colors and increased sexual desire.
- **Increased Potency:** Users fall into Trances
- **Further Increased Potency:** User remains conscious but loses accurate perception of actual surroundings. At this point the person should not be left alone and must have a sober person in the room. The user is in an altered reality, will wander and encounter brief periods of unconsciousness and blackouts.

Salvia users rate trips on a 6-tiered scale based upon the name of the drug:

- **S = SUBTLE effects**
- **A = ALTERED perception**
- **L = LIGHT visionary state**
- **V = VIVID visionary state**
- **I = IMMATERIAL existence**
- **A = AMNESIC effects**

As a parent, what can you do and how do you know if your child is using this?

Going through the Salvia sites one thing stood out, vocabulary. The users speak about Trip Reports. These are retellings of their drug-induced experiences. The words "visionary, spiritual enhancement, soul, altered-consciousness, sage." There is an official Salvia dictionary for proper trip descriptions and these includes:

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Salvia User's Vocabulary, *Partial List*

- accepting
- afterglow
- besaged
- dissociadelic
- dream people
- endoreality
- fantasia
- floating
- goofy
- healing
- magic casements
- mind tunnels
- sound of silence
- strange attractor
- teacher
- tranSalviaimensional
- visions
- weird
- wiSalviaom

For More information on Salvia:

- DEA
- Sage Group FAQ
- Trip Reports
- Group for Cognitive Liberty and Ethics

Many of these words are not common in the English language or have been created specifically for this drug's culture. The use of such vocabulary may be your only clue as a parent that your child is involved in the Salvia culture. Symptoms of use are vague appear like those experienced under LSD, mushrooms and PCP.

The reason Salvia is not illegal is that scientist can't figure out how it works. This also means there is no documentation on the long-term ramifications of this drug, good or bad. The only professional consensus on Salvia at this time is that it is a hallucinogen. Unlike other hallucinogens, the active ingredient in Salvia, *Salvinorin A* does not attach itself to the neurotransmitters, a requirement for illegal classification. Unless the definitions for controlled substances are changed or process of intoxication is discovered, the drug can and will remain legal.

A group called the Group for Cognitive Liberty and Ethics is currently working a grassroots effort to keep Salvia Divinorum legal and easily accessible to the masses. Their stance is that drug use enhances creativity and brainpower and should be encouraged rather than prohibited.

This article was inspired by the October 20, 2002 Portland Oregonian Article by staff reporter Margie Boulé entitled: Meet the most potent natural hallucinogen—And it's legal!

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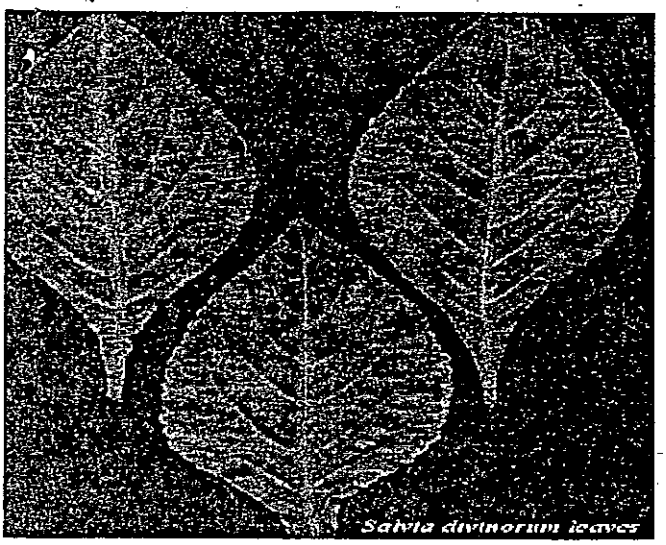


Drug Enforcement Administration
Newark Division

Michael Pasterchick, Jr.
Special Agent in Charge

Salvia Divinorum, ska Maria Pastora, Salvia (Salvinorin A, Divinorin A)

Introduction

Salvia Divinorum is a perenial herb in the mint family native to certain areas of the Sierra Mazateca region of Oaxaca, Mexico. It is one of 500 species of Salvia in the New World is in similar to the sage plant. The plant grows in large groupings to well over 3 feet in height. It's large green leaves, hollow square stems and flowers are it's characteristic features. S. Divinorum is one of several vision-inducing plants employed by the Mazatec Indians

There has been a recent interest among young adults and adolescents to re-discover ethnobotanical plants that can induce changes in perception, hallucinations, or other psychologically-induced changes. Since S. Divinorum, or any of its active ingredients are not specifically listed in the Controlled Substances Act, some on-line botanical companies and drug promotional sites have advertised Salvia as a legal alternative to other plant hallucinogens like mescaline. The plant material is smoked for the induction of "mystical" or hallucinogenic experiences.

Chemistry/Pharmacology

"Salvinorin A" the active component of S. Divinorum, is most effective when vaporized and inhaled. Chemically, Salvinorin A is a neoclerodane diterpene, a psychotropic terpenoid. The grouping of psychoactive plants containing terpenoid essential oils includes Salvia Divinorum, Wormwood (Absinth), and Cannabis Sativa (tetrahydrocannabinols, THC). Divinorin A was chemically characterized by Valdes et al., in 1984, however Ortega et al., (1982) had previously characterized the same substance and called it Salvinorin A and thus, out of convention, the psychoactive substance should be called Salvinorin A. A dose of 200 to 500 micrograms produces profound hallucinations when smoked. Its' effects in the open field test in mice and locomotor activity tests in rats are similar to mescaline. Salvinorin A's action in the brain are not

well elucidated. However, recent tissue testing (in vitro assays) have suggested that Salvinorin A may act at the kappa opiate receptor site, but functional assays are lacking to determine the exact mechanism of action of this drug substance.

Illicit Uses

Salvia is being smoked to induce hallucinations, the diversity of which are described by its users to be similar to those induced by ketamine, mescaline, or psilocybin. It is being widely touted on internet sites aimed at young adults and adolescents eager to experiment with these types of substances.

User Population

The user populations, thus far, seems limited to younger adults and adolescents influenced by the promotion of the drug on internet sites

Illicit distributed

Salvia Divinorum is grown domestically and imported from Mexico, and Central and South America.

Control status

Salvia Divinorum, Salvinorin A, and Divinorin A are not listed in the Controlled Substances Act.

Comments and additional information are welcomed by the Drug and Chemical Evaluation Section, FAX 202-307-8570 or telephone 202-307-7183.

September, 2002

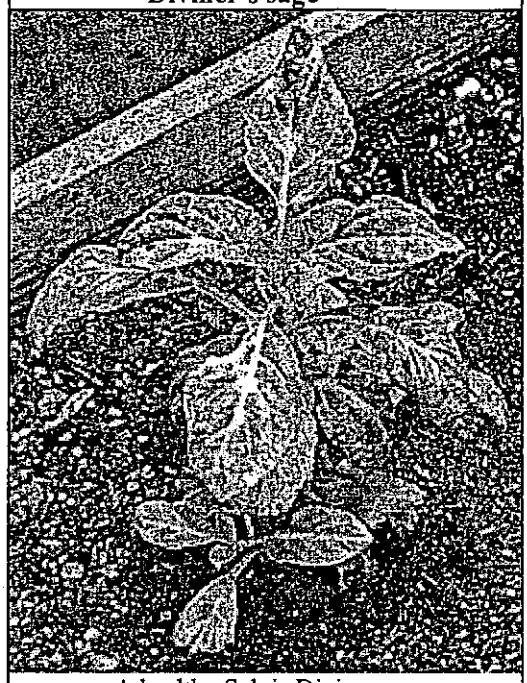
Salvia divinorum

From Wikipedia, the free encyclopedia

Salvia divinorum (also known as **Diviner's sage**, ***María Pastora*** or simply **Salvia**, although the genus name is shared among many plants) is a psychoactive plant, a member of the sage genus and the Lamiaceae (mint) family. The plant is grown by the Mazatec indigenous people of the Oaxaca mountains of southern Mexico in isolated, moist, and secret plots. It has been used as an entheogen by their shamans for centuries for healing during spirit journeys. It is thought to be a cultigen. No definitively wild populations have been found. The Latin name *Salvia divinorum* literally translates to "sage of the diviners".

The primary psychoactive constituent is trans-neoclerodane diterpenoid known as *salvinorin A*. Salvia also contains the closely related compounds salvinorins B-G, divinatorins A-E, salvinicins A and B, and hardwickiic acid. Salvinorin A is the most potent naturally-occurring hallucinogen known. It is active at doses as low as 100 μg [1] (http://www.erowid.org/plants/salvia/salvia_faq.shtml). Recent research has shown that salvinorin A is a remarkably potent and selective kappa opioid receptor agonist. It has been demonstrated that the effects of salvinorin A are blocked by kappa opioid receptor antagonists. This indicates that the effects of *S. divinorum* can be largely, if not entirely, attributed to kappa agonism. Salvinorin A is unique in that it is the only naturally occurring substance known to induce a visionary state *via* this mechanism of action.

Diviner's sage



A healthy Salvia Divinorum.

Scientific classification	
Kingdom:	Plantae
Division:	Magnoliophyta
Class:	Magnoliopsida
Order:	Lamiales
Family:	Lamiaceae
Genus:	*Salvia*
Species:	***S. divinorum***

Binomial name

Salvia divinorum

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- 1 History
- 2 Usage and effects
  - 2.1 Methods of ingestion
    - 2.1.1 Traditional Methods
    - 2.1.2 Nontraditional Methods
  - 2.2 Subjective effects
  - 2.3 Duration and after-effects
- 3 Chemistry
- 4 Legal status, Controversy
- 5 Botany
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History

In 1939 Salvia was first recorded in print by Jean Basset Johnston. He was studying the psilocybin mushroom use

of the Mazatecs in Mexico when he encountered this entheogen. R. Gordon Wasson documented its use a decade later and reported its effects through his own testimonials. Historical data at this point is largely unresearched, but it is likely to date back into the early history of Central America. It was not until the 1990s that it become more widely known through the experiments of Daniel Siebert.

As is often the case with cultigens, it is likely that the history of this plant dates back a number of generations. Cultigens require a long historical relationship with human cultures, and salvia is no exception. Perhaps the decline of its widespread use began with the Spanish Conquest, or this phenomenon may have been already underway, either due to religious or political reasons.

Gordon Wasson theorized that this plant was the mythological pipilzintzintli, the "Noble Prince" of the Aztec codices. This theory would explain why a cultigen of such extraordinary power was not otherwise known to the Aztecs, but this theory is not without dispute. The Aztecs were extremely knowledgeable in plant identification, and in their records report that *pipilzintzintli* has both male and female varieties. Salvia divinorum is lacking sexes, meaning there are no male or female flowers, as its flowers contain both sexes. The skeptics of this theory report that the Aztecs would have known the difference between male flowers and female flowers. Wasson, still, may have been correct in his hypothesis, in that there are a number of historical accounts of gendered properties being assigned to plants in a metaphorical manner, not in a botanically anatomical one.

Usage and effects

Methods of ingestion

Traditional Methods

Mazatec shamans use two methods of ingestion. Often, they simply eat the fresh leaves by chewing and swallowing them. Sometimes, they crush the leaves to extract the leaf juices, which they then drink (usually mixed with water). Reportedly, dosages vary from as few as 6 leaves to as many as 120, when using these methods.

Nontraditional Methods

Dry leaves can be smoked in a pipe but most users prefer the use of a bong to cool the smoke. The temperature required to release salvinorin-A from the plant material is quite high (about 240°C). A regular flame will work, but the direct application of something more intense, such as the flame produced from a butane torch lighter, is often preferred.

Many people find that smoking the unprocessed dried salvia leaf produces only light or unnoticable effects, perhaps due to the large volume of plant material that must be smoked to produce psychoactive effects. However, responses vary widely. A concentrated preparation of salvia leaf called salvia extract, with relative strength suggested by terms such as 5x, 10x, and 20x, may be smoked in place of natural strength leaves; this reduces the total amount of smoke inhaled for a given dosage of salvinorin overall, and facilitates more powerful experiences. One cone of 5X strength extract should be enough to produce the desired effect.

Sublingually ingested tinctures constitute another form of prepared salvia. A tincture is made from salvia leaf that has had the psychoactive components extracted, often using high-proof ethanol. Once produced, the liquid can either be used as a tincture or infused into salvia leaf, creating smokable salvia extract.

The traditional Mazatec method can also be employed; however, Salvinorin-A is generally considered to be inactive when ingested, because the chemical is inefficiently absorbed in the gastrointestinal tract unless

thoroughly emulsified; therefore, emphasis is often placed on holding the leaves (and also the saliva secreted during chewing) in the mouth as long as possible, to facilitate absorption through the oral mucosa. This consumes much more of the drug than smoking, but also produces a longer-lasting experience.

Subjective effects

Most users find that the effects of salvinorin are not conducive to socializing. People given Salvia often feel as though a trick has been played on them; in fact, while under the influence, most people tend to find any external stimuli distracting. Most people under the influence of salvia will remain in place although some users may move around. This can be especially dangerous as the user is in an altered state of consciousness and is therefore at a greater risk of unintended bodily injury. It is advisable to have a sober trip sitter present.

The effects of salvia are found by many to be highly spiritual entheogenic experience. Others find salvia useful for meditation. Consciousness is retained until the highest doses, but body control, awareness of externalities, and individual personality can disappear with even modest amounts. Even experienced drug users may feel totally out of control and confused.

At lower doses the user may experience spontaneous laughter, mild closed-eye visuals, stuttering or strobing visual effects, changes in depth perception, and a heightened sense of color and texture.

Moderate doses appear trance-like. Time distortion and open-eye visuals become increasingly apparent. Fractal patterns and geometric shapes may be noticeable with eyes open, and can be very confusing. Many people experience sensations of falling, similar to what is occasionally felt at the onset of sleep. The user may experience fully formed visions of other places, people, and events, especially with eyes closed.

At high doses, the effects become more powerful and may additionally include out-of-body experiences, perceptions of gravitational distortion, vertigo, sensations of wind or physical pressure, hearing voices, flanging of sound, significant open and closed-eye visuals, experiencing alternate realities, contact with beings or entities, dissolution of one's ego, and dissociation. It is also typical that, while under the effects of salvia, a person will not realize they have used the drug. The salvia experience is quite different from that of most other hallucinogenic drugs and may be overwhelming, even with the correct set and setting. Most users recommend darkness and silence as the best environment, however, minimal, ambient or relaxing music can be helpful.

According to experience reports at Erowid (http://www.erowid.org/experiences/subs/exp_Salvia_divinorum.shtml) and elsewhere, Salvia seems to produce visual hallucinations which have a somewhat higher level of consistency than other substances. Reports of contact with an entity supposedly associated with the plant, ("the Shepherdess") again with fairly consistent characteristics, are also common.

Many salvia users, during high-dose out-of-body experiences, may suddenly "merge" with objects. With the significant time distortion typical of salvia, users may live a lifetime as another person, or as an inanimate object, such as a wall or a piece of furniture. The experiences can be extremely pleasant, or very frightening and confusing.

People often fail to achieve the effects the first time they try the plant, possibly due to problems in the administration of the drug. With repeated use, anecdotal evidence suggests that decreased dosage may be possible for the same level experience. Due to the lack of scientific studies on Salvia, if true it is unknown whether this is due to learning proper techniques of administration or a sensitization factor, sometimes colloquially referred to as "reverse-tolerance".

Some people who try Salvia find it difficult or impossible to achieve the desired effects. This may be due to an

insufficient flame. However, sometimes the results are unpredictable. For example, a user may smoke a large amount and feel no effect, but the next day may smoke a small amount and experience a strong trip.

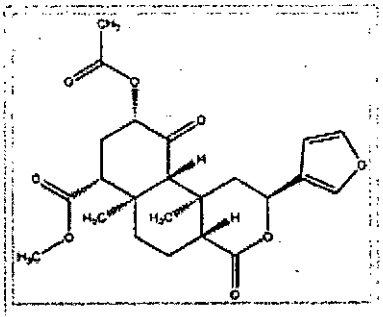
Duration and after-effects

If inhaled, the effects do not last very long, with the peak reached within one minute and then a slow descent back to one's self after about five minutes and back to baseline within 15 to 20 minutes. Chewing the leaf (in a 'quid') makes the effects come on more slowly and be experienced for longer. The first 5 minutes after smoking extract are very intense, and should be experienced lying or sitting down, eyes closed.

Most users report no hangover or negative after-effects. Some users report a pleasing "afterglow," or pleasant sensation and state of mind persisting after the experience has ended. Others, however, claim that Salvia has a depressing effect. Salvia has not been found to be either physically or psychologically addictive. There are no proven health risks associated with the psychoactive chemicals, although the long-term effects on the human body are not well documented. However, smoking any substance is generally regarded as unhealthy by medical professionals.

Chemistry

The primary active constituent is ***Salvinorin A***, sum formula $C_{23}H_{28}O_8$. Unlike most other known psychoactive compounds, Salvinorin A is not an amine—meaning it contains no nitrogen functional group. The Salvinorin group of compounds (including Salvinorin A, Salvinorin B and Salvinorin C) are called neoclerodane diterpenoids.



Salvinorin A

Extraction and purification of Salvinorin A has been documented but should only be attempted by qualified researchers with experience in chemistry and the proper laboratory equipment. Measurement of safe dosages is difficult and requires a sophisticated analytical balance, due to the extreme quantitative potency of Salvinorin A.

Legal status, Controversy

Until the late 1980s, not many people knew about salvia. The heavy commercialization of the Internet in the mid-1990s and the realization that the plant was not legally controlled engendered numerous Internet mail-order businesses which sold dried salvia leaves and other preparations, sometimes for exorbitant prices.

The general public became increasingly aware of salvia in 2002. As of June 1, 2002, Australia became the first country to ban salvia and salvinorin [2] (http://www.cognitiveliberty.org/news/salvia_australia.htm), [3] (http://www.thecouriermail.news.com.au/common/story_page/0,5936,5717251%5E3102,00.html). In late 2002, Rep. Joe Baca (D-California) introduced a bill in the United States House of Representatives to schedule salvia as a controlled substance, and the DEA has indicated on its website that it is aware of salvia and is evaluating the plant for possible scheduling.

Press accounts of efforts to ban salvia often quote law enforcement and government officials who exhibit an inaccurate knowledge of the drug's effects, and frequently characterize the "high" as "chewable marijuana", or as identical to LSD and PCP (two drugs with quite dissimilar effects to *each other*, as well as to salvia).

Under Louisiana Act № 159, 40 plants, including *Salvia divinorum*, have become illegal if sold for human consumption. It is still legal to own the plants. More laws regarding *S. divinorum* can be found at Erowid's Salvia

Law vault (http://www.erowid.org/plants/salvia/salvia_law.shtml).

Salvia divinorum was outlawed in Missouri in fall 2005. New York is considering a bill that would place heavy civil penalties on the sale of the plant. Illinois is also considering regulating Salvia divinorum.

In January 2006, the Swedish government declared their intention on making salvinorin A and all plants containing the chemical illegal. This law has been in effect since 1 March 2006.

In Delaware on January 23 2006, teen Bret Chidester (http://www.delawareonline.com/apps/pbcs.dll/article?AID=/20060226/NEWS/602260356/-1/NEWS01) committed suicide. His suicide note referred to the drug. In an essay found after his death, he wrote "*Salvia allows us to give up our senses and wander in the interdimensional time and space,... Also, and this is probably hard for most to accept, our existence in general is pointless. Final point: Us earthly humans are nothing.*" Because his use of the drug is considered to have contributed to his suicide, the Delaware State Legislature is rapidly moving to pass legislation (http://www.delawareonline.com/apps/pbcs.dll/article?AID=/20060323/NEWS/603230360/-1/NEWS01) that would make the drug illegal there.

Unlike marijuana, salvia has a nondescript appearance (being in the same genus as cooking sage), can be grown in a small space, has no odor and requires no elaborate lighting set-up, criminalization is likely to affect only the commercial sale of the plant, and not its private cultivation, which would be impossible to police. For most regular users growing the plant is considered to be an integral part of establishing a relationship with it.

Botany

Unlike other sages, *Salvia divinorum* produces very few seeds, and the seeds it does produce seldom germinate. It appears to have very little histocompatibility variation, so the pollen from a plant genetically identical to the style fails to reach the ovule. It is propagated by cuttings and by falling over and growing new roots. Although reportedly (Valdez, et al) isolated stands of *S. divinorum* exist in its native range, these are thought to be purposely created and tended by the people of the region. Therefore it is considered a true cultivar and thus does not occur naturally in the wild anywhere.

For the most part, the fate of the species lies with a very small number of clone plants. Of these few clones, there are only two that are in any kind of public circulation; the Wasson/Hofmann strain, and the Blosser ("Palatable") strain. The former is a strain discovered by those whose name the plant bears, when on a visit to the Mazatecs. The latter is the same case, in regards to name, and was discovered in Oaxaca; it is called "Palatable" as well, as it is said to have more palatable leaves when ingested orally than those of the Wasson/Hofmann strain, though other reports state that there is little difference between the taste of the plants. Other varieties are also grown, including the Luna strain which is a strange offshoot of the Hofmann/Wasson line. A few other strains exist, but they are mostly quite similar, in potency, effect, and growth.

References

1. Chavkin C, Sud S, Jin W, Stewart J, Zjawiony JK, Siebert DJ, Toth BA, Hufeisen SJ, & Roth BL. Salvinorin A, an active component of the hallucinogenic sage salvia divinorum is a highly efficacious kappa-opioid receptor agonist: structural and functional considerations (http://jpet.aspetjournals.org/cgi/content/abstract/308/3/1197). *J. Pharmacol. Exp. Ther.* 2004 Mar. 308 (3): 1197-1203.
2. Roth BL, Baner K, Westkaemper R, Siebert D, Rice KC, Steinberg S, Ernsberger P, Rothman RB. Salvinorin A: a potent naturally occurring nonnitrogenous kappa opioid selective agonist (http://www.pubmedcentral.nih.gov/articlerender.fcgi?tool=pubmed&pubmedid=12192085). *Proc. Natl. Acad. Sci. U.S.A.* 2002 Sep 3, 99 (18): 11934-11939.

External links

- The Salvia divinorum Research and Information Center (http://sagewisdom.org/) - Daniel Siebert's site
- Erowid Salvia Divinorum Vault (http://www.erowid.org/plants/salvia/salvia.shtml) - Salvia section from Erowid's vast reference site
- Lycaeum page on Salvia divinorum (http://leda.lycaeum.org/?ID=269) - another large reference site for psychoactives
- The Salvia Center (http://www.salviacenter.com/) - a hub for Salvia information on the web
- Salvia Divinorum Scotland (http://www.salvia-divinorum-scotland.co.uk/) - information and advice on cultivation etc.
- International section of the "Salvia Community" (http://www.salvia-community.net/International-f16.html) - discussions with Salvia experts from all over the world
- SpiritPlants Salvia Forum (http://www.spiritplants.org/)
- SalviaD Alliance Forum (http://groups.yahoo.com/group/SalviaD_Alliance)
- The Entheogen Forum (http://www.entheology.org/)
- The Australian Salvia Crusaders (http://www.geocities.com/salviacrusaders/) - Issues Regarding Australian Law and Salvia Divinorum

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Salvia

How To Smoke Salvia Divinorum

by MSS

After numerous attempts I finally came upon what I call the Secret of Smoked Salvia divinorum. I will not discuss the subjective effects except in a limited sense, but what I do wish to discuss is how one might better feel these effects.

Find a comfortable position, preferably sitting down in a quiet environment. Load a water pipe with a full hit of Salvia, light and inhale as deeply; and hold as long, as possible.

While holding in the hit it may be advantageous to poke out the left over ash/foliage and reload. Upon exhalation take a couple deep breathes of fresh air then inhale a second hit as above.

Before taking another hit you may want to empty the water pipe of the left over smoke from the previous hit since the smoke stales quickly and make the next hit more difficult to inhale and hold for a length of time.

Depending on unknown factors, or insufficient inhalations, one may find it necessary to do a hit or two more. Two deep hits has always been good for me, but I have unusually large lung capacity.

Those who are used to smoking are more likely to feel the effects of Salvia simply due to the fact that their lungs are much better prepared to inhale a large amount of smoke. One technique to use to bring in large volumes of smoke is to take a few deep breathes, exhale all the air in the lungs and then inhale from the water pipe.

One other technique is to continue loading and smoking until you no longer have the coordination to load anymore. I've tried this last technique before and it is really great for open eye visuals.

Most people don't feel anything the first time they try Salvia. If you do not get any results after several attempts, try using a high temperature lighter (or torch) and water pipe. The high temperature flame will vaporize more of the active ingredient than a standard lighter.

If you use a torch, don't do it alone. Make sure someone is there to turn off the torch. If the Salvia hits in the middle of a toke, you might loose control of the torch.

After taking the necessary hits close your eyes, lay your head back on a comfortable support, and get your arms and legs in a comfortable open position that won't require you to move after the effects have begun. When the effects begin one might have a strong desire to open ones eyes or change ones position to reestablish an equilibrium. It is important that you not do this. Lay perfectly still with eyes closed for the duration.

If you desire to attempt the experiment with eyes open I highly recommend staying still as possible, having no moving objects in sight, and fixing ones eyes upon a motionless object for the duration. The initial peak last for no more than three to five minutes while residual effects may carry on for ten.

With continued usage over time one becomes more adept at both noticing the effects of Salvia and at exploring the new landscape. As I continued using Salvia I reached a peak experience and now the visions are rather mundane, failing in their once spectacular glory.

The three most important factors in feeling the Salvia experience are appropriate silence, lack of movement, and closed eyes. I have found that a lack of dialog, either from other participants, or from TV is of primary importance, but that instrumental music makes for a quite intriguing experience, especially if 4 speakers are properly placed surrounding ones head.

Since silence is such an integral part of the experience I've conducted sessions with only one person experimenting at a time. The participation of others during ones Salvia

experience can at times be a hindrance.

If others are present when you are experimenting it is important that they be as quiet as possible, both vocally and in their physical movements (no creaking in chairs or traversing hardwood floors, heavy breathing, or, the hardest thing for an observer to hold back, laughter).

I've always required of other participants/observers that they be completely still so as to cause absolutely no noise. During the experience a new landscape is opened up, one without borders, and space can appear to go on infinitely.

Usually this landscape is one that can shift from one scene to the next without apparent provocation and which resembles a rapid succession of unconscious material forcefully trying to push itself into conscious awareness. If someone makes a noise or speaks the vision may be lost or altered since the noise, and where it is located in space, can still be comprehended by the conscious and rational mind.

This causes the mind of the experimenter, which can be quite conscious of two realities at once, to become aware of the inconsistency between these realities, and this can, and in my case usually does, disrupt the experience.

What the motionless body allows the mind to do is to slip deeper into the 3 dimensional nature of the vision. If the body is moved the vision will often alter or slip away. In some way the physical body defines the inner landscapes of the vision. My only way to explain this is to say that the conscious rational mind retains awareness of consensus reality while under the influence of Salvia.

Since Salvia creates a non-consensus reality body movement causes a dichotomy of awareness which can cause the mind to attempt a reconciliation between these realities. Consensus reality often wins, causing the vision to dissipate, or at least lose its convincing nature.

This sort of dual awareness is also played out with sight, which may be why many who attempt to feel the effects of Salvia, and have failed to try closing their eyes, cannot. By having ones eyes open the mind appears to be unconsciously forced to recognize one reality over the next and therefore cannot fall deeply into the full Salvia experience.

Of course this dichotomy of forces appears to be overcome

depending on how much is smoked, and obviously extracted Salvinorin-A forces consensus reality to the wayside.

The main physical effects that I have noticed are a feeling of a rise of body temperature and a slight tightening of the muscles, especially in the hands. I found that if I consciously focus on relaxing my body during this tensioning that I would be pulled further into the vision. This fits into my theory of dichotomy.

I've also found that after the main effects have worn off short term memory may be slightly impaired. For example, I kept forgetting about my lit cigarette in the ashtray. I would lay it down and then, in what appeared a couple minutes, it would be completely burned down to the filter.

One may also notice an inability to recall many of the aspects of the vision and may suffer from incoherent speech. The incoherent speech is very important in attempting to interpret the experience. Just as in Freudian dream psychoanalysis the mind make attempts to fill in the blanks of the vision with coherent structure, basically by adding material to make the vision make sense. But the visions in themselves are unconscious material coming up to a conscious level and this is very difficult to fully interpret.

When a participant comes down from the experience with me I remain completely silent, allowing the partaker to speak freely without my interjections or my attempts to make sense of what is being said. Let them freely speak, without the criticism of the all to common laughter, and try to form a new mental picture from remembered material. Let them have enough quiet time to digest what has happened so that they might come to their own personal understanding.

The main psychological effects seem to be a dissociation from ones physical surroundings. One becomes aware of other surroundings and of communication with alien, though not necessarily extraterrestrial or spiritual, beings. One of the more interesting factors I have found with Salvia is its ability to cause laughter, sometimes even uncontrollably so. Rarely have I seen fear from smoked foliage, but with Salvinorin-A I understand it is common.

Of course these are only my own observations and I make no guarantees of the same effects for others. Two last, though not thoroughly tested observations are that marijuana smoked beforehand interferes with the effects of Salvia and

that the effects of Salvia plateau, thereby requiring a rapid succession of hits.

I have yet to see if any other entheogen limits Salvia's effects. I look forward to testing and hearing about others' experiments with smoked Salvia during Mescaline, Psilocybin, Ayahuasca, and LSD excursions. It might also be interesting to try Salvia (masticated or smoked) in conjunction with smoked DMT. I have personally tried a smoked Salvia/5-MeO-DMT combination with highly dissociative effect on the ego (due to Id influences) while keeping a sense of superego awareness.

I became my superego aware of my ego as it was being affected and effected by my id. You could also say I became my super consciousness aware of my conscious mind being affected and effected by my unconscious mind. Quite a spectacular feeling. Tripartite Being recognized as one.

You should be aware that Salvia suitable for smoking purposes is available in different strengths and forms, for the sake of your own health always get standardized extract when possible, see below for more info.

--- ***Normal Salvia Leaves*** are just that, leaves that have been harvested and dried.

--- ***High Grade Salvia Leaves*** come from premium plants, similar to high grade marijuana compared to a standard strain.

--- ***Crude Extract*** is prepared by mixing crude extract with Salvia divinorum leaves. This concentrates tars and other harmful components of the leaf. It is usually described by a number followed by an x (such as "5x," "10x," etc). The number indicates the ratio of extract to leaf. For example 'Salvia Divinorum 10X Organic Extract', is prepared by mixing one unit of leaf with the tar-like crude extract obtained from nine units of leaf. The resulting product is ten times as potent as the leaves used to produce it. This type of product can vary tremendously in potency because the potency of the leaves used to produce it varies. It has a somewhat sticky feel and inferior burning characteristics due to the impure quality of the extract.

--- ***Standardized Extract*** is prepared by extracting pure salvinorin A (the active principal of the plant), then adding a measured quantity back onto Salvia divinorum leaves to bring them up to a specific, reliable, and consistent level of

potency. This type of product is time consuming to prepare, but is far superior to crude-extract enhanced leaf. Products that have been prepared in this manner have particularly good burning characteristics because they do not contain the tar-like, gummy chemicals found in crude extracts. Since the impurities have been removed during the extraction process, they won't end up in your lungs.

Salvia has been available legally in most areas of the world but it is being made illegal in more countries as time passes. Louisiana made it illegal to use Salvia as a drug in 2005. It used to be easy to buy Salvia online, it is becoming harder to find.

If you find a source, don't pay more than
$50 for a gram of 20x standardized extract
$25 for a gram of 10x standardized extract
$15 for a gram of 5x standardized extract

When smoked (in the ways described), the effects of Salvia can be overpowering and overwhelming. If it is your first time trying Salvia use the table below to find the dosage you should start at.

Normal Salvia Leaves: 1/2 - 1 gram
High grade Salvia Leaves: 1/4 - 1/2 gram
Salvia Extract 5x: 1/10 - 1/3 gram
Salvia Extract 10x: 1/10 gram
Salvia Extract 15x: 1/20 gram
Salvia Extract 20x: 1/20 gram

The bouncing bear company sells salvia, that is ideal for smoking purposes, in the Salvia divinorum section of their site. They ship from the US to most areas of the world.

Liquid Salvia Extracts

I have seen liquid Salvia extracts (tinctures) available in the past but do not know if they are still available. They are recommended for people who don't like smoking or would prefer to ingest a liquid for a milder Salvia experience. Follow the manufacturers recommendations about how much to use and how to use it.

Using a liquid Salvia extract will not be as powerful as smoking Salvia, but the Salvia experience lasts longer when taken in liquid form than it does when smoked.

See talking with god for another persons idea of what the

Salvia experience is like.

Books

The Salvia Divinorum Grower's Guide

This book is dedicated to growing Salvia Divinorum only. There are other books that about dozens or hundreds of types of salvia, but this is the book to get if you want to grow the mind altering Salvia Divinorum plant.

It's an informative book that tells you everything you need to know about the special growing conditions of this unusual plant. It is only 64 pages, but the information it contains will help anyone start and maintain a Salvia Divinorum garden with ease.

The Salvia Divinorum Grower's Guide

A Book of Salvias:
Sages for Every Garden

Salvias constitute the largest genus in the mint family, valued for their medicinal and culinary qualities. The name is derived from the Latin word salvare, to heal, and salvia provides a beneficial addition to any garden.

More than 900 species of Salvia exist, with more than half occurring in North and South America. In this book, the author has selected over 100 beautiful, garden worthy species and dozens of commercially significant hybrids and arranged them alphabetically with documentation providing the scientific name and native habitat of each, including elevation ranges and temperature tolerance, as well as historical background.

The author describes the leaves and flowers of each species, its blooming cycle, and its light, watering, fertilizing, and pruning requirements. Also suggests companion plants and offers data on propagation. The book includes a list of where to see and buy salvias, a flowering guide by seasons, and cold and shade tolerance guides. There are 96 color photographs and 40 line drawings.

A Book of Salvias

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Salvinorin A: Notes of Caution

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by Daniel J. Siebert. From "The Entheogen Review" Vol. 3, No.4: Winter Solstice, 1994.

Salvinorin A (the major active principal of the plant Salvia divinorum) is an extremely powerful consciousness altering compound. In fact it is the most potent naturally occurring hallucinogen thus far isolated. But before would-be experimenters get too worked-up about it, it should be made clear that the effects are often extremely unnerving and there is a very real potential for physical danger with its use.

When the herb Salvia divinorum is consumed either by smoking the dried leaf or chewing the fresh leaves the effects are usually (but not always) pleasant and interesting, this is because when used this way the amount of salvinorin A absorbed into the blood stream is usually very small and in the case of the chewed leaves it is absorbed into the blood stream very gradually.

The pure compound salvinorin A is active at 200 - 500 mcg when vaporized and inhaled. Since very few people have the costly equipment necessary to accurately weigh anything close to this small an amount, it is inevitable that people will try to visually estimate the dose. Unfortunately there is little room for error before the effects become potentially dangerous. When the dose goes above 500 - 1000 mcg the effects can be very alarming, I have seen several people get up and lunge around the room falling over furniture, babbling incomprehensible nonsense and knocking their heads into walls. Several people have tried to wander out of the house. When the experience is over they have no memory of any of this. In fact they usually remember very different events. To an outside observer people in this condition have a blank look in their eyes as if no one is present (and perhaps no one is). It is also common for people to have a facial expression which is probably best described as being like that of a frighten ed animal. It appears that at these "larger" doses one completely loses awareness of, and control over, the physical body and for some reason part of the brain causes the body to get up and move about recklessly while the individual has no awareness of where their physical body is or what it is doing. It seems inevitable that one of these days some careless person will do too large a dose without a sitter and will wander out in the street, or hurt themselves in some way.

Because the dose is so small and insignificant looking, there is a tendency for people to think they need more than what they are told is a safe dose. Another problem is that the technique of vaporizing and inhaling the compound can be a bit tricky. Salvinorin A has a relatively high boiling point and people often don't get it hot enough to remain a gas all the way down into the lungs. Another problem is that so little is used that the vapor often disperses before it gets inhaled. Sometimes people just don't hold the vapor in their lungs long enough for thorough absorption. Several people after trying a dose in the recommended safe range and not getting an effect assumed that they needed a larger dose, when in fact the problem was that they did not vaporize the material efficiently the first time. I have already seen more than one intelligent, careful and experienced person accidentally do too large a dose because of this. Fortunately they had sitters and managed to get through the experience safely.

It is also important to understand that there have been no toxicological studies of

this compound in humans. It is true that the Mazatecs have used the plant for a very long time and don't seem to have problems with it, but when the pure compound is used it would be a simple matter to consume a dose hundreds of times greater than anything ever encountered by the Mazatecs.

Not only is salvinorin A chemically different from other hallucinogens (it is a diterpene not an alkaloid) but its effects are quite different as well. Many people consider the effects less manageable and harder to work with than other entheogens. The majority of people who have had a full blown experience with salvinorin A are reluctant to ever do it again. Anyone choosing to experiment with this compound should always have an alert, clear-thinking sitter present to prevent them from injuring themselves or others.

Salvia divinorum as an herb can be used quite safely and many people claim that it has proved beneficial to them. Hopefully there will not be a rush to isolate the pure compound as it is almost inevitable that it will cause problems, people will get hurt, the compound and possibly the plant will get negative attention and it will become scheduled. We will just be adding one more potentially valuable plant ally to the list of species which are already feared and condemned in our society.

If you choose to pursue a relationship with this plant please treat it with respect and care. Perhaps if people can use the plant safely and responsibly it will be able to grow and thrive freely into the future.

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Salvia Divinorum

Teens, preteens and young adults are showing a revived interest in an ancient plant. Salvia Divinorum is an hallucinogenic plant that some claim is a safe, natural high. Instead, it can place a user in danger.

Background
Identifying characteristics
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Background

Salvia is part of a large genus of plants in the mint family, including the herb, sage. There are about 1,000 species of salvia. Most are used as ornamental plants for gardens and landscaping; some in America are popular for attracting hummingbirds or butterflies.

But one species - *salvia divinorum* - is better known for its chemical properties than its beauty. It originated in Mexico, where it has been used for healing and divination. The active component of salvia D has been identified In the U.S. it is also known under a variety of knicknames, like Maria Pastora, Sage of the Seers, Diviner's Sage, Salvia, Sally-D, and Magic Mint. In Western culture, it became popular for its hallucinogenic effects in the 90s. Use for this purpose in the United States is most popular with teens and young adults. Users who videotape their experiences and post them on YouTube and other Internet sites are spreading awareness of salvia's properties faster among the younger crowd.
The psychoactive component of salvia D has been identified as *salvinorin A*. It is hallucinogen.

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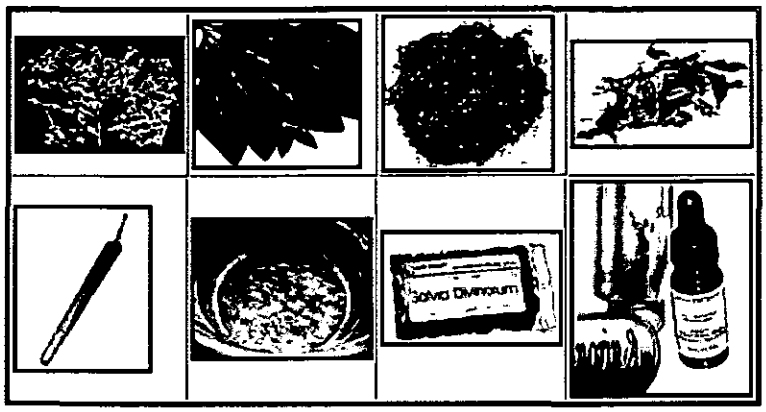
Identifying characteristics

The salvia D plant, which can grow to over 3 feet in height, has large green leaves, hollow square stems and white flowers with purple calyces. It can grow successfully outside of its native region.
While some people grow their own plants for illicit purposes, most users purchase products online or at retail "head shops". The products may include whole fresh or

dried leaves, as well as extract-enhanced leaves supposedly enriched with salvinorin A; chopped leaves; powders; crystals and tinctures. Please click on the thumbnail images below for more.



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Legality

Neither salvia D nor its potent extract salvinorin A has an approved medical use in the U.S. Salvia is not "legal pot" or "legal acid." It is not a party drug. Even pro-drug websites caution that it is not fun and people who try to party with salvia will probably not have a good experience.

Salvia D is legal on the federal level, but there is a growing movement to regulate it because of its potential danger. A number of states either have or are considering restrictions on the sale, possession or use of the plant and salvinorin A. In some, people are allowed to have the plant as long as it is not intended for consumption. In others, the plants are legal but extract-enhanced leaves are not, while Maine only prohibits possession by minors. Illinois has made it a schedule I controlled substance. Lawmakers in several other states are considering bills that seek to ban salvia divinorum.

The federal government considered placing salvia D and salvinorin A in schedule 1 of the Controlled Substances Act in 2002. Some committees heard the bill, but no action was taken on it and it died at the end of 2002. In 2007, the U.S. Drug Enforcement Administration (DEA) began an analysis of salvia D and salvinorin A to see if they present a risk to public safety that would justify making them controlled substances. The Controlled Substances Act requires that this analysis be performed before a substance can be scheduled as a controlled substance.

There are many already-existing non-drug-specific laws that can be enforced against reckless salvia users (e.g., laws that prohibit public endangerment, public intoxication, reckless driving, etc.).

Internationally, salvinorin A and/or *Salvia divinorum* have been placed under regulatory controls in Australia, Belgium, Denmark, Estonia, Finland, Italy, Spain, and Sweden

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Effects

Salvia D leaves are generally smoked or chewed. When chewed, effects first appear within 5 to 10 minutes. Salvinorin A may be smoked or mixed with liquids and held in the mouth for absorption into the bloodstream. Smoking pure salvinorin A, at a dose of 200-500 micrograms, results in effects within 30 seconds and lasts about 30 minutes. While the high from salvia D is short-lived, the aftereffects can linger for hours.

A limited number of studies have reported the effects of using either plant material or salvinorin A. Psychic effects include perceptions of bright lights, vivid colors and shapes, as well as body movements and body or object distortions. Other effects include dysphoria (a feeling of emotional and/or mental discomfort, restlessness, malaise, and an agitated depression), uncontrolled laughter, a sense of loss of body, overlapping realities and hallucinations (seeing objects that are not present). Physical effects may include un-coordination, dizziness, and slurred speech.

One survey of 500 users self-reported lingering after effects from salvia D. Some of the effects included 'weird' thoughts, increased sweating, dizziness, lack of coordination, heart racing, anxiety, chills, irritability, nausea, diarrhea, muscle cramps/aches, worsened mood and decreased self-confidence.

One thing to note about salvia D: People who believe using salvia D could be a replacement for marijuana have found the high unpleasant.

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Dangers

There have been relatively few studies on the dangers associated with salvia D or the long-term impact of use. Some research has suggested that the substance has a depressive effect in rats but there has not yet been a study showing such a causal relationship in humans. A professor in England, where the use of salvia D is growing, is concerned about a theory that salvia D interacts with receptors in the brain that may be linked with schizophrenia. He is urging more research into salvia D's role in brain chemistry.

The White House Drug Policy cautions that hallucinogens - including LSD, angel dust, and salvia D - can cause "powerful distortions in perception and thinking. Intense and often unpredictable emotional reactions can trigger panic attacks or psychotic reaction. An overdose of hallucinogens can cause heart failure, lung failure, coma, and death."

Even those who sell salvia D warn users to be cautious. Many sites "strongly recommend" that people planning to use the substance enlist a non-using friend to watch over them (a sitter) to make sure they don't hurt themselves or someone else. Users have developed a rating scale to rank the affects of salvia D. The SALVIA experiential rating scale runs from "S" (1) for subtle effects through "A" (6) for amnesic effects. At this stage either consciousness is lost; or at least the user is unable to later recall what was experienced. The individual may fall, or remain immobile or thrash around; somnambulistic behavior may occur; injuries can be sustained without pain being felt; on awakening the individual will have no recollection of what he/she did, experienced or said.

After the initial high, effects of the plant may linger for hours. A person driving in this state puts himself and the public at risk; even simple, everyday tasks around the home can be dangerous as the user may fluctuate between delusions and lucidity.

Salvia D and salvinorin A are not meant for human consumption, so they are not subject to standards, oversight or quality control. Users have no guarantee that what they are purchasing is a pure product, the strength of the drug or if it is tainted with other drugs or chemicals.

Researchers are studying reports of users suffering flashbacks from salvia D use, as well as suspicions tying the drug to suicidal ideation.

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Action Plan

Even though South Dakota currently has no law against possessing salvia D, it is a potentially dangerous, mind/mood altering substance.

In addition to watching for the common signs of drug use in their children, parents concerned about possible salvia D use should:
Discuss salvia D with your teen. Find out if it is becoming more popular among his/her peers. Ascertain what your child knows or believes about the drug.

Check your child's Internet use history for sites focused on drug use and/or selling salvia.

Watch for paraphernalia associated with use, specifically bongs or drug vaporizers for smoking salvia.

Please call the PVPS S.A.F.E. Prevention Counselor at your child's school if you have more questions or concerns.

Back to Top

Resources:
The Office of National Drug Control Policy
US Department of Justice/Drug Enforcement Administration
The Partnership for a Drug-Free America
Salvia Divinorum Research and Information Center
Erowid
Topeka Capital-Journal

2000 Prairie View Prevention Services, Inc.

Contact Us | Site Map | Disclaimer Policy

SB 54

26-LS0209\W.2
Chenoweth
4/13/09

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 54(RES)

Page 1, line 2:

Delete "**exorbitant or excessive**"

Insert "**unconscionable**"

Page 1, lines 11 - 12:

Delete "exorbitant or excessive"

Insert "unconscionable"

Page 2, line 25:

Delete "exorbitant or excessive"

Insert "unconscionable"

1239

TESORO

Tesoro Alaska Company
P.O. Box 196272
Anchorage, Alaska 99519-6272
907 561 5521
907 561 5047 Fax

April 3, 2009

The Honorable Hollis French
Chair
Alaska Senate Judiciary Committee
State Capitol
Juneau AK 99801-1182

RE: CS SB 54 (RES)

Dear Senator French:

Despite significant changes to the original bill, the Resources version of SB 54 imposes a great deal of risk to our business in Alaska. For that reason Tesoro opposes the Resources Committee substitute.

Without understandable definitions for the terms "excessive" and "exorbitant", refiners, wholesalers and retailers would be subject to serious business and legal risk while selling fuels.

I have heard testimony discounting this risk, so let me try to expand on our concern.

The current consumer protection laws, especially those prohibiting collusion and monopoly powers, are well defined, and make compliance straightforward. The regular investigations conducted by the Attorney General over the past decades have all been conducted in a consistent manner, regardless of who was serving as Attorney General.

The Attorney General recently concluded that supply and demand have, and are currently determining fuel price in Alaska. However, based on testimony, the sponsors believe that fuel prices in Alaska have been, and are now, excessive and exorbitant. If we imagined a world where "excessive" and "exorbitant" were law, we would have to consider the legislative record that indicates we are perceived to be in violation of the hypothetical law. Given our core value of complying with all laws, my company would be unwilling to risk breaking an undefined law, thus exposing shareholders to enormous penalties and costly legal proceedings.

Finally, the sponsors of this legislation reference the intent to give the Attorney General better tools to protect consumers. The anti-trust laws already on the books are powerful and effective in preventing anti-competitive behavior. Assuming that a market economy exists, logic would dictate that gouging is impossible – when prices rise to a level high enough, new competitors will enter the market, or an existing competitor will lower prices to gain market share.

Because the Attorney General has extensive authority under law to redress any market situation that would limit those reactions to prices, he already is empowered to prevent "gouging."

Thank you for the opportunity to comment. Please call me at 907-261-7221 with any questions.

Sincerely,

Kip Knudson

COST OF LIVING

ACCRA COST OF LIVING INDEX*
For Selected Cities
2008 Annual Average Data

City	Composite Index 100%	Grocery Items 12.49%	Housing 29.18%	Utilities 9.98%	Trans-portation 11.10%	Health Care 4.06%	Msc. Goods & Services 33.19%
West:							
Fairbanks, AK	**136.1**	**125.9**	**149.6**	**199.2**	**110.8**	**140.2**	**117.0**
Anchorage, AK	125.5	142.5	136.4	97.7	106.9	130.1	123.7
Kodiak, AK	125.1	149.1	116.8	146.2	116.4	128.0	119.5
Phoenix, AZ	101.1	103.4	100.1	90.9	100.2	99.4	104.8
Oakland, CA	147.9	128.6	224.5	89.4	111.7	119.1	120.9
Denver, CO	105.0	108.5	110.3	96.3	91.2	105.8	104.0
Idaho Falls, ID	89.3	88.2	81.3	87.3	96.1	90.2	94.8
Kalispell, MT	102.3	114.4	100.0	96.9	98.8	105.9	102.1
Farmington, NM	98.7	103.8	97.4	97.6	97.8	103.5	97.9
Seattle, WA	123.0	117.2	151.2	83.8	110.5	120.8	116.5
Laramie, WY	103.3	116.4	110.7	99.0	94.9	96.2	96.8
South:							
Miami, FL	116.6	106.7	142.4	96.9	107.9	107.1	107.5
Atlanta, GA	97.2	98.9	91.3	87.6	103.0	102.0	102.1
Lafayette, LA	98.6	91.9	105.0	89.6	107.2	86.5	96.9
St. Joseph, MO	94.1	94.9	81.0	97.2	93.8	106.7	103.0
Tulsa, OK	88.2	93.0	68.2	91.5	99.6	102.7	97.4
Memphis, TN	88.2	94.2	74.2	87.6	93.8	97.2	95.4
Dallas, TX	92.1	99.8	70.8	105.3	102.9	104.3	98.9
North Central:							
Indianapolis, IN	91.7	93.4	88.6	89.4	102.0	99.0	90.2
Grand Rapids, MI	95.2	100.1	96.6	107.2	95.2	86.8	89.5
Wausau, WI	94.8	90.9	87.3	110.5	98.8	99.9	96.1
Northeast:							
New York, NY	219.8	142.4	409.6	167.3	120.2	132.6	141.8
Philadelphia, PA	123.9	124.9	144.5	118.2	104.1	109.0	115.7
Boston, MA	133.6	115.9	156.7	140.6	108.1	133.6	126.4
Raleigh, NC	102.6	104.1	99.3	94.3	97.8	107.3	108.4
Richmond, VA	104.2	97.1	109.4	108.5	104.6	108.2	100.4
Avg. of 322 Urban Areas	100.0	100.0	100.0	100.0	100.0	100.0	100.0

2.38x higher = 238% More

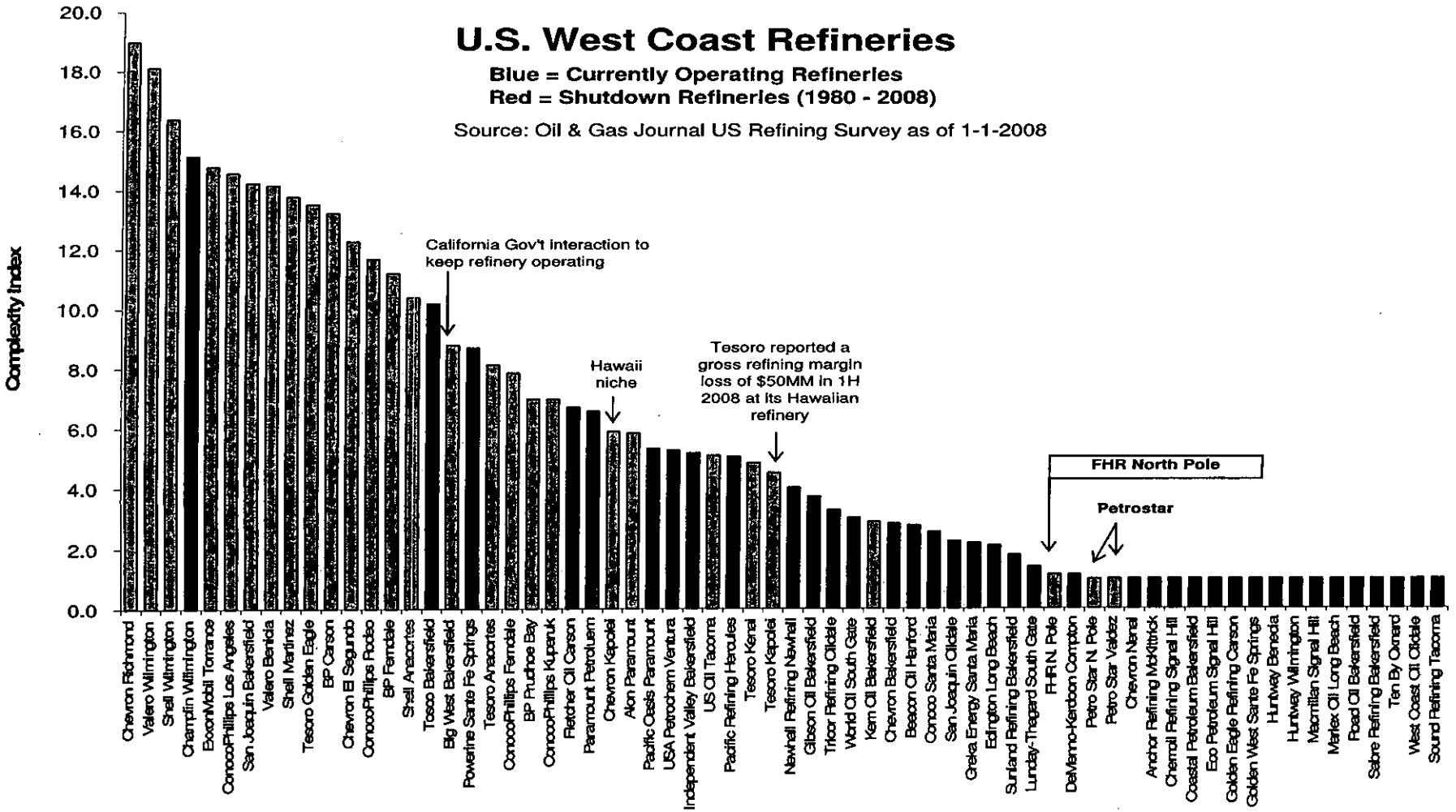
SOURCE: ACCRA (American Chamber of Commerce Researchers Association), "ACCRA Cost of Living Index," 2008 Annual Average Data.

NOTE: The ACCRA Cost of Living Index does not measure inflation (price change over time). Because each quarterly report is a separate comparison of prices at a single point in time, and because both the number and the mix of participants changes from one quarter to the next, Index data from different quarters cannot be compared. For inflation data you will nee d to use the CPI (Consumer Price Index).

* Item percentages change so please watch for current percentages.

N. Pole is a Low Complexity Refinery

History shows that low complexity refineries like N. Pole do not survive unless they have other sources of competitive advantage.



ALASKA STATE LEGISLATURE

Interim
716 W. 4th Ave, Ste. 540
Anchorage, AK 99501
(907) 269-0120
Fax: (907) 269-0122

Session
State Capitol, Rm. 115
Juneau, AK 99801
(907) 465-2435
Fax: (907) 465-6615

Senator Bill Wielechowski

SPONSOR STATEMENT
Senate Bill 54

"An Act making sales of and offers to sell certain energy resources by a refiner at prices that are exorbitant or excessive an unlawful act or practice under the Alaska Unfair Trade Practices and Consumer Protection Act."

Alaskans are paying far too much for heating and motor fuel. This bill will help reduce the cost of gasoline, and heating fuel for many Alaska residents, from road system communities where the price of gasoline is excessive, to rural communities where the price of heating fuel is far too high.

There is evidence that Alaska's refiners are marking up the cost they pay for crude oil at a rate that far exceeds the markup charged by West Coast refiners, and that is higher than the historical Alaska mark up. Many other states have price gouging laws, and Alaska should have one too.

Most Alaska motor fuel and heating oil is produced by the Tesoro and Flint Hills refineries, with most motor fuel coming from the former. Evidence to date shows that the high price Alaskans are paying for motor fuel and heating oil is caused in large part by this refiner mark-up. While it is understandable that fuel prices will rise and fall with the price of oil, there is questionable justification for the margins Alaska's main refiners are adding to their cost for Alaska crude oil.

This bill provides protection for Alaskan communities, individuals, and businesses that rely on refined petroleum products for heating and transportation by prohibiting refineries from charging excessive or exorbitant prices for heating oil, diesel, and automobile and aircraft fuel. An objective threshold is established where prices are presumed to be excessive or exorbitant, which refiners can rebut by showing that their prices are a reasonable response to expenses. The bill provides for monetary damages to deter potential violators.

During the recent fuel cost crisis, the rate at which Alaskan prices have been higher than Lower 48 rates has consistently exceeded historical norms, and Alaskan prices have increased while Lower 48 rates decreased. Even suspending Alaska's gasoline tax has not been able to eliminate this disparity.

This bill targets refinery prices, because the investigations conducted by the Legislative Research Division and the House Judiciary Committee have shown that the price disparities have arisen because of the prices that refineries sell products to retailers. This bill does not set or control pricing, and disparate pricing would still be legal if refiners can show their prices to be reasonable. This bill only applies to refiners with annual sales of over one million gallons of applicable fuel, exempting smaller community refiners.

While many other states' prohibitions against excessive fuel prices only apply in the event of natural disasters, terrorist attacks, or declared emergencies, Alaska has a unique Constitutional responsibility to ensure that natural resources are used to the maximum benefit of the Alaskan people. This bill prohibits refineries from charging exorbitant or excessive prices that are detrimental to state and local economies and the welfare of individual Alaskans. Also, this recent crisis has shown that high fuel costs alone can be enough to create an economic emergency.

LETTERS TO THE EDITOR

Gas gouging

Fairbanks Daily News-Miner (AK) - Wednesday, March 25, 2009
Author: Bill Mitchell, Fairbanks

It is starting to appear that our state Legislature isn't going to do anything to protect Alaskans from the price gouging that we've been victimized by at the pump for a long time now.

I will not be able to vote for any incumbent who isn't willing to do whatever it takes to correct this massive injustice that we've faced for far too long. I hope that enough feel the same way that most if not all incumbents up for re-election are sent packing after the next election cycle. Regardless of their party affiliation, they will have demonstrated that they are unworthy of the position they hold. I guess legislative salary issues trump protecting the people from the ongoing pillaging at the pump.

Is there nothing the governor can do to stop the pillaging? I thank her for refusing the federal funds that would have created more future overhead.

North Pole gas prices

Fairbanks Daily News-Miner (AK) - Tuesday, March 17, 2009
Author: Sherry Smith, North Pole
March 16, 2009

To the editor :

The local tax has been removed, and we are still paying more than Fairbanks. What I find really odd is the fact that the gas prices in Tok also are less than ours. Last time I checked, Tok was quite a bit further away from the refinery. I guess Fairbanks is too.

Why are we paying so much more?

High gas prices in state smell fishy

Anchorage Daily News (AK) - Monday, March 16, 2009

Today I researched using "gasbuddy.com" prices for fuel in the following cities. I then subtracted the state fuel tax for each type of fuel and compared those prices to Anchorage fuel prices , with the following results:

Great Falls -- regular gas $0.64; diesel $1.70.

Phoenix -- regular gas $0.55; diesel $1.67.

Seattle -- regular gas $0.61; diesel $1.69.

Honolulu -- regular gas $0.26; diesel $ 0.67.

As this information shows, we are being taken advantage of by our local oil companies and refineries. When we are paying more than Hawaii and have an in-state source for crude, then there can be no excuse for the high prices .

Also, these prices are compared with Anchorage prices . Most of the state pays far higher.

Everyone, and I mean everyone, needs to make our legislators and governor aware that this situation is not acceptable. Consider that most of us are affected by transportation for our food and necessities, and we are paying an additional $1.70 for diesel.

-- Charles Foster

Wasilla

Fuel tax suspension helps a little

Anchorage Daily News (AK) - Saturday, March 14, 2009

Glad to hear Gov. Sarah Palin pledged her support to extending the motor fuel tax suspension. The governor and lawmakers working together last year set the policy in place as part of the governor's comprehensive energy plan. I encourage legislators to keep this important tax suspension in place. Alaskans are still paying higher prices at the fuel pump than our neighbors in the Lower 48. Thank you, governor, for protecting our pocketbooks.

-- Corie Cruise

Wasilla

Gasoline threat

Fairbanks Daily News-Miner (AK) - Thursday, February 26, 2009
Author: Thomas McGhee, North Pole
Feb. 17, 2009

To the editor :

No illegal activity? A threat to create oil shortages and dire consequences intentionally would directly affect individuals, companies and entire communities. The evidence already is here today. "Jeff Cook, spokesman for Flint Hills Resources Alaska, forecast fuel shortages and other dire consequences should lawmakers approve anti-gouging or price cap bills." (Daily News-Miner, Feb. 13.) If that's not a threat, I don't know what one is.

There are no oil shortages, and there never has been a lack of oil other than those made by the companies. And why would anyone not want to protect residents?

Sell or close Flint Hills! It won't make it any worse for North Pole or the Fairbanks North Star Borough. We will survive your failures.

The truth is, price -gouging oil companies, greedy CEOs and outrageous union pay scales have put the public and private sector into stop-spending-and-protect-ourselves mode. In turn, it has

back-fired and crippled everyone. Thanks, big oil companies, out-of-control unions and overpaid CEOs; you didn't look out for the consumer.

Is this referred to as biting the hand that feeds you?

No gouging?

Fairbanks Daily News-Miner (AK) - Tuesday, February 17, 2009
Author: Bob Bederka, Fairbanks
Feb. 13, 2009

To the editor :

OK, let me get this right. Jay Ramras and the rest of our politicians say there is no gouging on our fuel price .

Someone please explain to me then how oil can drop to $34 a barrel and gas in Fairbanks goes up? For that matter, explain why we are paying high gas prices to subsidize jet fuel prices ? Anyone in town who drives a jet, please raise your hand.

Jay should quit sniffing whatever it is he is sniffing and smell the coffee. That's coffee bought locally and not imported for him by his pals in the oil companies.

For that matter, all the doom and gloom that the oil companies and Jay predict will happen if we enact price caps might affect Jay's and Sarah's political contributions and actually be a good thing for us, the average normal Joe. Our prices are way out of line and it's time for something to be done. After all, tourist season is coming and all that does is give producers and retailers reason to raise our prices more!

Oh, and on a separate note ... Scott, leave Mount McKinley alone. We already renamed Alaskaland to Pioneer Park because some idiot somewhere thought it was supposed to be like Disney World with rides and roller coasters. Out-of-staters should quit being allowed to run our state.

Cut prices

Fairbanks Daily News-Miner (AK) - Tuesday, February 10, 2009
Author: Cami Pena, Fairbanks
Jan. 30, 2009

To the editor :

I dread going to the grocery store. There's nothing to fear more than looking at your barely-a-week-family-of-three groceries and realizing it slightly passes $200.

What happened to the days when a box of Wheat Thins was only $2, instead of rounding up to $4? I understand that as times get tough in our economy (i.e. Iraq War) prices will skyrocket. Yet how come they don't come back down?

Gasoline was such a huge struggle and although Alaska is still a dollar higher than the Lower 48,

the prices still dropped. In a sense it infuriates me that grocery stores think that since the need for food is so high, people will still purchase groceries at a low income. The average American family's income has dropped dramatically with the recent downfall in employment. It would be nice if we could catch some sort of a break, soon!

Now don't get me wrong, I strongly appreciate the Safeway Club Card, Fred Meyer Rewards and even Wal-Mart's low prices , but it's still not enough. If most of Americans are overweight, how do you expect this to change with healthier and organic food prices through the roof?

So in regard to President-elect Obama, I understand he'd like to help the economy, but let's help the families first and cut prices .

Alaska should build a refinery

Anchorage Daily News (AK) - Monday, February 9, 2009
Once again the Legislature has failed to do its job. After completing a 54-page report, the House Judiciary Committee has said that it has based its findings on "intuition" (ADN article Feb 3).

I think it's based on something else, but I won't go there. Their findings are based on the refiners subsidizing jet fuel prices by gouging the public at the gas pump.

The article's statement that "Because jets can refuel anywhere, jet fuel prices are controlled by the world market" is total hogwash. As a retired airline pilot I can tell you that jets don't land just anywhere, they usually like to land at their destination. Anchorage is one of the largest air cargo crossroads of the world because of its location. It is a shorter distance from here to there, period. If the cargo haulers don't land here where will they land? Whitehorse? Reykjavik? Greenland?

Those places would have trouble refining jet fuel at world prices . Will they fly extra and go out of their way to buy cheaper fuel? I don't think the savings would add up. Some agency outside the Legislature, the Attorney General's office perhaps, should do the investigating. Better yet, the state should build its own modern refinery and run it like the profit-making railroad.

-- Bob Picard
Anchor Point

Villages need fuel, food relief now

Anchorage Daily News (AK) - January 16, 2009

Recent reports from Emmonak, a village of 800 on the mouth of the Yukon River, have raised grave concerns. The high price of heating oil is causing families to choose between heat and basic food supplies. It is a problem that should concern us all. Immediate action is needed by the state to ensure villages faced with these unique problems have enough food, and if this can't happen the private citizens of Alaska need to organize a relief campaign. Time is wasting.

-- Brian Whittle

Anchorage Daily News (AK) - Thursday, January 15, 2009

Price gouging is out of control

Your solution for high oil prices in Alaska does not go far enough. In a recent national campaign, a sandwich shop advertised $4.99 sandwiches that cost $5.99 here. My knee surgeries cost twice what they would have in Seattle. Years ago, when I was buying a new car from an Outside company, the local dealership wanted $800 to accept delivery, when the Outside rate for the same service was $150.

We need investigation into all of the higher prices we pay. Using your standard, we need a state agency that will investigate any price that is more than 10 percent above a specified Lower 48 average, maybe Seattle's. This agency should have the power to levy fines against plumbers and doctors and retailers and anyone else who is price gouging.

We need an agency that will determine what a fair profit to make is on any and all transactions. Why I have heard in the good years, fishermen can really rake it in. Why do I have to pay those exorbitant prices for halibut? A lot I had my eye on on the Hillside was going for $150,000. They bought it years ago for a fraction of that. Talk about gouging.

Let's get all of the Alaska price gouging under control, not just the refiners. A state agency to regulate profits is just what the doctor ordered.

-- Brian Leach

Anchorage

Take a gasoline holiday

Anchorage Daily News (AK) - Wednesday, January 14, 2009

Too bad everyone can't do as I do. If they could, gas would be $.50 a gallon; not $2.50 like it is here.

I filled the truck in Anchorage Nov. 3, and still have 1/4 tank. I am striving to buy gas every two months.

Not everyone can do that but still everyone has the power to bring down the price . If everyone would pick a day and not buy gas -- say Wednesday -- the price would come down. But will they? No! How could that be a problem? Not buy gas on a designated day? If you believe in doing this, notify all friends and relatives in and out of state.

-- Cliff Wade

Soldotna

Palin should take on gas prices

Anchorage Daily News (AK) - Monday, January 12, 2009

I used to find it amusing when friends from the Lower 48 would ask how much we pay for gasoline here. I particularly enjoyed telling them the reason why it was so much cheaper here than wherever they live: "We grow it up here."

Now we find ourselves paying nearly a buck a gallon more than any of them and, as far as I can tell, there is only one thing that has changed between the time of my attempts at humor and now when it is no longer a joke.

Sarah Palin bragged while on the VP campaign trail that she took on the oil companies and raised their taxes here in Alaska. Her adoring public, in the Lower 48 and here, cheered this.

Are you cheering now? I honestly think that the oil companies, rather than spreading their new tax burden amongst all of their customers, are sticking it to us here.

Every time I fill up now, I think of this "Palin Tax" and wonder why she should be considered as a heroine to any of us. And why she refuses to do anything about this.

-- Jim O'Toole

Anchorage

Monopoly keeps fuel prices high

Anchorage Daily News (AK) - Sunday, January 4, 2009

I hope the state refineries and their retailers had a prosperous Christmas -- we're currently paying twice as much for gas as many places in the Lower 48. I'm a free marketer. Unfortunately we don't have a free market for gas/fuel oil in Alaska: We have a near-monopoly.

Bush Alaska is practically dying on the vine and the state economy is hurting all over because of this greed. The state should either buy Flint Hills and expand it to distribute gas at cost, or probably the easier thing would be to tax these guys 11 cents for every 10 they're over the national average. Hopefully the state legislators will grow a spine and takes steps to rectify this in the spring.

-- **Richard Kent**

Homer

Gas issues

Fairbanks Daily News-Miner (AK) - Friday, January 2, 2009

Author: Janice Stables, North Pole
Dec. 29, 2008

To the editor :

I, too, have noticed the current plateau in local gasoline prices . According to a recent article in your pages, there has been a nationwide decline of 73 percent in oil prices since last summer. The national average price for gasoline is $1.69 per gallon.

I've done the math. Locally, our gasoline runs around $2.50 per gallon, 48 percent higher than the national average.

We have been told that our prices are based on the cost of gasoline plus the cost of shipping to Alaska (which in itself is questionable since we produce our own oil and gasoline).

I find it hard to believe that shipping costs are more than

3-5 cents per gallon. I find it even harder to believe that shipping costs 81 cents per gallon.

Is the Legislature done with its inquiry into local gasoline prices ? I hope not. Alaskans are still being taken for a ride.

OK, we elected you. Get to work!

Anchorage Daily News (AK) - Saturday, December 27, 2008

Where are our elected leaders? What are they doing? Only last month were they on my doorsteps, on radio, on television, in the newspaper, sending fliers bombarding me begging for my vote. Well, you got it! What are you doing for us now? Have you forgotten who put you in office? I am writing about gas prices. Alaska has the highest gas prices in the nation. Are you kidding? Oil prices are now down to $25 a barrel. We are still paying more than $2 a gallon. Or have you not noticed? I will remember you the next time you need my vote.

-- Andrea Smith

Why so high?

Fairbanks Daily News-Miner (AK) - Wednesday, December 24, 2008
Author: Randy Frank, Fairbanks

To the editor :

How many other people have noticed the price plateau reached lately for the cost of a gallon of gas at local stations? As of Dec. 22, 2008, the lowest price per gallon has been stuck at $2.479 for about two weeks and I have to wonder why. The price of Alaska crude is still sliding; today it was $33-plus per barrel.

The Web site GasBuddy.com gives good gas prices throughout Canada and the United States. Even smaller communities in the Lower 48 states are seeing gas prices of less than $2 and there are some places in Utah and Wyoming where the price is below $1.40 per gallon.

According to GasBuddy, Tesoro is selling gas in Honolulu at $2.29 per gallon, and that is about the highest price in the city. Gas is selling for about $1.65 per gallon in Seattle.

This really makes me wonder, and why is diesel now a dollar more than gasoline when it used to be cheaper? I know that the requirement for diesel to be low or ultra-low in sulfur content has something to do with the added cost, but gasoline has to be low-sulfur also. Some price difference can be explained because we use less diesel than gasoline, although refining diesel is easier than making gasoline, so I think that would compensate some for the difference in the amounts used.

I am at a real loss to understand why our gasoline prices are so high relative to the Lower 48 states. I am sure of one thing, though — the refiners would have a real good answer for me. But I don't know that I would believe them. Oh, and today I paid $1.81 per gallon for No. 2 heating oil. Amazing and amusing.

State refinery could cut gas costs

Anchorage Daily News (AK) - Saturday, December 13, 2008

Yesterday I returned from a visit to Georgia. Regular gasoline was selling for $1.34 to $1.45 and diesel was selling for $2.42 to $2.53 per gallon. Today **prices** here on the Kenai were $2.79 for gasoline and $3.79 for diesel, the highest **prices** in the nation. Why are Alaskans being charged almost double for fuel? Crude oil is selling for less than $40 a barrel, far less than it was 18 months ago, yet our fuel **prices** have retreated very little and very slowly.

The oil companies or refineries are ripping us off big time and the state seems unable or unwilling to try to stop them. Since the federal government has entered the private sector with the bailout of banks and the insurance industry, why doesn't the state build a refinery and enter into competition with the private refineries? That would certainly help ALL Alaskans and would drive **prices** down to a more comparable level.

-- Quinton Thomas Cable

Kasilof

Highest gas

Fairbanks Daily News-Miner (AK) - Tuesday, December 9, 2008
Author: Tracy Freel, Fairbanks
To the editor :

Alaskans get the shaft! In Alamosa, Colo., gas is $1.73 a gallon and it has to be trucked a minimum of 200 miles. In Fort Bridger, Wyo., where crude has to be trucked and then gas has to be trucked to retail stations, gas is $1.65 a gallon. Wildwood, Ga., — $1.54. Preston, Md., — $1.66. Garland, Texas, — $1.53. Fort Collins, Colo., — $1.47. Roanoke, Va., at Kroger gasoline station No. 3322 — $1.34.

We here in Fairbanks have a refinery in North Pole with a pipeline feeding it (crude is not trucked one foot), and we still have the highest gas, not to mention heating oil prices , in the nation. As of Nov. 28, gas was $2.629, and this was the lowest price in town. Is there something wrong with this picture, or is it just me? And all I can say when it goes back up is: Don't blame me, I didn't vote for him.

I'm proud to be an Alaska Republican, and I would like to say "thank you" to Ted Stevens for his years of service. He has my support and always has. Sarah Palin, I think, did a great job in the vice-presidential campaign and as our governor, and she has a strong backbone. She has the support of my family, and go get them and don't back down. Tracy Freel, Fairbanks

Gas price gouging small potatoes

Anchorage Daily News (AK) - Sunday, December 7, 2008

Having worked with the oil companies for 28 years, I know exactly what they are capable of.

Price gouging? Please. That is the least of their sins. It would be swell to see our gas prices go down before I become severely unhappy.

-- Lillian K. Staats

Wasilla

Can't figure high gas prices ? Give 'Tyranny of Oil' a read

Anchorage Daily News (AK) - Wednesday, December 3, 2008

The front page headlines in the Daily News Nov. 22 read "Alaska's high gas prices bewilder state lawmakers." For those citizens who would like an explanation, it can be found in a recent book written by Antonio Juhasz called "Tyranny of Oil".

Revealed is the history of the oil industry and how it has evolved to become the most powerful entity in the world. The industry's vertically integrated structure from well-head to consumer has allowed grossly high profits at the expense of the world's economy and its citizens. It is like a tax.

The oil industry was not able to be what it is today by just shrewd business practices. Their accomplishments have only been possible by political lobbying, influence peddling and campaign contributions at all levels of government. The millions of dollars spent have led to unchallenged corporate mergers, tax breaks, price manipulation, war in Iraq, and pollution at sea, in oilfields and refineries and in the air we breathe. Legislation has been and continues to be passed or defeated that benefits this industry.

Our elected officials have not and will not look after the people's well-being unless we hold them accountable. Who were the major contributors for the finance of the officials you voted for? Who are they indebted to and how will they stay in office? Who pays in the end?
-- Ronn Lund

Fuel disparities

Fairbanks Daily News-Miner (AK) - Tuesday, November 25, 2008
Author: Wayne C. Grieme, Fairbanks
Nov. 22, 2008

To the editor :

Fuel prices in the local area are out of sight but not out of mind. Local diesel prices range from $3.82 to $3.99 in the Fairbanks area, unleaded ranges from $2.79 to $2.99. Our combined local, state and federal taxes for diesel are 24.4 cents per gallon and for gasoline are 18.4 cents per gallon.

In Montana, diesel prices range from $2.62 to $2.72 while unleaded prices range from $1.80 to $1.86. Their combined local, state and federal taxes are: diesel — 52.2 cents, and gasoline — 46.2 cents.

In Utah, diesel prices range from $2.57 to $2.58 while unleaded prices range from $1.74 to $1.82. Their combined local, state and federal taxes are: diesel — 48.9 cents, and gasoline — 42.9 cents.

In Washington, diesel prices range from $2.66 to $3.24 while unleaded prices range from $1.89 to $2. Their combined local, state and federal taxes are: diesel — 61.9 cents, and gasoline — 55.9 cents.

Why such disparity? When you remove the taxes, it's even worse. I'm afraid to look at the home heating fuel prices .

Is our fuel processed here, or is it hauled in from the Lower 48?

Fuel prices change daily, but they can be verified on flyingj.com. The above prices were based on Nov. 22, 2008.

It's time for Palin to come home and take care of state's business

Anchorage Daily News (AK) - Monday, November 17, 2008

Our governor, Sarah Palin, needs to wake up and realize that the campaign is over. She lost. It is time to come home and do her job. It sounds like she is taking a victory lap by the speech she made at the governors' meetings rather than taking care of business at home. Let's get back on the job and take care of Alaska.

She can start with doing something about the outrageous **prices** of fuel oil. I have a small home in Wasilla, not five miles from her home, and it is costing me $500 a month to keep it partly warm, and cold weather hasn't hit yet. Fuel oil is $3.50 a gallon, higher then **gas** , with oil at $55 a barrel, and lower refining costs. Why is that? Yes, she gave us $1,200 to help with energy costs. That bought her a few votes I am sure, but I would have preferred a natural **gas** line on my street, or an additional **gas** refinery in our state.

Now that the election is over, governor, what can you do to help Alaska?

-- Bud Bass

Wasilla

Governor, deal with the gas that powers our vehicles

Anchorage Daily News (AK) - Saturday, November 15, 2008

I was ready to discontinue my subscription to the paper if this morning (Tuesday) you had continued with your Ladies Home Journal style of journalism with the Palins in the kitchen. Glad to see we are back to news items.

My question for all Alaskans and Gov. Palin and staff, where is the uproar over **gas prices** ? I was in Manhattan two weeks ago, the most expensive place in the country, and **gas** was $2.72 a gallon. Currently lower yet, with Midwest states being under $2 a gallon, Seattle at $2.38 a gallon, San Francisco at $2.68 a gallon. What's up, Gov? Monopoly, **price** fixing after **price** gouging?

Where is the interest in what is best for Alaskans? Gov. Palin, you have a job to do. This is affecting every Alaskan. Can this be addressed soon?

-- Gail Sela

Palmer

Gasoline costs

Fairbanks Daily News-Miner (AK) - Thursday, November 13, 2008
Author: Shawna Hildebrand, Fairbanks
Nov. 11, 2008

To the editor :

I am a college student here at the University of Alaska Fairbanks. This is my first semester back in Alaska. Upon moving back, I thought I was leaving the expensive gas prices of Durango, Colo., behind. As it turns out, gas prices are no better here than in most parts of the Lower 48.

Some of the counties down there are currently paying under $2 per gallon, while we are still paying over $3.

This is ridiculous, considering that we have resources that we could put to use for our state. Is it really that difficult to lower the prices to match the prices of the rest of our country? Or to at least try?

Alaskans getting gouged for gas

Anchorage Daily News (AK) - Sunday, November 9, 2008

I returned home yesterday from a trip to Texas where I paid $1.80 a gallon for gas. Our price here when I returned? $3.20. Alaska gas is now officially more expensive than Hawaii's. Texas gas stations used to gouge residents after tornadoes and government was very swift to act. Why is there so little response here? It's obvious to everyone Alaskans are getting a long-term "gouging" up here.

-- Steve Lane

Wasilla

More regulation for refineries

Anchorage Daily News (AK) - Tuesday, November 4, 2008

The ADN article "Local gas prices still lead nation" (Oct. 24) quoted economist Barry Pulliam as saying Alaska's "two refiners hold not a monopoly but a 'duopoly.' " This is an interesting observation because Chugach Electric and Municipal Light and Power can be considered a "duopoly" and are regulated utilities because they provide essential energy and do not function in a free market as defined in any Economics 101 textbook.

Alaska's two refineries have a natural geographic position that allows them to charge a higher price , which is just lower than what it would cost to truck gasoline to Alaska from Outside. A question that needs to be answered is: Why shouldn't the state address this duopoly as a regulated utility?

-- Rich Sewell

Anchorage

Reverse prices

Fairbanks Daily News-Miner (AK) - Sunday, October 26, 2008
Author: Andreas W. Gerlinger, Fairbanks
Oct. 21, 2008

To the editor :

I had a thought on how to make gas and oil prices fair again in Alaska. The prices for heating oil and gasoline are connected to prices of crude, so why not turn that around and make the crude connected to our price ?

Crude is about $70 today, yet our pump price looks more like that is around $100 to $110.

Gas gouging

Fairbanks Daily News-Miner (AK) - Sunday, October 19, 2008
Author: Michael Lenord , Fairbanks
Oct. 14, 2008

To the editor:

Why isn't everybody up in arms about the price of gasoline? In the state of Washington, gas is $2.87 and diesel is $3.29 a gallon. People in Washington pay 36 cents a gallon state tax, we pay nothing.

I must have missed the results of the big state investigation into gas price gouging; anybody out there hear anything? Think about it, if the Washington state gas tax was repealed like Alaska's, they would be paying $2.51 for gas and $2.93 for diesel. Am I the only one who thinks something here just isn't right?

State attorney: Legal price-gouging going on

Lawmakers may push bills to regulate fuel prices during upcoming session

By Tim Bradner<
Alaska Journal of Commerce
Publication Date: 11/02/08

Alaska legislators say they'll consider gasoline price-regulation or other actions, including state investment in a refinery, if refiners in Alaska don't lower gasoline prices.

"We're under tremendous pressure from our constituents to do something," Rep. Jay Ramras, R-Fairbanks, said in a legislative hearing Oct. 23.

Gasoline prices are dropping fast across the nation as crude oil prices fall, but they remain high in Alaska.

Ramras chairs the House Judiciary Committee, which held hearings on the fuel price issue in Anchorage.

At the hearing the state's lead attorney in an investigation on fuel prices told legislators that gasoline prices in Anchorage were as much as 90 cents a gallon higher than Seattle this summer and fall. On Oct. 24 regular gasoline sold for $3.51 per gallon in some Anchorage retail stations. On the same day gasoline prices averaged $3.08 per gallon in Seattle and $2.92 per gallon nationwide.

Prices were higher in small communities outside Anchorage. In Cordova, gasoline was selling for $4.93 per gallon. Residents of Kake, in Southeast Alaska, were paying $5.50 per gallon.

Ed Sniffen, head of the Department of Law's consumer protection division and lead investigator in the gasoline price inquiry, said he can find no explanation for the large price difference between Seattle and Alaska.

"Spreads like that raises anti-trust red flags," Sniffen told the Judiciary Committee.

It is possible that there is no illegal market activity and that the extended lag in price reductions results simply from the structure of the market, Sniffen said. He called it a "duopoly," or market domination by two suppliers.

Two refineries supply gasoline in Alaska. Tesoro Corp. is the state's main supplier, operating from its refinery near Kenai. Flint Hills Resources, a Koch Industries subsidiary, supplies gasoline to Interior Alaska markets from its refinery near Fairbanks.

Two other small refineries operated by PetroStar Inc., an Alaska company,

make only jet fuel and diesel.

All of Alaska's fuel requirements except in the Southeast panhandle region are supplied by Tesoro and Flint Hills. Southeast Alaska is supplied by refineries in the Pacific Northwest.

Tesoro declined to appear before the committee, but Sniffen said he and other state investigators met with company officials in Anchorage on Oct. 22. Tesoro was cooperative in providing information, but Sniffen said he was unable to tell legislators what was discussed because of confidentiality agreements.

Flint Hills' Alaska public affairs manager Jeff Cook did appear before the committee but told legislators he couldn't answer detailed questions because of the investigation. Cook said Flint Hills supplies only 15 percent of the state's gasoline market and all of that is in Interior Alaska.

He also said new federal and state environmental requirements on fuels have imposed costs on the company's refinery, with an additional result that it is unable to produce as much gasoline as it did previously.

Ramras asked Econ One Inc., a consulting firm working for the state Department of Law, to analyze the effects of several legislative options, including price controls.

Other lawmakers aren't enthused about controls.

"Price controls can be very dangerous. The answer is to increase competition," Rep. Bob Lynn, an Anchorage Republican, said in the meeting.

Rep. Les Gara, an Anchorage Democrat, said he favors either price regulation or a major state investment in one of two refineries serving Alaska so state officials will have a way to influence markets.

"If the state owns 51 percent of one of the refineries, we could decide to take a lower margin at certain times as a way of influencing behavior of the other refiner," Gara has said.

These ideas would obviously require a great deal more discussion, but Gara expects several legislators to introduce bills next spring.

There may be an opportunity for state investment in the Flint Hills refinery. The company is studying options for the plant, including selling it, because of poor financial performance. One of the problems is a high premium charged by the state for state-owned royalty oil supplied to Flint Hills.

Sniffen also told the legislative committee the state could act to induce new competition. When such a large price spread between regional markets exists, competitors typically rush new supply into that market to take advantage of higher prices.

That isn't happening in Alaska, Sniffen said, possibly because the gasoline market is small and the existing suppliers control storage and distribution.

"There might not be enough of an incentive for an entrepreneur to get into the market," Sniffen said.

Barry Pulliam, an economist with Econ One, agreed with Sniffen.

"In small markets the normal price discipline, the opportunity for competitors to bring product in from elsewhere, is often missing," he said. "It's a complex question but it's often difficult to get people to do it."

Hawaii's situation is similar to Alaska's in that the state is remote and has two refineries, and the market is relatively small. The price spread for gasoline between Hawaii and the West Coast is almost as high as in Alaska, Pulliam said.

California provided an example of what can happen when the opportunity to import competing supply is missing.

When the state of California imposed standards for gasoline formulation for environmental reasons, the price differences between California and Texas, for example, at times reached 50 cents to 60 cents per gallon even though it only cost 8 to 12 cents per gallon to transport fuel from the U.S. Gulf Coast to California. Because California imposed the special fuel standards and it wasn't made elsewhere, there was a supply restriction.

Ramras said the state could invest in bulk fuel tanks at Anchorage's port, which could then be leased to a competitor bringing gasoline to the state.

Sniffen said Alaska's toolbox to influence refiners is limited absent discovery of antitrust or illegal collusion, because the state doesn't have a price-gouging law. Refiners are free to charge whatever they think the market will bear.

"In theory, there is nothing preventing them from charging $10 per gallon," he said.

But price-gouging laws in other states, which could serve as a model for Alaska, are typically linked to a natural disaster, such as a hurricane, and not to high crude oil prices. In those cases the state or other government entity must declare an emergency, which gives it powers to impose penalties if a marketer hikes prices unusually high compared with price levels prior to the event that triggered the emergency.

An alternative is for the Legislature to bring gasoline under state utility regulation that now covers telecommunications, electricity and natural gas sales, Sniffen said.

"That would work. It's a proven procedure," he said. The pitfalls with this are in the extended time needed for regulatory proceedings, he said.

Ramras said an option he wants to consider is to require refiners to maintain a certain spread between Anchorage and Seattle wholesale prices when crude oil prices exceed $100 per barrel, and to apply penalties if the spread exceeds those limits.

Sniffen said Flint Hills and Tesoro face challenges with their refineries. Flint Hills operates a topping plant near Fairbanks that can only make certain products from crude oil. Most of the output is jet fuel sold to airlines flying into international airports in Anchorage and Fairbanks. Flint Hills is capable of making only limited quantities of gasoline and diesel.

The refinery is also dependent on state-owned royalty oil delivered through the trans-Alaska oil pipeline, for which it pays a premium.

Tesoro's refinery near Kenai is designed to process light crude oil from Cook Inlet fields, but that supply is supplemented with crude oil from the North Slope and elsewhere. The refinery also has limited options for selling its residual oil, which amounts to about a third of production, and takes a loss on this, Sniffen told legislators.

Ramras said he doesn't want to "demonize" the refineries because he recognizes the problems they face. "Both of these plants are not models of efficiency," he said.

Sniffen cautioned legislators on price controls because of possible unexpected effects.

"In the worst case, one of the two refineries could close, leaving you worse off. There could also be effects on supply reliability," if the state moved aggressively to control margins. "Contracts for delivery to remote communities could be affected, for example."

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http://alaskajournal.com/stories/110208/oil_20081102018.shtml

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Letter tells personal side of Emmonak's fuel crisis - ENERGY CRUNCH: Man had villagers describe their plight as they make do, or do without.

Anchorage Daily News (AK) - Thursday, January 15, 2009

Author: *KYLE HOPKINS khopkins@adn.com ; Staff*

With a phone and a computer keyboard, Nicholas Tucker has turned a spotlight on his neighbors in the western Alaska village of Emmonak by telling stories of people trapped in a food and fuel crisis.

Earlier this month, Tucker asked fellow villagers to describe what Alaska's rural energy crunch meant to them. He says he talked to a 70 year-old husband who cries when he's alone because he can't feed his family, and a young wife who can't sleep because she doesn't know where she'll get her next gallon of heating fuel.

In a long letter, he spelled out the heart-rending plights of 25 households, identified only by initials. He sent it to politicians, a food bank, a Native corporation and rural newspapers. Alaska Newspapers Inc. published the letter on its Web site earlier this week, and statewide public radio followed with an interview. By Wednesday, the story of Emmonak's plight was spreading across the blogosphere, and state officials and others were scrambling to figure out what was going on.

Division of Community and Regional Affairs Director Tara Jollie said the state has been working with the community, and that she had talked with city officials there this week.

"I'm not getting the same sense of crisis in the tone of voice, but I am hearing from all parties that it's a real tough time," she said.

It's unclear whether things are worse in Emmonak than other villages in the hard-hit Yukon-Kuskokwim Delta, or whether a single eloquent voice struck an Internet nerve.

In any case, by Wednesday Tucker's phone rang non-stop as churches offered to fly food to the village and strangers from the Lower 48 asked how they could help. The local Native store gave him a calling card Wednesday that Tucker planned to use to call the state.

"Have you heard anything about Emmonak? Is there anyone that can help us," he wants to ask..

Three factors have hammered the Yup'ik village -- home to about 800 people at the mouth of the Yukon River -- over the past year.

Local commercial fishermen didn't make any money from king salmon -- a staple of the economy -- Tucker said, and an early freeze-up forced the village to miss its winter fuel barge.

Then the cold snap hit.

Tucker says he suspects other nearby villages are hurting in the same way.

HEATING OIL $11 A GALLON?

Jollie, the head of the Community and Regional Affairs Division, said she got copies of Tucker's letter from the Emmonak city clerk and Angoon Sen. Albert Kookesh.

"We're working as fast as we can to be thoughtful and responsive. There's fact-finding that has to happen in any situation," she said.

A rural subcabinet appointed by Gov. Sarah Palin will review the Division's findings at a special meeting planned for Friday, Jollie said.

Palin's rural advisor resigned in October. Palin spokesman Bill McAllister said possible replacements have been interviewed, but as far as he knows, no one's been selected to fill the job.

Emmonak leaders hoped the state would declare a fuel emergency in the village when an early freeze the kept the barge carrying heating fuel and gasoline from arriving in October. But state officials said such declarations are reserved for natural disasters, such as a storm destroying village fuel tanks.

Heating oil currently costs $7.68 a gallon, according to the Emmonak village corporation that sells the fuel.

But that price could soon rise, because the corporation had to start flying in extra heating fuel last week to make up for the missed barge.

Former Emmonak City Manager Martin Moore estimated in December that flying in the oil could raise the price as high as $11 a gallon.

'NOT MESSING AROUND'

The same day heating oil began to arrive by plane, Tucker put out a call over VHF radio asking people to tell him their stories. More than 20 people replied.

In the close-knit village where some people are embarrassed to have their private lives laid bare, Tucker identified the families by their initials.

He described a single father with five children living off moose meat alone: "Right now, we can't eat during the day, only at supper time. And, it is still not enough. If there had been no school lunch, our kids would be starving."

Another passage described a family of six: "(The husband's) family has been out of food for quite some time now. Their one-year-old child is out of milk, can't get it and he has no idea when he will be able to get the next can. He has been borrowing milk from anyone he can."

The next day, Tucker gave his letter to local officials who gathered for a meeting on fuel prices.

It calls for someone, anyone, to fly food into the village over the next several months. "I'm not messing around. If we can get a massive air lift, do it," he said in a phone interview Wednesday.

"I don't care how it's done," he said.

FOOD OR FUEL

The Food Bank of Alaska sends food from Anchorage to Emmonak to be distributed through the Emmonak women's shelter, said executive director Susannah Morgan.

Families can pick up a box of food per month, with the amount depending on how many people live in the household.

Morgan said the shelter currently has food to distribute and that she recently talked to shelter officials. Both sides agreed, she said, that not enough locals knew about the resource.

"It's not unusual for people who haven't been used to fighting hunger not to know where the hunger resources are," she said.

Tucker plans to ask the shelter to increase its orders.

Meantime, Alaska Newspapers Inc. -- a subsidiary of the regional Calista Corp. -- is launching a food drive for the village.

As Tucker notes in his letter, other villages may be struggling in the same way as Emmonak, said Managing Editor Tony Hall. "I really have to believe this is going on in a lot of other villages too, but we just haven't heard."

Tucker said churches in Fairbanks are also planning to send food and money by air, while people from the Lower 48 are calling him to ask how they can help.

A local Catholic church plans to hold a miniature potlatch this weekend -- an event where people can bring a few bags of ramen or boxes of pilot bread for their neighbors, Tucker said.

Many of the people he talked to told him they're choosing between food and fuel.

Tucker describes himself as a longtime advocate for fisheries and social issues in the region.

Asked what started Tucker on his mission, his wife Dorothy described a conversation she had one night with the couple's 8-year-old son.

The boy told her he was hungry.

"I said, 'I'm sorry we got nothing. We got no cereal we got nothing, so he went to bed hungry," Dorothy said.

Later, she talked to her husband.

"I told him I was really sad, and I was thinking of other people too. Some just have one meal a day, save the rest for the next day."

Daily News reporter Tom Kizzia contributed to this story.

THE LETTER: Read Nicholas Tucker's letter about life in Emmonak.

adn.com/alaska

Caption: Photo 1: EmmonakLoc_011509.jpg

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Report: Refineries behind high gas prices in Alaska

Fairbanks Daily News-Miner (AK) - Monday, February 2, 2009

Author: *Rena Delbridge*

JUNEAU — A legislative committee tasked to look into high gas prices can't place a finger on any one reason Alaskans pay so much more at the pump.

House Judiciary Committee Chair Rep. Jay Ramras, R-Fairbanks, released a draft report today. Based on four public hearings and other information, the report cautions that any legislative action to force gas prices into parity with prices in the Lower 48 could drive refiners out of Alaska, leaving economic chaos in their wake.

Rep. John Coghill, R-North Pole, is a committee member.

He was somewhat frustrated by the lack of a conclusive finding, realizing that constituents are hurting at the gas pumps.

"They're really not gouging us," Coghill said.

Instead, he described a carefully choreographed dance between the higher prices Alaskans pay at the pump and the economic rewards the state realizes through the manufacture of jet fuel.

He shifted some of the question of high prices to Tesoro, which delivers about 85 percent of all motor fuel in Alaska. Flint Hills' North Pole Refinery turns out the other 15 percent.

Coghill said any final word on antitrust violations or price gouging will come from a state attorney general's office investigation, expected within days.

Ramras said the key finding is that the retail fuel and the aviation fuel businesses are tightly linked in Alaska.

"It's bad medicine to have to swallow, but Alaskans are sometimes, in some economic cycles, paying at the gas pump to keep the refineries producing jet aviation fuel, which represents 10 percent of the jobs in Alaska," he said.

He cautioned the analysis is intuitive and not based on any particular fact or document.

Some committee members are saying the draft — which they received at 5 p.m. Friday for a

1 p.m. hearing Monday — contains conclusions that weren't developed as a group.

Rep. Lindsey Holmes, D-Anchorage, doesn't know if she agrees with the report yet, because she hasn't had time to comb through it. She is critical of conclusions that she said weren't drafted by the committee.

"Really, they are comments by the committee chair," she said.

She also objected to the report picking apart a bill that didn't exist when the committee was at work by offering arguments against anti-gouging legislation. Ramras countered that the committee's original charge from former Speaker John Harris, R-Valdez, was to investigate retail gas prices and reach conclusions on possible legislative actions.

Introduced this session, House Bill 68 would make it illegal for Alaska refineries to sell gas, home heating fuel and diesel at prices more than 10 percent above the Washington state average.

Rep. Scott Kawasaki, D-Fairbanks, is among the bill's five sponsors. A parallel proposal, Senate Bill 54, is sponsored by three Anchorage Democrats.

Flint Hills Resources spokesman Jeff Cook said price-gouging legislation could have a significant, adverse affect on Alaska consumers and businesses, and could in fact prompt the refinery to change the way it does business.

"If the legislation is approved in Alaska, Flint Hills Resources may be forced to cease refining and fuel distribution in the state," Cook said.

If refiners shut up shop, Alaska loses its jet fuel production, which could place other economic cornerstones could be at serious risk, the report finds. Those include the Fairbanks and Anchorage airports because of a lack of jet fuel produced instate, the Alaska Railroad, which ships jet fuel and more, and Fort Wainwright and Eielson and Elmendorf air force bases, which draw on jet fuel manufactured instate.

John Binkley, chairman of the Alaska Railroad Corporation, confirmed that 40 percent of the railroad's revenue comes from hauling petroleum between North Pole and Anchorage.

"Without that base load, the railroad would look much different in terms of its size and its frequency of service," he said.

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Opinion

Anchorage Daily News (AK) - Sunday, February 8, 2009

Author: *Staff*

Gas price mystery

Rep. Ramras relies on intuition, leaves Alaskans wondering

Rep. Jay Ramras tried to have it both ways last week in his report on Alaska gasoline prices.

While the House Judiciary Committee report acknowledges a growing gap in Alaska and Lower 48 prices in the last year, Rep. Ramras advises against any "heavy-handed" government intervention to lower those prices.

He said that while he didn't have actual figures, he intuited that Alaskans were paying at the pump for the peculiarities of our fuel market, that high gasoline prices are the price we pay for a lively jet fuel market that keeps airports busy and jobs filled in Anchorage and Fairbanks and in between. If refiners have to cut jet fuel prices to remain competitive, they need to make it up at the pump when you fill your pickup.

Ramras' report was critical of House and Senate bills that would require refiners to justify their margins when the prices of fuels was more than 10 percent higher than Washington state prices.

Mess with the retail markets, he warned, and we might lose the Tesoro and Flint Hills refineries, which supply that jet fuel as well as gasoline, diesel and other fuels.

At the same time, he wrote that the committee shared the cynicism of Alaskans about the high refiners' margin, the difference between what it costs refiners to produce gasoline and the price they charge retailers. That margin is why Alaskans pay so much more for gasoline than drivers in Washington state -- as of Friday, about 42 cents per gallon more, and that's even more striking given that Alaskans pay 36 cents less per gallon in taxes than our brethren in Washington.

Rep. Ramras wrote: "There must be a better answer -- somebody must be playing 'hide the ball.' But we could not find it."

So the conclusion is that something is wrong here, but we don't know exactly what, and in any event it would be too risky to do anything about it other than build more storage capacity for rural Alaska.

We needed hearings for this?

Rep. Ramras may be trying to spike the gas pricing bills, but his conclusion makes a strong argument in favor of passage.

He says he can't find the ball?

The bills require refiners to show us the ball.

Rep. Pete Petersen, sponsor of the gas price bill in the House, argues that his bill doesn't impose price controls but does require justification for higher costs -- and that's justification beyond "what the market will bear."

Devoted free marketeers might argue that what the market will bear is the fair price. But Tesoro and Flint Hills make a duopoly that takes advantage of the fact that "Alaskans must drive," as the Ramras report says. We don't have the range of transportation alternatives most Lower 48 markets enjoy, so Alaskans can't cut their

demand much when prices rise. And more competition is unlikely here for a variety of reasons. Small population and relative isolation preclude Alaska from the relief that is supposed to come from free market competition.

If jet fuel keeps so much of our economy running, and higher gasoline prices help subsidize those sales, then maybe those prices are justified. But the refiners should prove it. A lawmaker's intuition isn't enough.

BOTTOM LINE: We still need a better explanation for high Alaska gas prices. House Bill 68 will require it.

Who's up

Who's down

Rep. Jay Ramras: Fairbanks lawmaker and businessman spearheads food drive for strapped Alaska villages. Good work.

Rep. Jay Ramras: House Judiciary chair looks at Alaska gasoline prices, says something's wrong but let's not do anything about it. Huh?

Gov. Sarah: In one week she tangles with actress Ashley Judd over wolves, Rep. Jay Ramras over charity and Rep. Mike Hawker over budget cuts. Cue the banjos for Dueling Press Releases.

Todd and Palin aides: Senate votes them in contempt for ignoring Troopergate subpoenas. Contempt indeed. First Dude shrugs and revs up for Iron Dog.

Duct tape: Game face for Iron Doggers. Give an Alaskan duct tape, pilot bread, WD-40 and a little love, and he or she is set for life.

Alaska peony growers: There's gold in them thar flowers. Now if we can just find a market for fireweed and black spruce.

City of Anchorage: Assembly makes best of bad deal, agrees to buy Northpointe Bluff subdivision. Let's not do this again.

Seawolf women: UAA basketball team is the unanimous choice for No. 1 in the country. That's unanimous, sister. Wow.

Anchorage bond package: By even, we mean the chances of passage. Assembly helps with some judicious trimming. Don't ask for the moon in this economy.

Pilot bread: That Sailor Boy box is pitching books for Alaska kids. It's a natural -- kids curls up in a chair with Harry Potter and pilot bread. The crackers will last all seven volumes.

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Opinion

Anchorage Daily News (AK) - Friday, January 9, 2009

Author: *Staff*

Gas price questions

'Something's out of whack'

Alaskans face a "duopoly" of gasoline suppliers in the state. Two refineries -- the Flint Hills operation in North Pole and Tesoro's Nikiski facility -- provide most of the state's gasoline.

So let's see ... Most of our gasoline is made here, yet as of December we were paying about 80 cents a gallon more than the national average.

Why?

The answer has been elusive.

State Sen. Bill Wielechowski has one. Alaskans, he said, are paying for "legal price gouging."

The senator and allies in the House -- Rep. Les Gara and Reps.-elect Pete Petersen and Chris Tuck -- have legislation in the works that would effectively roll back the "refiner's margin." That's the difference between what Alaska refiners pay for crude oil and what they charge retailers for their finished product.

What Alaskans want to know is why that margin keeps growing so fast, compared to refiners' margins in Washington state and the national average.

According to a legislative research report, the refiner's margin in Washington as of September 2008 was 60 cents a gallon. The U.S. average was 63 cents a gallon. The Alaska average was $1.25 a gallon -- double the Outside margins.

That's the reason Sen. Wielechowski says, "Something's out of whack."

As of Dec. 16, out of whack at the pump read this way, according to a legislative research report:

Alaska average per gallon: $2.67

National average per gallon: $1.81

Anchorage average per gallon: $2.45

Seattle average per gallon: $1.82

The price difference is even more striking because it includes all taxes, which in Washington state run 36 cents higher than in Alaska. We pay no state gasoline tax right now, because lawmakers have suspended it for a year. Even when that tax goes back into effect, it's only 8 cents a gallon -- lowest in the nation.

Last fall, Rep. Jay Ramras' House Judiciary Committee held hearings on gas prices. Tesoro declined to participate. Jeff Cook of Flint Hills said he couldn't say much because of the attorney general and Legislature's ongoing investigations. The state attorney, Ed Sniffen, said he couldn't say much because of confidentiality agreements over refiners' proprietary information.

Alaskan consumers have something to say every time they pull up at the pump.

So next week, Sen. Wielechowski hopes to offer legislation empowering the state to investigate refiners whenever their margin is more than 10 percent above a specified Lower 48 average, maybe Seattle's. If refiners could show that the margin was necessary to cover higher labor or other costs in Alaska and still turn a healthy profit, then fine. They could charge the higher amount.

But if they could show no such justification other than it's what the market will bear, then they could face fines and penalties for price gouging.

Why not let the free market determine the price?

"When there's no competition, there really isn't much of a free market," Rep. Gara said.

He's right.

The state has noted the lack of competition before. When former Attorney General Bruce Botelho concluded back in 2002 that there was no evidence of price collusion, he did say that the absence of competition meant that the refiners could enjoy the profits of collusion without the crime of collusion. In other words, they charge more because they can.

Cook, spokesman for Flint Hills, said Thursday he still couldn't comment because of the ongoing investigations. Tesoro spokesman Kip Knudson said that while he couldn't comment on legislation until he sees it, Tesoro would continue to work with the lawmakers and the attorney general's office.

For going on 10 years, Alaskans have asked why our gasoline prices rise as swiftly as the nation's but are sometimes much slower to fall.

We're still waiting for a good answer. If it's not forthcoming, then the state should have the authority to demand one.

BOTTOM LINE: Why do Alaskans pay more for gasoline than residents of any other state? We need good answers -- or lower prices.

Fair pay

Don Young can do right again

Today, the U.S. House of Representatives can fix one of the more mystifying U.S. Supreme Court decisions handed down in recent years.

In 2007, the court threw out a woman's pay discrimination lawsuit, filed under federal law, by using a creatively interpreted technicality. To pursue her claim, the court said, Lilly Ledbetter should have filed her suit within 180 days of when her employer decided to pay the illegally low, discriminatory wage.

As the dissenting justices noted, it often takes workers a long time to figure out they're getting paid less than they deserve. Wage and salary information is often confidential, making comparisons with co-workers difficult. The court ruling rewards rule-breakers if they can hide their pay discrimination for 180 days.

That just isn't fair. Which is why the U.S. House voted in summer of 2007 for a common-sense correction to the law. It said the 180 day clock for lawsuits runs from the most recent discriminatory paycheck. The measure, the Lilly Ledbetter Fair Pay Act, died after a Republican filibuster in the Senate.

In the House, Alaska's Don Young was one of only two Republicans to vote for the measure. That was the right call then, and it will be the right call again today.

BOTTOM LINE: Don Young can help fix a bad pay discrimination ruling.

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ALASKA STATE LEGISLATURE

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August 11, 2008

Attorney General Talis J. Colberg
P.O. Box 110300
Juneau, AK 99811-0300

Dear Attorney General Colberg:

We are writing to request an investigation into gasoline pricing in Alaska. As you know, the price of gasoline in Alaska is the highest in the nation. As of today, the average Alaska price is $4.62/gallon, while the national average is $3.88/gallon. This gap of 75 cents is substantially higher than the 20 cent spread that has historically existed. In fact, the actual price spread is higher than 75 cents, as Alaska's gasoline tax—which was 8 cents/gallon until recently suspended—was the second lowest in the country.

We would like to know what is responsible for this unprecedented discrepancy in pricing. Specifically could collusion at the wholesale or retail level be inflating prices in Alaska? We note that in 1999, after the last investigation into gasoline prices was initiated, the spread between Alaska and Lower 48 prices narrowed dramatically. This has led many people to speculate about whether informal price-fixing may have been at work.

We urge you to initiate this investigation as soon as possible as many Alaskans are struggling with today's exorbitant prices and desperately need relief.

Please do not hesitate to contact us if you have any questions about this request.

Sincerely,

Senator Bill Wielechowski

Bettye Davis

Senator Bettye Davis

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-2133
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August 11, 2008

The Honorable Bill Wielechowski
Alaska State Legislature
716 W. 4th Avenue, Suite 540
Anchorage, AK 99501

The Honorable Bettye Davis
Alaska State Legislature
716 W. 4th Avenue, Suite 450
Anchorage, AK 99501

Re: Alaska Gasoline Pricing

Dear Senators Wielechowski and Davis:

Thank you for your August 11, 2008 letter requesting an investigation into gasoline pricing in Alaska. I am also concerned with the high cost of gasoline and the apparent disparity between prices in Alaska and markets in other parts of the United States. On Saturday, August 9, 2008, at the request of the Governor, I directed the Consumer Protection Unit within the Department of Law to initiate an investigation into Alaska gasoline pricing.

We completed a similar investigation in November, 2002 which lasted over three years. The results of that investigation did not find evidence of any illegal activity. This type of investigation is complicated, and will require significant resources including the retention of experts to assist us in gathering and deciphering documents and information. We do not know when the investigation, which must remain confidential, will be completed.

Thank you again for your inquiry. Please contact my office if you have any questions.

Sincerely,

Talis J. Colberg
Attorney General

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DEPARTMENT OF LAW

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Press Release

ATTORNEY GENERAL'S OFFICE

For Immediate Release
November 20, 2008

UPDATE ON DEPARTMENT OF LAW'S GASOLINE PRICING INVESTIGATION

(Anchorage, Ak) - At the direction of Governor Sarah Palin, the Department of Law began an investigation into the pricing of gasoline in Alaska. The investigation was initiated in August, following the decline of gasoline prices across the country as the price of crude oil began to drop from record highs near $150 a barrel in July. Gasoline prices in Alaska, however, did not follow national trends, and soon became the highest in the nation. The Department's investigation is focused on explaining the slow decline of gasoline prices in Alaska, and whether the price of gasoline is the result of any illegal conduct, like price fixing or other collusive behavior.

The Department's investigation is ongoing, and must remain confidential under state law. The Department has gathered significant information from refiners, distributors, and retailers about the pricing of gasoline, and continues to gather additional data and information. The Department has retained Barry Pulliam, a Senior Economist at the Los Angles firm of Econ One, to assist the Department in its investigation. The Department has also attended two House Judiciary Committee hearings convened to discuss gasoline pricing issues.

The following is some useful information about gasoline pricing generally that may help explain some of the pricing for gasoline in Alaska.

1. The State of Alaska (or any state) does not regulate gasoline prices. Refiners, distributors, and retailers can sell gasoline at any price they want so long as those prices are not the result of collusive behavior, like "price fixing." If the price reached an "unconscionable" level, the price could also violate Alaska's consumer protection laws.

2. Because gasoline pricing is not regulated, economic forces including the available supply, consumer demand, and competition in the marketplace are the primary factors that determine gasoline prices.

3. Alaska does not have a price gouging law. Sellers of all goods and services (including gasoline) are not required to sell products on a "cost plus" basis. Thus, it does not matter what it costs the seller to acquire the goods or provide a service. Sellers can sell their products for whatever the market will bear. There is no "cap" on the amount of profit any business can make.

4. It does not matter what gasoline prices were when the price of oil was the same as it is today. For example, if refiners sold gasoline for $1.10/gallon when oil was $60 a barrel, this does not require them to sell it for $1.10 every time oil is $60 a barrel.

5. The price of gasoline in the lower 48 is not a good indicator of what prices "should be" in Alaska. The competitive forces that operate to control gasoline prices in the lower 48 are completely different from Alaska. The dynamics of supply, demand, and competition are unique in Alaska.

6. The demand for gasoline is not as "price sensitive" in Alaska as it is in other parts of the country. This means that regardless of the price, the demand does not change by much. This creates less incentive for suppliers to lower their price compared to areas of the country where demand drops significantly when prices rise.

7. Gasoline sold in Southeast Alaska is barged up from the Pacific Northwest and from Cook Inlet. Because fuel is only barged in once a month or every few months, it takes longer for prices to reflect current market conditions. It may take two or three months to exhaust current supply before less (or more) expensive gasoline is available and sold to retailers.

8. Some cities and boroughs charge tax on fuel sales. In the Kenai and Soldotna area, for example, the pump price adds a 6% city and borough tax that is not present in other cities, like Anchorage. Coupled with lower volumes and fewer stations, prices will tend to be higher in these communities.

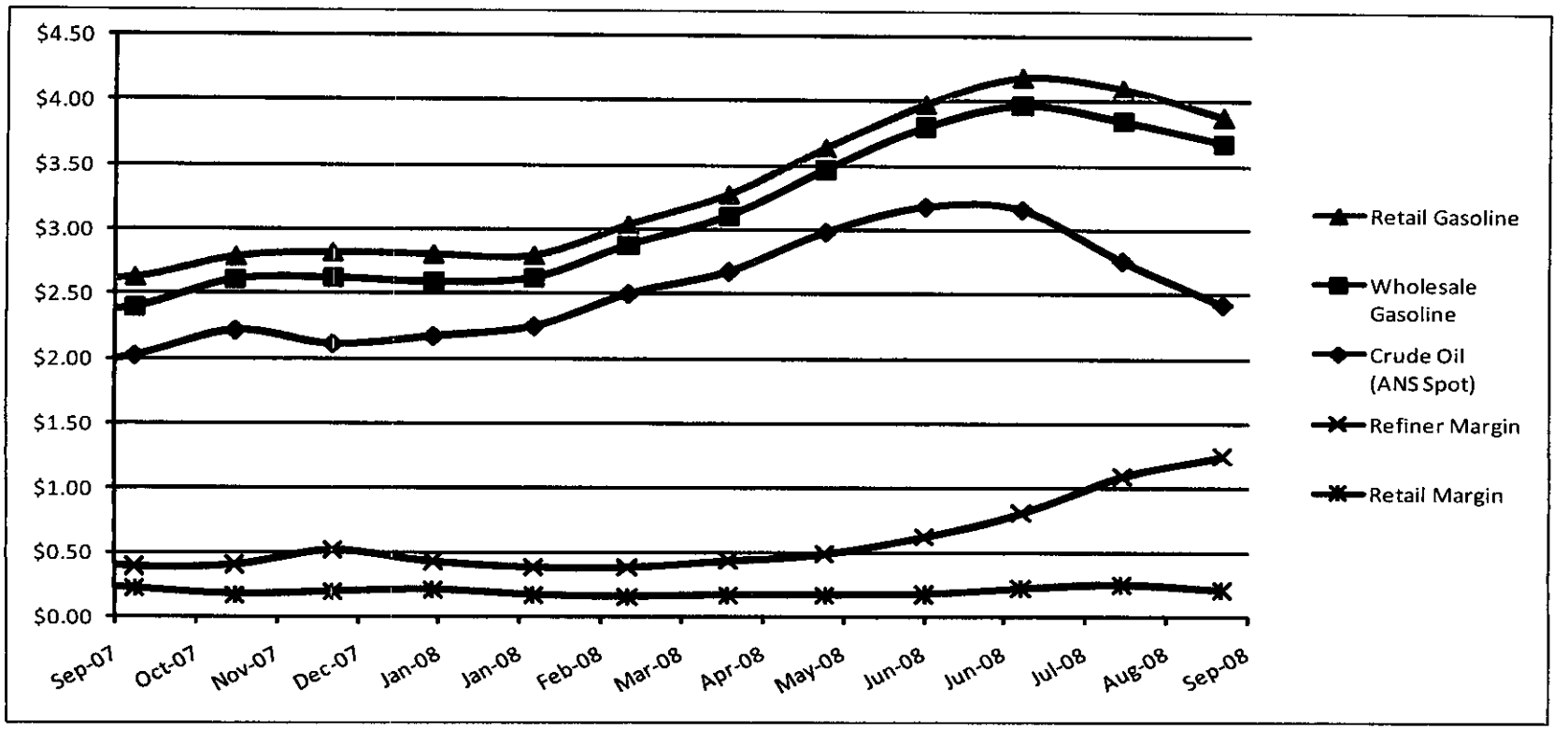
The Department will complete its investigation to determine if there is any illegal activity among gasoline sellers that may be a cause of the high price of gasoline, and will prepare a summary of its findings when the investigation is done.

For further information, contact Department of Law Assistant Attorney General Clyde (Ed) Sniffen at (907) 269-5200.

# # #

3/17/09

Figure 1: Selected Components of Alaska Gasoline Prices, September 2007 to September 2008



Notes: All dollar amounts are per gallon. We use the word "margin" to mean the proportion of gasoline costs attributable to a certain step in the process of bringing a gallon of gasoline to the retail market. In this context, only a percentage of the total margin is taken as profit.
1) "Retail Gasoline" is the average price of gasoline "at the pump" to end-users and include taxes;
2) "Wholesale Gasoline" is the average price of gasoline charged by Alaska refinters to resellers;
3) "ANS Spot" is the cost of Alaska North Slope crude oil on the commodity market. We calculated this cost by dividing the price per barrel by 42 (the number of gallons in a standard barrel);
4) "Refiner Margin" is refiner wholesale price minus ANS Spot prices;
5) "Retail Margin" is retail price minus wholesale price.
Sources: U.S. Department of Energy, Energy Information Administration, *http://www.eia.doe.gov/.* ; ANS Spot prices are from the Alaska Department of Revenue, Tax Division, *http://www.tax.state.ak.us/.*

Data provided by Oil Price Information Service *in cooperation with* Wright Express
Media are encouraged to localize fuel price stories by contacting their local AAA club media representative.

Current State Averages: Click on state for detailed information

**Prices Are In US Dollars Per Gallon.*

State	Regular	Mid	Premium	Diesel
Alaska	$2.500	$2.646	$2.797	$3.422
Alabama	$1.961	$2.096	$2.159	$2.187
Arkansas	$1.965	$2.073	$2.205	$2.167
Arizona	$1.944	$2.027	$2.144	$2.197
California	$2.256	$2.401	$2.441	$2.388
Colorado	$1.992	$2.131	$2.227	$2.140
Connecticut	$2.126	$2.307	$2.367	$2.621
District of Columbia	$2.109	$2.246	$2.313	$2.702
Delaware	$1.975	$2.098	$2.191	$2.287
Florida	$2.101	$2.276	$2.318	$2.313
Georgia	$1.949	$2.095	$2.188	$2.206
Hawaii	$2.415	$2.554	$2.602	$3.805
Iowa	$2.027	$2.134	$2.236	$2.186
Idaho	$1.905	$2.011	$2.066	$2.167
Illinois	$2.143	$2.306	$2.378	$2.316
Indiana	$2.042	$2.196	$2.258	$2.215
Kansas	$2.009	$2.063	$2.143	$2.207
Kentucky	$1.993	$2.137	$2.234	$2.161
Louisiana	$1.973	$2.103	$2.201	$2.185
Massachusetts	$1.983	$2.132	$2.214	$2.431
Maryland	$2.042	$2.172	$2.227	$2.318
Maine	$2.066	$2.229	$2.291	$2.446
Michigan	$2.057	$2.179	$2.266	$2.197
Minnesota	$2.019	$2.099	$2.154	$2.217
Missouri	$1.933	$2.012	$2.129	$2.077
Mississippi	$1.945	$2.052	$2.144	$2.128
Montana	$2.024	$2.111	$2.212	$2.203
North Carolina	$2.025	$2.149	$2.244	$2.231
North Dakota	$2.075	$2.146	$2.223	$2.246
Nebraska	$2.090	$2.137	$2.197	$2.209
New Hampshire	$1.954	$2.116	$2.192	$2.320
New Jersey	$1.877	$2.012	$2.088	$2.222
New Mexico	$2.076	$2.211	$2.307	$2.208
Nevada	$2.124	$2.239	$2.320	$2.239
New York	$2.161	$2.312	$2.361	$2.640
Ohio	$2.038	$2.174	$2.261	$2.243
Oklahoma	$1.941	$2.007	$2.119	$2.067
Oregon	$2.153	$2.272	$2.306	$2.321
Pennsylvania	$2.072	$2.185	$2.281	$2.450
Rhode Island	$2.056	$2.187	$2.260	$2.478
South Carolina	$1.920	$2.041	$2.140	$2.119
South Dakota	$2.049	$2.180	$2.269	$2.206
Tennessee	$1.939	$2.053	$2.151	$2.157
Texas	$1.980	$2.095	$2.170	$2.166
Utah	$1.854	$1.956	$2.041	$2.151
Virginia	$1.977	$2.074	$2.153	$2.250
Vermont	$2.024	$2.178	$2.272	$2.497
Washington	$2.266	$2.347	$2.464	$2.404
Wisconsin	$2.133	$2.215	$2.317	$2.237
West Virginia	$2.135	$2.232	$2.344	$2.350
Wyoming	$1.842	$1.920	$2.046	$2.123

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

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December 29, 2004

Ms. Rynnieva Moss
Office of Representative John Coghill
State Capitol, Room 204
Juneau, Alaska 99801-1182

Re: Studies regarding gasoline prices in Alaska by AG's office

Dear Ms. Moss:

You have requested that the Department of Law provide you with copies of any reports done regarding investigation of gasoline pricing in Alaska. I have located two such reports which are enclosed, one prepared by the Alaska Department of Law dated December 21, 2001 and entitled, "Alaska Petroleum Products Pricing Investigation: Update and Status," and the other also prepared by the Alaska Department of Law, dated November 21, 2002 entitled, "Alaska Petroleum Products Pricing Investigation: Closing Report." Please let me know if you have any further questions.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By:

David W. Márquez
Chief Assistant Attorney General
Legislation and Regulations Section
Legislative Liaison

DWM:cb
cc: Gregg D. Renkes, Attorney General
Scott Nordstrand, Deputy Attorney General
Kevin Jardell, Director, Governor's Legislative Office

ALASKA PETROLEUM PRODUCTS PRICING INVESTIGATION: UPDATE AND STATUS

Prepared by the Alaska Department of Law
December 21, 2001

Introduction

The Office of the Attorney General for the State of Alaska began an investigation of Alaska petroleum prices in 1999 by issuing Civil Investigative Demands to petroleum refiners and product distributors. The investigation was begun because of public complaints and inquiries to the Attorney General about the high price of gasoline in Alaska in comparison to other states. The purpose of the investigation is to determine whether Alaska petroleum product pricing is the product of illegal price fixing or other anticompetitive behavior in violation of state or federal statutes.

The Attorney General's investigation is ongoing. The Department of Law is reviewing the documents and data provided by the state's gasoline marketers. The Department of Law has not made a determination regarding whether there is sufficient evidence to warrant bringing an antitrust or other enforcement action.

Background

To bring an action under Section One of the Sherman Act (the federal antitrust law) or under AS 45.50 (Alaska's antitrust law), there must be evidence of an illegal agreement. This could be an actual written agreement, testimony, or other evidence of an agreement to fix prices, divide the market, or otherwise restrain competition.

Under existing law, the State of Alaska does not attempt to regulate wholesale or retail gasoline prices. A business is free to set its own price, but it is illegal for a business to collude with competitors to set prices.

The state has reviewed thousands of pages of documents, conducted interviews, and reviewed market data to determine whether there is direct evidence of an illegal agreement.

All material and data provided to the state in response to the civil investigative demands of the Attorney General are confidential by statute. AS 45.50.592(e). The following is a summary of the non-confidential portions of the analysis prepared by the department to date.

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Price Differences Between Alaska and the Lower 48

Retail prices of gasoline in Alaska have more closely followed prices in other West Coast states than prices in the rest of the U.S. Given Alaska's relative proximity to the West Coast, this probably is to be expected. Though Alaska's refineries supply much of the petroleum products required in the state, jet fuel, diesel, and gasoline have regularly been shipped from West Coast refineries to Alaska during the past decade. (Alaska's sources of supply for petroleum products are discussed in greater detail below.) In addition, gasoline and other products have been exported from Alaska to the West Coast. Because West Coast refineries are the closest alternative source of refined petroleum products outside Alaska, and because refined products move from Alaska to the West Coast, Alaska prices are influenced by West Coast prices.

Unfortunately, gasoline prices on the U.S. West Coast have, historically, been higher than prices in the rest of the U.S. Over the past seven years, the average retail price for gasoline, excluding taxes[1], on the West Coast has been 11 cents per gallon ("cpg") higher than the average retail price throughout the 50 states.

Concerns expressed by consumers and others about West Coast gasoline prices prompted the Federal Trade Commission ("FTC") to initiate an investigation. The FTC studied West Coast gasoline pricing practices for almost three years, but ultimately concluded that there was nothing unlawful about the manner in which West Coast wholesalers priced gasoline.

The FTC closed its West Coast investigation in May 2001. In doing so, it concluded that the West Coast has several important characteristics that set it apart from much of the rest of the U.S. gasoline market. One of the most important characteristics is the West Coast's relative distance from the Gulf Coast. The Gulf Coast is the largest refining center in the U.S. and an important source of supply of gasoline and other refined products. Refined products move to much of the U.S. from Gulf Coast refineries through a network of pipelines. There are no pipeline connections, however, between the Gulf Coast's refineries and the West Coast. This means that products like gasoline moving from the Gulf Coast's refineries to the West Coast must be shipped through the Panama Canal on marine tankers. This may explain in part why gasoline and other products refined on the West Coast command higher prices.

Unique product requirements, such as those imposed by the California Air Resources Board ("CARB"), also tend to raise the price of gasoline. In addition, there are a limited number of gasoline refiners and wholesalers on the West Coast, and all refiners and wholesalers do not compete in all metropolitan areas.

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[1] Retail gasoline prices at the pump include federal, state, and local taxes. Since Alaska has one of the lowest gasoline taxes in the nation, retail price comparisons understate the differences between prices in Alaska and elsewhere unless taxes are deducted.

Apart from the CARB standards, the West Coast market characteristics identified above are also present in Alaska. Compared to the West Coast, however, Alaska is even more distant from Gulf Coast product markets, has fewer refiners, and has even greater wholesale market concentration. This may explain in part why Alaska prices tend, on average, to be higher than those in other western states.

Yet these market characteristics, by themselves, do not explain why the price difference between Alaska and the West Coast grew sharply between 1995 and 1998. During this period, Anchorage-area prices were on average 17 cpg above retail prices in the Seattle area, a level nearly double the 9 cpg difference seen in the prior four years. This is curious given that Alaska refiners produced more gasoline during this period than was consumed here, and exported the surplus to the West Coast and Far East at prices lower than those offered in Alaska. Beginning in 1999, however—after the Attorney General initiated this investigation—the spread narrowed dramatically. Between January 1999 and December 2000, Anchorage-area retail prices averaged just 3 cpg above Seattle-area retail prices.

Supply and Demand of Petroleum Products

In addition to gasoline, the other major petroleum products sold in Alaska are jet fuel and diesel (No. 2 heating oil and No. 2 diesel fuel). These products and gasoline constitute more than 95% of the total volume of petroleum products sold in the state.

The Tesoro and Williams refineries produce gasoline, jet fuel, and diesel. The PetroStar refinery produces jet fuel and diesel, but no gasoline.

The Williams refinery, near Fairbanks, and the PetroStar refineries, near Fairbanks and in Valdez, all take Alaska North Slope crude ("ANS") directly from the TAPS line. Both companies reinject the unrefined portion of ANS back into the TAPS line.

Alaska's current demand for refined petroleum products is approximately 100 thousand barrels per day (MBD), or 1.5 billion gallons per year. Jet fuel consumption is just over 60 MBD, accounting for a little more than 60% of total demand for refined product in the state. Consumption of diesel and gasoline in Alaska runs approximately 16 MBD, or 245 million gallons per year, for each product.

More gasoline is produced in Alaska than is consumed. The excess is exported to the West Coast and foreign destinations. Nevertheless, gasoline, diesel, and jet fuel are barged into southeastern Alaska from Seattle-area refineries.

Historically, Alaska's refineries have not produced enough jet and diesel fuel to supply the state. These products are imported from the Far East or the West Coast.

Tesoro's refinery supplies the majority of gasoline consumed in Alaska, but Williams supplies most of the gasoline sold in Fairbanks and interior Alaska. Williams also ships gasoline and jet fuel by rail to Anchorage.

The Anchorage metropolitan area accounts for about 60% of the state's retail gasoline sales while Fairbanks, Juneau, the Kenai Peninsula, and Western Alaska account for roughly 10% of retail sales each. There are approximately 300 service stations in Alaska. About one-third of Alaska's 300 retail gasoline stations are located in the Anchorage area. The average retail station in Anchorage is larger and sells much higher volumes than stations in the rest of the state.

Alaska's Gasoline Industry Is Highly Concentrated

Williams, Tesoro, Chevron, and Texaco[2] account for the vast majority of gasoline marketed in Alaska. The state's two gasoline refiners, Williams and Tesoro, were also its largest gasoline marketers, accounting for nearly 65% of Anchorage-area sales between them in 1999. Chevron and Texaco accounted for approximately 32% of Anchorage volumes. These same four marketers have accounted for nearly all of Alaska's gasoline sales over the past decade.

For purposes of analyzing competition within a market, the U.S. Justice Department and the Federal Trade Commission categorize markets into the following three groups: Unconcentrated, Moderately Concentrated, Highly Concentrated. Alaska's gasoline industry is Highly Concentrated at both the refining and wholesale distribution levels. Wholesale gasoline markets in Alaska are more concentrated than in most other wholesale gasoline markets in the U.S. and on the West Coast. Analysis of the available market share data shows that with the exception of the southeast part of the state, concentration levels are much higher in regions outside of Anchorage.

Competition, Oligopoly, and Illegal Behavior

Unconcentrated markets are characterized by a large number of sellers offering the same or similar products to consumers who can shop for the best value. Unconcentrated markets are generally assumed to be competitive. The more sellers, the more likely competition will thrive. In a competitive situation, no single seller has market power; the

[2] Since the late 1990's, in the West and Midwest, Texaco brand gasoline has been marketed by Equilon, a joint venture between Texaco and Shell. As a condition to approving the recent merger of Chevron and Texaco, Alaska, other states, and the Federal Trade Commission required Texaco to divest its interest in Equilon to Shell or another buyer. Therefore, the Chevron-Texaco merger should not reduce competition in the Alaska gasoline market.

power to influence prices in the market on its own. Also where there are many sellers, it is difficult for sellers to coordinate their behavior or agree to volume or price restrictions without being detected.

In a competitive market, sellers are motivated to lower their prices in order to increase their sales, while buyers are motivated to seek out the best deal. Prices will tend to drop over time until they are close to sellers' costs. If prices begin to rise above costs, sellers will try to take advantage of the opportunity to increase profits by making more of the product available in the market. This increase in supply will in turn drive prices down to the point where they again are close to the sellers' costs. If prices fall to a level that does not cover sellers' costs, some sellers will go out of business. Those that are left will offer less of the product until prices start to increase again.

On the other end of the spectrum are highly concentrated markets, where there are relatively few sellers of a particular product. Economists call such a market an "oligopoly." Oligopolies do not always lead to higher prices, however. Prices in an oligopoly can be competitive even when there are very few sellers if, for example, potential new sellers are ready, willing, and able to enter the market in the event of even a small increase in price. In this situation, the threat of additional competition may tend to keep prices low. However, if there are relatively high costs associated with entering a market (entry barriers), existing sellers may be able to increase prices without much concern about attracting new competition.

When there are few sellers in a market, it is, presumably, easier for each to observe how its competitors react to decisions regarding output and prices, and each may take into account the potential impact of its own actions on market prices and the potential responses from other sellers. This type of competitive behavior, which is dependent in part on the expected actions or reactions of other sellers, is often referred to as "oligopolistic pricing" or "oligopolistic interdependence." In this environment, it is easy for sellers to develop a "live and let live" attitude toward their rivals that would not be possible to maintain in a competitive market. As a result, oligopolistic behavior can result in prices that are above competitive levels over extended periods of time.[3]

This type of interdependent behavior on the part of sellers is not generally regarded as a violation of antitrust laws so long as each business develops and implements its pricing and output decisions independently. That is, in determining what volumes to produce or what prices to offer, businesses can incorporate their expectations about a rival's likely reactions as long as those expectations are developed independently and without the aid of other sellers. If the sellers communicate about price setting or enter into

[3] Not all economists agree with this theory, and some would require empirical evidence supporting the theory before considering it valid for a particular market. In any event, whether higher-than-competitive prices in a market can be explained by oligopolistic interdependence is highly dependent on the facts.

an agreement that affects prices, it is considered collusion and a violation of the antitrust laws.

Economists believe collusion is more likely when certain conditions are present in a market, especially in markets for a relatively homogenous product like gasoline. These conditions include (1) the presence of only a few sellers (oligopoly), (2) inelastic demand, (3) relatively static or declining demand over time, (4) easy detection of sales by competitors, (5) price visibility, (6) difficulty of entry by potential new competitors, (7) frequent contact between sellers, and (8) few "fringe" or smaller sellers. All of these conditions are present in Alaska. But their presence, together with gas prices higher than one would expect in a competitive market, do not in themselves constitute a legal basis for an antitrust enforcement action. There must also be evidence of an illegal agreement or evidence that would allow the inference of such an agreement.

Additional Information on the Investigation

The companies have recently finished producing documents to the state. The state is in the process of reviewing and analyzing those documents to determine whether any laws or regulations have been violated.

Under Alaska's antitrust law, many aspects of this case are to be kept confidential. In particular, documents and their contents provided to the state in response to the Civil Investigative Demands (CIDs) issued by the Office of the Attorney General are to be kept confidential in the absence of a court order authorizing their disclosure to the public. AS 45.50.592(e). Such an order might be requested by the state if the investigation leads to an enforcement action. If the state finds no evidence of a violation of the antitrust laws, CID information may not be disclosed to the public in the absence of express authorization by the firm that provided the documents. AS 45.50.592(e). Because of the lawsuits filed against the state by some of the companies being investigated, court pleadings have been filed in the public record that contain some information about the investigation that would normally not be available to the public.

The state's initial CIDs were served upon several dealers of wholesale petroleum products in June, July, and August of 1999. Shortly thereafter, Tesoro, Chevron, and Texaco filed suit in Alaska Superior Court in Anchorage protesting the scope of the CID questions and the state's intended use of the produced documents. Those cases were consolidated under case number 3AN-99-8544CI. In an order issued October 7, 1999, the Superior Court upheld the propriety of the CIDs, with minor modification to a small number of questions, and the right of the state to share the documents with contract counsel without permission of the producing companies.

On October 13, 1999, Tesoro filed an appeal of the Superior Court's decision in the Alaska Supreme Court (Case No. S9379). Tesoro appealed both the scope of the CIDs and the state's right to share documents with contract counsel. The Alaska Supreme Court heard oral argument on November 15, 2000, but has yet to issue a decision.

The initial petition filed by Tesoro in the Superior Court explains Tesoro's contentions with respect to the scope of the CID. The CID, attached to the petition as an exhibit, lists the issues being examined by the Department of Law. Likewise, the state's opposition to Tesoro's petition outlines the issues that are the focus of the CID. The state's brief in the Alaska Supreme Court analyzes the issues being pursued and gives a brief history of the case proceedings. These documents are available at the state court clerk's office in Anchorage.

Other Resources

Interested persons may obtain gasoline pricing information from a number of sources on the Internet. The Energy Information Agency of the Federal Department of Energy tracks petroleum-related information nationwide. It compiles retail and wholesale gasoline pricing data and maintains reference documents about petroleum economics and various aspects of the energy markets:
http://www.eia.doe.gov

There is information on average wholesale prices at:
http://www.eia.doe.gov/pub/oil_gas/petroleum/data_publications/petroleum_marketing_monthly/current/pdf/pumtab35.pdf

The following article discusses the reasons that West Coast prices tend to be higher than those in the rest of the country:
http://www.eia.doe.gov/pub/oil_gas/petroleum/presentations/2001/senate_testimony_may/sld001.htm

The following article explains the many factors influencing the costs of refining:
http://www.eia.doe.gov/emeu/finance/usi&to/downstream/index.html

In August 2001, the Federal Trade Commission conducted a hearing regarding factors influencing the price of refined petroleum products. Testimony and information regarding that hearing can be found at:
http://www.ftc.gov/bc/gasrpt.htm

The American Automobile Association publishes daily average gasoline prices at:
http://www.fuelgaugereport.com

Disclaimer: This page contains hyper links to World Wide Web sites that are created and maintained by other organizations. We have included these links because we think that visitors to our site may find them of interest. We do not guarantee the accuracy or completeness of any information presented on these sites. The Office of the Attorney General does not necessarily endorse the views expressed on these web sites.

ALASKA PETROLEUM PRODUCTS PRICING INVESTIGATION:

CLOSING REPORT

Prepared by the Alaska Department of Law

November 21, 2002

Introduction

At my direction, the Alaska Department of Law conducted an extensive three-year investigation into the pricing of petroleum products in Alaska. The investigation was initiated in 1999 in response to public complaints about the high price of gasoline in Alaska in comparison to other states. I am closing the investigation because there is insufficient evidence indicating a violation of the antitrust laws.

Conditions Prompting the Investigation

Historically, the price of gasoline on the West Coast of the United States averaged 11 cents per gallon (cpg) higher than the average retail price throughout the 50 states, excluding taxes,[1] and the price of gasoline in Alaska has tended to be higher than the price of gasoline on the West Coast by about 9 cpg. Between 1995 and 1998, however, gasoline prices in Alaska were as much as 17 cpg higher than West Coast prices. This was the impetus for the investigation. Immediately after I initiated the investigation, beginning in 1999, the spread between prices in Alaska and the West Coast narrowed dramatically, more closely tracking the historical spread between Alaska and the other states.

Legal Standards

In order to establish a violation of Alaska's antitrust statute, AS 45.50.562 and AS 45.50.564 (or the comparable federal law), there must be evidence that two or more companies entered into an express or "tacit" agreement to fix petroleum prices. A showing that companies charged prices in excess of the competitive level, or raised and lowered prices in a parallel fashion, is not enough to establish the existence of a tacit agreement. Instead, evidence of uniform pricing must be accompanied by additional evidence demonstrating that two or more parties had a "meeting of the minds" to engage in cooperative pricing behavior, such as: (1) actions contrary to an entity's independent economic interests; (2) departure from normal business practices; (3) motive to conspire; (4) opportunity to conspire; (5) high level of inter-company communications; and (6) past antitrust violations involving collective action.[2]

---

[1] Retail gasoline prices at the pump include federal, state, and local taxes. Since Alaska has one of the lowest gasoline taxes in the nation, retail price comparisons understate the differences between prices in Alaska and elsewhere unless taxes are deducted.

[2] *See, In re Baby Food Litigation*, 166 F.2d 112, 122 (3d Cir. 1999) (proof of plus factors is a "prerequisite to finding that parallel action amounts to a conspiracy").

The Investigation

The investigation began in the summer of 1999 when my staff issued Civil Investigative Demands (CIDs) to refiners and distributors of petroleum products in the state. Hundreds of boxes of documents were produced in response to the demands. The investigation involved the review of thousands of pages of internal company documents, detailed analysis of pricing data, interviews of witnesses and potential witnesses, and formal depositions of several current and former oil company employees and executives.

Findings

My staff provided a summary of the investigation in a report entitled "Alaska Petroleum Price Fixing Investigation: Update and Status," December 21, 2001, http://www.law.state.ak.us/civil/oil-gas-mining/AKPPPI-1a_final.pdf. That report describes the economic conditions and market forces present in Alaska that affect the pricing of petroleum products. All of the information and data provided to me in response to the CIDs is, by statute, confidential. AS 45.50.592(e).

The investigation found that Alaska's gasoline industry is highly concentrated, in that four marketers accounted for the vast majority of gasoline sales during the relevant time period. When there are few sellers in a market, like Alaska, it is easier for them to observe how competitors react to decisions regarding output and prices, and each may take into account the potential impact of its own actions on market prices and the potential responses from other sellers. This type of interdependent behavior on the part of sellers often leads to parallel pricing, but that is not, in the absence of an express or implied agreement to set prices, a violation of the antitrust laws so long as each business develops and implements its pricing and output decisions independently. The investigation has not produced evidence of an express or implied agreement to set prices or to otherwise violate antitrust laws.

For the reasons set forth above, I am closing this investigation without further action. However, I expect the Department of Law to continue to monitor gasoline prices in Alaska.

SB 59

ALASKA STATE LEGISLATURE

SESSION
State Capitol, Rm 516
Juneau, Alaska 99801-1182
(907) 465-3873 Phone
(907) 465-3922 Fax
(877) 463-3873 Toll Free
Senator_Bert_Stedman@legis.state.ak.us

INTERIM
50 Front Street
Ketchikan, AK 99901-6442
Phone (907) 225-8088
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SENATOR BERT K. STEDMAN

MEMORANDUM

To: Senator Hollis French, Chairman
Senate Judiciary Committee

CC: Senator Bert Stedman
Senator Lesil McGuire
Senator Bill Wielechowski
Senator Gene Therriault

From: Weston Eiler, Legislative Aide

Date: March 18, 2009

Subject: Senate Bill 59 – Hearing Questions Follow-Up

Senator Stedman would like to follow-up on questions raised during the March 18th Senate Judiciary Committee hearing on Senate Bill 59. Committee members raised questions regarding the scope of the bill's expanded access for low-speed vehicles, the official definition of low-speed vehicle, and required safety tests.

Section 1 Subparagraph B of SB 59 states that low-speed vehicles may operate on a highway with a maximum speed of 45mph if the highway is, "within an area of the unorganized borough, outside of a city, that is not connected by road to Anchorage or Fairbanks." The attached list details which communities would be allowed, and which would be unable, to implement this expanded access to 45 mph roads for low-speed vehicles.

Federal Motor Vehicle Safety Standard (FMVSS) 500 defines low-speed vehicle as:

(a) a 4-wheeled motor vehicle,

(b) whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface, and

(c) whose Gross Vehicle Weight Rating (GVWR) is less than 1,133 kilograms (2,500 pounds).

FMVSS regulations also require several inspections including tests of the vehicle's maximum speed, carrying weight, and safety equipment. The attached documentation provides further details on the expected affect of SB 59 and applicable federal regulations. Please feel free to contact our office if you have any questions.

Senate Bill 59

Community eligibility to expanded low-speed vehicle access under Section 1 Subparagraph B of Senate Bill 59

Eligible Communities

*Communities **not** connected by road to Anchorage or Fairbanks, and with fewer than 25,000 residents*

---

1. Adak
2. Afognak
3. Akhiok
4. Akiachak
5. Akiak
6. Akutan
7. Alakanuk
8. Alatna
9. Aleknagik
10. Aleutians East Borough
11. Allakaket
12. Ambler
13. Anaktuvuk Pass
14. Andreafsky
15. Angoon
16. Aniak
17. Anvik
18. Arctic Village
19. Atka
20. Atmautluak
21. Atqasuk
22. Barrow
23. Beaver
24. Belkofski
25. Bethel
26. Bettles
27. Birch Creek
28. Brevig Mission
29. Bristol Bay Borough
30. Chalkyitsik
31. Chase
32. Chefornak
33. Chevak
34. Chignik
35. Chignik Lagoon
36. Chignik Lake
37. Chiniak
38. Chistochina
39. Chuathbaluk
40. Chuloonawick
41. Clark's Point
42. Coffman Cove
43. Cold Bay
44. Coldfoot
45. Copper Center
46. Copperville
47. Council
48. Covenant Life
49. Craig
50. Crooked Creek
51. Cube Cove
52. Deering
53. Dillingham
54. Diomede
55. Edna Bay
56. Eek
57. Egegik
58. Ekuk
59. Ekwok
60. Elfin Cove
61. Elim
62. Emmonak
63. Evansville
64. Eyak
65. False Pass
66. Ferry
67. Fort Yukon
68. Miller Landing
69. Galena
70. Gambell
71. Game Creek
72. Georgetown
73. Golovin
74. Goodnews Bay
75. Grayling
76. Gustavus
77. Haines
78. Haines Borough
79. Halibut Cove
80. Hamilton
81. Healy Lake
82. Hobart Bay
83. Hollis
84. Holy Cross
85. Chisana
86. Hoonah
87. Hooper Bay
88. Hope
89. Houston
90. Hughes
91. Huslia
92. Hydaburg
93. Hyder
94. Igiugig
95. Iliamna
96. Ivanof Bay
97. Jakolof Bay
98. Kaguyak
99. Petersville
100. Pope-Vannoy Landing
101. Silver Springs
102. Kake
103. Kaktovik
104. Kaltag
105. Kanatak
106. Karluk
107. Kasaan
108. Kasigluk
109. Kenny Lake
110. Ketchikan
111. Ketchikan Gateway Borough
112. Kiana
113. King Cove
114. King Island
115. King Salmon
116. Kipnuk
117. Kivalina
118. Klawock
119. Klukwan
120. Kobuk
121. Test
122. Kodiak
123. Kodiak Island Borough
124. Kodiak Station
125. Kokhanok
126. Koliganek
127. Kongiganak
128. Kotlik
129. Kotzebue
130. Koyuk
131. Koyukuk
132. Kupreanof
133. Kwethluk
134. Kwigillingok
135. Lake & Peninsula Borough
136. Lake Minchumina
137. Larsen Bay
138. Lazy Mountain
139. Levelock
140. Lime Village

141. Lower Kalskag
142. Lutak
143. Manley Hot Springs
144. Manokotak
145. Marshall
146. Mary's Igloo
147. Flat
148. Gateway
149. Glacier View
150. McGrath
151. Meadow Lakes
152. Mekoryuk
153. Chenega Bay
154. Metlakatla
155. Meyers Chuck
156. Moose Creek
157. Mosquito Lake
158. Mountain Village
159. Naknek
160. Nanwalek
161. Napaimute
162. Napakiak
163. Napaskiak
164. Naukati Bay
165. Nelson Lagoon
166. Toksook Bay
167. New Stuyahok
168. Newhalen
169. Newtok
170. Nightmute
171. Nikolai
172. Nikolski
173. Noatak
174. Nome
175. Nondalton
176. Noorvik
177. Northwest Arctic Borough
178. Nuiqsut
179. Bill Moore's Slough
180. Nulato
181. Nunam Iqua
182. Nunapitchuk
183. Ohogamiut
184. Old Harbor
185. Oscarville
186. Ouzinkie
187. Paimiut
188. Pauloff Harbor
189. Pedro Bay
190. Pelican
191. Perryville
192. Petersburg
193. Pilot Point
194. Pilot Station
195. Pitkas Point
196. Platinum
197. Point Baker
198. Point Hope
199. Point Lay
200. Port Alexander
201. Port Alsworth
202. Port Clarence
203. Port Graham
204. Port Heiden
205. Port Lions
206. Port Protection
207. Port William
208. Primrose
209. Quinhagak
210. Rampart
211. Red Devil
212. Ridgeway
213. Ruby
214. Russian Mission
215. Attu Station
216. Beluga
217. Buckland
218. Saint George
219. Saint Mary's
220. Saint Michael
221. Saint Paul
222. Salamatof
223. Salcha
224. Sand Point
225. Savoonga
226. Saxman
227. Scammon Bay
228. Selawik
229. Seldovia
230. Shageluk
231. Shaktoolik
232. Shemya Station
233. Shishmaref
234. Shungnak
235. Sitka
236. Skagway
237. Skwentna
238. Slana
239. Sleetmute
240. Solomon
241. South Naknek
242. Stebbins
243. Stevens Village
244. Stony River
245. Sutton-Alpine
246. Takotna
247. Tanana
248. Tatitlek
249. Tazlina
250. Telida
251. Teller
252. Tenakee Springs
253. Tetlin
254. Thorne Bay
255. Togiak
256. Tuluksak
257. Tuntutuliak
258. Tununak
259. Twin Hills
260. Two Rivers
261. Tyonek
262. Ugashik
263. Umkumiute
264. Unalakleet
265. Unalaska
266. Unga
267. Upper Kalskag
268. Tanaina
269. Venetie
270. Wainwright
271. Wales
272. Whale Pass
273. White Mountain
274. Whitestone Logging Camp
275. Wiseman
276. Womens Bay
277. Woody Island
278. Wrangell
279. Yakutat
280. Aleneva
281. Alpine
282. Buffalo Soapstone
283. Mud Bay
284. New Allakaket
285. Red Dog Mine
286. Seldovia Village
287. Thom's Place
288. Excursion Inlet
289. Vosnesenka
290. Whitestone Comm. Assn.

Non-Eligible Communities

Communities connected by road to Anchorage or Fairbanks, or with over 25,000 residents

---

1. Alcan Border
2. Anchor Point
3. Gakona
4. Anchorage
5. Anderson
6. Big Lake
7. Butte
8. Cantwell
9. Central
10. Chicken
11. Chitina
12. Circle
13. Clam Gulch
14. Cohoe
15. College
16. Cooper Landing
17. Cordova
18. Crown Point
19. Denali Borough
20. Dot Lake
21. Y
22. Knik-Fairview
23. Douglas
24. Dry Creek
25. Eagle
26. Eagle River-Chugiak
27. Eagle Village
28. Eielson AFB
29. Eklutna
30. Ester
31. Fairbanks
32. Fairbanks North Star Borough
33. Fort Greely
34. Fox
35. Fox River
36. Fritz Creek
37. Funny River
38. Lakes
39. Livengood
40. Girdwood
41. Glennallen
42. Gulkana
43. Happy Valley
44. Harding-Birch Lakes
45. Healy
46. Farm Loop
47. Homer
48. Juneau
49. Kachemak
50. Kalifornsky
51. Kasilof
52. Kenai
53. Kenai Peninsula Borough
54. Knik River
55. Matanuska-Susitna Borough
56. McCarthy
57. McKinley Park
58. Mendeltna
59. Mentasta Lake
60. Minto
61. Moose Pass
62. Nenana
63. Nikiski
64. Nikolaevsk
65. Ninilchik
66. North Pole
67. North Slope Borough
68. Northway
69. Northway Junction
70. Northway Village
71. Palmer
72. Paxson
73. Pleasant Valley
74. Portage Creek
75. Prudhoe Bay
76. Seward
77. Bear Creek
78. Lowell Point
79. Soldotna
80. Sterling
81. Talkeetna
82. Tanacross
83. Tok
84. Tonsina
85. Trapper Creek
86. Willow Creek
87. Valdez
88. Wasilla
89. Whittier
90. Willow
91. Diamond Ridge
92. Deltana
93. Dot Lake Village
94. Fishhook
95. Four Mile Road
96. Lake Louise
97. Tolsona
98. Point MacKenzie
99. Sunrise
100. Susitna
101. Nelchina
102. Chickaloon
103. Big Delta
104. Delta Junction

Note:

Under existing law, low-speed vehicles are allowed in these communities and able to drive on roads with a speed limit of up to 35mph. SB 59 expands access to roads with 45mph only in certain communities due to traffic congestion and safety concerns.

SB 59 - Low-Speed Vehicle Definition

could create safety issues and concerns that negatively impact and cause severe damage to a new growth industry that provides real and significant solutions to our country and our planet's key issues." This petitioner envisions a Medium Speed Vehicle class that "would essentially be the same as the LSV regulations with the exception of the top speed of 35 miles per hour and additional vehicle requirement to increase the safety of margin [sic] for rollover, stopping, acceleration, and avoidance maneuvering." The petitioner lists these additional vehicle requirements as: Ability to maintain 35 mph on a level grade, ability to maintain 30 mph up an 8 percent grade, a minimum width of 55 inches, a "coil over shock" suspension, four-wheel hydraulic disc or drum brakes, and three-point automotive seat belts, in addition to the requirements that already exist for LSVs in FMVSS No. 500. The petitioner also states, "Additional testing of the vehicles should also be considered, including crush zones with a 2.5mph 'no damage' requirement. A full frontal crash should be required to meet safety standards between 17–18 mph, which is a derivative of full speed automobiles being crash tested at 35 mph." The petitioner does not state where the no damage crush zones would be on the vehicle, how they would be measured, or which safety standards would be tested at 17 or 18 miles per hour.

Porteon believes the new medium speed vehicle class is necessary because LSVs currently travel, with their top speed of 25 mph, on streets with speed limits up to 35 mph and normal traffic flow is impeded by these vehicles. MSVs, with their top speed of 35 mph, "would create a more cohesive traffic environment for mixed use vehicles."

III. Low Speed Vehicles

In 1998, NHTSA established Federal Motor Vehicle Safety Standard (FMVSS) No. 500, "Low speed vehicles," in response to growing interest in using golf cars and other similar-sized, 4-wheeled vehicles, including Neighborhood Electric Vehicles (NEVs), to make short trips for shopping, social, and recreational purposes primarily within retirement or other planned communities with golf courses. *See* 63 FR 33194. The definition of LSV established in that rulemaking was, "a 4-wheeled motor vehicle, other than a truck, whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface."

In 2005, NHTSA published a final rule amending the definition of LSVs by removing the restriction on trucks, and instead establishing a 2,500 pound maximum GVWR. *See* 70 FR 48313. This allowed small vehicles designed for work-related applications within the intended communities, such as landscaping or delivery purposes, to be included within the definition of an LSV, without opening the category to unintended vehicles, such as street-sweepers or speed-modified passenger cars. Additionally, in 2006, in response to petitions for reconsideration from Dynasty Electric Car Corporation and Global Electric Motorcars (GEM), both manufacturers of electric LSVs, NHTSA increased the maximum GVWR for LSVs to 3,000 pounds. This was done, in part, to "level the playing field" between electric and gasoline-powered LSVs, by allowing for the additional weight in batteries required by electric vehicles. *See* 71 FR 20026.

In conceiving the concept of the LSV as a small vehicle that would not be subject to the same stringent safety criteria as other vehicles, a critical concept was that it would not ordinarily mix with other traffic. In our 1998 rule establishing the category of LSVs, NHTSA explained in the summary that the rule:

> [R]esponds to a growing public interest in using golf cars and other similar-sized, 4-wheeled vehicles to make short trips for shopping, social and recreational purposes *primarily within retirement or other planned communities with golf courses.* [emphasis added]

NHTSA's detailed analysis, as explained in the preamble of the 1998 final rule, recognized the importance of the fact that under most conditions, LSVs would not intermingle with regular automobile traffic, and the occasions where they would mix would be in controlled, low-speed environments. NHTSA stated that

> NHTSA has carefully reviewed their argument about the effects of this rulemaking. LSV safety, and thus the need for FMVSSs for LSVs, will be determined by the combination of three factors: vehicle design and performance; operator training and ability; and the operating environment. The agency believes that Standard No. 500, in combination with a limited operating environment and appropriate operator training and ability, will appropriately address the safety needs of LSV users.[4]

Additionally, in the 1998 final rule, NHTSA analyzed the Fatal Analysis Reporting System (FARS) data regarding fatalities involving golf cars. It was found that of the nine reported fatalities, eight of them involved a collision with a car or truck. This further underscored the importance of driving environment.

In the 1998 final rule, the agency studied the use of NEVs in various municipalities that permitted them to travel on public roads. In that notice, we stated that "the driving environment [of LSVs] should be appropriate to the vehicle and its characteristics. Limiting LSV use to low-speed city and suburban streets is necessary, but does not eliminate the safety risks."[5] NHTSA analyzed the State laws governing the on-road permissibility of NEVs in various States. Of the 12 States discussed, only one State (Arizona) permitted NEVs to travel on any road with a speed of 35 mph or less. The other 11 States (California, Nevada, New Mexico, Colorado, Wyoming, Illinois, Minnesota, Iowa, Florida, Georgia, and Texas) restricted NEVs to roads specifically designated by State and local governments.[6]

One portion of the analysis discussed possible reasons for the disparity of fatalities between Sun City[7] (which had four NEV fatalities) and the City of Palm Desert (which had zero). We noted that:

> The City of Palm Desert has a more controlled environment than Sun City for golf car use. The City of Palm Desert permits on-road use of golf cars in the same lanes as passenger cars and other larger motor vehicles in speed zones posted for speeds up to 25 miles per hour. In speed zones posted for speeds over 25 miles per hour, golf cars may be operated on-road only if there is a lane designated for their use and if the golf car is, in fact, operated within that lane. By contrast, NHTSA understands that Sun City, under state law, allows golf cars to operate in the same lanes as larger traffic on any road with a maximum speed of 35 miles per hour.

Based in part on this analysis, as well as our other observations, we concluded that operating environment played an important role in determining the benefits of establishing the LSV classification, as well as determining what safety standards should apply to that class. While NHTSA does not regulate the driving environment (such decisions are at the discretion of State governments), it did recommend that LSVs be licensed only for use in environments with very limited traffic. Specifically, we stated:

> NHTSA recognizes that not all operating environments may be as controlled as that of the City of Palm Desert. The agency encourages other states and municipalities to study the features of the City of Palm Desert's

[4] 63 FR 33208.

[5] 63 FR 33208.

[6] See 63 FR 33207.

[7] We note that Sun City is located in Arizona, the only State that allowed NEVs to travel on any street with a speed limit of 35 mph or less.

TP-500-02
April 19, 2006

U.S. DEPARTMENT OF TRANSPORTATION

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

LABORATORY TEST PROCEDURE

FOR

FMVSS 500, Low-Speed Vehicles

ENFORCEMENT
Office of Vehicle Safety Compliance
Room 6115, NVS-220
400 Seventh Street, SW
Washington, DC 20590

18. DATA SHEETS

FMVSS 500 - LSV INFORMATION AND TEST SUMMARY

TEST LAB: _____ CONTRACT NO.: _____
VEHICLE MAKE/MODEL/YEAR : _____
NHTSA No.:_____ VIN: _____DATE OF MFR: _____
TYPE PROPULSION : _____ SEATING CAPACITY: _____

GVWR _____ GAWR FRONT _____ GAWR REAR _____
DEALER INSTALLED ACCESSORIES: _____
TIRE TYPE and SIZE: _____

Safety Equipment	Pass	Fail
Headlamps (S5(b)(1))		
Turn signal lamps, front and rear (S5(b)(2))		
Taillamps (S5(b)(3))		
Stop lamps (S5(b)(4))		
Reflex reflectors, one red on each side, one on rear (S5(b)(5))		
Drivers side exterior mirror (S5(b)(6))		
Passenger side exterior mirror or interior mirror (S5(b)(6))		
Parking brake (S5(b)(7))		
Windshield, AS-1 or AS-4 composition (S5(b)(8))		
Vehicle Identification Number (VIN) (S5(b)(9))		
Seat belt assemblies - Type 1 or 2 (S5(b)(10))		
Certification label (Part 567)		

Vehicle Loading	Pass	Fail
Certification Label GVWR < 1,361 kg.		
With Occupant Weight added to UVW: GVWR ≥ total measured vehicle weight		
GAWRs ≥ measured axle weights		
With Occupant, Cargo & Luggage Weight added to UVW: GVWR ≥ total measured vehicle weight		
GAWRs ≥ measured axle weights		

Maximum Speed Test	Pass	Fail
Maximum Speed (S5(a)) _____km/hr (more than 32.0 km/hr and not more than 40.0 km/hr)		

Cindy Smith

From: Russell Stigall [russell@akvoice.org]
Sent: Wednesday, March 18, 2009 11:56 AM
To: Sen. Bert Stedman
Cc: Sen. Hollis French; Sen. Bill Wielechowski; Sen. Lesil McGuire; Sen. Gene Therriault
Subject: Support for SB 59 - low-speed vehicles
Attachments: ACA Support SB59 LSV.doc

Dear Senator Stedman,

Please accept this letter of support for SB 59 on behalf of the 38,000 members of the Alaska Conservation Alliance.

Sincerely,
Russell Stigall

Alaska Conservation Alliance
Clean Energy Legislative Organizer
(907) 463-3366

cc: Senate Judiciary Committee members French, Wielechowski, McGuire and Therriault

Gerald Herbrandson
Solar Wind of Alaska
P.O. Box 1374
720 Sandy Beach Rd.
Petersburg, Alaska 99833
(907) 772-4898 Cell (907) 518-1237
solarwind@aptalaska.net

Senator Bert Stedman
Representative Peggy Wilson

February 3, 2009

Regarding: HB59 – "An Act relating to the operation of low-speed vehicles"

1998 I started the business ***Solar Wind*** to promote the use of alternative energy systems within Alaska. In the 11 years that I have been in business I have sold over $350,000.00 worth of solar panels, inverters, batteries, generator, water turbines, and wind turbines. I have well over 100 customers significantly reducing their dependence upon carbon fuels.

Last year I expanded my business to include electric vehicles (**EV's**). Currently there are nine (9) **EV's** operating in Petersburg. Since last summer these vehicles have been driven over 8,000 miles saving 400 gallons of fuel.

EV's are ideal for small rural communities that have access to hydroelectric power. They cost less than 2 cents a mile to operate. The battery system that comes with the vehicle provides over 25 miles of range and is designed to function for over 20,000 miles, adding about 12 cents per mile for operation. There is minimal maintenance an no oil changes.

These **EV's** are a **low-speed vehicle (LSV)** and are ideally suited for short trips to the post office, grocery store, school, and shopping. Such short trips are the most fuel inefficient for internal combustion engines (**ICE**) and are hard on a cold engine.

Within Petersburg, as well as many of our smaller communities, most of our roads are posted at 35 mph or less and therefore are well suited to **LSV's**. The proposal to allow the use of **LSVs** on roads posted at 45 mph or less would greatly broaden the window of use.

I spoke to our chief of police, Mr. Stone, regarding the use of **LSV's** within Petersburg and he commented that many of our older citizens never drive over 25 mph anyway. He did not feel that their reduced speed would create a safety hazard within our community.

An interesting side note – many of my customers are older individuals who have difficulty getting in and out of conventional cars and trucks. However, they find the **LSV's** to be easy to get into and operate. They are some of my best champions driving their vehicles on a daily basis even through the winter.

I appreciate the support that you are providing to the use of alternative energy and **LSV's**. Please feel free to contact me at any time if there is information that I could provide or if you need support. Next time that you are in Petersburg I would enjoy giving you a ride from the airport or wherever (there may be a charge of 1.5 cents per mile).

Gerald Herbrandson
Solar Wind of Alaska

Alaska Conservation Alliance

Uniting for Alaska's Future

March 4, 2009

The Honorable Senator Stedman
State Capitol
Juneau, Alaska 99801

Re: SB 59 - An Act relating to the operation of low-speed vehicles

Dear Senator Stedman,

On behalf of the Alaska Conservation Alliance (ACA), a consortium of 40 Alaska-based conservation groups, I would like to express our support for SB 59, an Act relating to the operation of low-speed vehicles. Allowing low speed vehicles to access more mileage of state and municipal roads will allow those already in possession of a low-speed vehicle to get more use out of their investment while at the same time giving an added incentive to low-speed vehicle purchases by meeting more customer needs.

For those Alaskan communities working toward energy self-sufficiency through local, secure clean-energy production and use, the switch to hybrid-electric and all-electric vehicles is a must. By allowing low speed vehicles to access additional roads within these communities, roads that could take drivers to the airport, hospital, ferry terminal or grocery store, this bill will make cheap, efficient, low-speed vehicles more practical in these self-sufficient communities.

Additionally, low-speed vehicles can cost tens of thousands of dollars less than full-sized electric cars. This bill will help broaden the penetration of electric vehicles and offer transportation options to commuters with lower incomes. The Alaska Conservation Alliance strongly encourage the Alaska Legislature to pass SB 59. Thank you for your time and consideration.

Sincerely,

Kate Troll

Kate Troll
Executive Director

CC: Senate Judiciary Committee members

PO Box 1006600, Anchorage, Alaska 99501 / Ph. 907.258.6171 / Fax 907.258.6177
419 6th Street, Ste. 321, Juneau, Alaska 99801 / Ph. 907.463.3366 / Fax 907.463-2554 / www.akvoice.org

Petersburg gets charged up about their new electric cars

By ROBERT MONTEITH
Pilot writer

Petersburg's first ever car dealership held an open house last weekend. The event, which showed off the "Miles" electric car, was a huge success, attracting a crowd of over 100 people throughout the three-hour event.

"The first two hours, it was a lot like a fair. There were a lot of people milling around. I couldn't even answer all the questions. We invited all the current owners and they all came down to give everybody rides. It was just a lot of fun," said Gerry Herbrandson, who operates the company with brother Rod.

The brothers brought the compact electric cars to Petersburg after discovering the product existed. Herbrandson said he had been enthusiastic about alternative sources of energy like solar paneling for a long time. This new automobile venture, named Solar Wind of Alaska, is an extension of that interest.

The cars themselves run on 48 volt direct current motors that limit themselves to a legal low mileage vehicle limit of around 30 mph. The Herbrandsons have also recently started offering a truck, which is boosted up with a 72 volt AC motor that can haul ,700 lbs.

Herbrandson explained that for a long while, the manufacturer had difficulty finding the right market for these cars, which have a range of 30-50 miles between charges.

ROBERT MONTEITH / Petersburg Pilot

The Herbrandson brothers' electric car sales event attracted more than 100 people on Sunday.

"They made quite a few of these and put them in the larger cities. As you can see, that doesn't really make sense because they have boulevards and freeways so they didn't sell at all. So they were trying to figure out what to do with them. A number of dealers in small rural communities found out about this. They picked up on it because these are ideally suited for isolated small communities that don't have any freeways," he said.

The open house even attracted Douglas Wilson, an executive of the Miles' manufacturer, who want to know the appeal of the car in a place like Petersburg.

"He came up here specifically to show them why they are buying the cars. It's because of the ease of access and for just running around, it just makes a lot of sense," explained Herbrandson.

He went on to say that while he didn't expect the electric cars to replac[illegible]family's first vehicle, they offe[illegible]a lot as a way of getting around town quickly.

"Everybody is going to have to keep their truck to haul their boat out, haul their firewood, or do their long runs, but the problem is going to the grocery store or post office is just a short run. That is awful hard on gas engines. That's where your fuel efficiency is very low. You pick up some condensates in the engine because it's not getting warm enough. The electric cars, this is where they shine. If people are choosing to replace their second car, this is the car of choice because it meets a lot of needs," he said.

One need is the cost of fuel, which Herbrandson lists at about 1.5-2 cents worth of electricity per mile.

So far, business has been good for the upstart company with several Petersburg families purchasing the vehicles. The Herbrandsons will travel to Wrangell this weekend for another open house event.

1301

Public testimony in regards to SB54 on April 3, 2009

Justin Powell
www.fairbanksgas.com
1075 Trianon Dr.
Fairbanks, AK

Thank you, Chairman French for allowing public testimony today on SB 54. I want to share with you several events have transpired over the last few years that have left Alaska with a market that can no longer self regulate itself. The result being a dramatic increase in refinery margins which has cost the residents of Alaska over $230 million dollars over the last year.

In 2004 Flint Hills bought the North Pole refinery and entered into a contract with the State of Alaska to buy royalty oil from the North Slope. Within this contract was a stipulation that Flint Hills must invest in desulfurization facilities to be able to meet pending EPA requirements. Only months after the legislature ratified the royalty oil sales contract, Flint Hills backed out of this commitment setting the stage for where we find ourselves today.

In 2007 the EPA regulations of 15ppm ultra low-sulfur diesel took effect. As you can see from the chart on page 3, ULSD was first offered for sale in Alaska on June 1st, 2007. Prior to the new EPA regulations the Tesoro and Flint Hills refineries both produced similar product lines of gasoline, diesel and jet fuel with neither producer having a significant market ownership in one product.(Fig 1.) In fact in 2002 the State of Alaska reported that in-state refineries exported 84 million gallons of surplus gasoline.

Figure 1. 2002 Refinery Production

	Percent of production	Quantity (million bbls.)
Flint Hills		
Gasoline & Naphtha	19	4.44
Jet Fuel	57	13.31
Diesel	19	4.44
Gas Oil	4	0.99
Asphalt	1	0.23
Tesoro		
Gasoline	25	4.56
Jet, diesel, fuel oil	45	9.03
Bottoms & residual	30	5.48

After the new EPA regulations went into effect this balanced market was shattered. Due to Flint Hill's lack of investment they could no longer produce gasoline and diesel to meet stricter EPA requirements. Tesoro gained a 100% market share of the ULS Diesel market and an 80% share of the gasoline market. Flint Hills focused on the production of jet fuel and was forced to purchase low-sulfur feed stock from Tesoro to dilute with their high sulfur gasoline to meet EPA regulations.

The third Alaska refiner, Petrostar mainly produces jet fuel and heating oil. Neither of these products was impacted by the 2007 EPA regulations. Petrostar has carved out their own share of this market as the prime supplier to the military bases. They have been able to maintain this market ownership of Alaska's military contracts through their minority owned preferred bidder status as a wholly owned subsidiary of ASRC.

The result today is that we have three refiners who each have over an 80% share in one or two segments of the market. The effect of this niche market ownership is blatantly obvious when you look at the chart on page two. The only product that all three refineries produce is jet fuel which does not show the same upward trends as gasoline and diesel fuel.

Without outside intervention it is highly unlikely that this situation will correct itself. All three refineries are enjoying profitable margins and there is no incentive for them to increase the level of competition in the market. Unless the legislature acts we will continue to see higher prices indefinitely.

There are three possible ways to remedy our current situation:

1. Flint Hills could build a desulfurization unit and reenter the gasoline and diesel fuel markets. This would rebalance the market shares bringing more competition. At this time Flint Hills has no plans to do so.

2. The State of Alaska could build the infrastructure to allow independent retailers to bring in fuel from outside Alaska. A fuel purchase program could be managed through existing channels. You only have to look as far as the gas pump in Juneau to see that this is possible. The capitol costs and risks are too great to expect a private entrepreneur to make this investment. To quote a local Fairbanks fuel distributor, *"There is no way for an independent such as myself to import any real volume from the PNW (Pacific Northwest), I have no access to storage thus no way to bring enough in to make a meaningful difference in the market and the risk exposure is huge the refineries could make it an unprofitable load in the blink of an eye."*

3. The third choice is to pass SB54 and bring balance to the market through regulation. This is the least preferred way of restoring prices, but the only way to provide immediate correction to the market.

I thank you for your time and consideration of this bill and urge you to move SB54 to a floor vote.

Justin Powell

www.fairbanksgas.com

(907)460-7888

Figure. 2

Fuel Price Comparison 4/3/2009					
	Fairbanks	Anchorage	Juneau	Washington (-tax)	US Average (-tax)
Gasoline	2.46	2.36	2.07	1.93	1.75
Diesel	3.37	3.34	2.59	2.06	1.96

Figure. 3

Crack spread is a term used in the oil industry for the differential between the price of crude oil and petroleum products extracted from it - that is, the profit margin that an oil refinery can expect to make by "cracking" crude oil. http://en.wikipedia.org/wiki/Crack_spread

Gasoline Crack Spread

Alaska $2.12 x 42g./bbl - $49.38(ANS crude spot) = $39.66

Seattle $3.49 x 42g./bbl - $49.38(ANS crude spot) = $97.16

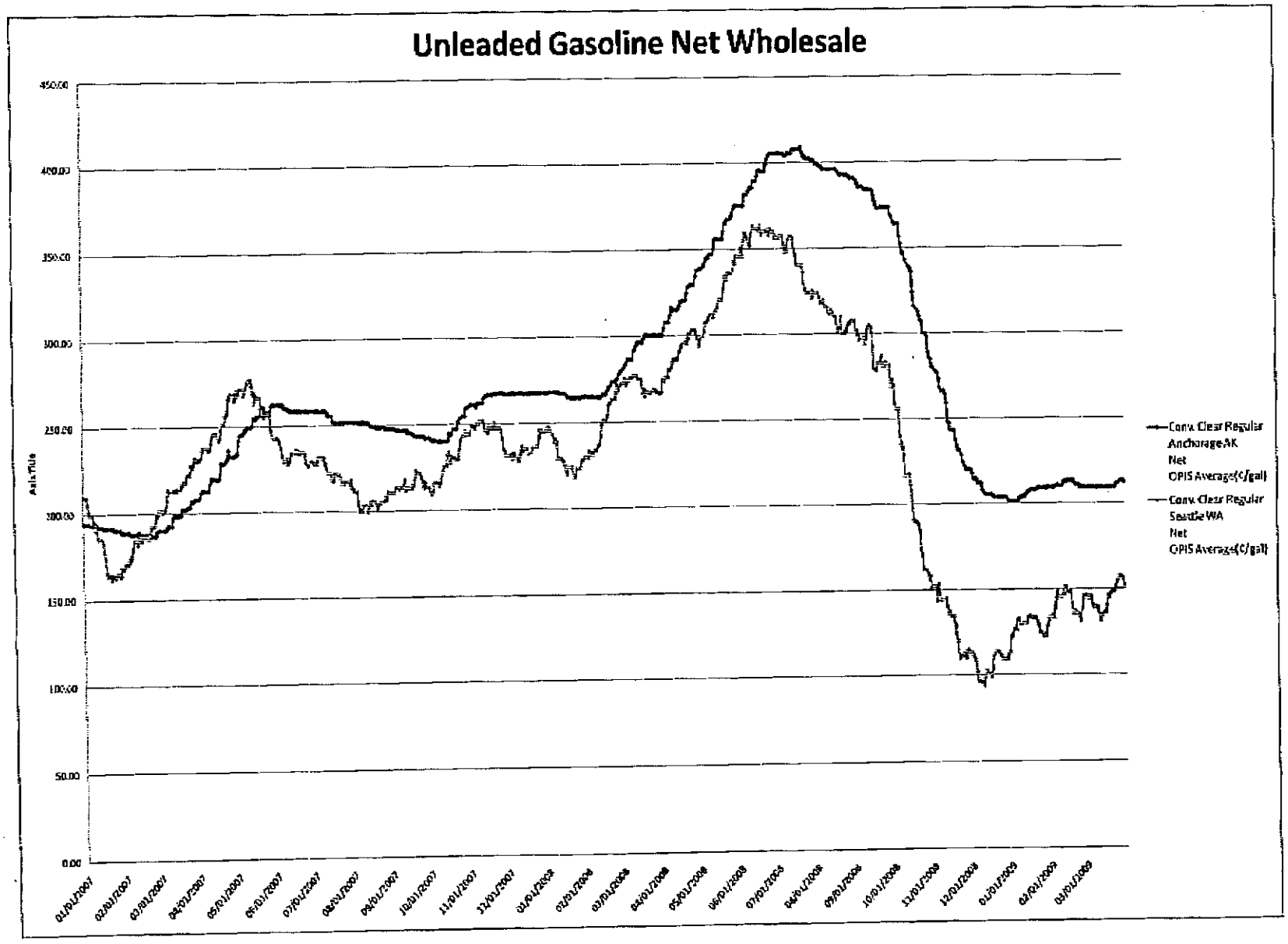
Difference **$25.26 or 175%**

Diesel Crack Spread

Alaska $2.92 x 42g./bbl - $49.38(ANS crude spot) = $73.26

Seattle $3.93 x 42g./bbl - $49.38(ANS crude spot) = $115.52

Difference **$61.74 or 536%**


Unleaded Gasoline Net Wholesale
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400.00
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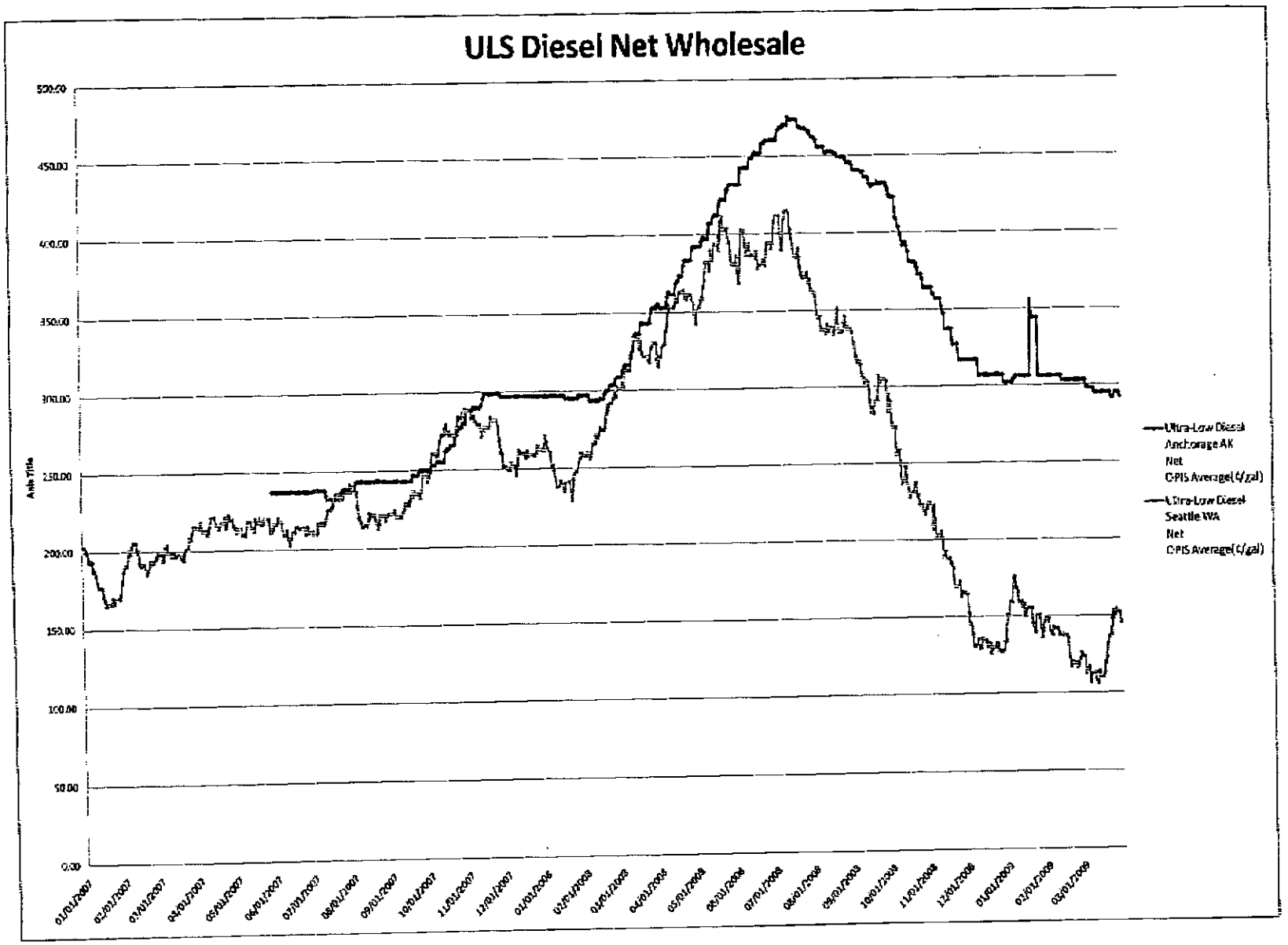
Conv Clear Regular Anchorage AK Net OPIS Average(¢/gal)
Conv Clear Regular Seattle WA Net OPIS Average(¢/gal)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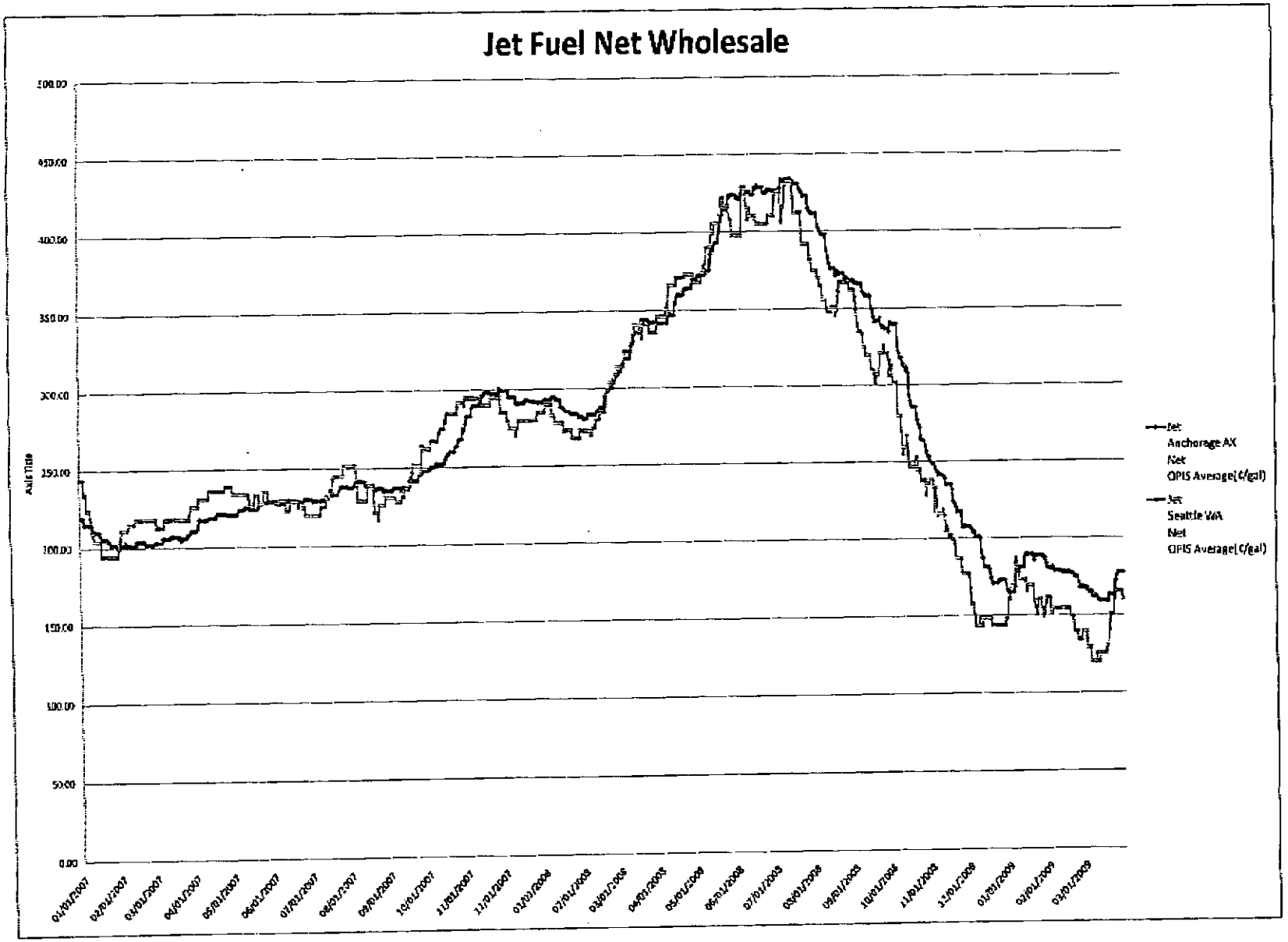
Ultra-Low Diesel Anchorage AK Net OPIS Average(¢/gal)
Ultra-Low Diesel Seattle WA Net OPIS Average(¢/gal)


Jet Fuel Net Wholesale
Jet
Anchorage AK
Net
OPIS Average(¢/gal)
Jet
Seattle WA
Net
OPIS Average(¢/gal)

Wholesale Rack Prices ANCH vs. SEA (Gasoline)

Average Rack difference 54 cents/gallon

ANCHORAGE, AK 2009-03-31 17:05:40 EDT

OPIS CLOSING BENCHMARK FILE

OPIS NET CLEAR PRICES

		Terms	Unl	Move	Mid	Move	Pre	Move	Date
Shell	b	N-10	197.90	- 2.00	204.90	- 2.00	213.90	- 2.00	02/27
Chevron	b	N-10	205.80	+ 5.00	213.80	+ 5.00	221.80	+ 5.00	03/27
FlntHlsRs	u	N-10	218.00	- 5.00	225.00	- 5.00	232.00	- 5.00	03/31
Tesoro	b	N-10	220.00	+ 4.00	227.00	+ 4.00	234.00	+ 4.00	03/25
Texaco	u	N-10	220.00	+ 4.00	227.00	+ 4.00	234.00	+ 4.00	03/25
LOW RACK			197.90		204.90		213.90		
HIGH RACK			220.00		227.00		234.00		
RACK AVG			212.34		219.54		227.14		
BRD LOW RACK			197.90		204.90		213.90		
BRD HIGH RACK			220.00		227.00		234.00		
BRD RACK AVG			207.90		215.23		223.23		
UBD LOW RACK			218.00		225.00		232.00		
UBD HIGH RACK			220.00		227.00		234.00		
UBD RACK AVG			219.00		226.00		233.00		
CONT AVG-03/31			212.34		219.54		227.14		
CONT NET AVG-03/31			212.34		219.54		227.14		
CONT NET LOW-03/31			197.90		204.90		213.90		
CONT NET HI-03/31			220.00		227.00		234.00		

ANCHORAGE, AK	
LOW RETAIL	232.33
AVG RETAIL	236.25
LOW RETAIL EX-TAX	213.66
AVG RETAIL EX-TAX	217.59

SEATTLE, WA 2009-03-31
11:01:56 EDT

OPIS NET CLEAR PRICES

		Terms	Unl	Move	Mid	Move	Pre	Move	Date
Cenex	b	1-10	148.50	- 5.00	158.40	- 5.00	168.30	- 5.00	03/30
COP	u	N-10	151.25	- 4.00	160.25	- 4.00	169.25	- 4.00	03/30
Chevron	b	N-10	151.60	- 3.00	161.10	- 3.00	170.60	- 3.00	03/30
Texaco	b	N-10	151.60	- 3.00	161.10	- 3.00	170.60	- 3.00	03/30
Shell	b	N-10	153.50	- 1.00	163.00	- .20	172.50	- 1.00	03/30
Tesoro	u	N-10	153.75	- 4.50	162.75	- 4.50	171.75	- 4.50	03/30
US Oil	u	N-10	154.25	- 8.50	163.25	- 8.50	174.25	- 8.50	03/30
LOW RACK			148.50		158.40		168.30		
HIGH RACK			154.25		163.25		174.25		
RACK AVG			152.06		161.41		171.04		
OPIS PACIFIC NORTHWEST DELIVERED SPOT (SRI)									
FOB SEATTLE			146.84		-- --		163.34		
BRD LOW RACK			148.50		158.40		168.30		
BRD HIGH RACK			153.50		163.00		172.50		
BRD RACK AVG			151.30		160.90		170.50		
UBD LOW RACK			151.25		160.25		169.25		
UBD HIGH RACK			154.25		163.25		174.25		
UBD RACK AVG			153.08		162.08		171.75		
CONT AVG-03/31			152.28		161.64		171.28		
CONT NET AVG-03/31			152.06		161.41		171.04		
CONT NET LOW-03/31			148.50		158.40		168.30		
CONT NET HI-03/31			154.25		163.25		174.25		

SEATTLE-BELLEVUE-EVERETT, WA	
LOW RETAIL	207.98
AVG RETAIL	227.05
LOW RETAIL EX-TAX	154.04
AVG RETAIL EX-TAX	173.45

ALASKA STATE LEGISLATURE

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(877) 463-3873 Toll Free
Senator_Bert_Stedman@legis.state.ak.us

INTERIM
50 Front Street
Ketchikan, AK 99901-6442
Phone (907) 225-8088
Fax (907) 225-0713

SENATOR BERT K. STEDMAN

SPONSOR STATEMENT

Senate Bill 59

"An Act relating to the operation of low-speed vehicles"

In recent years, electric cars have progressed so they now come with all the necessary safety equipment as regular passenger vehicles. The use of low-speed electric vehicles has extended beyond golf communities and they are showing up in our towns. This new breed of electric car can help reduce carbon dioxide emissions and provide cheaper, environment-friendly transportation options for Alaskans.

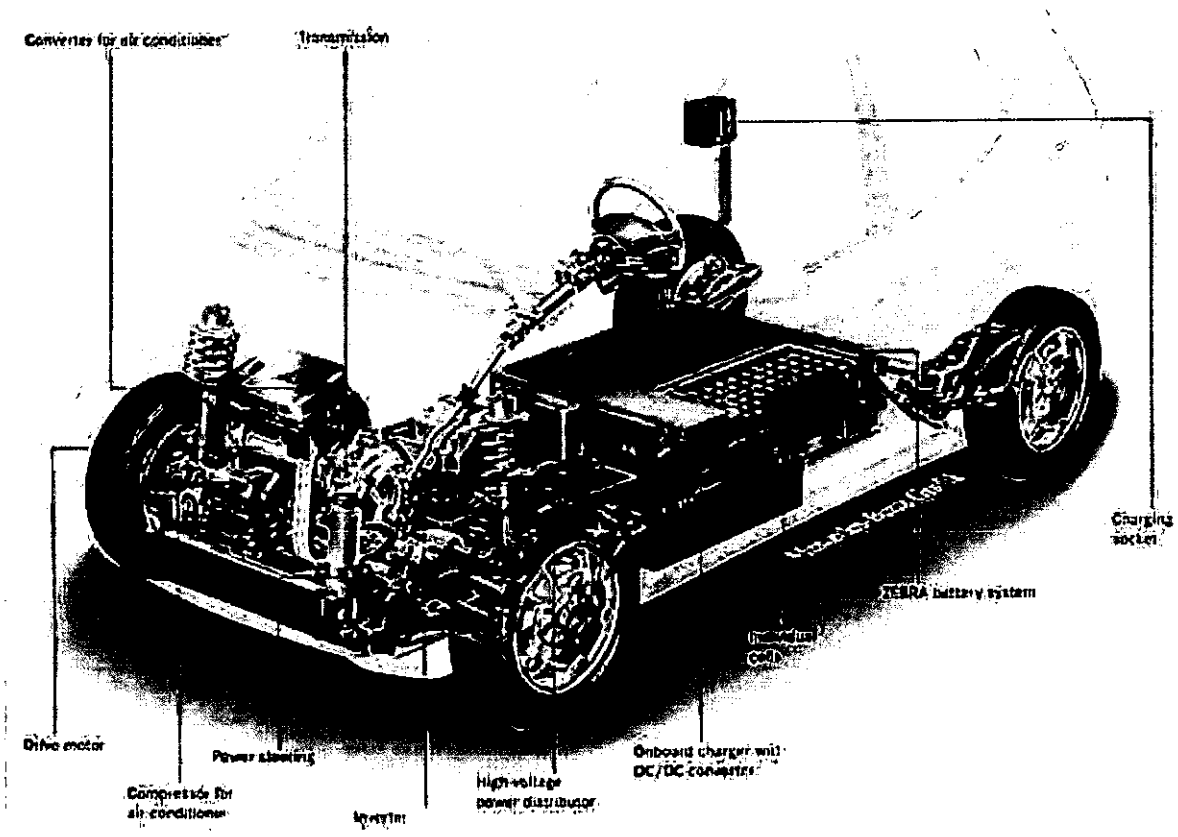
Current Alaska law only allows electric cars to operate on roads with posted speed limits of 35 mph or less. In communities throughout Alaska, owners of electric cars are seeking access to more miles of road. If enacted, SB 59 will allow low-speed electric vehicles on roads with posted speed limits of 45 mph or less. This new access would be limited to communities not connected by road to Anchorage or Fairbanks, and with a maximum of 25,000 residents.

Larger communities may not want low-speed electric vehicles traveling on roads with high traffic volume for safety purposes. SB 59 allows municipalities to opt-in and expand access of low-speed vehicles at their discretion. However, many small communities throughout Alaska have few road miles and low traffic volume providing a suitable environment for electric cars. SB 59 will give individual communities the opportunity to increase electric car usage if they so choose.

Contact: Weston Eiler, Legislative Aide to Senator Bert Stedman at (907)-465-3873

Electric Cars You Can Drive

Electric cars and its hybrid technology is a burgeoning market, and the chance for America to become energy-independent is on everyone's minds as of late. No one wants to be paying for gasoline, when an 8-hour charge can get them much, much more for their time and money. When you read about these vehicles, keep in mind that this technology is new, but it's reliable.



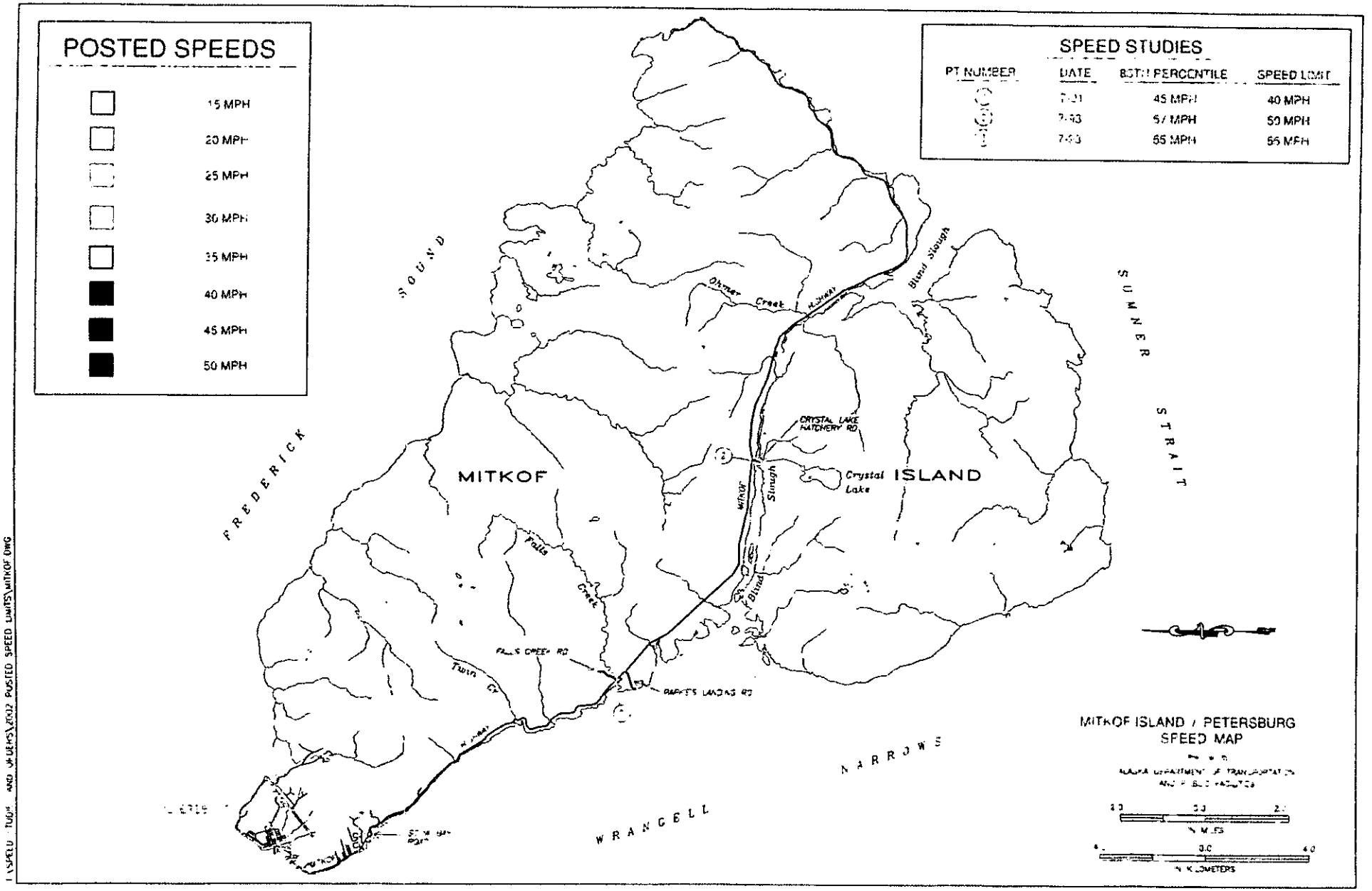
Electric Cars Available in 2008

Tesla Roadster Electric Car
GEM Electric Car
Dynasty iT Sedan Electric Car
ZENN Electric Car
Zap Xebra Electric Car
Aptera Type-1

Miles EV ZX-40 ~ Retail: $14,750

Southeast Alaska Community Speed Limits (estimated length of road for each speed limit)

Location	Total Miles	15mph	20mph	25mph	30mph	35mph	40mph	45mph	50mph	55mph	total state miles	% miles state
Sitka	49.431	0.3	0.21	4.15	0.9	3.1	4.6	3	0	0	16.26	32.89%
Peterburg	72.068	0	1.465	0.84	3.78	3.404	0.05	0	29	0	38.539	53.48%
Wrangell	53.79	0	0.09	0.225	0	1.414	2.78	8	4.25	0	16.759	31.16%
Ketchikan	93.732	0	11.962	8.5	2.236	5.75	4	10.5	8	3.5	54.448	58.09%



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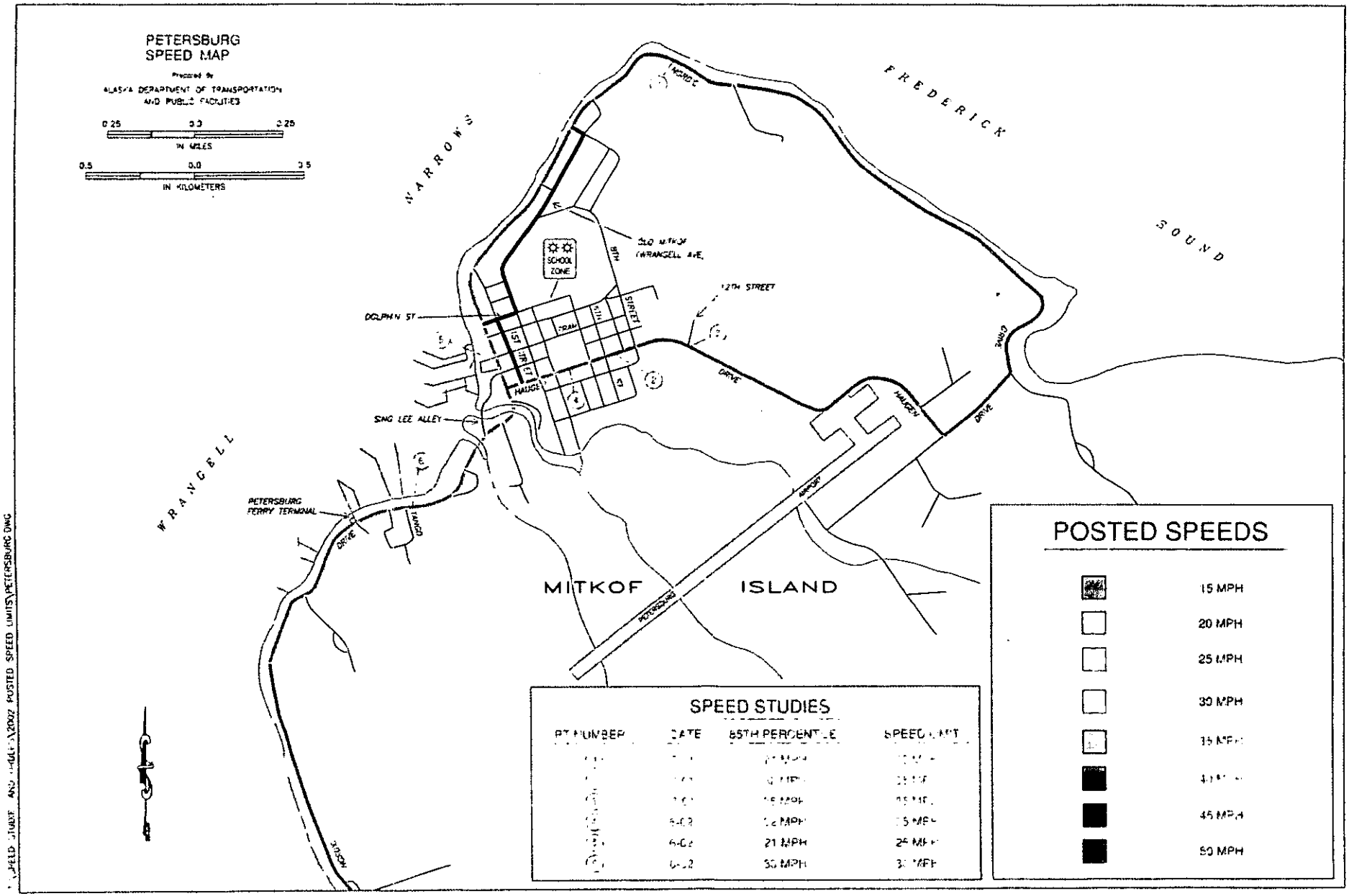
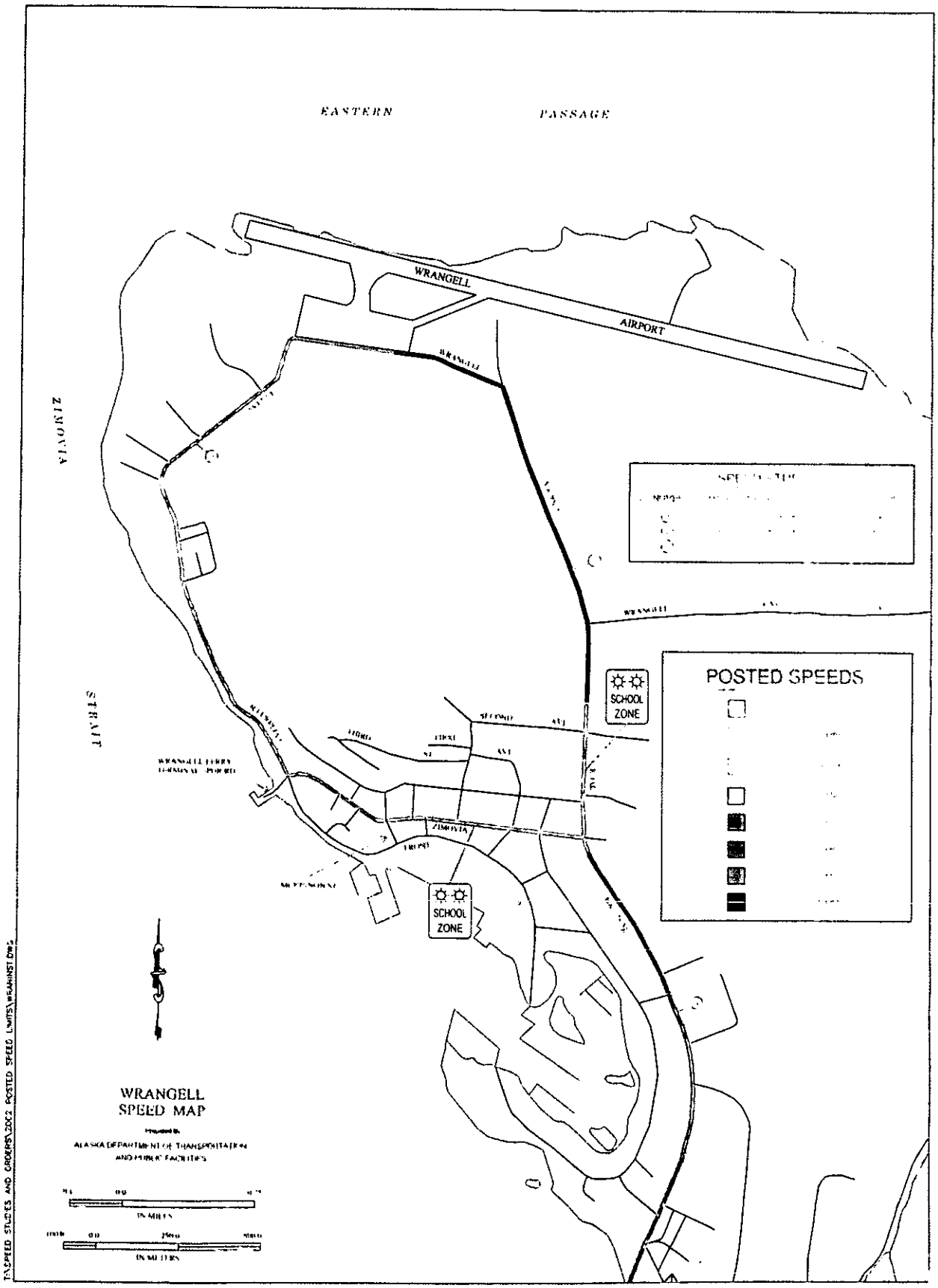
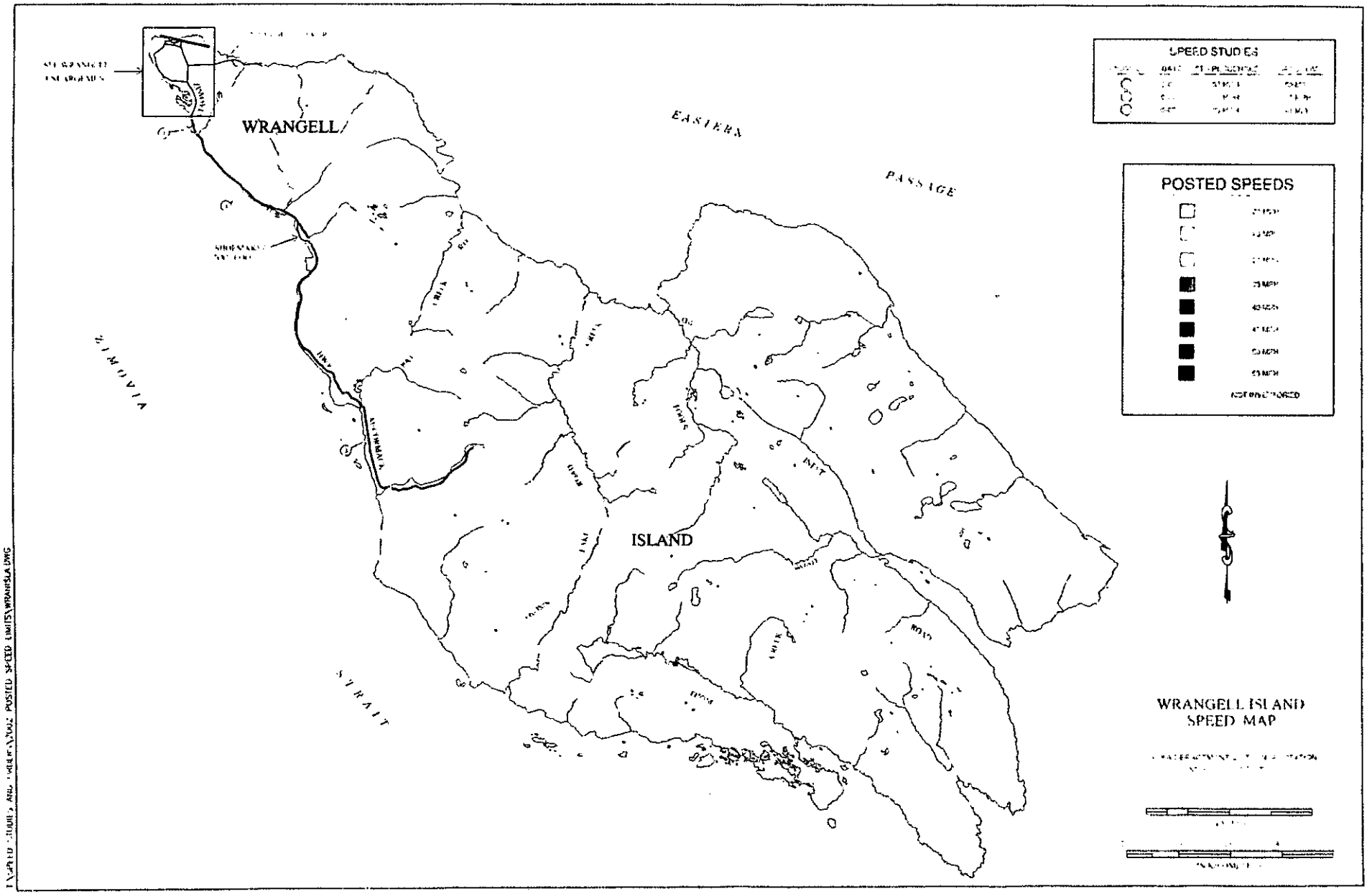
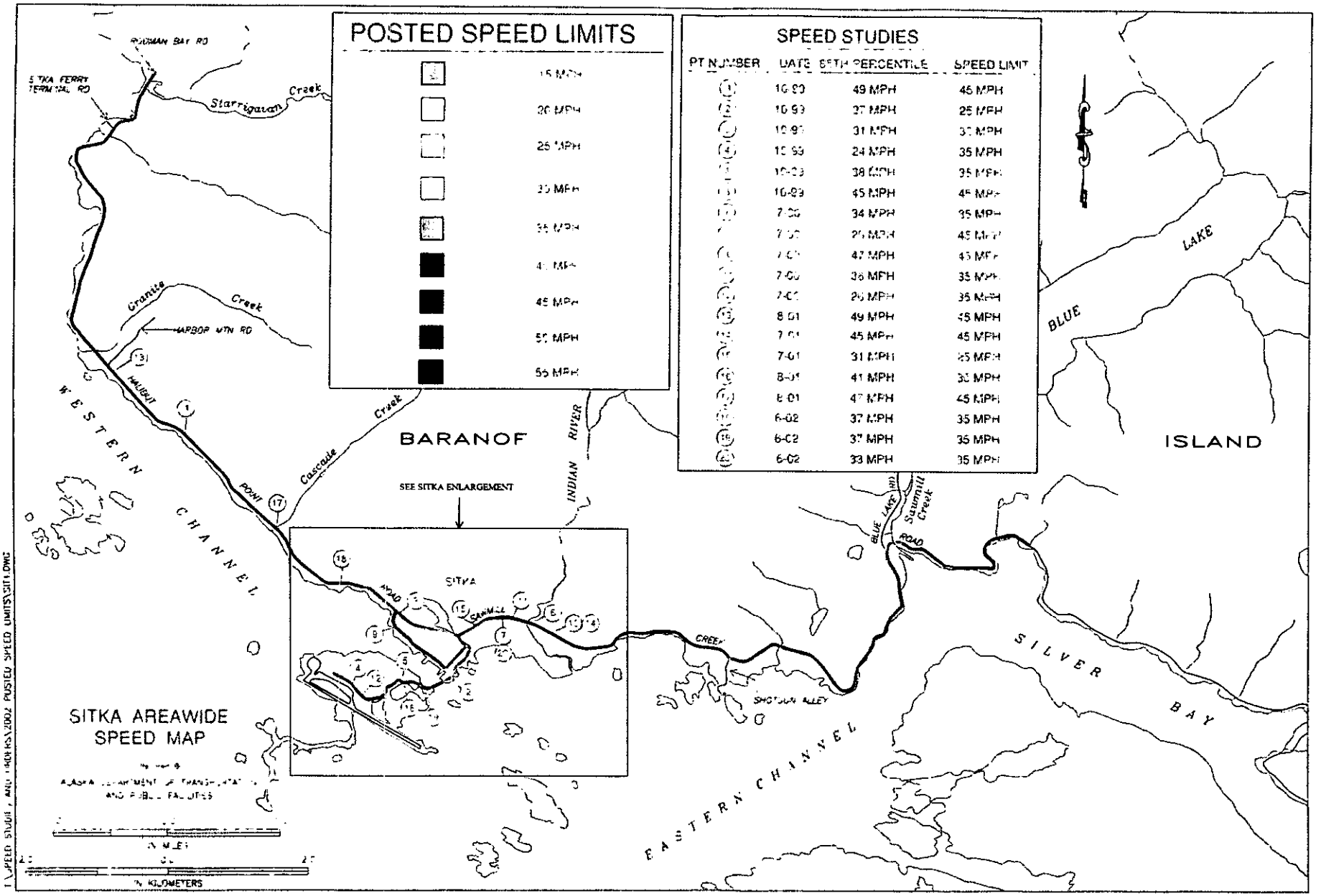


SPEED STUDY AND IMAGE FILES\2002 POSTED SPEED LIMITS\PETERSBURG.DWG


EASTERN
PASSAGE
WRANGELL
AIRPORT
ZIMOVIA
STRAIT
SCHOOL ZONE
SCHOOL ZONE
POSTED SPEEDS
WRANGELL
SPEED MAP
ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
IN MILES
IN METERS


WRANGELL
ISLAND
EASTERN
PASSAGE
SUMNAVIA
STRAIT
SPEED STUDIES
POSTED SPEEDS
WRANGELL ISLAND
SPEED MAP


POSTED SPEED LIMITS
15 MPH
20 MPH
25 MPH
30 MPH
35 MPH
40 MPH
45 MPH
50 MPH
55 MPH
SPEED STUDIES
PT NUMBER
DATE
85TH PERCENTILE
SPEED LIMIT
10-99 49 MPH 45 MPH
10-99 37 MPH 25 MPH
10-99 31 MPH 30 MPH
10-99 24 MPH 35 MPH
10-99 38 MPH 35 MPH
10-99 45 MPH 45 MPH
7-00 34 MPH 35 MPH
7-00 26 MPH 45 MPH
7-00 47 MPH 45 MPH
7-00 36 MPH 35 MPH
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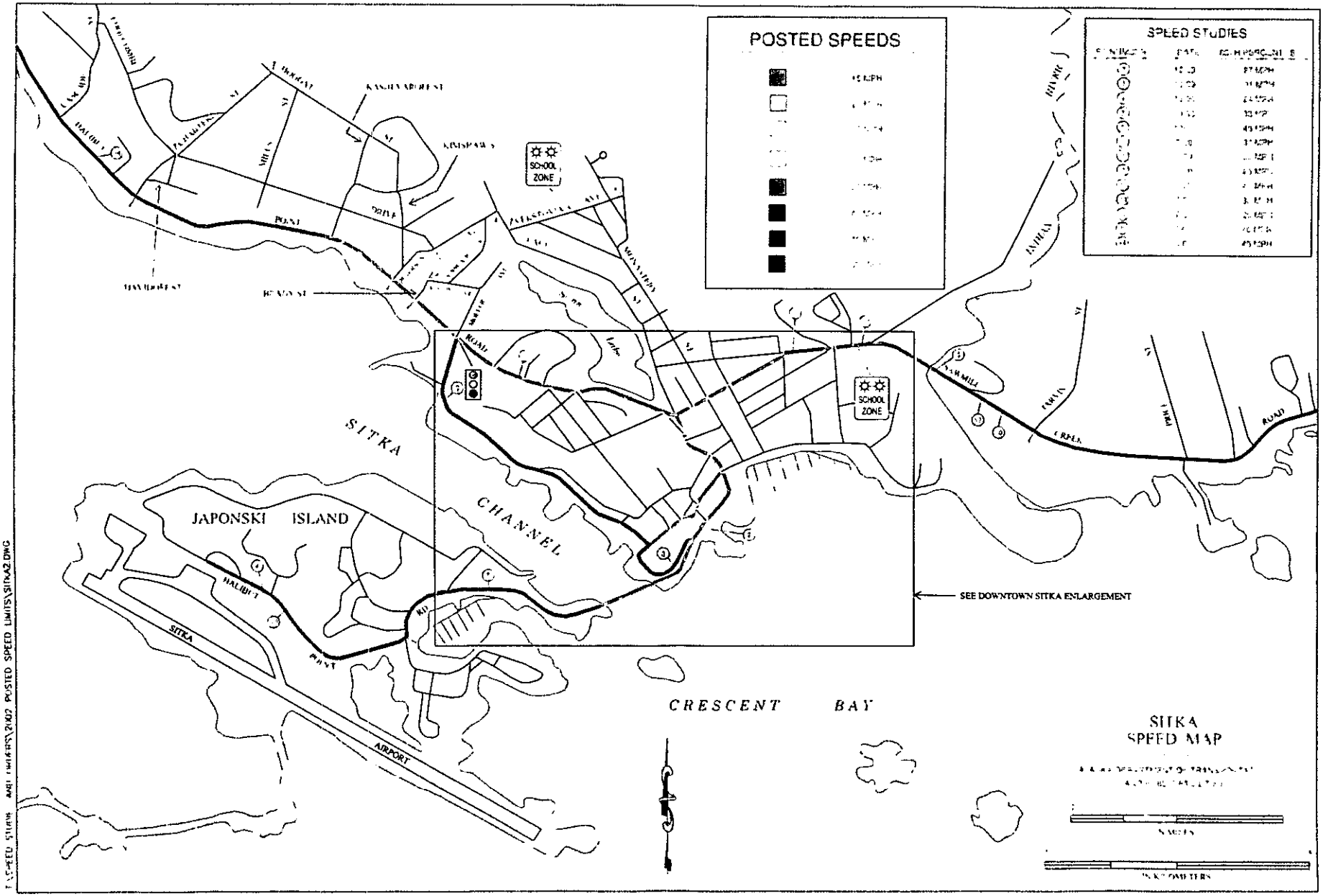
7-01 45 MPH 45 MPH
7-01 31 MPH 25 MPH
8-01 41 MPH 30 MPH
8-01 47 MPH 45 MPH
6-02 37 MPH 35 MPH
6-02 37 MPH 35 MPH
6-02 33 MPH 35 MPH
SITKA AREAWIDE SPEED MAP
SEE SITKA ENLARGEMENT
SITKA
BARANOF
ISLAND
LAKE
BLUE
WESTERN CHANNEL
EASTERN CHANNEL
SILVER BAY
INDIAN RIVER
Granite Creek
Starrigavan Creek
Cascade Creek
Sawmill Creek
HARBOR MTN RD
HALIBUT POINT
BLUE LAKE RD
SHOTGUN ALLEY
SEWARD
ROAD
SITKA FERRY TERMINAL RD
ROSMAN BAY RD
IN MILES
IN KILOMETERS


POSTED SPEEDS
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SEE DOWNTOWN SITKA ENLARGEMENT
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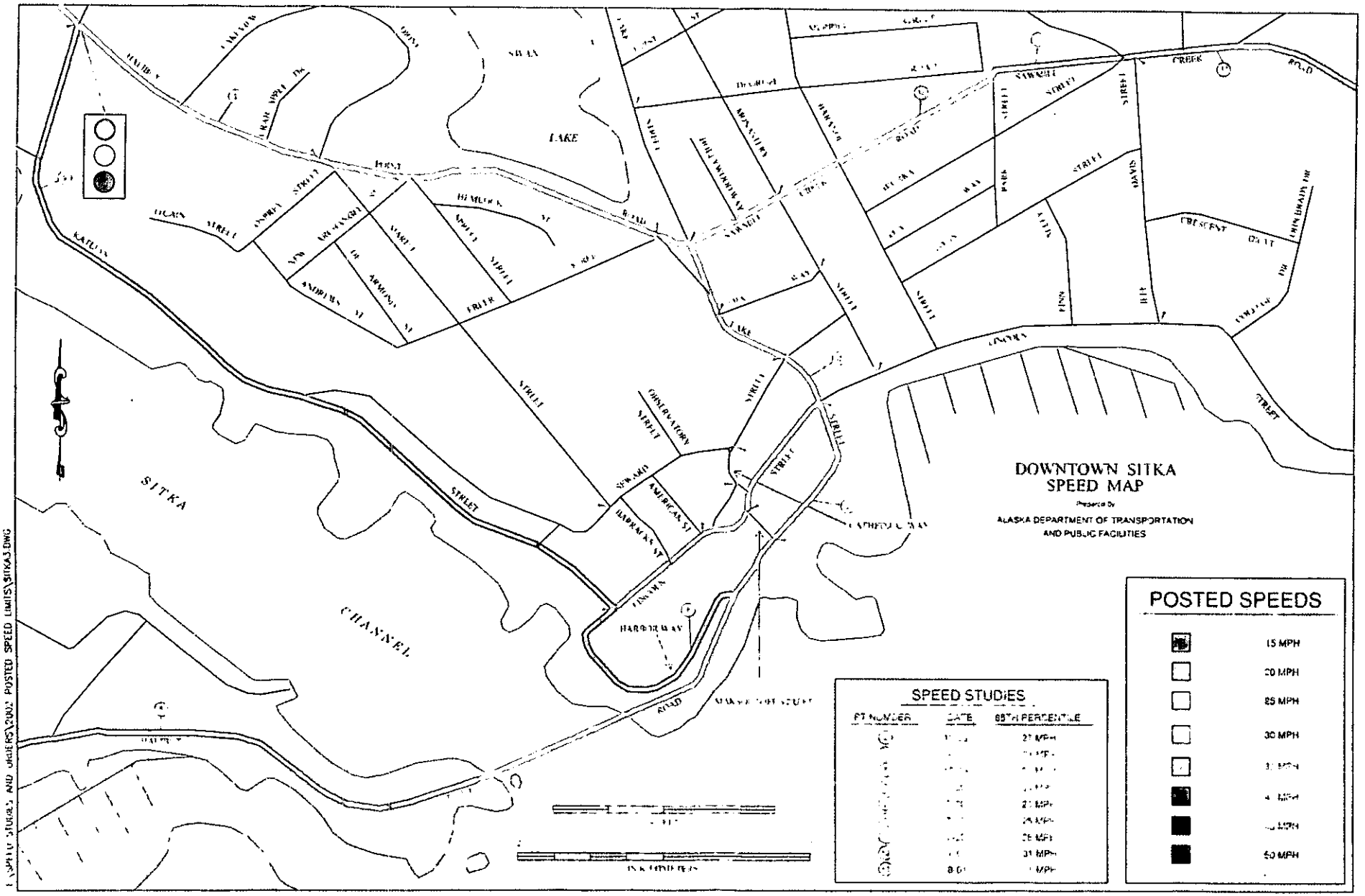
AIRPORT
HALIBUT POINT RD
SITKA
SPEED MAP
MILES
KILOMETERS


DOWNTOWN SITKA
SPEED MAP
Prepared By
ALASKA DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
POSTED SPEEDS
15 MPH
20 MPH
25 MPH
30 MPH
40 MPH
50 MPH
SPEED STUDIES
ST NUMBER
DATE
85TH PERCENTILE
SITKA
CHANNEL
LAKE
KATLIAN
HARBOR DR
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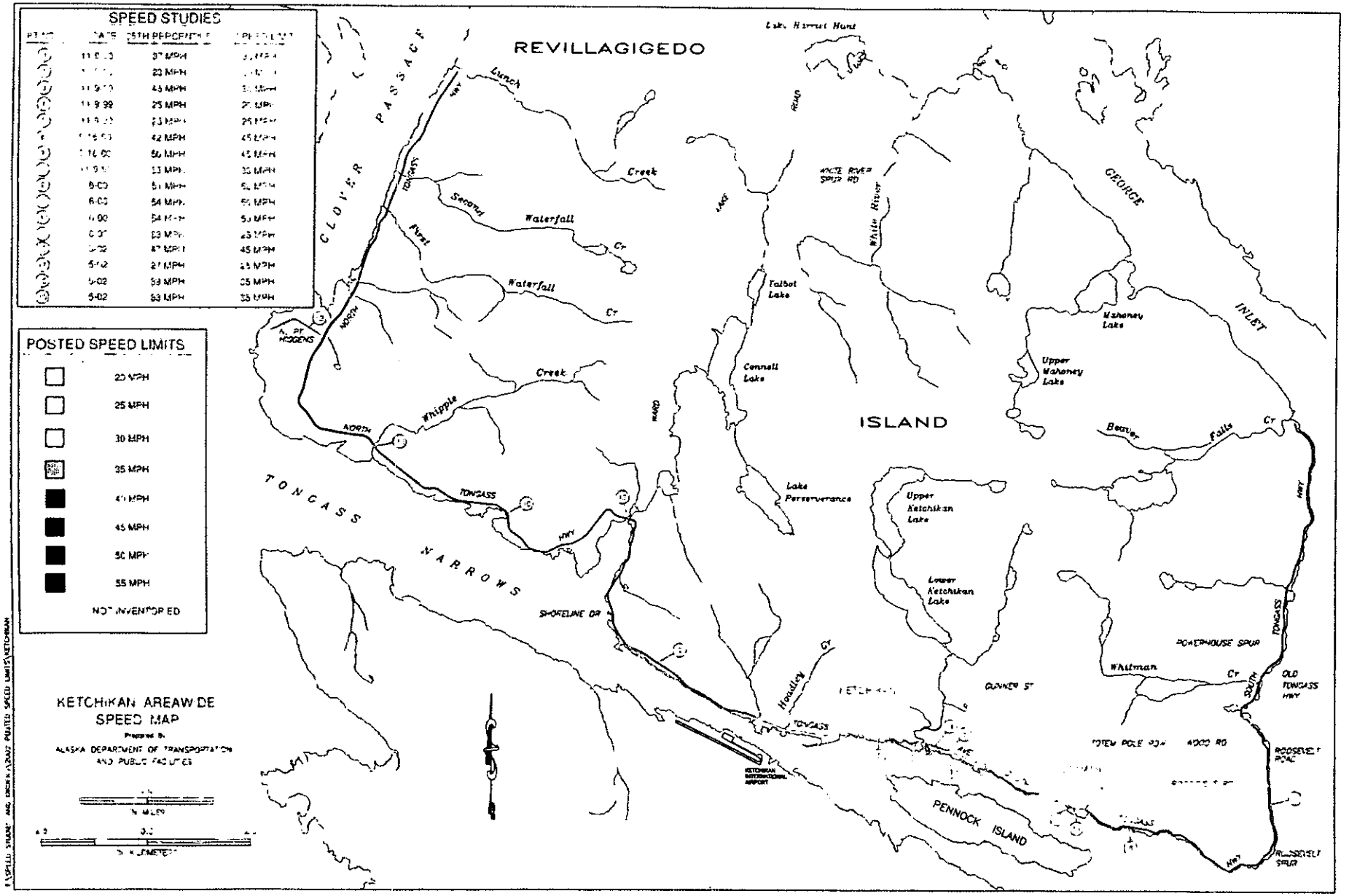
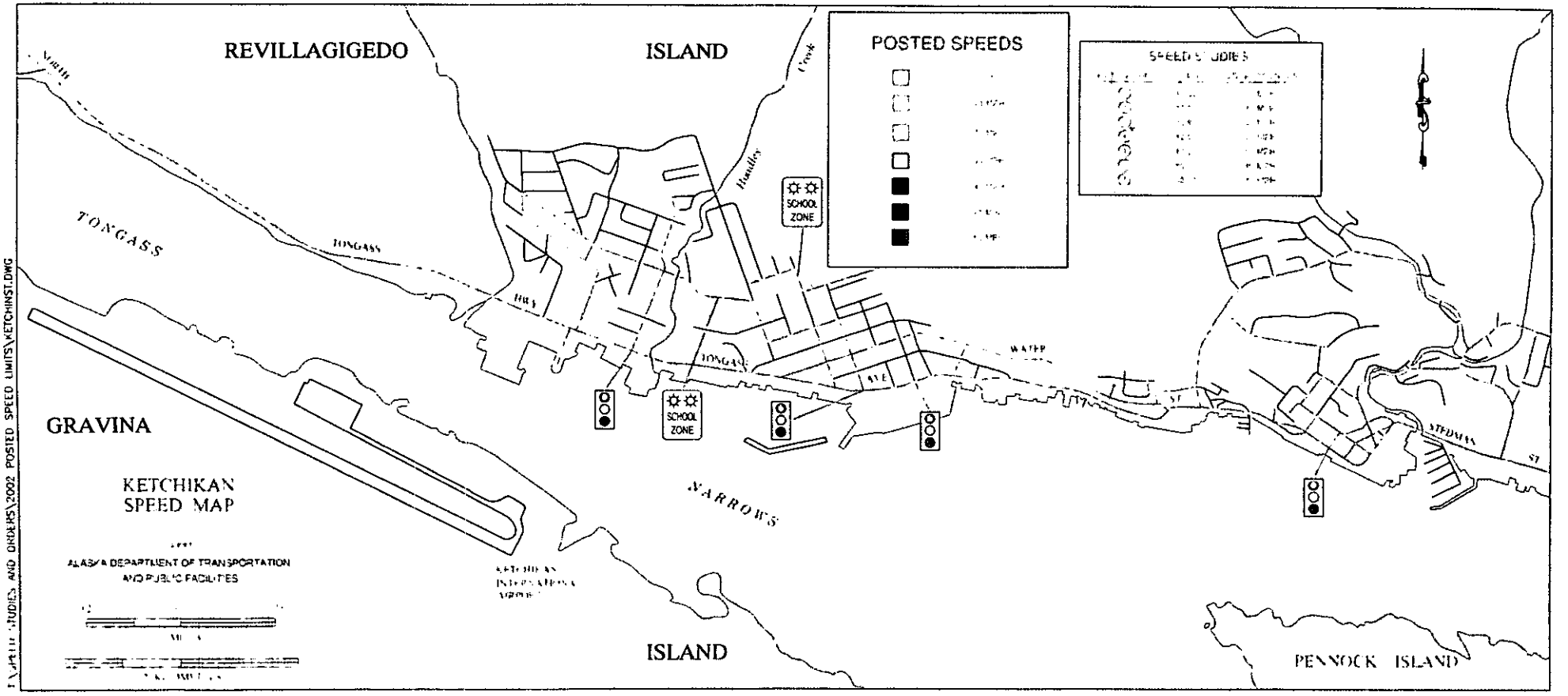
STREET


SPEED STUDIES
POSTED SPEED LIMITS
25 MPH
30 MPH
35 MPH
40 MPH
45 MPH
50 MPH
55 MPH
NOT INVENTORIED
KETCHIKAN AREAWIDE SPEED MAP
ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
REVILLAGIGEDO
ISLAND
TONGASS NARROWS
CLOVER PASSAGE
GEORGE INLET
PENNOCK ISLAND
Lake Harriet Hunt
Lunch Creek
Second Waterfall Cr
Third Waterfall Cr
Whipple Creek
Talbot Lake
Connell Lake
Lake Perseverance
Upper Ketchikan Lake
Lower Ketchikan Lake
Mahoney Lake
Upper Mahoney Lake
Beaver Falls Cr
Waterfall Cr
Houghton Cr
Walman Cr
WHITE RIVER SPUR RD
White River
NORTH TONGASS HWY
SOUTH TONGASS HWY
OLD TONGASS HWY
SHORELINE DR
POWERHOUSE SPUR
TOTEM POLE PARK
4000 RD
ROOSEVELT SPUR
KETCHIKAN INTERNATIONAL AIRPORT



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durable construction and the ability to carry heavier loads at lower costs than a full-speed [vehicle] or purpose-designed LSV." While we agree that acceding to ETA's request would have this effect, it is again an effect we hope to avoid.

To begin, we note that foreign made on-road motor vehicles, that are capable of high-speed use, are not eligible to be transformed into LSVs via the adoption of a speed-limiting governor. In a June 28, 2000 letter of interpretation to Mr. Thomas E. Dahl on this issue, we stated there are no circumstances under which the addition of a speed governing device to a high-speed vehicle would make the vehicle meet the definition of an LSV. After explaining that we established the LSV class because the vehicles were too small to meet the full FMVSS requirements, we stated that a common feature of this class appeared to be that they were capable of a maximum speed of 25 mph *as designed and manufactured*. This is still our interpretation of the regulation.

Furthermore, the agency has stated several times that one concern we have regarding the LSV classification is that it could be used as a mechanism to import foreign motor vehicles without first making them conform to the FMVSSs. For example, in the 2005 final rule, we stated that "[t]he [2,500-pound] GVWR limit prevents attempts to circumvent FMVSSs for cars, trucks, and multipurpose passenger vehicles by applying the LSV classification to vehicle types that are able to meet the [full FMVSS] standards." [9] ETA's recommended 4,000-pound limit would permit the result we intended to prevent, and we view that as a reason to deny the petition.

b. Technology-Neutral Regulation

ETA's final argument is that the current GVWR limitation provides an advantage to gasoline-powered vehicles over electric vehicles. The agency is aware that, with current technology, the batteries needed to power an electric vehicle weigh substantially more than the fuel needed to power an internal combustion engine. This was considered to some extent in our original rulemaking establishing the 2,500-pound GVWR limit in 2005, and considered extensively in our 2006 rule increasing that limit to 3,000 pounds, a rule undertaken at the behest of two electric LSV manufacturers.

In the petitions that led to the 2006 rulemaking, NHTSA was presented with two differing solutions to this problem. The first, presented by Dynasty Electric Car Corporation, recommended a 2,500-pound GVWR restriction for internal combustion engine LSVs and a 2,800-pound GVWR restriction for electric LSVs. The second, recommended by GEM, requested that the GVWR limit be raised to 3,000 pounds for all LSVs, as this would accommodate electric LSVs with a cargo-carrying capacity of 1,000 pounds.

In the 2005 rule establishing the GVWR limitation, we discussed why we were not establishing different GVWR limitations for electric and gasoline-powered vehicles, despite the issue regarding the weight of the batteries. We noted that each propulsion type has its own advantages. While gasoline-powered vehicles are lighter, "the fact that electric LSVs are successful in the market indicates that any advantage of the [internal combustion] vehicle due to greater load capacity under our GVWR restriction will be overcome by other attractions of the electric vehicle to consumers." [10] ETA, perhaps inadvertently, cites several of these advantages in its petition. These include the high cost of gasoline, government mandates to reduce or eliminate petroleum-fueled vehicles from fleets, and the environmental benefits of electric vehicles. Therefore, we do not believe it is necessary to increase the regulatory complexity by setting different GVWR limitations based on propulsion method.

Finally, we believe that 3,000 pounds is a level at which electric LSVs that perform cargo-carrying work are practicable to build. In the 2006 final rule, we quoted one of the petitioners, GEM, where it stated:

> All that GEM seeks in the U.S. market is a comparable "level playing field" by allowing LSV trucks to weigh as much as 3000 pounds GVWR, which would accommodate the electric batteries and an appropriate payload for LSV trucks.

We note that GEM currently produces a cargo-carrying electric LSV with a GVWR of 3,000 pounds or less. We noted on GEM's Web site the GEM eL XD, which has a GVWR of 3,000 pounds, a payload capacity of 1,450 pounds, a top speed of 25 mph, and a range of up to 40 miles.[11] This example illustrates that the current GVWR limit permits the development of cargo-carrying, electric LSVs.

IV. Conclusion

For the reasons stated above, we are denying ETA's petition to increase the maximum allowable GVWR to 4,000 pounds for electric LSVs. Furthermore, because we are not increasing the maximum allowable GVWR, we are denying ETA's recommendation to establish brake requirements and tire weight rating requirements in FMVSS No. 500.

Issued on: September 19, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8–22736 Filed 9–25–08; 8:45 am]

BILLING CODE 4910–59–P

[9] 70 FR 48316.

[10] 70 FR 48317.

[11] *See* GEM Web site, available at *http://www.gemcar.com.*

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2008–0154]

Federal Motor Vehicle Safety Standards; Medium Speed Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies petitions for rulemaking submitted by Environmental Motors, and Porteon Electric Vehicles, Inc. and Mirox Corporation. The petitioners requested that NHTSA commence rulemaking to create a new class of motor vehicles known as medium speed vehicles, which would have a maximum speed capability of 35 mph. The petitioners contemplated that these vehicles would be subject to a set of safety standards greater than those that apply to low speed vehicles but substantially less than the full set of safety standards that apply to other light vehicles such as passenger cars. The petitioners cited a number of reasons in support of their petition, the most significant of which related to potential environmental benefits. After carefully reviewing the petitions, we are denying them because the introduction of such a class of motor vehicles without the full complement of safety features required for other light vehicles such as passenger cars would result in significantly greater risk of deaths and serious injuries. While NHTSA agrees with the importance of environmental issues, the agency believes that it is neither necessary nor appropriate to significantly increase the risk of deaths and serious injuries to save fuel.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Gayle Dalrymple, Office of Crash Avoidance Standards, NVS–123. Telephone: 202–366–5559;

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For legal issues: Mr. Ari J. Scott, NHTSA Office of the Chief Counsel, NCC–112. Telephone: (202) 366–2992; facsimile: (202) 366–3820; e-mail *ari.scott@nhtsa.dot.gov.*

Both officials can be reached by mail at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Overview

NHTSA has received three petitions for rulemaking, from Environmental Motors, Porteon Electric Vehicles, Inc. and Mirox Corporation, requesting that the agency commence rulemaking to create a new class of motor vehicles known as medium speed vehicles MSVs. While the specific requests vary, they essentially ask the agency to conduct rulemaking to exclude smaller light vehicles that would currently be classified as passenger cars, multipurpose passenger vehicles (MPVs) or trucks from many or most of the Federal motor vehicle safety standards, if their speed capability is 35 mph or less. The vehicles would instead be subject to a set of safety standards greater than those that apply to low speed vehicles (LSVs) but substantially less than the full set of safety standards that apply to other light vehicles.

The petitioners made a variety of arguments in support of their requests, the most significant of which related to environmental benefits, including facilitating the development of electric vehicles and fuel savings. They argued that because LSVs are not permitted to have a speed capability greater than 25 mph, they cannot safely keep up with traffic in urban areas, and a need therefore exists for vehicles with a higher speed (35 mph) capability. The petitioners also noted that two States have passed laws that purport to allow medium speed electric vehicles to operate on certain public roads.

After carefully considering the petitions, we are denying them because the introduction of such a class of motor vehicles without the full complement of safety features required for other light vehicles would result in significantly greater risk of deaths and serious injuries. We address the petitioners' arguments in detail in the rest of this document, but note the following points in this overview.

The petitioners appear to view MSVs as a variant of LSVs, i.e., a special class of small motor vehicles that would not be required to meet the full complement of the Federal motor vehicle safety standards. However, the rationale for applying a limited set of safety standards to LSVs is not relevant to MSVs.

NHTSA issues different safety standards for different types of motor vehicles. The agency established the special category of motor vehicles called LSVs to accommodate the use of small golf cars and other vehicles primarily intended for use in controlled, low-speed communities, such as retirement communities. In order to qualify as an LSV under the agency's definition, a vehicle must, among other things, have a speed capability no higher than 25 mph. LSVs are subject to a limited set of safety measures in FMVSS No. 500, including requirements related to the installation of lamps, mirrors, seat belts and a windshield. However, LSV's are not subject to most of the standards to which other light vehicles such as passenger cars are required to comply, including the rigorous crashworthiness standards.

One of the principal concerns raised by the petitioners is that the 25 mph speed limitation that applies to LSVs prevents these vehicles from keeping up with traffic in urban areas. However, the 25 mph limitation reflects the fact that NHTSA designed the set of safety standards that apply to LSVs for vehicles intended to be used in controlled, low speed environments. Vehicles with a speed capability above 25 mph are more likely to be driven outside controlled, low speed environments, and the limited LSV safety requirements are not appropriate for such vehicles.

The petitioners appear to assume that the full set of safety standards applicable to other light vehicles such as passenger cars would not be appropriate for MSVs, i.e., small vehicles with a speed capability of 35 mph. However, the traffic environment in which these vehicles would likely travel, including, e.g., urban roads with a speed limit of 35 mph or 45 mph, is an environment for which the full set of the Federal motor vehicle safety standards is needed to prevent fatalities and serious injuries. MSVs would be traveling in mixed traffic at speeds in which crashes posed a risk of serious injury or fatality and in which safety features such as frontal and side air bags significantly reduced that risk. Also, a number of the crash test requirements included in our safety standards simulate crashes in this higher speed environment. We note that the petitioners did not provide analysis demonstrating why any of the Federal motor vehicle safety standards are not needed for MSVs.

NHTSA shares the concerns of the petitioners about the importance of environmental issues and saving fuel, and notes that it is currently engaged in rulemaking in which it has proposed to substantially increase average fuel economy standards for passenger cars and light trucks. We also note that a number of smaller vehicles have been introduced in recent years that are certified to comply with the full set of Federal motor vehicle safety standards. In addition, the current unprecedented cost of fuel is forcing manufacturers to improve fuel efficiency and reduce vehicle size without Federal mandates.

While we appreciate the importance of environmental issues, NHTSA does not believe that it is necessary or appropriate to significantly increase the risk of deaths and serious injuries to save fuel by introducing a new class of motor vehicles that does not provide adequate safety protection.

II. Petitions for Rulemaking

Environmental Motors

One of the petitions received by NHTSA was from Environmental Motors, an electric vehicle (EV) dealer located in Glendale, CA.[1] That company stated that the petition was being sent as part of an effort by a coalition interested in getting zero emission, energy-efficient vehicles on the road in a safe and timely manner. The coalition includes EV manufacturers and sellers (including Miles Electric Vehicles, Zenn Motor Company, e-ride Industries, Dynasty Electric Car Corp., Boshart Engineering, Free Drive EV, Inc, Clean-Tech LLC, LE Electric Automobiles, LLC, and Electrovaya, Resort Vehicles, Inc.), the City of Santa Monica, CA, the University of California, Santa Barbara, and the Sustainable Transport Club of Santa Monica, CA. All of these groups sent letters supporting Environmental

[1] This petition can be viewed at *http://www.regulations.gov*, docket #NHTSA–2008–0019.

Motors' petition, which were attached to the petition.

The petition itself requested that NHTSA establish a Medium Speed Vehicle (MSV) standard. According to the petition, the promulgated MSV standard should incorporate "the right mix of safety features," although it did not specify what it considered a right mix. In doing so, the petition requested that NHTSA consider a number of factors. These include:

- The fact that MSV legislation has been passed by several States.
- Alleged safety benefits of vehicles being able to keep up with traffic.
- That a MSV class would assist in the development of electric vehicles.
- That most MSVs would be electric, and noting the environmental benefits of electric vehicles.

Additionally, in letters of support, various supporters added additional arguments. These included:

- The fact that full-speed electric vehicles are expensive.
- Safety disbenefits incurred by the fact that some individuals modify LSVs to increase their speed.
- As an alternative to creating a class of MSVs, NHTSA could increase the speed limitation for LSVs.

Mirox Corporation

Another petition that NHTSA received was from Mirox Corporation (Mirox).[2] Mirox's petition was more detailed than that of Environmental Motors, but also suggested that NHTSA create a class of MSVs with a maximum top speed of 35 mph.

Mirox requested that NHTSA define a MSV as a vehicle with: (1) A maximum speed of 30–35 mph, a maximum GVWR of 3,000 lbs. for cargo-carrying vehicles, or 2,500 lbs. for vehicles with passenger-carrying capacity only; (3) has three or four wheels; and (4) a limited number of equipment and bumper requirements. These requirements are more stringent than those required for LSVs, but substantially less than those required for other light vehicles such as passenger cars. Most prominently, Mirox would exclude MSVs from the requirements of FMVSS Nos. 138, 202a, and 208. The petitioner's request is explained in more detail below.

Mirox presents a variety of reasons for recommending its MSV classification. Some of these are similar to those identified by Environmental Motors, but some are unique. The following is a summary of the arguments put forth by Mirox:

- MSVs are a viable alternative to motorcycles, including enclosed, three-wheeled motorcycles, which are currently subject to a very limited array of safety standards. Mirox notes that the rate of motorcycle fatalities has been increasing, and argues that the use of MSVs could alleviate this. Mirox also argues that MSVs would provide better protection from weather and outside conditions than motorcycles, and are therefore likely to be used more often. Additionally, Mirox states that MSVs would be easier to drive than motorcycles, which would also help reduce injuries.
- MSVs are a better alternative to LSVs for use in driving in urban environments. Mirox states that due to speed limitations, LSVs are unsuited to driving in urban conditions, as they impede traffic flow and have limited acceleration potential. Mirox also argues that drivers will prefer MSVs as defined by the petitioner, as they will offer more protection from outside conditions and be equipped with a wider array of safety features than LSVs.
- Mirox expounds on the environmental and economic benefits of increased fuel economy for MSVs over passenger cars. It argues that because most MSVs will be electric, they will not consume fuel while idling, which is common in the urban environments that Mirox believes will be the primary environment for MSVs.
- Like Environmental Motors, Mirox points to the adoption of MSEV statutes in Montana and Washington, and argues that Federal regulations should be changed to sanction vehicles built in accordance to those statutes.
- Mirox cites the use of "quadricycles" in Europe, and argues that similar vehicles should be permitted in the U.S. as well. Mirox asserts that European experience, especially in France, has shown that the quadricycle class of vehicles is the safest of all vehicle classes, and that their drivers had fewer accidents than the average driver of a full-sized car.

In its petition, Mirox recommended a specific, detailed definition for MSVs. While similar in nature to that for an LSV, Mirox's definition contains more specific safety requirements. We note that, while it espoused the benefits of electric power, unlike the Montana or Washington statutes, Mirox's recommended definition would include gasoline-powered MSVs.

Specifically, Mirox's recommended definition of medium-speed vehicle is:

> A self-propelled, four-wheeled or three-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one mile is more than thirty miles per hour but not more than thirty-five miles per hour on a paved level surface. Each Medium-speed vehicle shall at a minimum be equipped with [the] following safety equipment that [conforms] to [the] existing FMVSS and current applicable SAE standard:
>
> - Headlamps as per FMVSS No. 108
> - Front and rear turn signal lamps (SAE I) (49 CFR 571.108)
> - Taillamps (SAE T), (49 CFR 571.108)
> - Stop lamps (SAE S), (49 CFR 571.108)
> - Reflex reflectors: one red on each side as far to the rear as practicable, one amber on each side as far to the front as practicable (SAE A)
> - Side marker lights, one red on each side as far to the rear as practicable, one amber on each side as far to the front as practicable (SAE P)
> - An exterior mirror mounted on the driver's side of the vehicle and either an exterior mirror mounted on the passenger's side of the vehicle or an interior mirror (49 CFR 571.111)
> - A parking brake (49 CFR 571.135)
> - A windshield of AS–1 or AS–5 composition, that conforms to the American National Standards Institute's "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highway," Z–26.1–1977, January 28, 1977, as supplemented by Z26.1a, July 3, 1980 (49 CFR 571.205)
> - A VIN that conforms to the requirements of 49 CFR Part 565, Vehicle Identification Number
> - A Type 1 or Type 2 seat belt assembly conforming to FMVSS No. 209, installed at each designated seating position, and whose mounting complies with FMVSS No. 210
> - Bumper system; both front and rear that conforms to 49 CFR Part 581
> - Audible Warning Devices; Horn and Reverse Warning Beeper
> - If the vehicle is electrically powered it shall conform to FMVSS No. 305
> - A GVWR of less than 1,361 kilograms (3,000 pounds) if the vehicle is designed with substantial cargo-carrying capacity (i.e., vehicles intended for carrying goods), or 1,134 kilograms (2,500 pounds) if the vehicle is designed solely for transport of passengers.
>
> Additionally, if the Medium-speed vehicle contains any equipment that is referenced in any of the following FMVSS[s], such equipment or features shall [conform] to all the requirements of the applicable FMVSS:
>
> FMVSS Nos. 101, 102, 103, 104, 105, 106, 108, 109, 110, 111, 113, 116, 118, 124, 135, 139, 201, 202, 203, 204, 205, 206, 207, 209, 210, 212, 214, 216, 219, 225, 301, 302, 304, 305, and 401.

Porteon Electric Vehicles, Inc

The last petition received by NHTSA was from Porteon Electric Vehicles, Incorporated of Portland, Oregon.[3] This petitioner plans to market an electric car designed from the ground up rather than retrofit an imported vehicle by removing the IC engine and replacing it with an electric motor. The petitioner is concerned, "that unregulated growth

[2] This petition can be viewed at *http://www.regulations.gov*, docket #NHTSA–2008–0019.

[3] This petition can be viewed at *http://www.regulations.gov*, docket #NHTSA–2008–0019.

could create safety issues and concerns that negatively impact and cause severe damage to a new growth industry that provides real and significant solutions to our country and our planet's key issues." This petitioner envisions a Medium Speed Vehicle class that "would essentially be the same as the LSV regulations with the exception of the top speed of 35 miles per hour and additional vehicle requirement to increase the safety of margin [sic] for rollover, stopping, acceleration, and avoidance maneuvering." The petitioner lists these additional vehicle requirements as: Ability to maintain 35 mph on a level grade, ability to maintain 30 mph up an 8 percent grade, a minimum width of 55 inches, a "coil over shock" suspension, four-wheel hydraulic disc or drum brakes, and three-point automotive seat belts, in addition to the requirements that already exist for LSVs in FMVSS No. 500. The petitioner also states, "Additional testing of the vehicles should also be considered, including crush zones with a 2.5mph 'no damage' requirement. A full frontal crash should be required to meet safety standards between 17–18 mph, which is a derivative of full speed automobiles being crash tested at 35 mph." The petitioner does not state where the no damage crush zones would be on the vehicle, how they would be measured, or which safety standards would be tested at 17 or 18 miles per hour.

Porteon believes the new medium speed vehicle class is necessary because LSVs currently travel, with their top speed of 25 mph, on streets with speed limits up to 35 mph and normal traffic flow is impeded by these vehicles. MSVs, with their top speed of 35 mph, "would create a more cohesive traffic environment for mixed use vehicles."

III. Low Speed Vehicles

In 1998, NHTSA established Federal Motor Vehicle Safety Standard (FMVSS) No. 500, "Low speed vehicles," in response to growing interest in using golf cars and other similar-sized, 4-wheeled vehicles, including Neighborhood Electric Vehicles (NEVs), to make short trips for shopping, social, and recreational purposes primarily within retirement or other planned communities with golf courses. *See* 63 FR 33194. The definition of LSV established in that rulemaking was, "a 4-wheeled motor vehicle, other than a truck, whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface.

In 2005, NHTSA published a final rule amending the definition of LSVs by removing the restriction on trucks, and instead establishing a 2,500 pound maximum GVWR. *See* 70 FR 48313. This allowed small vehicles designed for work-related applications within the intended communities, such as landscaping or delivery purposes, to be included within the definition of an LSV, without opening the category to unintended vehicles, such as street-sweepers or speed-modified passenger cars. Additionally, in 2006, in response to petitions for reconsideration from Dynasty Electric Car Corporation and Global Electric Motorcars (GEM), both manufacturers of electric LSVs, NHTSA increased the maximum GVWR for LSVs to 3,000 pounds. This was done, in part, to "level the playing field" between electric and gasoline-powered LSVs, by allowing for the additional weight in batteries required by electric vehicles. *See* 71 FR 20026.

In conceiving the concept of the LSV as a small vehicle that would not be subject to the same stringent safety criteria as other vehicles, a critical concept was that it would not ordinarily mix with other traffic. In our 1998 rule establishing the category of LSVs, NHTSA explained in the summary that the rule:

> [R]esponds to a growing public interest in using golf cars and other similar-sized, 4-wheeled vehicles to make short trips for shopping, social and recreational purposes *primarily within retirement or other planned communities with golf courses.* [emphasis added]

NHTSA's detailed analysis, as explained in the preamble of the 1998 final rule, recognized the importance of the fact that under most conditions, LSVs would not intermingle with regular automobile traffic, and the occasions where they would mix would be in controlled, low-speed environments. NHTSA stated that

> NHTSA has carefully reviewed their argument about the effects of this rulemaking. LSV safety, and thus the need for FMVSSs for LSVs, will be determined by the combination of three factors: vehicle design and performance; operator training and ability; and the operating environment. The agency believes that Standard No. 500, in combination with a limited operating environment and appropriate operator training and ability, will appropriately address the safety needs of LSV users.[4]

Additionally, in the 1998 final rule, NHTSA analyzed the Fatal Analysis Reporting System (FARS) data regarding fatalities involving golf cars. It was found that of the nine reported fatalities, eight of them involved a collision with a car or truck. This further underscored the importance of driving environment.

In the 1998 final rule, the agency studied the use of NEVs in various municipalities that permitted them to travel on public roads. In that notice, we stated that "the driving environment [of LSVs] should be appropriate to the vehicle and its characteristics. Limiting LSV use to low-speed city and suburban streets is necessary, but does not eliminate the safety risks." [5] NHTSA analyzed the State laws governing the on-road permissibility of NEVs in various States. Of the 12 States discussed, only one State (Arizona) permitted NEVs to travel on any road with a speed of 35 mph or less. The other 11 States (California, Nevada, New Mexico, Colorado, Wyoming, Illinois, Minnesota, Iowa, Florida, Georgia, and Texas) restricted NEVs to roads specifically designated by State and local governments.[6]

One portion of the analysis discussed possible reasons for the disparity of fatalities between Sun City [7] (which had four NEV fatalities) and the City of Palm Desert (which had zero). We noted that:

> The City of Palm Desert has a more controlled environment than Sun City for golf car use. The City of Palm Desert permits on-road use of golf cars in the same lanes as passenger cars and other larger motor vehicles in speed zones posted for speeds up to 25 miles per hour. In speed zones posted for speeds over 25 miles per hour, golf cars may be operated on-road only if there is a lane designated for their use and if the golf car is, in fact, operated within that lane. By contrast, NHTSA understands that Sun City, under state law, allows golf cars to operate in the same lanes as larger traffic on any road with a maximum speed of 35 miles per hour.

Based in part on this analysis, as well as our other observations, we concluded that operating environment played an important role in determining the benefits of establishing the LSV classification, as well as determining what safety standards should apply to that class. While NHTSA does not regulate the driving environment (such decisions are at the discretion of State governments), it did recommend that LSVs be licensed only for use in environments with very limited traffic. Specifically, we stated:

> NHTSA recognizes that not all operating environments may be as controlled as that of the City of Palm Desert. The agency encourages other states and municipalities to study the features of the City of Palm Desert's

[4] 63 FR 33208.

[5] 63 FR 33208.

[6] See 63 FR 33207.

[7] We note that Sun City is located in Arizona, the only State that allowed NEVs to travel on any street with a speed limit of 35 mph or less.

plan, and to adopt those features to the extent practicable.[8]

In later rulemakings, NHTSA made several adjustments to the definition of LSVs. First and foremost, the agency dropped its original restriction on "truck-like" vehicles, and replaced it with a maximum gross vehicle weight rating for LSVs.[9] This weight limit was originally 2,500 lbs., but was later increased to 3,000 lbs.[10]

IV. State Legislation on MSEVs and Relevant Federal Requirements

In the past year, two States have enacted legislation that purports to allow medium speed electric vehicles (MSEVs) to operate on certain public roads. Montana was the first State to pass such a law, on April 23, 2007. This was followed shortly thereafter by Washington State, which passed on May 15, 2007. These are the only two States that NHTSA is aware of that have passed any sort of MSV legislation.

The Montana and Washington statutes define MSEVs as electric-powered vehicles with a maximum speed of 35 mph that meet certain limited safety requirements similar to those established by NHTSA for LSVs.[11] The Montana law permits MSEVs to travel on public roads with a posted speed of up to 45 mph,[12] while the Washington law restricts them to roads with a posted speed of 35 mph or less.

NHTSA has considered the legislative history and other information relating to the aforementioned State laws. Both States were interested in expanding the use of electric vehicles in order to reduce fuel consumption, and economic and environmental benefits associated with that end. Additionally, there was a stated belief that a speed of 35 mph is needed for safety, as they would be able to keep up with traffic better. The following excerpt from the Washington State Senate report illustrates the considerations at issue:

> Staff Summary of Public Testimony: PRO: These electric vehicles are environmentally friendly and provide significant energy savings. They are not golf carts; they are cars designed for running errands in town. The current speed of 25 mph is too slow and puts people at risk. Increasing the allowed speed to 35 mph will improve safety.[13]

Under Federal law, vehicles with a speed capability above 25 mph that would be considered MSEVs under these State laws are classified as passenger cars, multipurpose passenger vehicles, or trucks. These vehicles are subject to the full range of FMVSSs that apply to these vehicles. The responsibilities of manufacturers and dealers to comply with Federal law, including not manufacturing or selling vehicles unless they comply with all applicable FMVSSs, are not limited by State laws on MSEVs.

V. Agency Response to Petitions

After carefully considering the petitions from Environmental Motors, Proteon and Mirox, we are denying them. First and foremost among this agency's considerations are safety concerns. The concept of establishing such a class of motor vehicles with limited safety features that would be likely to intermingle with larger, higher-speed vehicles in urban environments would result in significantly greater risk of deaths and serious injuries. The petitioners did not provide analysis demonstrating why any of the Federal motor vehicle safety standards are not needed for MSVs, given the traffic environment in which these vehicles would be likely to travel.

A. The Rationale for Applying a Limited Set of Safety Standards to LSVs Is Not Relevant to MSVs

As noted earlier, the petitioners appear to view MSVs as a variant of LSVs, i.e., a special class of small motor vehicles that would not be required to meet the full complement of the Federal motor vehicle safety standards. However, the rationale for applying a limited set of safety standards to LSVs is not relevant to MSVs.

NHTSA issues different safety standards for different types of motor vehicles. The agency established the special category of motor vehicles called LSVs to accommodate the use of small golf cars and other vehicles primarily intended for use in controlled, low-speed communities, such as retirement communities. In order to qualify as an LSV under the agency's definition, a vehicle must, among other things, have a speed capability no higher than 25 mph. LSVs are subject to a limited set of safety measures in FMVSS No. 500, including requirements related to the installation of lamps, mirrors, seat belts and a windshield. However, LSV's are not subject to most of the standards to which other light vehicles such as passenger cars are required to comply, including the rigorous crashworthiness standards.

One of the principal concerns raised by the petitioners is that the 25 mph speed limitation that applies to LSVs prevents these vehicles from keeping up with traffic in urban areas. They argued that because LSVs are not permitted to have a speed capability greater than 25 mph, they cannot safely keep up with traffic in urban areas, and a need therefore exists for vehicles with a higher speed (35 mph) capability.

However, the 25 mph limitation reflects the fact that NHTSA designed the set of safety standards that apply to LSVs for vehicles intended to be used in controlled, low speed environments. Vehicles with a speed capability above 25 mph are more likely to be driven outside controlled, low speed environments, and the limited LSV safety requirements are not appropriate for such vehicles.

When promulgating the original LSV rule, as stated above, at the time one of the most important factors was that LSVs were conceived as vehicles that would be used in controlled, low-speed environments, primary in retirement communities and those centered around golf courses. NHTSA surveyed the applicable State laws governing the on-road use of LSVs, and found that only one out of twelve States with LSV-use laws permitted them to travel on any public road with a speed limit of 35 mph or less. The other remaining States limited their use to specially-designated roads.[14] While NHTSA does not have the authority to prescribe the roads for which different types of vehicles are permitted, the agency suggested limiting LSVs to controlled environments. The following passage from the 1998 final rule properly summarizes NHTSA's position on this point:

> Still another reason [for the significant disparity in the number of deaths involving NEVs] may lie in the different operating environments in the two communities. The City of Palm Desert has a more controlled environment than Sun City for golf car use. The City of Palm Desert permits on-road use of golf cars in the same lanes as passenger cars and other larger motor vehicles in speed zones posted for speeds up to 25 miles per hour. In speed zones posted for speeds over 25 miles per hour, golf cars may be operated on-road only if there is a lane designated for their use and if the golf car is, in fact, operated within that lane. By contrast, NHTSA understands that Sun City, under state law, allows golf cars to operate in the same lanes as larger traffic on any road with a maximum speed of 35 miles per hour.
>
> NHTSA recognizes that not all operating environments may be as controlled as that of the City of Palm Desert. The agency encourages other states and municipalities to study the features of the City of Palm Desert's plan, and to adopt those features to the extent practicable.[15]

[8] 63 FR 33208.

[9] 70 FR 48313, August 17, 2005.

[10] 71 FR 20026, April 19, 2006.

[11] The specific definitions are at Mont. Code Ann. 61–1–101 and West's RCWA 46.04.295.

[12] Mont. Code Ann. 61–8–377.

[13] Washington State Senate Bill Report, HB 1820, March 21, 2007.

[14] 63 FR 33207.

[15] 63 FR 33208.

We recognize that since that time many States have passed laws permitting LSVs on a much wider variety of roads than originally contemplated. Today, many States permit LSVs on all public roads with posted speed limits of 35 mph or less. Some States even permit them on roads with speed limits of 45 mph.

As we have noted before, however, we continue to believe that LSV use on roads outside confined, controlled areas will be limited by the fact that occupants will not want to travel at less than 25 mph in mixed-vehicle traffic for other than very short trips, regardless of how States may or may not restrict their use. See 68 FR 68319, December 3, 2003.

We agree with the petitioners that the increased speed capability and other features in the requested MSV category would facilitate and encourage drivers to use MSVs in general driving environments. This, however, means that the rationale for applying a limited set of safety standards to LSVs is not relevant to MSVs. Instead, and as discussed further below, this is an argument for why these vehicles should be required to comply with the same safety standards as other light vehicles used in general driving environments, such as passenger cars.

B. The Traffic Environment in Which MSVs Would Likely Travel Is an Environment for Which the Full Set of the Federal Motor Vehicle Safety Standards Is Needed To Prevent Fatalities and Serious Injuries

The petitioners appear to assume that the full set of safety standards applicable to other light vehicles such as passenger cars would not be appropriate for MSVs, i.e., small vehicles with a speed capability of 35 mph. However, the traffic environment in which these vehicles would likely travel, including, e.g., urban roads with speed limits of 35 mph or 45 mph, is an environment for which the full set of the Federal motor vehicle safety standards is needed to prevent fatalities and serious injuries. We note that the energy involved in vehicle-to-vehicle collisions increases proportional to the square of the velocity of travel, and the result of a vehicle collision at 35 mph is twice as severe as the same collision at 25 mph.

MSVs would be traveling in mixed traffic at speeds in which crashes posed a risk of serious injury or fatality and in which safety features such as frontal and side air bags significantly reduced that risk. Also, a number of the crash test requirements included in our safety standards simulate crashes in this higher speed environment. We note that the petitioners did not provide analysis demonstrating why any of the Federal motor vehicle safety standards are not needed for MSVs.

As part of considering this issue, we have looked at crash information on public roads with speed limits of 35 to 45 mph. For this traffic environment, the need for the safety features required in FMVSS No. 208, air bags, are far more important than for lower speed crashes, as frontal crashes become a more prominent part of the overall crash picture.

The total number of occupants killed annually in crashes is 37,314 (2002–2006 average, Fatality Analysis Reporting System). Of these occupant fatalities, 6,319 were killed on roads with posted speed limits of 35 mph or less, and 13,493 are killed in crashes on roads with posted speed limits of 45 mph or less. The total number of occupants suffering incapacitating injury annually is 13,492. Of these, 1,798 were injured in crashes on roads with posted speed limits of 35 mph or less, and 4,261 occupants were injured in crashes on roads with posted speed limits of 45 mph or less. It is important to note that those numbers reflect vehicles that were certified to comply with the Federal motor vehicle safety standards.

We estimate that in 2005, on roads posted at 35 mph or lower, 1,921 crash victims lived because the vehicles were compliant with all FMVSSs, including 278 saved by air bags. In crashes on roads posted at 45 mph or lower, 3,163 lives were saved because the vehicles involved were compliant with all FMVSSs. Of those, 414 were saved by air bags.[16]

Given these statistics, we believe the full set of Federal motor vehicle safety standards is needed for vehicles traveling in the traffic environment in which MSVs would likely travel, including, e.g., urban roads with speed limits of 35 mph or 45 mph.

Finally, as noted above, a number of the crash test requirements included in our safety standards simulate crashes in this environment. For example, our highest speed crash test in FMVSS No. 208 (vehicle compliance is currently phasing in) simulates a 35 mph frontal crash between the tested vehicle and a vehicle like itself. Our crash test in FMVSS No. 214 that helps ensure thoracic protection simulates a crash in which the tested vehicle traveling at 15 mph is struck in the side by a light vehicle traveling at 30 mph.

[16] Using the methodology of "Lives Saved by the Federal Motor Vehicle Safety Standards and Other Vehicle Technologies, 1960–2002" DOT HS 809–833.

C. It Is Neither Necessary nor Appropriate To Significantly Increase the Risk of Deaths and Serious Injuries To Save Fuel

The petitioners and the supporters which wrote in favor of the Environmental Motors petition emphasized the potential to conserve fuel, thereby saving money at a time of high fuel prices as well as reducing emissions that can harm the environment. In the two States that passed MSEV statutes, the legislative history also shows that this legislation was conceived due to concerns about saving fuel.

NHTSA also considers fuel conservation an important goal. However, we believe that it is neither necessary nor appropriate to significantly increase the risk of deaths and serious injuries to save fuel.

Fuel conservation can be accomplished by means that are not inconsistent with the need for safety. Significant innovation is currently underway in fuel economy, gas-electric hybrid engine technology, and continued development of fully electric vehicles, such as the Chevrolet Volt, noted in the Mirox petition. NHTSA recently published a proposal to substantially increase fuel economy (CAFE) standards for passenger cars and light trucks. These standards affect nearly all light vehicles, and will have a tremendous impact on fuel savings. Furthermore, these vehicles are being designed to meet the full FMVSS requirements for passenger cars or other applicable vehicle class.

D. Other Issues

The petitioners raised a number of additional issues, which we discuss in this section.

Quadricycles

The Mirox petition compared the requested MSV classification to a type of vehicle used in Europe known as a "quadricycle." The Economic Commission for Europe (ECE) defines a quadricycle in two vehicle categories, L_6 "light quadricycle" and L_7 "quadricycle":[17]

Category L_6: A vehicle with four wheels whose unladen mass in not more than 350 kg, not including the mass of the batteries in the case of electric vehicles, whose maximum design speed is not more than 45 km/h, and whose engine cylinder capacity does not exceed 50 cm^3 for spark (positive) ignition engines, or whose maximum net power output does not exceed 4 kW in the case of other internal combustion engines, or whose

[17] TRANS/WP.29/78/Rev.1/Amend. 4, 26 April 2005.

maximum continuous rated power does not exceed 4 kW in the case of electric engines.

Category L_7: A vehicle with four wheels, other than that classified for the category L_6, whose unladen mass is not more than 400 kg (550 kg for vehicles intended for carrying goods), not including the mass of batteries in the case of electric vehicles and whose maximum continuous rated power does not exceed 15 kW.

Mirox claimed that quadricycles are an extremely safe method of transportation that is used extensively in Europe. The chief benefits of quadricycles is that they are easy to use (unlike motorcycles), easy to park, and consume far less fuel than even the smallest European passenger cars. Mirox requested that MSVs be defined in such a way that at least some European quadricycles can be legally imported as MSVs.

While the petitioner claimed that quadricycles are extremely safe, Mirox did not provide any data to support this claim or to show that introduction of these vehicles into the U.S. would be consistent with the need for safety. We note that we have earlier denied the petition of GG Quad North American to change the definition of "motorcycle" to allow quadricycles to be sold in the U.S. as motorcycles (71 FR 67843, November 24, 2006).

Aftermarket Speed Modifications of LSVs

A letter written in support of the Environmental Motors petition by Electrovaya suggested that "The new [MSV] regulations would give people a better option than illegally changing an LSV to go faster." We agree with Electrovaya that modifying an LSV to increase the speed is highly undesirable. However, we do not believe that adopting a regulation to accommodate this practice is a prudent response to the issue. Furthermore, we would point out that manufacturers, dealers, sellers, and motor vehicle repair businesses that modify the speed of an LSV are in violation of the "make inoperative" provision.

This statutory provision, 49 U.S.C. 30122, *Making safety devices and elements inoperative,* reads in part:

> A manufacturer, distributor, dealer, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard prescribed under this chapter unless the manufacturer, distributor, dealer, or repair business reasonably believes the vehicle or equipment will not be used (except for testing or a similar purpose during maintenance or repair) when the device or element is inoperative.

If one of the above-mentioned entities increased the speed of an LSV to 25 mph or greater, that LSV would no longer comply with paragraph S5.3 of FMVSS No. 500, which specifies that the vehicle's top speed must be less than 25 mph. Therefore, the modifying entity would be subject to civil penalties as specified in 49 U.S.C. 30165.

Burgeoning Electric Vehicle Market

Porteon states in its petition, "Regardless of our [the electric cars' industry] success or failure, the U.S. will soon see an influx in electric vehicles as fuel prices, urbanization, and climate change effect [sic] transportation and state regulation. It is estimated that over 20 manufacturers are in operation or commencing production along with a new influx of imports anticipated from China and Malaysia. Our concern is that unregulated growth could create safety issues and concerns that negatively impact and cause severe damage to a new growth industry that provides real and significant solution to our country and our planet's key issues." NHTSA would like to point out that the electric vehicle market is not unregulated. Any vehicle not certified as an LSV, or that travels at speeds greater than 25 miles per hour, must meet all the FMVSSs in place for the appropriate vehicle type (passenger car, truck, bus, or MPV). The petitioner can rest assured that growth of the electric vehicle market will not occur without the vehicles meeting the existing regulatory safety requirements enforced by NHTSA. The only difference between electric vehicles and those predominately in use today is their propulsion system. An electric propulsion system will not exempt these vehicles from the requirement to meet all the Federal standards for motor vehicles.

VI. Conclusion

For the reasons discussed above, NHTSA denies the petitions for rulemaking submitted by Environmental Motors, Proteon Electric Vehicles and Mirox Corporation.

Issued on: September 19, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8–22737 Filed 9–25–08; 8:45 am]

BILLING CODE 4910–59–P

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SENATOR BERT K. STEDMAN

MEMORANDUM

To: Senator Hollis French, Chairman
Senate Judiciary Committee

From: Senator Bert Stedman Bert K. Stedman

Date: March 5, 2009

Subject: Request for Hearing

I respectfully request that Senate Bill 59, "An Act relating to the operation of low-speed vehicles", be scheduled for a hearing in the Senate Judiciary Committee at your earliest convenience.

Attached is the following documentation:

- Sponsor Statement
- CS for Senate Bill 59
- Fiscal Note – Department of Transportation & Public Facilities
- Fiscal Note – Department of Public Safety
- Fiscal Note – Division of Motor Vehicles
- General Background Information on Electric Cars
- Southeast Alaska Speed Limit Mileage Data & Maps
- NHTSA Ruling on Medium Speed Vehicles

If you have any questions or need more information, feel free to contact me or my aide Weston Eiler. Thank you for your attention to this important matter.

DISTRICT A
Ketchikan • Sitka • Petersburg • Wrangell
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SB 60

SENATE COMMITTEE REPORT

DATE: 4/17/09

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 60

SB 60 UNIFORM PROBATE CODE; TRUSTS, WILLS

"An Act relating to the Uniform Probate Code, including wills, trusts, nonprobate transfers, augmented estates, personal representatives, and trustees; and amending Rules 3 and 8, Alaska Rules of Civil Procedure, Rule 1, Alaska Rules of Probate Procedure, and Rule 37.5, Alaska Rules of Administration."

and recommends:

[ ] be **replaced** with [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt _____Letter of Intent

[ ] further referral to _____Committee

SENATE BILL:
[ ] Same Title
[ ] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Law	2/5/10			✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Coghill	✓			
		✓			
	McGuire	✓			
CHAIR:	French	✓			

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Senate Resources Committee

Chair
Senate Special Committee on Energy
Senate Special Committee on World Trade, Technology & Innovation

Member
Senate Judiciary Committee
Joint Armed Services Committee

SENATOR LESIL MCGUIRE

SPONSOR STATEMENT

SB 60: Uniform Probate Code; Trusts, Wills

Inevitably, every family in Alaska must deal with handling the affairs of a deceased family member's estate or trust. The Uniform Probate Code (UPC) is the legal model Alaska has relied upon to handle these matters since it was first adopted back in 1969.

The Uniform Probate Code (UPC) is a uniform act drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) governing inheritance and the decedents' estates in the USA. The primary purpose of the act is to streamline the probate process and to standardize and modernize the various state laws governing wills, trusts, and intestacy.

SB 60 updates and clarifies Alaska statutes relating to the UPC with the aim of improving the ease of administration of estates and trusts for Alaska residents. SB 60 provides the following amendments to the Uniform Probate Code:

- Allows the settlor of a trust to designate a representative who can represent or bind an incapacitated person in future proceedings relating to the trust administration.

- Establishes that an augmented estate does not include property transferred to an irrevocable trust if the settlor is a discretionary beneficiary of the trust and if the transfer was made more than 30 days before marriage, or with the consent of the decedent's spouse.

- Creates a procedure for the establishment of will and trust validity before death. Situations arise where there is a question concerning a person's capacity to execute a will or trust, or whether the document was executed as the result of undue influence, duress, fraud, or mistake. The new procedure will allow these issues to be brought before the court while the testator or settlor is alive and when evidence is fresh.

- Provides for venue of a probate proceeding if the decedent was not domiciled in Alaska but significant assets are located within the state.

The State of Alaska has directly received millions of dollars of insurance premium tax dollars and many jobs have been created in the trust, banking, insurance, and legal professions thanks to the business attracted by our competitive and contemporary trust laws.

SB 60 is one of three bills introduced (SB 60, SB 62, and SB 63) that aim to update and clarify Alaska trust laws to make Alaska a better place for investors and families – both Alaskan and from other states – to invest their money in the competitive arena of trust management.

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MEMORANDUM March 17, 2009

SUBJECT: Identification of changes between CSSB 60( ) (26-LS0302\E) and 26-LS0302\A (Work Order No. 26-LS0302\E)

TO: Senator Lesil McGuire
Attn: Trevor Fulton

FROM: Theresa Bannister
Legislative Counsel

This memo is an identification of the changes between W.O. 26-LS0302\A and W.O. 26-LS0302\E. Unless specified otherwise, the references are to the "E" version.

Section 1. In AS 13.06.120(2)(G)(ii) and (iii), "represent or bind" replaces "represent and bind." In AS 13.06.120(3), you'll find a modified version of the non-liability language that was in version A's AS 13.06.120(2)(G)(iv); the E language adds a reference to extend the non-liability to "a person representing another person under (2)(A) - (F) of this section." In AS 13.06.120, the numbering of paragraphs (3) and (4) is changed to (4) and (5). In AS 13.06.120(4), the cross references are changed.

Section 2. In AS 13.12.201(b)(9)(C)(i), "the decedent" replaces "self."

Section 3. No difference.

Section 4. In new sec. 13.12.205(b), the conditions are changed for when the augmented estate does not include property transferred to an irrevocable trust with a transfer restriction. See page 8, lines 7 - 9.

Section 5. No difference.

Section 6. No difference.

Section 7. No difference.

Section 8. In sec. 13.12.530, adds another category to the persons who may petition the court: an interested party with the testator's consent.

In sec. 13.12.540, removes language from (a)(2) and changes the venue rules in (b).

In sec. 13.12. 545, removes language from (11) and removes (14) from version A.

In sec. 13.12.550, removes (11) from version A.

In sec. 13.12.555, removes (b) from version A.

In sec. 13.12.560, removes "Notwithstanding AS 13.06.120" at the beginning.

In sec. 13.12.565(c), removes the reference to AS 13.36 and the last sentence of version A, requiring giving notice to certain other persons. Adds a definition of "party in interest."

In sec. 13.12.585, rewrites (a).

Section 9. New section.

Section 10. New bill section number.

Section 11. New bill section number.

Section 12. New bill section number. In (a), adds a description of how the new bill section 9 changes a court rule. In (e), changes the description how AS 13.12.585 changes a court rule.

Section 13. New bill section number. Adds a reference to the new bill section 9.

If I may be of further assistance, please advise.

TLB:ljw
09-164.ljw

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MEMORANDUM March 16, 2009

SUBJECT: Sectional summary of CSSB 60( ) relating to the Uniform Probate Code (Work Order No. 26-LS0302\E)

TO: Senator Lesil McGuire
Attn: Trevor Fulton

FROM: Theresa Bannister
Legislative Counsel

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

Section 1. Amends AS 13.06.120(2), which lists the situations when persons are bound by orders binding others in proceedings under the Uniform Probate Code. Allows a person designated by a trust instrument to represent and bind a born or unborn trust beneficiary. Allows the settlor to designate the person in the trust in various ways. Generally does not allow a designated person serving as a trustee to represent and bind the beneficiaries. Generally does not allow the designated person to represent and bind a beneficiary if the designated person is also a beneficiary.

Also provides that certain persons who represent other persons under AS 13.06.120(2) (A) - (F) are not liable for good faith acts and omissions to the beneficiaries whose interests are represented or to persons claiming through those beneficiaries.

Section 2. Amends AS 13.12.201(b)(9). Makes grammatical and conforming amendments to the definition of "transfer" for certain provisions of the Uniform Probate Code that relate to the elective share of a surviving spouse.

Section 3. Amends AS 13.12.205, which relates to a decedent's nonprobate transfers to other persons. Deletes an irrevocable transfer in trust with a transfer restriction from the property that is included in the augmented estate.

Section 4. Adds AS 13.12.205(b). Provides that the augmented estate does not include property transferred to an irrevocable trust with a transfer restriction if two conditions relating to the trust's settlor and the transfer's timing are met.

Section 5. Makes a conforming amendment for bill sec. 4 to a cross-reference in AS 13.12.206(3).

Section 6. Makes a conforming amendment for bill sec. 4 to a cross-reference in AS 13.12.207(b).

Section 7. Makes a conforming amendment for bill sec. 4 to a cross-reference in AS 13.12.209(b).

Section 8. Adds a new set of sections that provide for establishing the validity of wills and trusts before death.

Sec. 13.12.530. Allows certain persons to petition the court to determine the validity of a will before the testator's death.

Sec. 13.12.535. Allows certain persons to petition the court to determine the validity of a trust before the settlor's death.

Sec. 13.12.540. Establishes the venue for a petition to determine will or trust validity.

Sec. 13.12.545. Identifies what a petition for will validity must contain.

Sec. 13.12.550. Identifies what a petition for trust validity must contain.

Sec. 13.12.555. Authorizes a court to declare a will or trust to be valid. Declares that the will has full legal effect and must be admitted to probate on request after the testator's death, unless modified or revoked after the court's declaration.

Sec. 13.12.560. Makes the court's validity declaration binding on other persons.

Sec. 13.12.565. Directs the court to hold a hearing after a petition is filed. Requires the petitioner to notify the spouse, children, and heirs of the testator or settlor. For a will, also requires the petitioner to notify the testator, the personal representatives nominated in the will, and the devisees under the will. For a trust, also requires the petitioner to notify the settlor and parties in interest.

Sec. 13.12.570. Establishes the burden of proof for the petitions.

Sec. 13.12.575. Allows a testator to modify or revoke the will after the court's declaration.

Sec. 13.12.580. Allows a trust to be modified, terminated, revoked, or reformed after the court's declaration.

Sec. 13.12.585. Establishes which records related to a petition are public, which are available only to certain persons, and which are confidential. Allows the court to order confidential records to be made available to other persons when good cause is shown.

Sec. 13.12.590. Defines terms for the new article.

Section 9. Amends AS 13.16.055(a). When decedents are not domiciled in this state, allows the first informal or formal testacy or appointment proceedings to be held in the judicial district where certain fiduciaries reside or have a principal place of business.

Section 10. Amends AS 13.16.410. Allows personal representatives to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

Section 11. Amends AS 13.36.109. Allows trustees to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

Section 12. Indicates how certain provisions in the bill amend the court rules.

Section 13. States that those sections that amend the court rules only take effect if bill section 12 is approved by a two-thirds vote.

If I may be of further assistance, please advise.

TLB:plm
09-177.plm

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MEMORANDUM March 17, 2009

SUBJECT: Identification of changes between CSSB 60( ) (26-LS0302\E) and 26-LS0302\A (Work Order No. 26-LS0302\E)

TO: Senator Lesil McGuire
Attn: Trevor Fulton

FROM: Theresa Bannister
Legislative Counsel

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Section 13. New bill section number. Adds a reference to the new bill section 9.

If I may be of further assistance, please advise.

TLB:ljw
09-164.ljw

Uniform Probate Code

The Uniform Probate Code (UPC) is a comprehensive statute that unifies, clarifies, and modernizes the laws governing the affairs of decedents and their estates, certain transfers accomplished other than by a will, and trusts and their administration. The UPC was originally approved by the National Conference of Commissioners on Uniform State Laws and the House of Delegates of the American Bar Association in 1969. The purpose of the UPC is to modernize probate law and probate administration and to encourage uniformity through the adoption of the code by all fifty states. The UPC, which has been amended numerous times, has been adopted in its entirety by sixteen states: Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota, and Utah. The other thirty-four states have adopted parts of the UPC, but in general the UPC has not succeeded in providing a uniform body of substantive and procedural probate law.

The UPC contains seven substantive articles. Article I contains general provisions, definitions, and jurisdictional topics. Article II governs wills and intestate succession, which occurs when a person dies without leaving a will. Article III deals with the probate of wills and the administration of estates, article IV concerns the probating of estates in states other than the domicile of the decedent, article V extends protection to persons under disability and their property, and article VI governs nonprobate transfers of property. Article VII contains comprehensive provisions on trust administration.

The prime objective of the UPC is to simplify the probate process. For example, article III provides for supervised and unsupervised administration of probate. For estates with few assets and no disputes among the beneficiaries, the UPC allows unsupervised administration. In this case the executor of the will, who is called a Personal Representative in the UPC, handles the probating of the estate without direct supervision by the probate court. The personal representative handles every step of the probate process by filing a series of simple forms with the probate court. Unsupervised administration reduces the cost of probate and speeds up the process. Probate courts are freed from dealing with routine matters and may concentrate their efforts on estates with substantial assets or contested matters, where supervised administration is necessary.

The adoption of the UPC by state legislatures has been fought both by attorneys, who are opposed to unsupervised administration and to the overturning of current state laws governing probate, and by bonding companies, which stand to lose business because unsupervised probate does not require the posting of a bond. In light of this opposition, the Commissioners on Uniform State Laws have developed freestanding acts from similar provisions integrated into the UPC. This technique permits provisions, such as those involving powers of attorney and guardianship, to become law without disturbing other parts of a state's probate code.

Further readings

Averill, Lawrence H., Jr. 2001. *Uniform Probate Code in a Nutshell.* 5th ed. St. Paul, Minn.: West Group.

——. 1992. "An Eclectic History and Analysis of the 1990 Uniform Probate Code." *Albany Law Review* 55 (summer).

Stimmel, Andrew. 2002. "Mediating Will Disputes: A Proposal to Add a Discretionary Mediation Clause to the Uniform Probate Code." *Ohio State Journal on Dispute Resolution* 18 (fall).

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ALASKA STATE LEGISLATURE

Session
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SENATOR LESIL MCGUIRE

Chair
Senate Special Committee on Energy
Senate Special Committee on
World Trade, Technology, and Innovations

Co-Chair
Senate Resources Committee

Member
Senate Judiciary Committee
Joint Armed Services Committee

Senator.Lesil.McGuire@legis.state.ak.us

DATE: January 18, 2010

TO: Senator Hollis French, Chair Senate Judiciary Committee

FR: Senator Lesil McGuire

RE: Request to Schedule SB 60: Uniform Probate Code; Trusts, Wills

Dear Senator French,

Please schedule SB 60: Uniform Probate Code; Trusts, Wills for a hearing in the Senate Judiciary Committee at your earliest convenience.

Attached is a bill packet that contains the following:

1. Sponsor Statement
2. Current Version of the Bill: CS SB 60 (26-LS0302\S)
3. A Sectional Analysis
4. Identification of Changes
5. Original Version of the Bill: SB 60 (26-LS0302\A)
6. Fiscal Notes:
   a. Department of Law: Zero fiscal note 3/20/2009
7. Supporting Documents
   a. Uniform Probate Code

A list of people willing to testify for SB 60 will be forthcoming.

Esther Cha in my office will be the staff contact for this bill. Her number is 465-5159. Please call if you have any questions.

Sincerely,

Senator Lesil McGuire

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---
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Jennifer M. Wright*

✦ Admitted in AK
● Admitted in CA
* Admitted in TX
✢ Admitted in WA

December 10, 2009

To Jnew

Senator Hollis French
716 West Fourth Avenue, Suite 420
Anchorage, AK 99501

Re: Pending Trust and Estate Legislation

Dear Senator French:

Thank you for agreeing to meet with us and discuss pending trust and estate legislation before the Twenty-Sixth Legislature. As you know, we represent an informal group of attorneys and trust officers who practice in the area of estates and trusts in Alaska. We have been working with the Legislature for approximately 12 years in order to recommend improvements in Alaska's estate and trust statutes. We have recommended the following bills and have worked with the Legislature in order to assist in their drafting. The pending bills are as follows:

1. **SB 60 (sponsor: McGuire); House counterpart, HB 144 (sponsor: Ramras)**

In summary, this bill provides for the following:

✓ a. Allows a person who creates a trust to designate a person who will represent incapacitated persons in future proceedings.

✓ b. Updates Alaska's law with respect to an irrevocable trust that has the settlor as a discretionary beneficiary. Specifically, if the trust is created before marriage or with the spouse's consent, then the interest in the trust will not be part of the assets that a surviving spouse can choose to elect against after the settlor's death.

✓ c. Allows a person to have a will or trust validated before death and therefore not subject to challenge based on incapacity, undue influence, duress, fraud or similar claims.

d. Provides venue for probate of a will of a nonresident of Alaska.

e. Allows a fiduciary to consider discretionary distributions as from capital gain. This will allow better tax planning for beneficiaries of estates and trusts.

Status: Both bills were referred to Labor and Commerce and Judiciary. Labor and Commerce committees in both houses have heard the bills and reported them out. Next, to Judiciary for both bills.

2. SB 62 (sponsor: McGuire)

In 1998, Alaska enacted an optional community property system. Several amendments have been made to Alaska's act, and this bill proposes further amendments designed to improve the act. Specifically, the amendments accomplish the following:

a. Adds references to a community property trust in appropriate provisions.

b. Eliminates language stating a confusing statute of limitations and incorporates by reference a new statute of limitations.

c. Provides clarification that property which spouses agree is community property is owned as community property regardless of the form of title to the property. If title to community property is in a form that provides for survivorship ownership between the spouses then the survivorship ownership is presumed to have been made with the consent of both spouses. If one spouse designates a beneficiary for an interest in property, the designation is only effective for that spouse's one-half interest unless the other spouse consents in writing. Various family designations are presumed to have been made with the consent of the other spouse. The testimony of one spouse is sufficient to rebut a presumption.

d. Enacts remedies for improper transfers and limitation periods within which those remedies must be pursued.

Status: Referred to State Affairs and Judiciary. No hearings yet.

3. SB 63 (sponsor: McGuire); House counterpart, HB 146 (sponsor: Ramras)

This bill provides for the following amendments:

a. Clarifies the burden of proof which a creditor must meet to establish that a transfer in trust was done with the intent to defraud a creditor.

b. Clarifies that a spendthrift provision will apply to a trust if distributions are made under the exercise of discretion by a trustee who is not the settlor, whether or not the exercise of the discretion is governed by a standard.

c. Provides that the spendthrift provision in a trust will apply even though the trustee may distribute income or principal to the settlor to pay income taxes.

d. Clarifies that a beneficiary's interest in a trust, whether or not vested, is not considered a factor or economic circumstance in the division of property subject to divorce.

Status: SB 63 referred to State Affairs, Judiciary, and Finance; no hearings yet. HB 146 referred to Labor and Commerce and Judiciary; no hearings yet.

4. Uniform Disclaimer of Interests and Property Act

House Bill 201 was introduced by Representative LeDoux in the Twenty-Fifth Legislature. This bill contained the latest version of the Uniform Disclaimer of Property Interests Act. Our group reviewed this act and made a number of suggestions for changes, which were incorporated into the latest version of HB 201.

It is our understanding that this bill may be reintroduced into the Twenty-Sixth Legislature. As stated above, our group has thoroughly reviewed this bill and recommends its passage.

5. Proposals for a New Bill

Our group has reviewed the following subjects and recommends that they be included in a new estate and trust bill:

a. **Remains Statute.** This provision would clarify Alaska law concerning the persons who are entitled to make decisions about a person's remains after death.

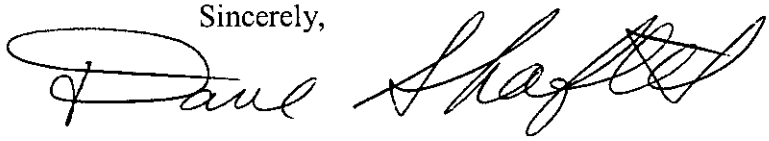
b. **Directed Trustee Statute Improvements.** This provision would clarify Alaska law in regard to allowing a settlor to direct that a trustee may follow the directions of other trustees or advisors, without liability.

c. **Decanting Statute Improvements.** This provision would substantially improve a trustee's ability to make needed modifications to a trust which are the result of errors, changes of circumstances, and similar matters.

d. **IRA Transfers.** This provision would allow the owner or participant of an IRA to make a voluntary transfer of his or her interest in the account. This would facilitate tax planning.

Again, thank you very much for making time to review and discuss these trust and estate matters which are pending before the Twenty-Sixth Legislature.

Sincerely,



David G. Shaftel

SB

63

ALASKA STATE LEGISLATURE

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Member
Senate Judiciary Committee

SENATOR LESIL MCGUIRE

SECTIONAL ANALYSIS
CS for SENATE BILL NO. 63(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE—SECOND SESSION

Section 1. Amends AS 34.40.110(b), the subsection that makes exceptions to the transfer trust restrictions allowed under the section.

The (b)(1) exception, requires that a creditor establish the criteria for the exception by clear and convincing evidence.

The (b)(2) exception also makes a conforming amendment to reflect the addition of materials under (b)(3).

The context of subsection (b)(3) is that if a person has a transfer restriction established in subsection (a) it would prevent a creditor from reaching assets in a trust even if the trust requires that all/part of the trust assets must be distributed to the settlor so long as conditions established in subsections (A) through (F) are met. New Subsection (E) allows a settlor to receive certain discretionary distributions made by a trustee who is not the settlor. The second new exception (F) relates to the receipt of certain income or principal to pay income tax due on the trust.

Section 2. Amends AS 34.40.110(h). Provides that a transfer restriction on a beneficiary's trust interest is enforceable even if the settlor has certain listed powers relating to the appointment, removal, and replacement of a trustee, trust protector, or an advisor.

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 23, 2010

SUBJECT: Sectional summary of CSSB 63( ), a bill relating to transfer restrictions on trust interests (Work Order No. 26-LS0317\P)

TO: Senator Lesil McGuire
Attn: Esther Cha

FROM: Theresa Bannister
Legislative Counsel

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

Section 1. Amends the subsection that establishes four situations when a creditor can satisfy a claim out of a beneficiary's interest in a trust when the trust contains a transfer restriction. In the first situation, this bill requires that the creditor establish the intent to defraud by clear and convincing evidence. In the second situation, which is based on the settlor's (the creator of the trust) right to revoke or terminate the trust, deletes a current exclusion from the meaning of "revoke or terminate" because the exclusion does not fit within the concept of revocation or termination.

Section 2. Adds a new provision to the section that allows a person who creates a trust (settlor) to restrict the transfer of a beneficiary's interest before payment to the beneficiary. States that the transfer restriction is allowed even if the settlor has any of the three listed rights: (1) to appoint a trustee, a trust protector, or an advisor for the trust; (2) to remove a trustee or trust protector and appoint certain replacements; or (3) remove an advisor and appoint a replacement.

Section 3. Adds a new provision to the section that allows a person who creates a trust (settlor) to prohibit the transfer of a beneficiary's interest before payment to the beneficiary (the beneficiary can be the settlor). States that the transfer restriction operates even if two situations exist: (1) the beneficiary has the right to receive a distribution made in a person's discretion; or (2) the settlor, under specific conditions, potentially will receive or actually receives income or principal to pay income taxes due on the income of the trust.

If I may be of further assistance, please advise.

TLB:ljw
10-208.ljw

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Senate Resources Committee

Member
Senate Judiciary Committee

SENATOR LESIL MCGUIRE

SPONSOR STATEMENT
CS for SENATE BILL NO. 63(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY–SIXTH LEGISLATURE—SECOND SESSION

This bill amends and improves Alaska's trust provisions which permit a settlor to form an irrevocable trust, be a discretionary beneficiary of the trust and, if the trust has a spendthrift clause, protect the trust assets from the settlor's creditors. Alaska was the first state to enact this type of trust law. Since enactment in 1997, numerous other states have enacted similar statutes. At present, twelve states allow this type of trust.

This bill improves Alaska's trust provisions so that Alaska's statute remains competitive with those of other states. As a result, both residents, and nonresidents of Alaska who choose to form this type of trust in Alaska, will benefit from these improved provisions.

The bill upgrades Alaska's statute by adopting the following provisions which have been adopted in other states:

- A creditor must establish by clear and convincing evidence that a transfer was made with an intent to defraud a creditor. (This standard has been adopted by nine of the other twelve states);
- Distributions can be made under the discretion of a trustee pursuant to a standard, as well as with absolute discretion;
- The settlor may be reimbursed for income taxes attributable to the trust;
- The settlor can retain the power to replace a trustee/advisor with a non-related, non-subordinate party.

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Member
Senate Judiciary Committee

SENATOR LESIL MCGUIRE

What is a Trust?

A Trust is a legal arrangement (basically a contract) where one person (called a trustee) holds property for the benefit of other persons (called beneficiaries). There are many different types of trusts.

The personal trust is the most common form of trust, created for non-business reasons for the benefit and protection of individuals. The trustee in a personal trust acts in accordance with the law and the instructions set forth in the governing instrument by the person who created the trust (called Grantor or Settlor). The primary responsibilities of the trustee are to manage and protect the assets in the trust for the best interest of the beneficiaries. The management and protection responsibilities include proper investment of assets, collection of income, maintenance of accurate books and records, filing of tax returns and other reports, and the payment of income and trust property to the beneficiaries in accordance with the terms of the trust.

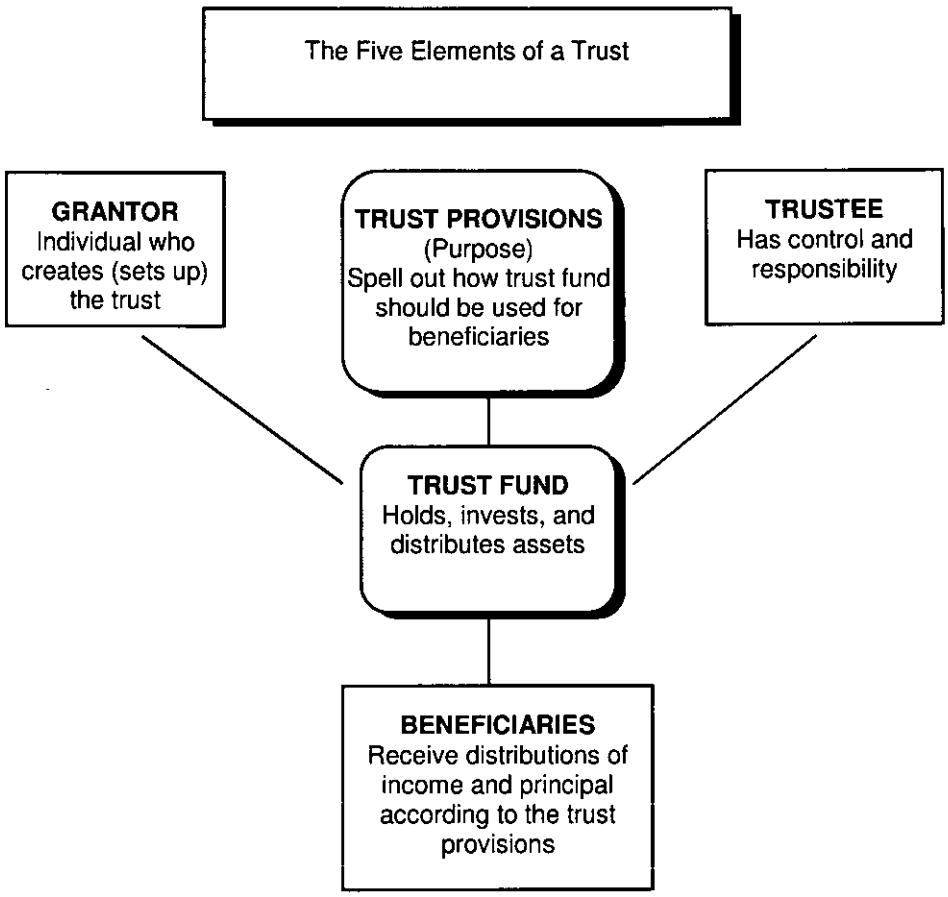
Trusts are used throughout the United States to accomplish many different objectives such as;

- Protecting interest of minors
- Preserve assets for the family
- Accomplish the desires of the family
- Improve quality of life by allowing use of trust assets by beneficiaries
- Provide asset protection
- Reduce and in some cases eliminate gift, estate and income taxes

A self-settled trust is a trust where the grantor is also a beneficiary with other family members. This allows the assets in the trust to appreciate in value and the trust assets will not be in the Grantors taxable estate for federal estate tax purposes. The IRS has recently issued a private letter ruling acknowledging that these trusts can accomplish this objective.

From the information we have received from Alaska estate planning attorneys over ten thousand Alaskans have taken advantage of Alaska's favorable trust laws, non-residents of Alaska have also used Alaska's trust laws to accomplish their family financial goals.

What is a Trust?



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MEMORANDUM March 23, 2010

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TO: Senator Lesil McGuire
Attn: Esther Cha

FROM: Theresa Bannister
Legislative Counsel

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Section 1. Amends the subsection that establishes four situations when a creditor can satisfy a claim out of a beneficiary's interest in a trust when the trust contains a transfer restriction. In the first situation, this bill requires that the creditor establish the intent to defraud by clear and convincing evidence. In the second situation, which is based on the settlor's (the creator of the trust) right to revoke or terminate the trust, deletes a current exclusion from the meaning of "revoke or terminate" because the exclusion does not fit within the concept of revocation or termination.

Section 2. Adds a new provision to the section that allows a person who creates a trust (settlor) to restrict the transfer of a beneficiary's interest before payment to the beneficiary. States that the transfer restriction is allowed even if the settlor has any of the three listed rights: (1) to appoint a trustee, a trust protector, or an advisor for the trust; (2) to remove a trustee or trust protector and appoint certain replacements; or (3) remove an advisor and appoint a replacement.

Section 3. Adds a new provision to the section that allows a person who creates a trust (settlor) to prohibit the transfer of a beneficiary's interest before payment to the beneficiary (the beneficiary can be the settlor). States that the transfer restriction operates even if two situations exist: (1) the beneficiary has the right to receive a distribution made in a person's discretion; or (2) the settlor, under specific conditions, potentially will receive or actually receives income or principal to pay income taxes due on the income of the trust.

If I may be of further assistance, please advise.

TLB:ljw
10-208.ljw

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Senate Special Committee on
World Trade, Technology, and Innovations

Co-Chair
Senate Resources Committee

Member
Senate Judiciary Committee
Joint Armed Services Committee

Senator.Lesil.McGuire@legis.state.ak.us

MEMORANDUM

DATE: March 17, 2010

TO: Senator Hollis French, Chair Senate Judiciary Committee

FR: Senator Lesil McGuire

RE: Request to Schedule SB 63: Transfer Restrictions on Trusts

---

I respectfully request that SB 63: Transfer Restrictions on Trusts be scheduled for a hearing in the Senate Judiciary Committee at your earliest convenience.

Attached is a bill packet that contains the following:

1. Sponsor Statement
2. Current Version of the Bill: CS SB 63(STA) (26-LS0317\S)
3. A Sectional Analysis
4. Identification of Changes
5. Original Version of the Bill: SB 63 (26-LS0317\A)
6. Fiscal Notes:
   a. Department of Law: Zero fiscal note 3/12/2010
7. Supporting Documents
   a. A Trust Explained with Diagram

Esther Cha in my office will be the staff contact for this bill. Her number is 465-2995. Please call if you have any questions.

SB 68

STATE OF ALASKA

Commissioner's Office

DEPARTMENT OF CORRECTIONS

PO BOX 112000
Juneau, Alaska 99811
PHONE: (907) 465-4652
FAX: (907) 465-3390

April 8, 2009

The Honorable Hollis French
Capitol 417
Alaska State Capitol Building
Juneau, Alaska 99811

Dear Senator French

Enclosed is a March 31, 2009 update for offenders on probation and incarcerated for moral turpitude utilizing the 2009 Department of Corrections Definitions. Please note that these numbers are different from the data provided to you previously.

If you have any questions, please free to contact me.

Sincerely,

Dwayne B. Peeples
Deputy Commissioner

Enclosure

cc: Senator Davis

OFFENDERS IN INSTITUTIONS FOR FELONIES OF MORAL TERPITUDE
AS OF 3/31/2009 USING THE 2009 DEFINITION

CRIME DEGREE	COUNT
F	4
FA	323
FB	502
FC	818
FU	693
TOTAL	**2340**

LOCATION	COUNT	%
CRC'S		
AKEELA HOUSE	3	1%
ANCHORAGE EM	42	18%
CLITHEROE	5	2%
CORDOVA CTR	32	14%
FAIRBANKS EM	15	6%
GLACIER MANOR	29	13%
GLENNWOOD CTR	49	21%
KENAI EM	4	2%
KETCHIKAN EM	1	0%
NORTH STAR CTR	19	8%
PARKVIEW	24	10%
SEASIDE CRC-NOME	6	3%
TUNDRA CTR	2	1%
SUBTOTAL CRC	**231**	**100%**
IN-STATE INSTITUTIONS		
ANCHORAGE JAIL	64	5%
ANVIL MTN CC	13	1%
COOK INLET PRETRIAL	71	6%
FAIRBANKS CC	35	3%
HILAND MTN CC	159	12%
KETCHIKAN CC	8	1%
LEMON CREEK CC	81	6%
MATSU PRETRIAL	13	1%
PALMER MIN CC	84	7%
PALMER-MED CC	129	10%
PT. MACKENZIE CF	56	4%
SPRING CREEK CC	437	34%
WILDWOOD CC	121	9%
WILDWOOD PRETRIAL	9	1%
YUKON-KUSKOKWIN CC	6	0%
SUBTOTAL IN-STATE INST	**1286**	**100%**
OUT OF STATE INST		
ARIZONA - RED ROCK CC	807	98%
COLORADO STATE PRISON	3	0%
FEDERAL BUREAU PRISONS	12	1%
MINNESOTA STATE PRISON	1	0%
SUBTOTAL OUT OF STATE	**823**	**100%**
GRAND TOTAL	**2340**	

OFFENDERS ON PROBATION FOR FELONIES OF MORAL TERPITUDE
AS OF 3/31/2009 USING THE 2009 DEFINITION

CRIME DEGREE	COUNT
F	54
FA	281
FB	1008
FC	2822
FU	195
TOTAL	4360

AGENCY	COUNT	%
ANCHORAGE PROB	2122	48.7%
BARROW PROB	29	0.7%
BETHEL PROB	203	4.7%
DILLINGHAM PROB	60	1.4%
FAIRBANKS PROB	496	11.4%
JUNEAU PROB	192	4.4%
KENAI PROB	341	7.8%
KETCHIKAN PROB	131	3.0%
KODIAK PROB	78	1.8%
KOTZEBUE PROB	59	1.4%
NOME PROB	48	1.1%
PALMER PROB	554	12.7%
SITKA PROB	47	1.1%
TOTAL	4360	100.0%

AGENCY	F	FA	FB	FC	FU	TOTAL
ANCHORAGE PROB	33	172	492	1316	109	2122
BARROW PROB	0	2	3	23	1	29
BETHEL PROB	0	4	44	147	8	203
DILLINGHAM PROB	0	2	17	40	1	60
FAIRBANKS PROB	6	28	106	335	21	496
JUNEAU PROB	3	13	53	111	12	192
KENAI PROB	3	17	70	240	11	341
KETCHIKAN PROB	2	4	41	81	3	131
KODIAK PROB	1	1	23	50	3	78
KOTZEBUE PROB	1	1	14	40	3	59
NOME PROB	0	2	10	36	0	48
PALMER PROB	4	35	117	375	23	554
SITKA PROB	1	0	18	28	0	47
TOTAL	54	281	1008	2822	195	4360

OFFENDERS IN INSTITUTIONS FOR FELONIES OF MORAL TERPITUDE
AS OF 3/31/2009 USING THE 2009 DEFINITION

LOCATION	F	FA	FB	FC	FU	TOTAL
CRC'S						
AKEELA HOUSE	0	1	1	1	0	3
ANCHORAGE EM	0	5	9	27	1	42
CLITHEROE	0	1	2	2	0	5
CORDOVA CTR	0	1	7	24	0	32
FAIRBANKS EM	0	1	4	10	0	15
GLACIER MANOR	0	2	6	20	1	29
GLENNWOOD CTR	0	13	14	21	1	49
KENAI EM	0	0	0	4	0	4
KETCHIKAN EM	0	0	1	0	0	1
NORTH STAR CTR	0	2	6	11	0	19
PARKVIEW	0	3	3	18	0	24
SEASIDE CRC-NOME	0	0	0	6	0	6
TUNDRA CTR	0	0	0	2	0	2
SUBTOTAL CRC'S	**0**	**29**	**53**	**146**	**3**	**231**
IN-STATE INSTITUTIONS						
ANCHORAGE JAIL	0	11	14	33	6	64
ANVIL MTN CC	0	0	4	8	1	13
COOK INLET PRETRIAL	0	13	17	33	8	71
FAIRBANKS CC	0	3	13	17	2	35
HILAND MTN CC	2	25	28	81	23	159
KETCHIKAN CC	0	0	2	6	0	8
LEMON CREEK CC	0	7	24	37	13	81
MATSU PRETRIAL	0	1	7	4	1	13
PALMER MIN CC	0	10	15	49	10	84
PALMER-MED CC	0	13	37	69	10	129
PT. MACKENZIE CF	0	7	10	37	2	56
SPRING CREEK CC	0	76	89	125	147	437
WILDWOOD CC	0	11	34	70	6	121
WILDWOOD PRETRIAL	0	0	5	3	1	9
YUKON-KUSKOKWIN CC	0	0	2	4	0	6
SUBTOTAL IN-STATE INST	**2**	**177**	**301**	**576**	**230**	**1286**
OUT OF STATE INSTITUTIONS						
ARIZONA - RED ROCK CC	1	117	148	94	447	807
COLORADO STATE PRISON	0	0	0	0	3	3
FEDERAL BUREAU PRISONS	1	0	0	2	9	12
MINNESOTA STATE PRISON	0	0	0	0	1	1
SUBTOTAL OUT OF STATE	**2**	**117**	**148**	**96**	**460**	**823**
GRAND TOTAL	**4**	**323**	**502**	**818**	**693**	**2340**

OFFENSES THAT CONSTITUTE MORAL TERPITUDE (2009 VERSION)

ofnse_viol_cd	crime_degree_cd	ofnse_desc
T70-30.050	F	ACCEPTING BRIBE
AS11.73.040	FC	ADVERTISE IMITATION CONTR SUBSTANCE
46.400 (OBSCIS)	FA	ARSON - 1ST (OBSCIS)
T70-20.010 (OBSCIS)	F	ARSON - 1ST DEGREE (OBSCIS)
46.410 (OBSCIS)	FB	ARSON - 2ND (OBSCIS)
T70-20.020 (OBSCIS)	F	ARSON - 2ND DEGREE (OBSCIS)
AS11.46.400	FA	ARSON 1- DANGER OF SERIOUS INJURY
AS11.46.410	FB	ARSON 2- DAMAGE BUILDING W/ INTENT
T70-20.010	F	ARSON-1ST DEGREE
T70-20.020	F	ARSON-2ND DEGREE
T70-15.160 (OBSCIS)	F	ASLT INTEND TO KILL/RAPE/ROB (OBSCIS)
41.200 (OBSCIS)	FA	ASSAULT - 1ST (OBSCIS)
41.210 (OBSCIS)	FB	ASSAULT - 2ND (OBSCIS)
41.220 (OBSCIS)	FC	ASSAULT - 3RD (OBSCIS)
AS11.41.200	FA	ASSAULT 1
AS11.41.200(A)(2)	FA	ASSAULT 1- SERIOUS INJURY, INTENT
AS11.41.200(A)(3)	FA	ASSAULT 1- SERIOUS INJURY, EXTREME INDIF
AS11.41.200(A)(4)	FA	ASSAULT 1- SERIOUS INJURY, WEAP, REPEAT
AS11.41.200(A)(1)	FA	ASSAULT 1- SERIOUS INJURY, WEAPON
AS11.41.210	FB	ASSAULT 2
AS11.41.210(A)(1)	FB	ASSAULT 2 - INJURY W/ WEAPON, INTENT
AS11.41.210(A)(2)	FB	ASSAULT 2 - SERIOUS INJURY, RECKLESS
AS11.41.210(A)(3)	FB	ASSAULT 2 - SERIOUS INJURY, REPEATED
AS11.41.220	FC	ASSAULT 3
AS11.41.220(A)(1)(A)	FC	ASSAULT 3- CAUSE FEAR OF INJURY W/ WEAP
AS11.41.220(A)(1)(B)	FC	ASSAULT 3- CAUSE INJURY W/ WEAP
AS11.41.220(A)(1)(C)(II)	FC	ASSAULT 3- INJURE CHILD <10, REPEATED
AS11.41.220(A)(1)(C)(I)	FC	ASSAULT 3- INJURE CHILD <10, REQ MED TX
AS11.41.220(A)(3)	FC	ASSAULT 3- INJURE CHILD 10-15 REQ MED TX
AS11.41.220(A)(2)	FC	ASSAULT 3- REPEAT THREAT OF DEATH/INJURY
T70-15.230	F	ASSAULT AND BATTERY
T70-15.160	F	ASSAULT INTEND TO KILL/RAPE/ROB
T70-15.190	F	ASSAULT WHILE ARMED
T70-15.190 (OBSCIS)	F	ASSAULT WHILE ARMED (OBSCIS)
T70-15.220	F	ASSAULT WITH DANGEROUS WEAPON
A46.410 (OBSCIS)	FC	ATT ARSON 2 (OBSCIS)
A46.400 (OBSCIS)	FB	ATT ARSON I (OBSCIS)
A41.210 (OBSCIS)	FC	ATT ASSAULT 2 (OBSCIS)
A41.200 (OBSCIS)	FB	ATT ASSAULT I (OBSCIS)
A46.365 (OBSCIS)	FC	ATT AUTO THEFT - 2ND (OBSCIS)
A46.360 (OBSCIS)	FC	ATT AUTO THEFT - 1ST (OBSCIS)
A46.300 (OBSCIS)	FC	ATT BURGLARY I (OBSCIS)
A46.220 (OBSCIS)	F	ATT CONC MERCHANDISE (OBSCIS)
A71.010 (OBSCIS)	FA	ATT DRUGS-FIRST DEG (OBSCIS)
A71.020 (OBSCIS)	FB	ATT DRUGS-SECOND DEG (OBSCIS)
A71.030 (OBSCIS)	FC	ATT DRUGS-THIRD DEG (OBSCIS)
A56.310 (OBSCIS)	FC	ATT ESCAPE 2 (OBSCIS)
A56.300 (OBSCIS)	FB	ATT ESCAPE I (OBSCIS)
A41.455 (OBSCIS)	FC	ATT EXPLOIT OF MINOR (OBSCIS)
A41.520 (OBSCIS)	FC	ATT EXTORTION (OBSCIS)
A28.10.491 (OBSCIS)	F	ATT FEL TITLE/REGIST (OBSCIS)
A46.285 (OBSCIS)	F	ATT FRAUD USE CRED CARD (OBSCIS)
A56.510 (OBSCIS)	FC	ATT INTERF OFF PROC (OBSCIS)
A46.280 (OBSCIS)	F	ATT ISSUE BAD CHECKS (OBSCIS)
A41.300 (OBSCIS)	FA	ATT KIDNAPPING (OBSCIS)
A41.120 (OBSCIS)	FB	ATT MANSLAUGHTER (OBSCIS)
A41.100 (OBSCIS)	F	ATT MURDER I (OBSCIS)
A56.200 (OBSCIS)	FC	ATT PERJURY (OBSCIS)
A41.510 (OBSCIS)	FC	ATT ROBBERY 2 (OBSCIS)
A41.500 (OBSCIS)	FB	ATT ROBBERY I (OBSCIS)
A46.600 (OBSCIS)	FC	ATT SCHME TO DEFRAUD (OBSCIS)
A41.434 (OBSCIS)	FA	ATT SEX ABUSE I (OBSCIS)
A41.436 (OBSCIS)	FC	ATT SEX ABUSE MINOR 2 (OBSCIS)
A41.420 (OBSCIS)	FC	ATT SEX ASSAULT 2 (OBSCIS)
A41.410 (OBSCIS)	FA	ATT SEX ASSAULT I (OBSCIS)
A46.120 (OBSCIS)	FC	ATT THEFT I (OBSCIS)
A61.195 (OBSCIS)	FC	ATT WEAPONS 2 (OBSCIS)
AS11.31.100(D)(2)	FA	ATTEMPT
AS11.31.100(D)(3)	FB	ATTEMPT
AS11.31.100(D)(4)	FC	ATTEMPT
AS11.31.100(D)(1)	FU	ATTEMPT
AS11.46.410(ATT)	FC	ATTEMPTED ARSON 2
AS11.46.400(ATT)	FB	ATTEMPTED ARSON I
AS11.41.210(ATT)	FC	ATTEMPTED ASSAULT 2
AS11.41.200(ATT)	FB	ATTEMPTED ASSAULT I

OFFENSES THAT CONSTITUTE MORAL TERPITUDE (2009 VERSION)

ofnse_viol_cd	crime_degree_cd	ofnse_desc
AS11.46.300(ATT)	FC	ATTEMPTED BURGLARY I
AS11.46.475(ATT)	FB	ATTEMPTED CRIM MISCHIEF 1
AS11.46.480(ATT)	FB	ATTEMPTED CRIM MISCHIEF 2
AS11.46.480(ATT) (DISC 6/28/02	FC	ATTEMPTED CRIM MISCHIEF I
AS11.61.240(ATT)	FB	ATTEMPTED CRIM POSS EXPLOSIVE
AS11.41.320(ATT)	FB	ATTEMPTED CUST INTERFER 1
AS11.73.030(ATT)	FC	ATTEMPTED DEL FAKE DRUG-MINOR
AS11.71.010(ATT)	FA	ATTEMPTED DRUGS-FIRST DEGREE
AS11.71.020(ATT)	FB	ATTEMPTED DRUGS-SECOND DEGREE
AS11.71.030(ATT)	FC	ATTEMPTED DRUGS-THIRD DEGREE
AS11.41.455(ATT)	FC	ATTEMPTED EXPLOIT OF MINOR
AS11.41.520(ATT)	FC	ATTEMPTED EXTORTION
AS11.46.500(ATT)	FC	ATTEMPTED FORGERY I
AS11.46.280(ATT)	FC	ATTEMPTED ISSUE BAD CHECKS
AS11.41.300(ATT)	FA	ATTEMPTED KIDNAPPING
AS11.41.120(ATT)	FB	ATTEMPTED MANSLAUGHTER
AS11.41.100(ATT)	FU	ATTEMPTED MURDER 1
AS11.41.110(ATT)	FA	ATTEMPTED MURDER 2
AS11.66.110(ATT)	FC	ATTEMPTED PROMOTION PROST I
AS11.41.510(ATT)	FC	ATTEMPTED ROBBERY 2
AS11.41.500(ATT)	FB	ATTEMPTED ROBBERY I
AS11.46.600(ATT)	FC	ATTEMPTED SCHEME TO DEFRAUD
AS11.41.434(ATT)	FA	ATTEMPTED SEX ABUSE I
AS11.41.436(ATT)	FC	ATTEMPTED SEX ABUSE MINOR 2
AS11.41.420(ATT)	FC	ATTEMPTED SEX ASSAULT 2
AS11.41.410(ATT)	FA	ATTEMPTED SEX ASSAULT I
AS11.46.120(ATT)	FC	ATTEMPTED THEFT I
31.105 (OBSCIS)	F	ATTMPT TO COMMIT FELONY (OBSCIS)
31.110 (OBSCIS)	F	ATTMPT TO COMMIT FELONY (OBSCIS)
31.100 (OBSCIS)	F	ATTMPT TO COMMIT FELONY (OBSCIS)
46.365 (OBSCIS)	FC	AUTO THEFT - 2ND (OBSCIS)
46.360 (OBSCIS)	FC	AUTO THEFT - 1ST (OBSCIS)
T70-15.300	F	BLACKMAIL
T70-30.040	F	BRIBERY
56.100 (OBSCIS)	FB	BRIBERY (OBSCIS)
AS11.56.100	FB	BRIBERY-GIVE TO PUBLIC SERVANT
46.300 (OBSCIS)	FB	BURGLARY - 1ST (OBSCIS)
46.310 (OBSCIS)	FC	BURGLARY - 2ND (OBSCIS)
AS11.46.300	FB	BURGLARY 1
AS11.46.300(A)(2)(A)	FB	BURGLARY 1- ARMED WITH FIREARM
AS11.46.300(A)(2)(B)	FB	BURGLARY 1- CAUSE/ATTEMPT INJURY
AS11.46.300(A)(1)	FB	BURGLARY 1- IN A DWELLING
AS11.46.300(A)(2)(C)	FB	BURGLARY 1- USE OR THREATEN W/ WEAPON
AS11.46.310	FC	BURGLARY 2
T70-20.080	F	BURGLARY IN DWELLING HOUSE
T70-20.080 (OBSCIS)	F	BURGLARY IN DWELLING HOUSE (OBSCIS)
T70-20.100 (OBSCIS)	F	BURGLARY NOT IN DWELLING HOUSE (OBSCIS)
T70-20.100	F	BURLARY NOT IN DWELLING HOUSE
T70-20.070	F	BURNING TO DEFRAUD INSURER
AS28.10.491(A)(6)	FC	BUY/SELL VEH W/ID REMOVED/ALTERED
T70-15.200	F	CARELESS USE OF FIREARMS
T70-15.290	F	CHILD STEALING
71.010 (OBSCIS)	F	CNTRLD SUBSTNCES- 1ST (OBSCIS)
71.020 (OBSCIS)	FA	CNTRLD SUBSTNCES- 2ND (OBSCIS)
71.030 (OBSCIS)	FB	CNTRLD SUBSTNCES- 3RD (OBSCIS)
71.040 (OBSCIS)	FC	CNTRLD SUBSTNCES- 4TH (OBSCIS)
AS11.41.530	FC	COERCION
41.530 (OBSCIS)	FC	COERCION (OBSCIS)
AS11.41.530(A)(1)	FC	COERCION- INSTILL FEAR OF INJURY
AS11.41.530(A)(2)	FC	COERCION-FEAR ACCUSATION OF CRIME
AS11.41.530(A)(4)	FC	COERCION-FEAR OF ACT BY PUBLIC SERVANT
AS11.41.530(A)(3)	FC	COERCION-FEAR OF EXPOSURE OF SECRET
AS11.41.530(A)(5)	FC	COERCION-FEAR OF STRIKE OR BOYCOTT
AS11.41.530(A)(6)	FC	COERCION-FEAR OF/WITHHOLD TESTIMONY
AS11.46.660(A)(1)	FC	COMM BRIBE RECEIVING- BY AGENT/EMPLOYEE
AS11.46.660(A)(5)	FC	COMM BRIBE RECEIVING- BY ARBITRATOR
AS11.46.660(A)(2)	FC	COMM BRIBE RECEIVING- BY FIDUCIARY
AS11.46.660(A)(4)	FC	COMM BRIBE RECEIVING- BY OFFICER OF ORG
AS11.46.660(A)(3)	FC	COMM BRIBE RECEIVING- BY PROF ADVISER
AS11.46.660	FC	COMMERCIAL BRIBE RECEIVING
46.660 (OBSCIS)	FC	COMMERCIAL BRIBE RECEIVING (OBSCIS)
46.670 (OBSCIS)	FC	COMMERCIAL BRIBERY (OBSCIS)
AS11.46.670	FC	COMMERCIAL BRIBERY - OFFER/GIVE BRIBE
C41.300 (OBSCIS)	FA	CON KIDNAPPING (OBSCIS)
C41.500 (OBSCIS)	FB	CON ROBBERY I (OBSCIS)

OFFENSES THAT CONSTITUTE MORAL TERPITUDE (2009 VERSION)

ofnse_viol_cd	crime_degree_cd	ofnse_desc
C41.434 (OBSCIS)	FA	CON SEX ABUSE I (OBSCIS)
AS28.10.491(A)(5)	FC	CONCEAL IDENTITY OF VEH OR EQUIPMENT
AS11.46.220(C)(1)(A)	FC	CONCEAL MERCH- FIREARM
AS11.46.220(C)(1)(B)	FC	CONCEAL MERCH- VALUE $500+
AS11.46.220(C)(1)(C)	FC	CONCEAL MERCH-$50-$499, PRIOR CONVICS
AS11.46.220(C)(1)	FC	CONCEAL MERCH-FIREARM, $500+ OR PRIORS
46.220 (OBSCIS)	F	CONCEALMENT OF MERCHANDISE (OBSCIS)
AS11.31.120	F	CONSPIRACY
11.31.120 (OBSCIS)	FA	CONSPIRACY (OBSCIS)
AS11.41.200(CON)	FB	CONSPIRACY ASSAULT I
AS11.71.010(CON)	FA	CONSPIRACY DRUGS FIRST DEGREE
AS11.71.020(CON)	FB	CONSPIRACY DRUGS SECOND DEGREE
AS11.71.030(CON)	FC	CONSPIRACY DRUGS THIRD DEGREE
AS11.41.300(CON)	FA	CONSPIRACY KIDNAPPING
AS11.41.120(CON)	FB	CONSPIRACY MANSLAUGHTER
AS11.41.110(CON)	FA	CONSPIRACY MURDER 2
AS11.41.100(CON)	FU	CONSPIRACY MURDER I
AS11.41.500(CON)	FB	CONSPIRACY ROBBERY I
AS11.41.434(CON)	FA	CONSPIRACY SEX ABUSE I
AS11.41.410(CON)	FA	CONSPIRACY SEX ASSAULT I
AS11.41.100(CONSP)	FU	CONSPIRACY TO MURDER 1
AS11.46.475(A)(1)	FA	CRIM MISCHIEF 1-DAMAGE OIL/GAS PIPELINE
AS11.46.475(A)(2)	FA	CRIM MISCHIEF 1-PUB UTIL/EMERG SERVICE
AS11.46.475(A)(3)	FA	CRIM MISCHIEF 1-WIDE DANGER, >$100,000
AS11.46.480(A)(3)	FB	CRIM MISCHIEF 2-DAMAGE OIL/GAS PIPELINE
AS11.46.480(A)(4)(B)	FB	CRIM MISCHIEF 2-DELIVER TAMPERED ITEM
AS11.46.480(A)2(B)	FB	CRIM MISCHIEF 2-DELIVERS TAMPERED ITEM
AS11.46.482(A)(3)	FC	CRIM MISCHIEF 2-RISK DAM>$100,000
AS11.46.482(A)(5)	FC	CRIM MISCHIEF 2-TAKE POLICE/EMERG VEH
AS11.46.482(A)(4)	FC	CRIM MISCHIEF 2-TAKE VEH, DAM>$500
AS11.46.480(A)(4)(A)	FB	CRIM MISCHIEF 2-TAMPER FOOD/DRUG
AS11.46.480(A)2(A)	FB	CRIM MISCHIEF 2-TAMPER FOOD/DRUG
AS11.46.480(A)(1)	FB	CRIM MISCHIEF 2-TAMPERS PIPELINE/AIRCRAFT
AS11.46.480(A)(2)	FB	CRIM MISCHIEF 2-WIDE DANGER, >$100,000
41.130 (OBSCIS)	FC	CRIM NEGLIGENT HOMICIDE (OBSCIS)
AS11.46.520(A)(2)	FC	CRIM POSS FORGERY DEVICE-ADAPTABLE
AS11.46.520(A)(1)	FC	CRIM POSS FORGERY DEVICE-SPECIF DESIGNED
AS11.46.740(A)(2)	FC	CRIM USE COMPUTER-ADD FALSE INFORMATION
AS11.46.740(A)(1)	FC	CRIM USE COMPUTER-OBTAIN INFORMATION
AS11.46.565(A)	FB	CRIMINAL IMPERSONATION 1
AS11.46.475	FA	CRIMINAL MISCHIEF 1
AS11.46.480 (DISC 6/28/02)	FB	CRIMINAL MISCHIEF 1
AS11.46.480	FB	CRIMINAL MISCHIEF 2
AS11.46.482	FC	CRIMINAL MISCHIEF 3
AS11.46.520	FC	CRIMINAL POSSESSION OF FORGERY DEVICE
AS11.46.530(B)(1)	FC	CRIMINAL SIMULATION- VALUE $500+
AS11.46.740	FC	CRIMINAL USE OF COMPUTER
AS11.41.130	FC	CRIMINALLY NEGLIGENT HOMICIDE
46.480 (OBSCIS)	FB	CRIMNAL MISCHIEF - 1ST (OBSCIS)
46.482 (OBSCIS)	FC	CRIMNAL MISCHIEF - 2ND (OBSCIS)
41.320 (OBSCIS)	FC	CUSTODIAL INTERFER -1ST (OBSCIS)
AS11.41.320	FC	CUSTODIAL INTERFERENCE 1
AS11.46.730(C)(1)	FB	DEFRAUD CREDITORS-VALUE $25,000+
AS11.46.730(C)(2)	FC	DEFRAUD CREDITORS-VALUE $500-$24,999
73.030 (OBSCIS)	FB	DELIVER IMIT CONT SUBS MINOR (OBSCIS)
AS11.73.030	FB	DELIVER IMITATION CONTR SUBST TO MINOR
T70-30.315	F	DESTROY, ALTER, CONCEAL EVIDENCE
61.125 (OBSCIS)	FC	DIST OF CHILD PORNOGRAPHY (OBSCIS)
AS11.61.125	FB	DISTRIBUTE CHILD PORNOGRAPHY
17.12.010 (OBSCIS)	F	DRUG POSS/DIST/MANUF (OBSCIS)
AS11.61.128(d)	FB	E-DISTRIB INDECNT MATL TO MINORS- SX OFN
AS11.61.128(c)	FC	E-DISTRIBUTE INDECENT MATERIAL TO MINORS
AS15.56.070	FC	ELECTION OFFICIAL MISCONDUCT 1
AS11.51.200(A)(1)	FC	ENDANGER VULN ADULT 1- CARETAKER ABANDON
AS11.51.200(A)(2)	FC	ENDANGER VULN ADULT 1- INJURE BY NONSUPP
AS11.51.200	FC	ENDANGER VULNERABLE ADULT 1
AS11.51.100(A)(1)	FC	ENDANGER WELFARE MINOR 1- DESERTION
AS11.51.100(A)(2)	FC	ENDANGER WELFARE MINOR 1-LV W SEX OFNDR
AS11.51.100	FC	ENDANGERING WELFARE OF MINOR
51.100 (OBSCIS)	FC	ENDANGERING WELFARE OF MINOR (OBSCIS)
AS11.51.100(D)(1)	FB	ENDNGR WLFR MINR 1- LEAVE W ABUSER, DIES
AS11.51.100(D)(2)	FC	ENDNGR WLFR MINR 1-LV W ABUSR,SER INJURY
T70-30.090 (OBSCIS)	FA	ESCAPE (OBSCIS)
56.310 (OBSCIS)	FB	ESCAPE - 2ND DEGREE (OBSCIS)
56.320 (OBSCIS)	FC	ESCAPE - 3RD DEGREE (OBSCIS)

OFFENSES THAT CONSTITUTE MORAL TERPITUDE (2009 VERSION)

ofnse_viol_cd	crime_degree_cd	ofnse_desc
AS11.56.300	FA	ESCAPE 1
56.300 (OBSCIS)	FA	ESCAPE 1ST DEGREE (OBSCIS)
AS11.56.310	FB	ESCAPE 2
AS11.56.310(A)(3)	FB	ESCAPE 2- ON ELCTRNIC MONITOR FOR FELONY
AS11.56.310(A)(1)(A)	FB	ESCAPE 2-CORRECTIONAL FACILITY
AS11.56.310(A)(1)(B)	FB	ESCAPE 2-OFF DETENTION FOR FELONY/EXTRAD
AS11.56.310(A)(1)(C)	FB	ESCAPE 2-OFF DETENTION, POSSESS FIREARM
AS11.56.310(A)(2)	FB	ESCAPE 2-UNLAWF EVASION, POSSESS FIREARM
AS11.56.320	FC	ESCAPE 3
AS11.56.320(A)(1)	FC	ESCAPE 3- INCARCERATION FOR MISDEMEANOR
AS11.56.320(A)(2)	FC	ESCAPE 3-UNLAWF EVASION, ATT LEAVE STATE
AS11.41.455(B)	FB	EXPLOIT MINOR- MAKE PORN, PARENT ALLOWS
AS11.41.455(A)(7)	FB	EXPLOIT MINOR- MAKE PORN, SADO/MASOCHISM
AS11.41.455(A)(3)	FB	EXPLOIT MINOR-MAKE PORN, ADLT TOUCH CHLD
AS11.41.455(A)(5)	FB	EXPLOIT MINOR-MAKE PORN, CHLD BESTIALITY
AS11.41.455(A)(4)	FB	EXPLOIT MINOR-MAKE PORN, CHLD MASTRBTN
AS11.41.455(A)(2)	FB	EXPLOIT MINOR-MAKE PORN, CHLD TOUCH ADLT
AS11.41.455(A)(6)	FB	EXPLOIT MINOR-MAKE PORN, LEWD EXHIBTN
AS11.41.455(A)(1)	FB	EXPLOIT MINOR-MAKE PORN, SEX PENETRATE
41.455 (OBSCIS)	FB	EXPLOITATION OF MINOR (OBSCIS)
AS42.30.090	FB	EXPLOSIVES - INJURY/DEATH ON PSNGR VEH
AS11.41.520	FB	EXTORTION
41.520 (OBSCIS)	FB	EXTORTION (OBSCIS)
AS11.41.520(A)(1)	FB	EXTORTION - THREATEN INJURY, OTHER CRIME
AS11.41.520(A)(4)	FB	EXTORTION-TAKE/WHOLD ACT BY PUBLIC SRVNT
AS11.41.520(A)(2)	FB	EXTORTION-THREATEN ACCUSATION OF CRIME
AS11.41.520(A)(3)	FB	EXTORTION-THREATEN EXPOSURE OF SECRET
AS11.41.520(A)(7)	FB	EXTORTION-THREATEN OTHER HARM
AS11.41.520(A)(5)	FB	EXTORTION-THREATEN STRIKE OR BOYCOTT
AS11.41.520(A)(6)	FB	EXTORTION-THREATEN/WITHHOLD TESTIMONY
AS11.56.835(A)(2)	FC	FAIL TO REG AS SEX OFNDR 1- INTENTIONAL
AS11.56.835(A)(1)	FC	FAIL TO REG AS SEX OFNDR 1- REPEATEDLY
AS11.56.835	FC	FAILURE TO REGISTER AS SEX OFFENDER 1
56.805 (OBSCIS)	FC	FALSE ACCUSATION (OBSCIS)
04.16.210 (OBSCIS)	FB	FALSE STATEMENT/APPLICATION (OBSCIS)
AS28.10.491(A)(9)(GEN)	FC	FALSE STATEMENT-VEHICLE TITLE/REGIS
AS11.46.630	FC	FALSIFY BUSINESS RECORDS
AS11.46.630(A)(4)	FC	FALSIFY BUSINESS REC-PREVENT TRUE ENTRY
AS11.46.630(A)(2)	FC	FALSIFY BUSINESS RECS-DESTROY TRUE ENTRY
AS11.46.630(A)(1)	FC	FALSIFY BUSINESS RECS-FALSE ENTRY
AS11.46.630(A)(3)	FC	FALSIFY BUSINESS RECS-OMIT TRUE ENTRY
46.630 (OBSCIS)	FC	FALSIFYING BUSINESS RECORDS (OBSCIS)
T70-20.430 (OBSCIS)	F	FALSIFYING OR DESTROY RECORDS (OBSCIS)
28.10.491 (OBSCIS)	F	FELONY TITLE/REGISTER (OBSCIS)
T70-30.270	F	FILE FALSE OR FORGED INSTRUMT
AS28.10.491(A)(2)	FC	FORGE/ALTER ASSIGNMENT TITLE, SEC INT
AS28.10.491(A)(1)	FC	FORGE/ALTER REGIS/TITLE/PLATES
46.500 (OBSCIS)	FB	FORGERY - 1ST (OBSCIS)
46.505 (OBSCIS)	FC	FORGERY - 2ND (OBSCIS)
AS11.46.500	FB	FORGERY 1
AS11.46.500(A)(2)	FB	FORGERY 1- STOCKS OR BONDS
AS11.46.500(A)(1)	FB	FORGERY 1-GOVERNMENT INSTRUMENTS
AS11.46.505	FC	FORGERY 2
AS11.46.505(A)(1)	FC	FORGERY 2-LEGAL DOCUMENTS
AS11.46.505(A)(2)	FC	FORGERY 2-PUBLIC RECORDS
T70-25.020 (OBSCIS)	F	FORGERY OF EVIDENCES OF DEBT (OBSCIS)
T70-25.020	F	FORGERY OF EVIDENCES OF DEPT
T70-25.010	F	FORGERY OF RCD OR CERTIFICATE
T70-25.010 (OBSCIS)	F	FORGERY OF RCD OR CERTIFICATE (OBSCIS)
AS11.46.285(B)(2)	FC	FRAUD USE OF ACCESS DEVICE VALUE $500-$25000
AS11.46.285(B)(1)	FB	FRAUD USE OF ACCESS DEVICE VALUE >$25000
AS21.36.360(B)(LG)	FB	FRAUDULENT INSURANCE ACT- $10,000+
AS21.36.360(B)(MD)	FC	FRAUDULENT INSURANCE ACT-$500-$9,999
AS11.56.705	FC	HARM POLICE DOG 1- KILL, SERIOUS INJURY
AS11.56.770(B)(3)	FC	HINDER PROSECUTION 1- AID TO ESCAPE
AS11.56.770(A)(1)	FC	HINDER PROSECUTION 1- OR APPREHENSION
AS11.56.770(A)(2)	FC	HINDER PROSECUTION 1- PROFIT FROM CRIME
AS11.56.770(B)(1)	FC	HINDER PROSECUTION 1-CONCEAL OFFENDER
AS11.56.770(B)(6)	FC	HINDER PROSECUTION 1-HIDE CRIM PROCEEDS
AS11.56.770(B)(4)	FC	HINDER PROSECUTION 1-OBSTRUCT ARREST
AS11.56.770(B)(5)	FC	HINDER PROSECUTION 1-SUPPRESS PHYS EVID
AS11.56.770(B)(2)	FC	HINDER PROSECUTION 1-WARN OF DISCOVERY
AS11.56.770	FC	HINDERING PROSECUTION 1- OF A FELONY
56.770 (OBSCIS)	FC	HINDRNG PROSECUTION - 1ST (OBSCIS)
AS11.73.020(A)(12)	FC	IMIT CONTR SUBST-ACETAMINOPHEN

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AS11.73.020(A)(6)	FC	IMIT CONTR SUBST-CAFFEINE
AS11.73.020(A)(17)	FC	IMIT CONTR SUBST-CHORPHENIRAMINE
AS11.73.020(A)(15)	FC	IMIT CONTR SUBST-DIPHENHYDRAMINE
AS11.73.020(A)(14)	FC	IMIT CONTR SUBST-DOXYLAMINE
AS11.73.020(A)(11)	FC	IMIT CONTR SUBST-DYCLONINE
AS11.73.020(A)(1)	FC	IMIT CONTR SUBST-EPHEDRINE
AS11.73.020(A)(2)	FC	IMIT CONTR SUBST-EPHEDRINE SULFATE
AS11.73.020(A)(8)	FC	IMIT CONTR SUBST-LIDOCAINE
AS11.73.020(A)(16)	FC	IMIT CONTR SUBST-PHENIRAMINE
AS11.73.020(A)(5)	FC	IMIT CONTR SUBST-PHENYPROPANOLAMINE
AS11.73.020(A)(9)	FC	IMIT CONTR SUBST-PROCAINE
AS11.73.020(A)(3)	FC	IMIT CONTR SUBST-PSEUDOEPHEDRINE
AS11.73.020(A)(4)	FC	IMIT CONTR SUBST-PSEUDOEPHEDRINE HCL
AS11.73.020(A)(18)	FC	IMIT CONTR SUBST-PYRILAMINE
AS11.73.020(A)(13)	FC	IMIT CONTR SUBST-SALICYLAMIDE
AS11.73.020(A)(10)	FC	IMIT CONTR SUBST-TETRACAINE
AS11.73.020(A)(7)	FC	IMIT CONTR SUBST-THEOPHYLLINE
T70-40.110	F	INCEST
AS11.41.450	FC	INCEST
41.450 (OBSCIS)	FC	INCEST (OBSCIS)
AS11.41.450(A)(1)	FC	INCEST- PENETR ANCESTOR OR DESCENDANT
AS11.41.450(A)(2)	FC	INCEST- PENETR BROTHER OR SISTER
AS11.41.450(A)(3)	FC	INCEST- PENETR UNCLE,AUNT, NEPH OR NIECE
41.458 (OBSCIS)	FC	INDECENT EXPOSURE (OBSCIS)
AS11.41.458	FC	INDECENT EXPOSURE 1
61.123 (OBSCIS)	FC	INDECENT PHOTOGRAPHY (OBSCIS)
AS11.61.123(F)(1)	FC	INDECENT VIEW/PHOTO W/O CONSENT-OF MINOR
56.510 (OBSCIS)	FB	INTERFER OFFICIAL PROCEEDINGS (OBSCIS)
56.745 (OBSCIS)	FA	INTERFER REPORT DV (OBSCIS)
AS11.56.510(A)(1)(D)	FB	INTERFERE W/ OFFC PROC- AFFECT OUTCOME
AS11.56.510(A)(2)(B)	FB	INTERFERE W/ OFFC PROC- BRIBE JUROR
AS11.56.510(A)(2)(A)	FB	INTERFERE W/ OFFC PROC- BRIBE WITNESS
AS11.56.510(A)(1)(A)	FB	INTERFERE W/ OFFC PROC- THREATEN WITNESS
AS11.56.510(A)(1)(C)	FB	INTERFERE W/ OFFC PROC-RETALIATE WIT/JUR
AS11.56.510(A)(1)(B)	FB	INTERFERE W/ OFFC PROC-THREATEN JUROR
AS11.56.510	FB	INTERFERENCE W/ OFFICIAL PROCEEDINGS
46.280 (OBSCIS)	F	ISSUING BAD CHECK (OBSCIS)
AS11.46.280(D)(1)	FB	ISSUING BAD CHECK- VALUE $25,000+
AS11.46.280(D)(2)	FC	ISSUING BAD CHECK- VALUE $500-$24,999
AS11.56.590	FC	JURY TAMPERING
56.590 (OBSCIS)	FC	JURY TAMPERING (OBSCIS)
AS11.56.590(A)(2)	FC	JURY TAMPERING-AFFECT OUTCOME
AS11.56.590(A)(1)	FC	JURY TAMPERING-INFLUENCE JUROR
T70-15.260	F	KIDNAPPING
AS11.41.300(A)	FU	KIDNAPPING
41.300 (OBSCIS)	F	KIDNAPPING (OBSCIS)
T70-15.260 (OBSCIS)	F	KIDNAPPING (OBSCIS)
AS11.41.300(A)(1)(C)	FU	KIDNAPPING- INJURY OR SEXUAL ASSAULT
AS11.41.300(A)(1)(D)	FU	KIDNAPPING- INTERFERE W/ GOVT FUNCTION
AS11.41.300(A)(2)(A)	FU	KIDNAPPING- RESTRAIN AND HIDE VICTIM
AS11.41.300(A)(2)(B)	FU	KIDNAPPING- RISK OF SERIOUS INJURY
AS11.41.300(A)(1)(E)	FU	KIDNAPPING- TO COMMIT FELONY OR ESCAPE
AS11.41.300(A)(1)(A)	FU	KIDNAPPING- FOR RANSOM
AS11.41.300(D)	FA	KIDNAPPING- RELEASE VICTIM UNHARMED
AS11.41.300(A)(1)(F)	FU	KIDNAPPING- TO SEXUALLY ABUSE CHILD
AS11.41.300(A)(1)(B)	FU	KIDNAPPING- USE VICTIM AS SHIELD/HOSTAGE
T70-15.134	F	LEWD/LASCIVIOUS ACTS TO CHILD
T70-15.134 (OBSCIS)	F	LEWD/LASCIVIOUS ACTS TO CHILD (OBSCIS)
T70-25.030	F	MAKE OR POSSESS FORGERY TOOLS
T70-15.040	F	MANSLAUGHTER
AS11.41.120	FA	MANSLAUGHTER
T70-15.040 (OBSCIS)	FA	MANSLAUGHTER (OBSCIS)
41.120 (OBSCIS)	FA	MANSLAUGHTER (OBSCIS)
AS11.41.120(A)(2)	FA	MANSLAUGHTER -AID SUICIDE
AS11.41.120(A)(1)	FA	MANSLAUGHTER -DEATH NOT MURDER 1 OR 2
73.010 (OBSCIS)	FC	MANU/DELIV OF IMIT CONT SUBS (OBSCIS)
AS11.73.010	FC	MANUF/DELIVER IMITATION CONTROLLED SUBST
11.77.010 (OBSCIS)	FB	MANUF/DELIVR IMIT CNTRLD SUBST (OBSCIS)
AS04.16.200(B)	FC	MANUF/SELL ALCOHOL W/O LIC - IN DRY AREA
S75-12.030 (OBSCIS)	F	MANUFACTURE & SALE OF DRUGS (OBSCIS)
AS04.11.010(A)	FC	MANUFACTURE, SELL, OFFER FOR SALE
AS11.71.010(A)(3)	FU	MICS 1-CONTINUING CRIM ENTERPRISE
AS11.71.010(A)(1)	FU	MICS 1-DELIVER IA TO MINOR, >3 YRS DIFF
AS11.71.010(A)(2)	FU	MICS 1-DELIVER IIA, IIA TO MINOR, >3 YRS
AS11.71.030(A)(2)	FB	MICS 3-DELIVER IVA,VA,VIA TO MINOR,>3YRS

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AS11.71.030(A)(1)	FB	MICS 3-DELIVER/POSS W/INTENT IIA, IIIA
AS11.71.030(A)(3)(A)(I)	FB	MICS 3-POSS IA, IIA NEAR SCHOOL GROUNDS
AS11.71.030(A)(3)(A)(II)	FB	MICS 3-POSS IA, IIA NEAR YOUTH CENTER
AS11.71.030(A)(3)(B)	FB	MICS 3-POSS IA, IIA ON SCHOOL BUS
AS11.71.040(A)(10)	FC	MICS 4-AFFIX FALSE LABEL
AS11.71.040(A)(6)	FC	MICS 4-COUNTERFEITING DEVICE
AS11.71.040(A)(2)	FC	MICS 4-DELIVER/POSS W/INTENT >1 OZ VIA
AS11.71.040(A)(1)	FC	MICS 4-DELIVER/POSS W/INTENT IVA, VA
AS11.71.040(A)(8)	FC	MICS 4-FALSE INFORMATION IN REPORT
AS11.71.040(A)(7)	FC	MICS 4-FALSE REGISTRATION NUMBER
AS11.71.040(A)(5)	FC	MICS 4-KEEP BLDG/VEH TO DISTRIBUTE
AS11.71.040(A)(9)	FC	MICS 4-OBTAIN POSSESSION BY MISREP
AS11.71.040(A)(4)(B)	FC	MICS 4-POSS III,IV,V,VI ON SCHOOL BUS
AS11.71.040(A)(4)(A)(II)	FC	MICS 4-POSS IIIA,IVA,VA,VIA AT YOUTH CTR
AS11.71.040(A)(4)(A)(I)	FC	MICS 4-POSS IIIA,IVA,VA,VIA NEAR SCHOOL
AS11.71.040(A)(3)(F)	FC	MICS 4-POSSESS > 1 POUND VIA
AS11.71.040(A)(3)(B)	FC	MICS 4-POSSESS >25 TABLETS IIIA,IVA
AS11.71.040(A)(3)(C)	FC	MICS 4-POSSESS >3 GRAMS IIIA,IVA
AS11.71.040(A)(3)(D)	FC	MICS 4-POSSESS >50 TABLETS VA
AS11.71.040(A)(3)(E)	FC	MICS 4-POSSESS >6 GRAMS VA
AS11.71.040(A)(3)(G)	FC	MICS 4-POSSESS 25 PLANTS CANNABIS
AS11.71.040(A)(3)(A)	FC	MICS 4-POSSESS ANY AMOUNT IA, IIA
AS11.46.620(D)(1)	FC	MISAPPLY PROPERTY- VALUE $500+
AS11.61.190(A)(2)	FA	MISC/WEAPONS 1- SHOOT FROM VEHICLE
AS11.61.190(A)(1)	FA	MISC/WEAPONS 1- USE DURING DRUG OFFNSE
AS11.61.195(A)(2)(B)	FB	MISC/WEAPONS 2- FELON AT DAYCARE CNTR
AS11.61.195(A)(2)(A)	FB	MISC/WEAPONS 2- FELON ON SCHOOL GRNDS
AS11.61.195(A)(1)	FB	MISC/WEAPONS 2- POSS DURING DRUG OFFNS
AS11.61.200(A)(5)	FC	MISC/WEAPONS 3- ALTER SERIAL NUMBER
AS11.61.200(A)(3)	FC	MISC/WEAPONS 3- PROHIBITED WEAPON
AS11.61.200(A)(2)	FC	MISC/WEAPONS 3- SELL TO FELON
AS11.61.200(A)(4)	FC	MISC/WEAPONS 3- SELL TO INTOXICATED PERS
AS11.61.200(A)(8)	FC	MISC/WEAPONS 3- TRESPASS, VIOL DV ORDER
AS11.61.200(A)(9)	FC	MISC/WEAPONS 3- VIOL DV ORDER
AS11.61.200(A)(7)	FC	MISC/WEAPONS 3-ARMED, DRUNK, TRESPASSING
AS11.61.200(A)(1)	FC	MISC/WEAPONS 3-FELON IN POSSESSION
AS11.61.200(A)(11)	FC	MISC/WEAPONS 3-FIRE FROM VEHIC
AS11.61.200(A)(10)	FC	MISC/WEAPONS 3-IN FELON'S HOUSE
AS11.61.200(A)(6)	FC	MISC/WEAPONS 3-POSS ALTERED SERIAL NMBER
61.190 (OBSCIS)	FA	MISCOND W WEAPNS - 1ST (OBSCIS)
T92-61.200 (OBSCIS)	FC	MISCOND W WEAPNS - 1ST (OBSCIS)
61.195 (OBSCIS)	FB	MISCOND W WEAPNS - 2ND (OBSCIS)
61.200 (OBSCIS)	FC	MISCOND W WEAPNS - 3RD (OBSCIS)
T92-61.200	F	MISCOND WITH WEAPON-1ST
AS11.56.600	FC	MISCONDUCT BY JUROR
56.600 (OBSCIS)	FC	MISCONDUCT BY JUROR (OBSCIS)
AS11.61.190	FA	MISCONDUCT INVOLVING WPNS 1
AS11.61.195	FB	MISCONDUCT INVOLVING WPNS 2
AS11.61.200	FC	MISCONDUCT INVOLVING WPNS 3
AS11.71.010	FU	MISCONDUCT-CNTRLD SUBSTANCE 1
AS11.71.020	FA	MISCONDUCT-CNTRLD SUBSTANCE 2
AS11.71.030	FB	MISCONDUCT-CNTRLD SUBSTANCE 3
AS11.71.040	FC	MISCONDUCT-CNTRLD SUBSTANCE 4
41.100 (OBSCIS)	F	MURDER - 1ST (OBSCIS)
T70-15.010 (OBSCIS)	F	MURDER - 1ST DEGREE (OBSCIS)
41.110 (OBSCIS)	F	MURDER - 2ND (OBSCIS)
T70-15.030 (OBSCIS)	F	MURDER - 2ND DEGREE (OBSCIS)
AS11.41.100	FU	MURDER 1
AS11.41.100(A)(2)	FU	MURDER 1-ASSAULT OR TORTURE OF CHILD
AS11.41.100(A)(1)(B)	FU	MURDER 1-INDUCE SUICIDE
AS11.41.100(A)(1)(A)	FU	MURDER 1-INTENT TO CAUSE DEATH
AS11.41.110	FU	MURDER 2
AS11.41.110(A)(2)	FU	MURDER 2-EXTREME INDIFFERENCE
AS11.41.110(A)(3)	FU	MURDER 2-FELONY MURDER
AS11.41.110(A)(4)	FU	MURDER 2-GANG-RELATED
AS11.41.110(A)(1)	FU	MURDER 2-INTEND SERIOUS INJURY
T70-15.010	F	MURDER-1ST DEGREE
T70-15.030	F	MURDER-2ND DEGREE
T70-15.080	F	NEGLIGENT HOMICIDE
T70-15.080 (OBSCIS)	F	NEGLIGENT HOMICIDE (OBSCIS)
T70-15.340	F	NEGLIGENT USE OF COMBUST MATERIAL
AS11.46.290(A)(2)	FC	OBTAIN CREDIT CARD BY FRAUD- AS SECURITY
AS11.46.290(A)(1)	FC	OBTAIN CREDIT CARD BY FRAUD -BUY OR SELL
46.290 (OBSCIS)	FC	OBTAINING CREDIT CARD FRAUDTLY (OBSCIS)
T70-30.290	F	OFFERING FALSE EVIDENCE

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AS11.46.550	FC	OFFERING FALSE INSTRUMENT FOR RECORDING
T70-30.120	F	OFFICER ALLOWING ESCAPE
AS11.41.452(A)(2)(E)	FB	ONLINE ENTICEMENT OF A MINOR
AS11.41.452(A)	FC	ONLINE ENTICEMENT OF A MINOR
56.230 (OBSCIS)	FC	PERJ BY INCONSISTENT STATEMTS (OBSCIS)
AS11.56.200	FB	PERJURY
56.200 (OBSCIS)	FB	PERJURY (OBSCIS)
AS11.56.230	FC	PERJURY BY INCONSISTENT STATEMENTS
AS11.56.370	FC	PERMITTING AN ESCAPE
56.370 (OBSCIS)	FC	PERMITTING AN ESCAPE (OBSCIS)
T70-15.210	F	POISONING
73.020 (OBSCIS)	FC	POSS IMIT CONT SUBS TO SELL (OBSCIS)
AS11.61.127	FC	POSSESS CHILD PORNOGRAPHY
AS11.61.240(B)(2)	FB	POSSESS EXPLOSIVES-INTEND CLASS A FELONY
AS11.61.240(B)(3)	FC	POSSESS EXPLOSIVES-INTEND CLASS B FELONY
AS11.61.240(B)(1)	FA	POSSESS EXPLOSIVES-INTEND MURDER/KIDNAP
AS28.10.491(A)(3)	FC	POSSESS FORGED TITLE/REGIS/PLATE
AS11.73.020	FC	POSSESS IMITATION CONTR SUBST
T70-55.030	F	POSSESSION BY CONVICTS
46.520 (OBSCIS)	FC	POSSESSION OF FORGERY DEVICE (OBSCIS)
61.240 (OBSCIS)	F	POSSESSN OF EXPLOSIVES (OBSCIS)
T70-30.300	F	PREPARING FALSE EVIDENCE
56.375 (OBSCIS)	FC	PROMOTE CONTRABAND - 1ST (OBSCIS)
AS11.56.375(A)(2)	FC	PROMOTE CONTRABAND 1- ARTICLE FOR ESCAPE
AS11.56.375(A)(3)	FC	PROMOTE CONTRABAND 1- CONTRLD SUBSTANCE
AS11.56.375(A)(1)	FC	PROMOTE CONTRABAND 1-DEADLY WEAPON
66.210 (OBSCIS)	FC	PROMOTE GAMBLING - 1ST (OBSCIS)
AS11.66.210	FC	PROMOTE GAMBLING 1
AS11.66.110(A)(2)	FA	PROMOTE PROST 1- INDUCE MINOR
AS11.66.110(A)(3)	FB	PROMOTE PROST 1- PERSON IN ONE'S CUSTODY
AS11.66.120(A)(2)	FC	PROMOTE PROST 2-PROCURE CUSTOMER
AS11.66.120(A)(1)	FC	PROMOTE PROST 2-RUN ENTERPRISE
66.110 (OBSCIS)	FB	PROMOTE PROSTIT - 1ST (OBSCIS)
66.120 (OBSCIS)	FC	PROMOTE PROSTIT - 2ND (OBSCIS)
AS11.66.110(A)(1)	FB	PROMOTE PROSTITUTION 1-USE FORCE
AS11.66.120	FC	PROMOTE PROSTITUTION 2
AS11.56.375	FC	PROMOTING CONTRABAND 1
AS11.71.210	FC	PURCHASE OR RECPT OF RESTRICTED AMTS OF CERTAIN LISTED CHEMICALS
T70-15.120	F	RAPE
T70-15.120 (OBSCIS)	F	RAPE (OBSCIS)
56.520 (OBSCIS)	FB	RCVING BRIBE BY WIT OR JUROR (OBSCIS)
AS11.56.110	FB	RECEIVE BRIBE - BY PUBLIC SERVANT
AS11.56.110(A)(1)	FB	RECEIVE BRIBE- PUB SERV SOLICIT BENEFIT
AS11.56.110(A)(2)	FB	RECEIVE BRIBE-PUB SERV ACCEPT BENEFIT
56.110 (OBSCIS)	FB	RECEIVING A BRIBE (OBSCIS)
AS11.56.520(A)(2)	FB	RECEIVING A BRIBE BY JUROR
AS11.56.520(A)(1)	FB	RECEIVING A BRIBE BY WITNESS
AS11.56.520	FB	RECEIVING A BRIBE BY WITNESS/JUROR
AS11.61.160	FC	RECRUITING GANG MEMBER 1
46.260 (OBSCIS)	F	REMOVAL OF ID MARKS (OBSCIS)
AS11.46.260(B)(1)	FC	REMOVAL OF ID MARKS - VALUE $500+
AS28.10.491(A)(7)	FC	REMOVE VEH FROM STATE, SECURED INTEREST
AS28.10.491(A)(4)	FC	REMOVE/FALSIFY VEH ID NUMBER
AS11.61.100	FC	RIOT
61.100 (OBSCIS)	FC	RIOT (OBSCIS)
T70-45.020	F	RIOT AND UNLAWFUL ASSEMBLY
T70-15.240	F	ROBBERY
T70-15.240 (OBSCIS)	F	ROBBERY (OBSCIS)
41.500 (OBSCIS)	FA	ROBBERY - 1ST (OBSCIS)
41.510 (OBSCIS)	FB	ROBBERY - 2ND (OBSCIS)
AS11.41.500	FA	ROBBERY 1
AS11.41.500(A)(1)	FA	ROBBERY 1- ARMED W/ DEADLY WEAPON
AS11.41.500(A)(3)	FA	ROBBERY 1- CAUSE/ ATTEMPT SERIOUS INJURY
AS11.41.500(A)(2)	FA	ROBBERY 1- USE WEAPON
AS11.41.510	FB	ROBBERY 2
AS11.41.510(A)(2)	FB	ROBBERY 2- USE FORCE TO COMPEL DELIVERY
AS11.41.510(A)(1)	FB	ROBBERY 2- USE FORCE TO PREVENT RESISTNC
AS11.46.600	FB	SCHEME TO DEFRAUD
AS11.46.600(A)(2)	FB	SCHEME TO DEFRAUD - $10,000+
46.600 (OBSCIS)	FB	SCHEME TO DEFRAUD (OBSCIS)
AS11.46.600(A)(1)	FB	SCHEME TO DEFRAUD- 5+ VICTIMS
AS11.41.434	FU	SEX ABUSE MINOR 1
AS11.41.434(A)(1)	FU	SEX ABUSE MINOR 1- PENETRATE VIC <13
AS11.41.434(A)(3)(B)	FU	SEX ABUSE MINOR 1-AUTH FIG PENETRATE<16
AS11.41.434(A)(3)(A)	FU	SEX ABUSE MINOR 1-PENETRATE <16, HSHOLD

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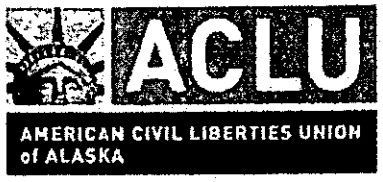
AS11.41.434(A)(2)	FU	SEX ABUSE MINOR 1-PENETRATE OWN CHLD <18
AS11.41.436(A)(5)(B)	FB	SEX ABUSE MINOR 2- AUTH FIG CONTACT <16
AS11.41.436(A)(5)(A)	FB	SEX ABUSE MINOR 2- CONTACT <16, HSHLD
AS11.41.436(A)(3)	FB	SEX ABUSE MINOR 2- CONTACT, BY PARENT
AS11.41.436(A)(2)	FB	SEX ABUSE MINOR 2- CONTACT, VICTIM <13
AS11.41.436(A)(4)	FB	SEX ABUSE MINOR 2- EXPLOIT/PORNO,VIC <16
AS11.41.436(A)(1)	FB	SEX ABUSE MINOR 2- PENETRATE, VIC 13-15
AS11.41.438(A)(2)	FC	SEX ABUSE MINOR 3-AUTH FIG PENETR 16-17
AS11.41.438(A)(1)	FC	SEX ABUSE MINOR 3-CONTACT 13-15,3 YR DIF
41.434 (OBSCIS)	F	SEX ABUSE MINOR-1ST (OBSCIS)
41.436 (OBSCIS)	FB	SEX ABUSE MINOR-2ND (OBSCIS)
41.438 (OBSCIS)	FC	SEX ABUSE MINOR-3RD (OBSCIS)
AS11.41.436	FB	SEX ABUSE OF MINOR 2
AS11.41.438	FC	SEX ABUSE OF MINOR 3
AS11.41.410	FU	SEX ASSAULT 1
AS11.41.410(A)(2)	FU	SEX ASSAULT 1- ATT. PENETRATE, INJURE
AS11.41.410(A)(1)	FU	SEX ASSAULT 1- PENETRATE W/O CONSENT
AS11.41.410(A)(3)	FU	SEX ASSAULT 1-PENTR MENT INCAP UNDR CARE
AS11.41.410(A)(4)	FU	SEX ASSAULT 1-PNTR BY HLTH PROF, UNAWARE
AS11.41.420	FB	SEX ASSAULT 2
AS11.41.420(A)(4)	FB	SEX ASSAULT 2- CONTACT BY HEALTH PROF
AS11.41.420(A)(1)	FB	SEX ASSAULT 2- CONTACT W/O CONSENT
AS11.41.420(A)(2)	FB	SEX ASSAULT 2- CONTACT, VICT UNDER CARE
AS11.41.420(A)(3)	FB	SEX ASSAULT 2- PENETRATE INCAP VICTIM
AS11.41.425	FC	SEX ASSAULT 3
AS11.41.425(A)(2)	FC	SEX ASSAULT 3- CONTACT INCAPACITATED VIC
AS11.41.425(A)(1)	FC	SEX ASSAULT 3- CONTACT, MENTAL INCAP VIC
AS11.41.425(A)(3)	FC	SEX ASSAULT 3- CONTACT, VIC UNAWARE
41.410 (OBSCIS)	F	SEXUAL ASSAULT - 1ST (OBSCIS)
41.420 (OBSCIS)	FB	SEXUAL ASSAULT - 2ND (OBSCIS)
41.430 (OBSCIS)	FC	SEXUAL ASSAULT - 3RD (OBSCIS)
T83-41.430 (OBSCIS)	FC	SEXUAL ASSAULT - 3RD (OBSCIS)
41.425 (OBSCIS)	FC	SEXUAL ASSAULT - 3RD (OBSCIS)
T83-41.430	F	SEXUAL ASSAULT-3RD
AS11.41.430	FC	SEXUAL ASSAULT-3RD
T70-15.150	F	SHOOT, STAB, OR CUT WITH INTENT
T70-15.150 (OBSCIS)	F	SHOOT,STAB OR CUT WITH INTENT (OBSCIS)
T70-40.120	F	SODOMY
S56.510 (OBSCIS)	FC	SOL INTERF OFF PROC (OBSCIS)
S41.100 (OBSCIS)	FA	SOL MURDER I (OBSCIS)
S41.436 (OBSCIS)	FC	SOL SEX ABUSE 2 (OBSCIS)
S41.434 (OBSCIS)	FA	SOL SEX ABUSE I (OBSCIS)
AS11.46.600(SOL)	FC	SOLICITATION
AS11.46.410(SOL)	FC	SOLICITATION ARSON 2
AS11.46.400(SOL)	FB	SOLICITATION ARSON I
AS11.41.210(SOL)	FC	SOLICITATION ASSAULT 2
AS11.41.200(SOL)	FB	SOLICITATION ASSAULT I
AS11.56.100(SOL)	FC	SOLICITATION BRIBERY
AS11.46.300(SOL)	FC	SOLICITATION BURGLARY I
AS11.46.475(SOL)	FB	SOLICITATION CRIM MISCHEIF 1
AS11.46.480(SOL)	FB	SOLICITATION CRIM MISCHIEF 2
AS11.46.480(SOL) (DISC 6/28/02	FC	SOLICITATION CRIM MISCHIEF I
AS11.61.240(SOL)	FB	SOLICITATION CRIM POSS EXPLOSIVE
AS11.46.482(SOL)	FC	SOLICITATION CRIMINAL MISCHIEF 3
AS11.73.030(SOL)	FC	SOLICITATION DEL FAKE DRUG-MINOR
AS11.61.125(SOL)	FC	SOLICITATION DIST CHILD PORN
AS11.71.010(SOL)	FA	SOLICITATION DRUGS 1ST DEGREE
AS11.71.020(SOL)	FB	SOLICITATION DRUGS 2ND DEGREE
AS11.71.030(SOL)	FC	SOLICITATION DRUGS 3RD DEGREE
AS11.56.310(SOL)	FC	SOLICITATION ESCAPE 2
AS11.56.300(SOL)	FB	SOLICITATION ESCAPE I
AS11.41.455(SOL)	FC	SOLICITATION EXPLOIT OF MINOR
AS11.41.520(SOL)	FC	SOLICITATION EXTORTION
AS11.46.500(SOL)	FC	SOLICITATION FORGERY I
AS11.56.510(SOL)	FC	SOLICITATION INTERF OFF PROC
AS11.46.280(SOL)	FC	SOLICITATION ISSUE BAD CHECKS
AS11.41.300(SOL)	FA	SOLICITATION KIDNAPPING
AS11.41.120(SOL)	FB	SOLICITATION MANSLAUGHTER
AS11.41.110(SOL)	FA	SOLICITATION MURDER 2
AS11.41.100(SOL)	FU	SOLICITATION MURDER I
AS11.56.200(SOL)	FC	SOLICITATION PERJURY
AS11.66.110(SOL)	FC	SOLICITATION PROMOTE PROSTITUTION I
AS11.56.520(SOL)	FC	SOLICITATION RCV BRIBE WIT/JUR
AS11.56.110(SOL)	FC	SOLICITATION RECEIVE BRIBE
AS11.41.510(SOL)	FC	SOLICITATION ROBBERY 2

OFFENSES THAT CONSTITUTE MORAL TERPITUDE (2009 VERSION)

ofnse_viol_cd	crime_degree_cd	ofnse_desc
AS11.41.500(SOL)	FB	SOLICITATION ROBBERY I
AS11.41.436(SOL)	FC	SOLICITATION SEX ABUSE 2
AS11.41.434(SOL)	FA	SOLICITATION SEX ABUSE I
AS11.41.420(SOL)	FC	SOLICITATION SEX ASSAULT 2
AS11.41.410(SOL)	FA	SOLICITATION SEX ASSAULT I
AS11.56.810(SOL)	FC	SOLICITATION Terroristic Threat 2
AS11.46.120(SOL)	FC	SOLICITATION THEFT I
AS11.61.195(SOL)	FC	SOLICITATION WEAPONS 2
AS11.61.190(SOL)	FB	SOLICITATION WEAPONS I
AS11.41.260	FC	STALKING 1
AS11.41.260(A)(4)	FC	STALKING 1- POSSESS DEADLY WEAPON
AS11.41.260(A)(6)	FC	STALKING 1- PRIOR CRIMES, SAME VICTIM
AS11.41.260(A)(5)	FC	STALKING 1- PRIOR SIMILAR CONVICTION
AS11.41.260(A)(3)	FC	STALKING 1- VICTIM <16
AS11.41.260(A)(2)	FC	STALKING 1- VIOLATE BAIL, PROB OR PAROLE
AS11.41.260(A)(1)	FC	STALKING 1- VIOLATION OF COURT ORDER
41.260 (OBSCIS)	FC	STALKING 1ST DEGREE (OBSCIS)
AS11.56.610(A)(4)	FC	TAMPER PHYS EVID- TO PREVENT PROCEEDING
AS11.56.610(A)(2)	FC	TAMPER PHYS EVID-CREATE/USE FALSE EVID
AS11.56.610(A)(1)	FC	TAMPER PHYS EVID-DESTROY/ALTER/SUPPRESS
AS11.56.610(A)(3)	FC	TAMPER PHYS EVID-SUPPRESS BY FORCE/DECEP
AS11.56.540(A)(2)	FC	TAMPER WITNESS 1- ABSENT FROM PROCEEDING
AS11.56.540(A)(1)	FC	TAMPER WITNESS 1- INFLUENCE TESTIMONY
AS11.56.610	FC	TAMPERING W/ PHYSICAL EVIDENCE
AS11.56.815	FC	TAMPERING W/ PUBLIC RECORDS 1
AS11.56.540	FC	TAMPERING W/ WITNESS 1
56.610 (OBSCIS)	FC	TAMPERING WITH PHYSICAL EVID (OBSCIS)
56.540 (OBSCIS)	FC	TAMPERING WITH WITNESS-1ST (OBSCIS)
AS11.56.810(A)(3)	FC	TERRORISTIC THREAT- SERIOUS PUB INCONV
AS11.56.810(A)(1)	FC	TERRORISTIC THREAT- CAUSE FEAR OF INJURY
AS11.56.810(A)(2)	FC	TERRORISTIC THREAT-CAUSE EVACUATION
AS11.56.810	FC	TERRORISTIC THREATENING
56.810 (OBSCIS)	FC	TERRORISTIC THREATENING (OBSCIS)
46.120 (OBSCIS)	FB	THEFT - 1ST (OBSCIS)
46.130 (OBSCIS)	FC	THEFT - 2ND (OBSCIS)
AS11.46.120	FB	THEFT 1- VALUE $25,000+
AS11.46.130	FC	THEFT 2
AS11.46.130(A)(6)	FC	THEFT 2- $50-$499, PRIOR CONVICTIONS
AS11.46.130(A)(3)	FC	THEFT 2- FROM PERSON OF ANOTHER
AS11.46.130(A)(5)	FC	THEFT 2-AIRCRAFT SAFETY EQUIPMENT
AS11.46.130(A)(2)	FC	THEFT 2-FIREARM OR EXPLOSIVE
AS11.46.130(A)(1)	FC	THEFT 2-VALUE $500-$24,999
AS11.46.130(A)(4)	FC	THEFT 2-VESSEL SAFETY EQUIP
46.180 (OBSCIS)	F	THEFT BY DECEPTION (OBSCIS)
46.190 (OBSCIS)	F	THEFT BY RECEIVING (OBSCIS)
46.160 (OBSCIS)	F	THEFT OF LOST PROPERTY (OBSCIS)
46.200 (OBSCIS)	F	THEFT OF SERVICES (OBSCIS)
T70-45.055	F	THREATS AND FALSE RPT OF BOMB
56.750 (OBSCIS)	FA	UNLAWFUL CONTACT 1 (OBSCIS)
56.755 (OBSCIS)	FB	UNLAWFUL CONTACT 2 (OBSCIS)
AS11.56.335	FC	UNLAWFUL EVASION - 1ST
AS11.61.250	FC	UNLAWFUL FURNISHING OF EXPLOSIVES
AS15.56.060	FC	UNLAWFUL INTERFERENCE W/ ELECTION
AS15.56.030	FC	UNLAWFUL INTERFERENCE W/ VOTING 1
46.270 (OBSCIS)	F	UNLAWFUL POSSESSION (OBSCIS)
AS11.46.270(B)(1)	FC	UNLAWFUL POSSESSION - VALUE $500+
AS11.41.455	FB	UNLWFL EXPLOIT OF MINOR -MAKE CHILD PORN
AS11.56.205	FC	UNSWORN FALSIFICATION - 1
T70-15.295	F	USE OF FIREARMS DURING CRIME
T70-15.295 (OBSCIS)	F	USE OF FIREARMS DURING CRIME (OBSCIS)
AS11.46.360	FC	VEHICLE THEFT 1
AS11.46.360(A)(2)	FC	VEHICLE THEFT 1-DAMAGE $500+
AS11.46.360(A)(3)	FC	VEHICLE THEFT 1-POLICE/EMERGENCY VEH
AS11.46.360(A)(4)	FC	VEHICLE THEFT 1-PRIOR CONVICTIONS
AS11.46.360(A)(1)	FC	VEHICLE THEFT 1-TAKE VEH, AIR OR WTRCRFT



April 14, 2009

AMERICAN CIVIL LIBERTIES UNION OF ALASKA
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The Honorable Bettye Davis
Senator, Alaska State Senate
State Capitol, Room 30
Juneau, AK 99801-1182
Via fax 907-465-3756 and email: Senator_Bettye_Davis@legis.state.ak.us

Re: ***ACLU of Alaska – Support of SB 68***

Dear Senator Davis:

On behalf of the American Civil Liberties Union (ACLU) of Alaska and our thousands of members and activists throughout the state, as well as our Board of Directors and Staff, I am writing to express our **strong support of Senate Bill 68** seeking to enfranchise formerly incarcerated Alaskans.

We are grateful for your work in sponsoring this bill, and your historic commitment to the most fundamental of constitutional rights – the right to vote.

Thanks also to your office for responding to our inquiries regarding the details of this legislation. We appreciate the hard work of your staff in seeking to ensure that SB 68 will reduce unnecessary impediments to enfranchisement. As you know, those who participate in voting are less likely to re-offend, and reducing barriers to voting contributes to the public welfare of all Alaskans.

The ACLU of Alaska is pleased to support SB 68 and hopes to work with you towards quick passage of this legislation.

Please feel free to contact us at (907) 258-0044, or jmittman@akclu.org, if you require any additional information.

Sincerely,

Jeffrey A. Mittman
Executive Director

Sen. Bettye Davis

From: ACLU [aclu@aclu.org] on behalf of Garrett Ennis [alaskancomfort@hotmail.com]
Sent: Friday, April 10, 2009 10:27 PM
To: Sen. Bettye Davis
Subject: Ensure all Alaskans have the right to vote

Apr 11, 2009

RECEIVED
APR 13 2009

Senator Bettye Davis
120 4th Street
Juneau, AK 99801-1182

Dear Senator Davis,

As your constituent, I ask you to support SB 68, which helps keep all Alaskans safer, by ensuring that ex-offenders have the right to vote and function as responsible citizens and taxpayers.

Restricting voting rights does not prevent crime or provide compensation to victims. Research shows that people who vote are much less likely to be re-arrested. That is why the American Probation and Parole Association, the National Black Police Association, the American Bar Association and others support full voting rights when former offenders return to their communities.

Senate Bill 68 encourages the behaviors we all wish to see and that society ought to encourage a commitment to community and participation in our democracy.

Thank you for supporting SB 68.

Sincerely,

Mr. Garrett Ennis
5432 E Northern Lights Blvd # 329
Anchorage, AK 99508-4713

Alaska State Legislature

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Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

Senator Bettye Davis

Sponsor Statement

SB 68 "An Act relating to the voting rights of felons"

Across the country states handle the right to vote for returning felons differently. Two (2) states, Maine and Vermont do not take away a felons right to vote. Thirteen states (13) allow felons to vote upon release from incarceration. Twenty one (21) including Alaska allow felons to vote after they complete all parole/probation requirements while fourteen (14) states permanently disenfranchise certain felons. If our belief is that felons once released have paid their debt to society then returning their right to vote upon release from incarceration would be a positive step.

SB 68 allows felons upon release from incarceration to register to vote. This bill starts the process which allows felons to start assuming responsibility for their reintegration in their communities. We are each responsible for how our government works and we do that through voting. In Alaska, 6081* Alaskans have lost their right to vote because of felony convictions. Currently, Alaska law bars the vote to persons convicted of felonies of moral turpitude until the expiration of a post-incarceration period of parole or probation, which is often years after they have reentered society to become productive citizens and tax payers. .

Harsh sentencing laws over the past 30 years have allowed the prison population to balloon, while reducing the rehabilitative model to almost non existent. Over 4.7 million Americans or 1 in 43 adults cannot vote due to felony convictions, with 1/3 or more of them were incarcerated due to alcohol and drug offenses. In Alaska we have gone from slightly over 800 prisoners in 1984 to 5344 in 2008, an increase of 149%. Of those incarcerated in Alaska 48% are Caucasian, 36% are Alaska Native, 10% are African American, 3% are Hispanic, and 3% are Asian/Pacific Islanders.* Nationally minority felons are disproportionately disenfranchised under current law and the harm of this continued disenfranchisement after release is exacerbated by stigma and other forms of discrimination as they try to reenter society. In Alaska 52% of our incarcerated offenders are minorities.

In Alaska, we do not have a problem taking a person off the voting roles if convicted of a felony but we do not have a system that will automatically allow them to return to the voting roles upon termination of supervision. Voting is just one of many steps a returning felon must make to become a productive member of the community. This Bill will help provide a clear time for returning voting rights and provide an important right/responsibility to felons returning to their communities.

* Alaska Div. of Elections
* Alaska Dept. of Corrections "2008 Offender Profile"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 2, 2009

SUBJECT: Sectional Summary of SB 68 (Work Order No. 26-LS0324\A)

TO: Senator Bettye Davis
Attn: Thomas Obermeyer

FROM: Alpheus Bullard
Legislative Counsel

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

Section 1. Establishes that a person convicted of a crime that constitutes a felony involving moral turpitude under state or federal law may not vote while incarcerated for that crime, and that the person upon release will be advised of voter registration requirements and procedures.

Section 2. Establishes that the voter registration of a person convicted of a crime that constitutes a felony involving moral turpitude will be cancelled while that person is incarcerated.

Section 3. Establishes that a person convicted of a crime that constitutes a felony involving moral turpitude under state or federal law is disqualified from voting while incarcerated for that crime.

Section 4. Repeals AS 15.60.010(39), a definition of "unconditional discharge."

TLAB:ljw
09-053.ljw

Alaska State Legislature

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Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

Senator Bettye Davis

Date: 4/1/2009

To: Senator French, Chair
Senate Judiciary Committee

From: Senator Bettye Davis BD

Re: SB 68 "An Act relating to the voting rights of felons"

This is a request that you schedule a hearing on SB 68 at the earliest possible date.

Please find attached a copy of the bill, a sponsor statement, a fiscal note, and a sectional analysis. Your attention to this request would be appreciated. Thank you.

SB 73

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Kim Elton
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

MEMORANDUM

March 18, 2009

TO: Legal

FROM: Cindy Smith 465-6641

RE: SB73

Please prepare an as-passed final Judiciary CS to SB73 (LS0360\A) with an amendment to set an effective date of October 1, 2009.

Thanks. Call w/any questions!

Senator Linda Menard

State Capitol, Room 9
Juneau, Alaska 99801

Phone: (907) 465-6600
Fax: (907) 465-3805

Alaska State Legislature

Sponsor Statement for SB 73

By passing Senate Bill 73, motorists would be required to use their vehicle's headlight system at all times while on Alaska's roads.

The bill will address a key goal of the Alaska Highway Safety Office's Strategic Highway Safety Plan. That plan recommends changing state law to require headlight use at all times. The Alaska Highway Safety Office backs up the need for the law with research showing a decrease in traffic accidents where daytime running lights are used. Enforcement of the headlight law could decrease head-on collisions by 7 percent to 15 percent, the AHSO has determined.

The effectiveness of "headlights on" rules can be seen on the Seward Highway. In the mid-1990s, signs were installed along the highway from Anchorage to Seward reading "Headlights On At All Times." The Department of Public Safety says the signs were very effective in saving lives. According to the Department of Transportation, there was a marked decrease in numbers of crashes around the time of sign posting on the Seward Highway.

Similar results have been seen in other countries located in Polar Regions like Alaska. In Sweden, which has similar weather conditions to Alaska, studies have found that the requirement to use headlights at all times reduced crash rates by 20 percent in urban areas and 17 percent in rural areas in winter months.

Currently, 39 out of 50 states, including Alaska, require use of headlights on motorcycles at all times while operating on roads. Experts report the headlights increase the conspicuousness of motorcycles, allowing other motorists to more easily see them.

Today, drivers pulled over without their headlights on in areas requiring headlights are fined $50 and two points on their license. According to Lt. Rodney Dial of the Alaska State Troopers, those fines would likely carry over statewide if SB 73 is passed.

Senate Bill 73 will increase the safety on Alaska's roadways by making all vehicles easier to see while traveling, especially during Alaska's long periods of dusk and dawn.

Headlights On At All Times Law (SB73 - 2009)
Estimate of Sign Cost

Community/Area	Location	No of Signs
Prudhoe Bay	Departing South, Dalton Hwy	1
Fairbanks	Departing, Steese, Parks, Richardson	3
Delta	Departing, Richardson, Alaska Hwy N&S	3
Tok	Departing, Tok Cutoff W, Alaska Hwy N&S	3
Alaska Border-Alaska Hwy	For W-bound arrivals	1
Glenallen	Departing, Glen W, Richardson N&S	3
Wasilla	Departing, Parks Hwy N	1
Palmer	Departing, Glen Hwy E	1
Valdez	Departing Richardson Hwy N	1
Glen-Parks Interchange	Departing Glen E, Glen S, Parks N	3
Anchorage	Airport	2
	Departing South-Seward Hwy	1
	Departing North, Glen Hwy	1
Kenai	Airport	1
Seward	Departing, Seward Hwy N	1
Soldotna	Airport	1
	Departing, Sterling Hwy N&S	2
Homer	Departing, Sterling Hwy N	1
Haines	Departing Haines Hwy N	1
Alaska Border-Haines	For S-bound arrivals	1
Skagway	Departing Klondike Hwy N	1
Alaska Border-Klondike	For S-bound arrivals	1
Juneau	Ferry Terminal	1
	Airport, Yandukin& Shell Simmons	2
Ketchikan	Ferry Access to Airport-both sides on Tongass	2

39 Signs

Intent:

Install signs at:
Major Airports
Major Ferry Terminals
At Major Junctions
At border crossings

We want to minimize the number of signs- just post at major entry points or junctions of high volume roads

4 Line Sign

7	ft. wide
4.5	ft. tall
31.5	s.f.
110	$/s.f.
3465	Sign Cost
$ 135,135	Total

HH.3. Headlights On at All Times – Tier One

Description: Around 15 people die in Alaska each year in head-on crashes. National data indicate headlights-on signing and enforcement could eliminate 7 to 15 percent of these crashes.

This plan recommends changing state law to require headlights on at all times. If this is not done, we can still post signs that will make headlights mandatory on particular sections of road. 13 AAC 04.010 gives the signs the authority of law.

Responsible Agency:

Lead Agency: Alaska Department of Transportation and Public Facilities, Alaska Highway Safety Office (AHSO)

Contact Name, Title: Cindy Cashen, Highway Safety Office Administrator

Phone: (907) 465-4374 E-mail: Cindy.Cashen@alaska.gov

Necessary Partners:

- Governor's Alaska Highway Safety Office.
- DOT&PF Headquarters and Regional Offices.
- Legislature.
- Media.
- AG's Office.
- State Troopers/Local Police.
- National Insurance Institute.
- NHTSA.

Data Analysis Needs or Available Resources:

Create a statewide map of head-on collisions, insurance report, photos, past country/state success stories.

Expected Effectiveness/Outcome:

Narrative: To eliminate fatal and major injury crashes – estimate number yet to be determined.

Average number of lives lost and major injuries sustained due to this problem over the past five years: Approximately 15 per year.

Estimated number of lives saved and major injuries prevented in one year following implementation: One.

Funding and Resource Requirements:

Narrative: Funding for AHSO to cover legal costs – approximately $10K. If signs are posted, approximately $1,000 per sign.

Estimated Cost to Implement: $ TBD

Action Steps and Timeline:

Action Step	Responsible Agency	Timeline/Due Date
Collect data and success stories in a draft packet for the legislature.	AHSO	December 2007
Collaborate with partners to develop a legislative information/ lobby plan.	AHSO	December 2007
Pass Legislation.	Legislature	May 2008
If successful, install signs in high-crash areas. (This could happen earlier.)		

Measurement and Evaluation:

Strategy Performance Measures: Reduction in head-on collisions.

Evaluation:

Reduction in head-on collisions as indicated by before/after crash studies.

1376

U.S. Department
of Transportation
National Highway
Traffic Safety
Administration

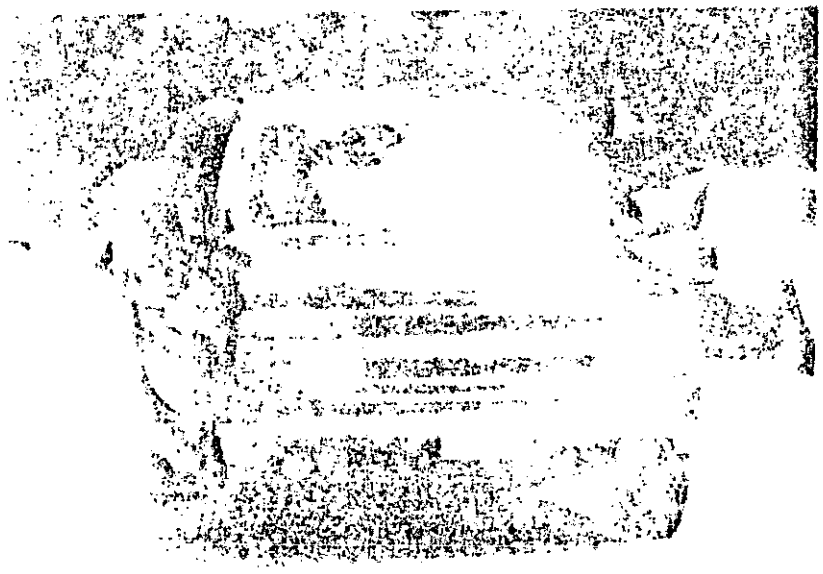
NHTSA
People Saving People

DOT HS 809 760

September 2004

Technical Report

An Assessment of the Crash-Reducing Effectiveness of Passenger Vehicle Daytime Running Lamps (DRLs)



Published By:
NCSA
National Center for Statistics and Analysis
Advanced Research and Analysis

This document is available to the public from the National Technical Information Service, Springfield, VA 22161

1377

Executive Summary

This study estimates the effectiveness of passenger vehicle daytime running lights in reducing two-vehicle opposite direction crashes, pedestrian/bicycle crashes, and motorcycle crashes. The authors chose the generalized simple odds, a conventional statistical technique, to analyze the data. The generalized odds ratio attempts to adjust for a variety of exogenous factors other than the presence or absence of DRLs not specifically controlled for within the model.

Significant results of this study show that from 1995 to 2001:

Simple Odds Results:

- DRLs reduced opposite direction daytime fatal crashes by 5 percent.
- DRLs reduced opposite direction/angle daytime non-fatal crashes by 5 percent.
- DRLs reduced non-motorists, pedestrians and cyclists, daytime fatalities in single-vehicle crashes by 12 percent.
- DRLs reduced daytime opposite direction fatal crashes of a passenger vehicle with a motorcycle by 23 percent.

The reviewers of this paper required the inclusion of an analysis based on odds ratio, which can be found in Appendix B. Like the simple odds, the odds ratio attempts to control for a variety of factors other than the presence or absence of DRLs. The estimated effectiveness of DRLs based on this technique is extremely sensitive to small changes encountered in real world crash data. As a result, reductions in target crashes during the daytime using the odds ratio technique may not be detected over the inherent background noise of the data system. **None** of the results based on the odds ratio are statistically significant.

Odds Ratio Results:

- DRLs reduced opposite direction daytime fatal crashes by –6.3 percent that is DRLs increase opposite direction daytime fatal crashes by 6.3 percent.
- DRLs reduced opposite direction/angle daytime non-fatal crashes by –7.9 percent that is DRLs increase opposite direction/angle daytime non-fatal crashes by 7.9 percent.
- DRLs reduced non-motorists, pedestrians and cyclists, daytime fatalities in single-vehicle crashes by 3.8 percent.
- DRLs reduced daytime opposite direction fatal crashes of a passenger vehicle with a motorcycle by 26 percent.

Table 1: State Requirements for Headlight Use When Operating Passenger Vehicles

State	Headlights Must Be Used				Minimum Sight Distance Before Headlight Use is Mandatory (in feet)
	Half Hour After Sunset and Half Hour Before Sunrise	From Sunset to Sunrise	When Windshield Wipers are Operating	During Inclement Weather	
Alabama		x	x		500
Alaska [a]					1,000
Arizona		x			500
Arkansas	x		x		500
California	x				1,000
Colorado		x			1,000
Connecticut	x			x	1,000
Delaware		x	x		1,000
District of Columbia [b]					500
Florida		x		x	1,000
Georgia	x			x	500
Hawaii	x				200
Idaho	x				500
Illinois		x	x		1,000
Indiana		x			500
Iowa		x		x	500
Kansas		x			1,000
Kentucky	x				350
Louisiana		x	x	x	500
Maine	x		x	x	1,000
Maryland	x		x		1,000
Massachusetts	x		x		200
Michigan	x				500
Minnesota		x		x	500
Mississippi		x			500
Missouri	x				500
Montana	x			x	500
Nebraska	x				500
Nevada	x				1,000
New Hampshire	x			x	1,000
New Jersey	x		x	x	500
New Mexico	x				500
New York	x		x	x	1,000
North Carolina		x	x		400
North Dakota		x		x	1,000
Ohio	x				1,000
Oklahoma	x			x	500
Oregon		x			1,000
Pennsylvania		x		x	1,000
Rhode Island		x	x	x	500
South Carolina	x		x		500
South Dakota	x				200
Tennessee		x		x	200
Texas	x				1,000
Utah	x			x	1,000
Vermont	x			x	150
Virginia		x	x		500
Washington	x				1,000
West Virginia		x		x	500
Wisconsin	x				350
Wyoming	x			x	1,000

Notes:
(a) Headlights are required at all times on designated roadways with speeds in excess of 45 miles per hour.
(b) We could not locate time of day usage requirements for the District of Columbia.

Sources: *Digest of Motor Laws*, American Automobile Association, 2005, and Matt Sundeen, Program Principal, Transportation, National Conference of State Legislatures, (303) 364-7700.

Information from Kurt Smith, Department of Transportation

1. 13 AAC 04.010 became effective in April 1994. It authorized the department to install Headlights On At All Times signs.
2. HOAAT signs were posted on the Seward Highway from Seward to Anchorage mid summer 1994.
3. DPS claimed the signs were very effective in saving lives (16 fatalities during 1991-1993, none in 2004). They asked that the rest of our major highways be signed accordingly.
4. The department worked to install the signs (500 signs at an approximate cost of $250,000). Many signs were installed by late 1995.
5. The DOT&PF Commissioner, under direction from the governor, issued a stop work notice in late 1995 due to adverse public opinion. The signs were taken down, except for the signs on the Seward Highway.
6. It is hard to tell the long term safety impact of the Headlights On signs, because their installation coincided with some major passing lane and reconstruction projects on the Seward Highway. **However, there was a marked decrease in numbers of crashes around that time. As I recall, severe crashes did not decrease that markedly.**
7. **Windshield "surveys" have indicated that a higher percentage of vehicles have their lights on on the Seward Highway than on other roads.**

Information from the Insurance Institute for Highway Safety

1 | What are the safety advantages of DRLs?

Daytime running lights (DRLs) are a low-cost method to reduce crashes. They are especially effective in preventing daytime head-on and front-corner collisions by increasing vehicle conspicuity and making it easier to detect approaching vehicles from farther away.

2 | Where are DRLs required?

Laws in Canada and many European countries require vehicles to operate with lights on during the daytime. There are two types of laws. Canada's requires vehicles to be equipped with DRLs. Laws in Europe require motorists to turn on their headlights if their vehicles do not have automatic DRLs. In 1972, Finland mandated daytime running lights in winter on rural roads and a decade later made DRLs mandatory year-round. Sweden's law took effect in 1977, Norway's in 1986, Iceland's in 1988, and Denmark's in 1990. Hungary has required drivers on rural roads to operate with vehicle lights on since 1993. Canada requires DRLs for vehicles made after December 1, 1989. No US state mandates DRLs, but some require drivers to operate vehicles with lights on in bad weather.

3 | Are DRLs available on vehicles in the United States?

First offered on a handful of 1995 domestic and foreign model passenger cars, pickups, and SUVs, daytime running lights have become a more common feature. They are standard on all General Motors, Lexus, Mercedes Benz, Saab, Subaru, Suzuki, Volkswagen, and Volvo models. Other manufacturers also offer daytime running lights on certain models. GM offers retrofit kits for vehicles that do not already have DRLs. The kits can be used on non-GM models, too.

4 | How effective are DRLs?

Nearly all published reports indicate DRLs reduce multiple-vehicle daytime crashes. Evidence about DRL effects on crashes comes from studies conducted in Scandinavia, Canada, and the United States. A study examining the effect of Norway's DRL law from 1980 to 1990 found a 10 percent decline in daytime multiple-vehicle crashes.[1] A Danish study reported a 7 percent reduction in DRL-relevant crashes in the first 15 months after DRL use was required and a 37 percent decline in left-turn crashes.[2] In a second study covering 2 years and 9 months of Denmark's law, there was a 6 percent reduction in daytime multiple-vehicle crashes and a 34 percent reduction in left-turn crashes.[3] A 1994 Transport Canada study comparing 1990 model year vehicles with DRLs to 1989 vehicles without them found that DRLs reduced relevant daytime multiple-vehicle crashes by 11 percent.[4]

In the United States, a 1985 Institute study determined that commercial fleet passenger vehicles modified to operate with DRLs were involved in 7 percent fewer daytime multiple-vehicle crashes than similar vehicles without DRLs.[5] A small-scale fleet study conducted in the 1960s found an 18 percent lower daytime multiple-vehicle crash rate for DRL-equipped vehicles.[6] Multiple-vehicle daytime crashes account for about half of all police-reported crashes in the United States. A 2002 Institute study reported a 3 percent decline in daytime multiple-vehicle crash risk in nine US states concurrent with the introduction of DRLs.[7] Federal researchers, using data collected nationwide, concluded that there was a 5 percent decline in daytime, two-vehicle, opposite-direction crashes and a 12 percent decline in fatal crashes with pedestrians and bicyclists.[8]

5 | Will DRLs shorten headlamp bulb life or lower fuel economy?

Running vehicle lights in the daytime does not significantly shorten bulb life. Systems like those on General Motors cars that use high beams are designed to operate at half their normal power during daylight hours, thereby conserving energy and reducing the effect on a vehicle's fuel economy. The National Highway Traffic Safety Administration (NHTSA) estimates that only a fraction of a mile per gallon will be lost, depending on the type of system used. GM estimates the cost to be about $3 per year for the average driver. Transport Canada estimates the extra annual fuel and bulb replacement costs to be $3-15 for systems using reduced-intensity headlights or other low-intensity lights and more than $40 a year for DRL systems using regular low-beam headlights.

6 | Will motorists be bothered by glare?

In most countries mandating DRLs, glare has not been an issue. However, some motorists in the United States have complained that the systems here are too bright. In response to these complaints, NHTSA in 1998 proposed reducing the maximum allowable light intensity from 7,000 to 1,500 candela, a value more in line with European DRLs. There has been no action on this proposal as yet.

7 | Are motorcycles required to have DRLs?

Federal law does not require motorcycles to have DRLs, but some states require motorcyclists to ride with their headlights on at all hours. Thus, since 1979 most manufacturers have equipped their cycles with automatic-on headlamps.

List of witnesses testifying to Senate Bill 73

In person:
Cindy Cashen- Administrator, Alaska Highway Safety Office

Lt. Rodney Dial, Alaska State Troopers (unclear at this point whether Lt. Dial's testimony will be in-person or by phone)

Senator Linda Menard

State Capitol, Room 9
Juneau, Alaska 99801

Phone: (907) 465-6600
Fax: (907) 465-3805

Alaska State Legislature

To: Senator Hollis French, Chair
Senate Judiciary Committee

From: Senator Linda Menard

Date: March 11, 2009

Re: Request for hearing of SB 73

Honorable Senator Hollis French,

I respectfully request a hearing of Senate Bill No. 73 before the Senate Judiciary Committee.

Senate Bill 73 seeks to require the use of headlights at all times while operating a motor vehicle in the state of Alaska.

Thank you for your consideration.

Linda Menard

SB 85

amended

26-GS1009\S
Luckhaupt
3/25/09

CS FOR SENATE BILL NO. 85( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to penalties for violations of limitations on possessing, sending, shipping, transporting, or bringing alcoholic beverages to, soliciting or receiving orders for delivery of alcoholic beverages to, and the manufacture, sale, offer for sale, barter, traffic, or possession of alcoholic beverages in, a local option area; relating to minor consuming or in possession or control of alcoholic beverages; relating to civil penalties for liquor licensees whose agents or employees furnish alcoholic beverages to a person under 21 years of age; and providing for an effective date."

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

*** Section 1.** AS 04.11.575 is amended by adding a new subsection to read:

(d) In addition to other penalties imposed by law, if an agent or employee of a licensee is convicted of a violation of AS 04.16.052(5) occurring on the licensed premises of the licensee, the board shall, for a first conviction, issue a written warning to the licensee. The warning must include a description of civil fines for second and

subsequent convictions. The board shall impose a civil fine of $1,000 on the licensee for the second and subsequent conviction of an agent or employee of the licensee for violation of AS 04.16.052(5) occurring on the licensed premises of the licensee. In imposing a civil fine under this subsection, second and subsequent convictions include the cumulative number of convictions of all agents or employees of a licensee that are committed on the premises of the licensee that occur within 10 years after the first conviction. A conviction occurs on the date that sentence is imposed for the offense. A hearing under AS 44.62.330 - 44.62.630 (Administrative Procedure Act) to issue a warning or impose a fine under this section shall be limited to the following questions:

(1) was an agent or employee of the licensee convicted by plea or judicial finding of a violation of AS 04.16.052(5);

(2) did the violation of AS 04.16.052(5) by the agent or employee of the licensee occur on the licensed premises of the licensee; and

(3) if the hearing is to consider imposition of a fine, did the violation of AS 04.16.052(5) occur within 10 years after a conviction for a prior violation of AS 04.16.052(5).

* **Sec. 2.** AS 04.16.050(c) is amended to read:

(c) A person is guilty of repeat minor consuming or in possession or control if the person was **previously granted a suspended imposition of sentence** [PLACED ON PROBATION] under (b)(1) of this section**, has a prior conviction under (b)(2) of this section,** or has been previously convicted once, and the person violates (a) of this section. Upon conviction in the district court, the court shall

(1) impose a fine of $1,000 and require at least 48 hours of community work;

(2) revoke the person's driver's license for three months;

(3) take possession of the person's driver's license; and

(4) suspend up to $500 of the fine and place the person on probation for up to one year under (e) of this section.

* **Sec. 3.** AS 04.16.050(d) is amended to read:

(d) A person is guilty of habitual minor consuming or in possession or control if the person **has a prior conviction** [WAS PLACED ON PROBATION] under (c) of

this section, or has been previously convicted **two or more times** [TWICE], and the person violates (a) of this section. Habitual minor consuming or in possession or control is a class B misdemeanor. Upon conviction, the court may impose an appropriate period of imprisonment and fine and place the person on probation under (e) of this section for one year, or until the person is 21 years of age, whichever is later, and shall

(1) impose at least 96 hours of community work;

(2) revoke the person's driver's license for six months;

(3) within five working days, notify the agency responsible for the administration of motor vehicle laws of the revocation; and

(4) take possession of the person's driver's license.

*** Sec. 4.** AS 04.16.200(h) is amended to read:

(h) Upon conviction of a class C felony under (b) or (e)(2) or (3) of this section, the court

(1) shall impose a fine of not less than $10,000 and a minimum sentence of imprisonment of

(A) 120 days if the person has **not** been previously convicted [ONCE];

(B) 240 days if the person has been previously convicted **once** [TWO TIMES];

(C) 360 days if the person has been previously convicted **two** [THREE] or more times;

(2) may not

(A) suspend execution of sentence or grant probation except on the condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; and

(ii) pay the minimum fine required under (1) of this subsection; or

(B) suspend imposition of sentence.

*** Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to

read:

APPLICABILITY. (a) AS 04.11.575(d), added by sec. 1 of this Act, applies to offenses committed on or after the effective date of this Act.

(b) AS 04.16.050(c), as amended by sec. 2 of this Act, and AS 04.16.050(d), as amended by sec. 3 of this Act, apply to probation ordered for offenses occurring before, on, or after the effective date of this Act. References to prior or previous suspended impositions of sentences or convictions include suspended impositions of sentences and convictions occurring before, on, or after the effective date of this Act.

(c) AS 04.16.200(h), as amended by sec. 4 of this Act, applies to an offense occurring on or after the effective date of this Act. References to previous convictions in sec. 4 of this Act apply to convictions occurring before, on, or after the effective date of this Act.

* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax

Pages (including cover sheet):

Date: March 24, 2009

To: Leg. Legal

From: Cindy Smith

RE: CS for SB85

I'd like to get a CS for SB85 (GS1009\E) with the attached language (which was provided by the Department of Law).

Because it eliminates the local option provision in \E, there will also need to be a title change.

The other major change to the existing bill adds language regarding hearings.

Please call me if you have any questions! We'd like the CS for discussion next week.

DRAFT

CS FOR SENATE BILL 85

"An Act relating to civil penalties for liquor licensees whose agents or employees furnish alcoholic beverages to a person under 21 years of age; relating to minor consuming; relating to penalties for violations of limitations on possessing, sending shipping, transporting, or bringing alcohol to a local option area; and providing for an effective date."

*** Section 1.** AS 04.11.575 is amended by adding a new subsection to read:

(d) In addition to other penalties imposed by law, if an agent or employee of a licensee is convicted of a violation of AS 04.16.052(5) occurring on the licensed premises of the licensee, the board shall, for a first conviction, issue a warning to the licensee. The warning shall include a description of civil fines for second and subsequent convictions. The board shall impose a civil fine of $1,000 on the licensee for the second and subsequent conviction of an agent or employee of the licensee for violation of AS 04.16.052(5) occurring on the licensed premises of the licensee. In imposing a civil fine under this subsection, second and subsequent convictions include the cumulative number of convictions of all agents or employees of a licensee that are committed on the premises of the licensee that occur within 10 years of the first conviction. A conviction occurs on

the date that sentence is imposed for the offense. A hearing under AS 44.62.330 – 44.62.630 to issue a warning or impose a fine under this section shall be limited to the following questions:

(1) was an agent or employee of the licensee convicted by plea or judicial finding of a violation of AS 04.16.052(5);

(2) did the violation of AS 04.16.052(5) by the agent or employee of the licensee occur on the licensed premises of the licensee;

(3) if the hearing is to consider imposition of a fine, did the violation of AS 04.16.052(5) occur within ten years of the conviction of a prior violation of AS 04.16.052(5).

*** Sec. 2.** AS 04.16.050(c) is amended to read:

(c) A person is guilty of repeat minor consuming or in possession or control if the person was **previously granted a suspended imposition of sentence** [PLACED ON PROBATION] under (b)(1) of this section**, has a prior conviction under (b)(2) of this section,** or has been previously convicted once, and the person violates (a) of this section. Upon conviction in the district court, the court shall

(1) impose a fine of $1,000 and require at least 48 hours of community work;

(2) revoke the person's driver's license for three months;

(3) take possession of the person's driver's license; and

(4) suspend up to $500 of the fine and place the person on probation for up to one year under (e) of this section.

* **Sec. 3.** AS 04.16.050(d) is amended to read:

(d) A person is guilty of habitual minor consuming or in possession or control if the person **has a prior conviction** [WAS PLACED ON PROBATION] under (c) of this section, or has been previously convicted **two or more times** [TWICE], and the person violates (a) of this section. Habitual minor consuming or in possession or control is a class B misdemeanor. Upon conviction, the court may impose an appropriate period of imprisonment and fine and place the person on probation under (e) of this section for one year, or until the person is 21 years of age, whichever is later, and shall

(1) impose at least 96 hours of community work;

(2) revoke the person's driver's license for six months;

(3) within five working days, notify the agency responsible for the administration of motor vehicle laws of the revocation; and

(4) take possession of the person's driver's license.

* **Sec. 4.** AS 04.16.200(h) is amended to read:

(h) Upon conviction of a class C felony under (b) or (e)(2) or (3) of this section, the court

(1) shall impose a fine of not less than $10,000 and a minimum sentence of imprisonment of

(A) 120 days if the person has **not** been previously convicted [ONCE];

(B) 240 days if the person has been previously convicted **once** [TWO TIMES];

(C) 360 days if the person has been previously convicted **two** [THREE] or more times;

(2) may not

(A) suspend execution of sentence or grant probation except on the condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; and

(ii) pay the minimum fine required under (1) of this subsection; or

(B) suspend imposition of sentence.

*** Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Section 1 of this Act applies to offenses committed on or after the effective date of this Act.

(b) Sections 2 and 3 of this Act apply to probation ordered for offenses occurring before, on, or after the effective date of this Act.

(c) Section 4 of this Act applies to an offense occurring on or after the effective date of the applicable section of this Act. References to previous convictions apply to convictions occurring before, on, or after the effective date of this Act.

*** Sec. 6.** This Act takes effect immediately in accordance with AS 01.10.070(c).

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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

Business Manager
Joseph Young
Anchorage

Board of Directors
Angella Long, President
Wasilla
John Lucking, Vice President
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Leo Brandlen, Past President
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Pres. First City Chapter
Matt Betzen, Member
Unalaska
Pres. Aleutian Islands Chapter
Thecla LaLonde, Member
Wrangell
Pres. Wrangell Chapter

February 17, 2009

Honorable Sarah Palin
State of Alaska
PO Box 110001
Juneau, AK 99811-0001

Dear Governor Palin:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for facilitating the introduction of House Bill 91 and Senate Bill 85, relating to bringing alcoholic beverages to a local option area and minor consuming.

The APOA State Board and Legislative Committee reviewed this proposed legislation and unanimously support these bills.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

1395

10.5 liters	distilled	44.1	1 liter = 4.1 cups	44 Cups of whiskey
24 liters	wine	98.4	1 liter = 4.1 cups	98.5 Cups of wine
12 gallons	malt	192	1 Gallon = 16 cups	192 Cups of beer
				334.5 **Cups per Month of Alchol**
				11.15 **8 oz. Cups per Day**

from/Sen Dermanit

Introduced by: Mayor Zulkosky
Vice-Mayor Leinberger
Date: February 10, 2009
Action: Passed
Vote: 5-0

CITY OF BETHEL, ALASKA

Resolution # 09-11

OPPOSING THE COMMITTEE SUBSTITUTE FOR SENATE BILL 85 (CRA) "AN ACT RELATING TO LIMITATION ON POSSESSING, SENDING, SHOPPING, TRANSPORTING, OR BRINGING ALCOHOLIC BEVERAGES TO A LOCAL OPTION AREA AND TO PENALTIES FOR VIOLATION OF HOSE LIMITATIONS; RELATING TO PROBATION FOR MINOR CONSUMING OR IN POSSESSION OR CONTROL OF ALCOHOLIC BEVERAGES; RELATING TO CIVIL FINES FOR LIQUOR LICENSEES WHOSE AGENTS OR EMPLOYEES FURNISH ALCOHOLIC BEVERAGES TO A PERSON UNDER 21 YEARS OF AGE; AND PROVIDING FOR AN EFFECTIVE DATE" AS THEY ARE CURRENTLY WRITTEN

WHEREAS, in 1977 under the provisions of title 4 of the Alaska statutes a majority of the eligible voters within the City of Bethel voted themselves into local option to prohibit the sale of alcoholic beverages within City limits however alcohol could still be purchased in other areas and shipped in;

WHEREAS, the proposed limitations in the new legislation will only drive up the price of bootlegged alcohol and perpetuate the problem; while bootlegging is a major issue in rural Alaska, this is not the best avenue to combat the problem;

WHEREAS, only four of the nineteen communities with "damp" status (Barrow, Kotzebue, Saint Mary's Bethel) will be impacted;

WHEREAS, it is the community's option to regulate the alcohol within their community through a local option referendum, stricter alcohol limitation should also be established by a vote of the people within the communities affected by the change;

WHEREAS, whether it be through limitations on alcohol amounts purchased or possessed, establishing a dry community or opting out of local option completely;

WHEREAS, none of these actions should be taken without the majority of the community's vote, local option should be just that, the option of the local community, allow the people to choose the best method of improvement for their city;

Introduced by: Mayor Zulkosky
Vice-Mayor Leinberger
Date: February 10, 2009
Action: Passed
Vote: 5-0

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Bethel is hereby opposed to the Committee substitute for Senate Bill 85 (CRA); as it should be left up to the respective community to establish additional regulations if desired.

ENACTED THIS 24th DAY OF FEBRUARY 2009 BY A VOTE OF 5 IN FAVOR AND 0 OPPOSED.

Tiffany Zulkosky, Mayor

ATTEST:

Lori Strickler, City Clerk

CS FOR SENATE BILL 85(CRA)
Sectional Analysis

Section 1 amends the law that requires package store liquor licensees who send alcohol to persons living in damp communities to check a statewide database before sending alcohol to a person. Under current law a licensee may send 10 ½ liters of distilled spirits, 24 liters of wine, and 12 gallons of malt beverage to each adult in a damp local option area every month.

This bill would change this provision so that a package store liquor licensee may send the same amount to an individual in a damp local option area once in a two month period.

Section 2 adopts civil penalties for liquor licensees whose agents or employees are convicted of furnishing alcohol to a minor on the licensee's premises. Under current law there are no certain legal consequences for the owner of a bar or liquor store if an employee sells alcohol to a minor. The bill requires Alaska Alcoholic Beverage Control Board to send a warning letter to the licensee the first time the licensee's agent or employee is convicted of furnishing alcohol to a minor on his or her premises. For a second or subsequent conviction by an agent or employee, the ABC board would impose a civil fine of $1,000.

Sections 3 and 4 correct a minor error in legislation adopted last year that reduced the probation period for minors convicted of consuming alcohol. The law addressing minor consuming in Alaska places progressive penalties on minors who consume alcohol. These sections clarify that the penalties imposed for second and third convictions will be imposed on all minors who have the requisite prior conviction or convictions.

Section 5 corrects a provision in legislation enacted last year that intended to adopt mandatory minimum penalties for bootlegging that are similar to the mandatory minimum penalties for drunk driving. Because the definition of prior conviction for bootlegging is different from that for drunk driving, the legislation did not adopt a mandatory minimum for the first time conviction of felony bootlegging. Senate Bill 85 amends the penalties for felony bootlegging so that the penalties are the same as those for felony drunk driving.

Sections 6 and 7 include applicability and effective date provisions.

SENATE BILL 85
Sectional Analysis

Section 1 addresses the amount of alcohol that a person may possess in or send to a damp community, the possession or sending of which would create a rebuttable presumption that it was for the purpose of illegal sale of the alcohol. A damp community is one that has elected to allow possession but not the sale of alcohol in their community.

Current law provides that a person may possess in or send to a damp community 10 ½ liters (or 14 fifths) of distilled spirits; 24 liters (or 32 bottles) of wine; and 12 gallons (about 21 - 12 ounce six packs) of malt beverages each calendar month before giving rise to the rebuttable presumption that the possession or transporting is for the illegal sale of the alcohol.

Section 1 of Senate Bill 85 reduces the amounts that give rise to the rebuttable presumption to three liters (or four fifths) of distilled spirits; 12 liters (or 16 bottles) of wine; and six gallons (about 11 - 12 ounce six packs). A person could possess or transport these amounts each month without giving rise to the rebuttable presumption.

Section 2 amends the law that requires package store liquor licensees who send alcohol to persons living in damp communities to check a statewide database before sending alcohol to a person. The licensee may not send alcohol if the person has already received the amount of alcohol that gives rise to the rebuttable presumptions described in Section 1. Section 2 amends the law to conform to the changes in the presumptive amounts described in Section 1.

Section 3 adopts civil penalties for liquor licensees whose agents or employees are convicted of furnishing alcohol to a minor on the licensee's premises. Under current law there are no certain legal consequences for the owner of a bar or liquor store if an employee sells alcohol to a minor. The bill requires Alaska Alcoholic Beverage Control Board to send a warning letter to the licensee the first time the licensee's agent or employee is convicted of furnishing alcohol to a minor on his or her premises. For a second or subsequent conviction by an agent or employee, the ABC board would impose a civil fine of $1,000.

Sections 4 and 5 correct a minor error in legislation adopted last year that reduced the probation period for minors convicted of consuming alcohol. The law addressing minor consuming in Alaska places progressive penalties on minors who consume alcohol. These sections clarify that the penalties imposed for second and third

convictions will be imposed on all minors who have the requisite prior conviction or convictions.

Section 6 addresses the penalties for bootlegging, that hinge on the amount of alcohol illegally transported into a local option community. Under current law a bootlegger commits a class A misdemeanor (maximum term of incarceration one year) if the amount of alcohol illegally transported is less than 10 ½ liters of distilled spirits, 24 liters of wine, or 12 gallons of malt liquor. The bill would reduce the amount that delineates a class A misdemeanor to less than three liters of distilled spirits, 12 liters of wine, and six gallons of malt liquor.

Section 6 makes conforming changes for felony bootlegging. Bootlegging more than the amounts described above would be a class C felony. A third conviction of bootlegging the lower amounts within 15 years of the two prior convictions is also a class C felony.

Section 7 corrects a provision in legislation enacted last year that intended to adopt mandatory minimum penalties for bootlegging that are similar to the mandatory minimum penalties for drunk driving. Because the definition of prior conviction for bootlegging is different from that for drunk driving, the legislation did not adopt a mandatory minimum for the first time conviction of felony bootlegging. Senate Bill 85 amends the penalties for felony bootlegging so that the penalties are the same as those for felony drunk driving.

Sections 8 and 9 include applicability and effective date provisions.

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

SARAH PALIN, GOVERNOR

Mailing: PO Box 110300
Juneau, AK 99811-0300
Physical: 123 4th Street, Ste 717
Juneau, AK 99801
Phone: (907) 465-3428
Fax: (907) 465-4043

January 27, 2009

Senator Donald Olson, Chair
Senate Community and Regional Affairs Committee
Alaska State Capitol, Room 514
Juneau, Alaska 99801

Re: An act relating to limitation on transporting alcohol to local option communities, minor consuming, and civil fines for licensees.

Dear Chairman Olson:

I am writing to respectfully request that you schedule the referenced bill for hearing in the Senate Community and Regional Affairs Committee at your earliest convenience. The bill builds on the recent alcohol enforcement efforts made by the legislature, by reducing the amount of alcohol a person may possess in or transport to a damp community before raising the presumption that the possession or transportation was for illegal sale of the alcohol. The bill makes conforming changes to the amount of alcohol that package stores may send to damp communities, and the penalties for bootlegging alcohol.

The bill also would impose civil penalties on a liquor licensee whose agents or employees are convicted of furnishing alcohol to a minor on the licensee's premises. For a first conviction, the ABC Board would send a warning letter to the licensee. For second and subsequent convictions, the Board would impose a civil fine of $1,000. Most liquor licensees are very responsible in emphasizing the importance of refusing to sell alcohol to minors. For the few that are not, this would encourage them to stress the importance of the law to their employees and agents.

Last, the bill makes two corrections in legislation adopted last year. The legislation that changed the probation period for minor consuming had a minor error. Second, the legislation that adopted mandatory minimum penalties for bootlegging needs amendment to conform to the mandatory minimum penalties for drunk driving.

In support of this bill we plan to have witnesses from the Division of Behavioral Health, the ABC Board, and a participant in the Rural Justice Commission.

Thank you for your consideration of this request.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By: Richard A. Svobodny
Deputy Attorney General

RAS:ADC: sf

SB 92

Alaska State Legislature

Senate
Health & Social
Services
Committee
Chair
•
Senate
Education Committee
Vice - Chair

Legislative Council
Vice - Chair
•
Senate
Transportation
Committee
•
Senate
Labor & Commerce
Committee

Senator_Bettye_Davis@legis.state.ak.us
http://www.aksenate.org

Senate Judiciary Committee: March 12, 2010

SB 92: The National Popular Vote is Good For Alaska

1. The National Popular Vote is Not Only Constitutional, but Employs the Historically Precedented Way of Changing the Method of Electing the President

The U.S. Constitution says "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors...."

The U.S. Supreme Court has repeatedly referred to this unqualified grant of state power as "exclusive" and "plenary."

The winner-take-all rule (namely, awarding all of a state's electoral votes to the candidate who receives the most popular votes in each individual state) is not contained in the U.S. Constitution. Only three states used it in the nation's first presidential election in 1789.

Nearly all major changes U.S. presidential elections have been initiated and implemented at the state level — not by action at the federal level.

For example, there is nothing in the Constitution that says that the people may vote for President. In 1789, only five states

let the people vote for President (while the state legislature or the governor and his cabinet cast the state's electoral votes in the other states). The states changed this, one-by-one, until, by 1880, the people in every state were able to vote for President.

Permitting the people to vote for President was not an "end run" around the Constitution, but, instead, an exercise of a power that the Constitution explicitly gave to state legislatures. We have not encountered a single person who argues that the state legislatures did anything improper, inappropriate, or unconstitutional when they made this most fundamental change in the way the President is elected.

Similarly, elimination of wealth qualifications to vote (which limited voting to about 3% of the population in 1789) was accomplished on a state-by-state basis.

Woman acquired the right to vote on a state-by-state basis over a 50-year period beginning in 1869. After 30 of the 48 states had already given women the right to vote, a federal constitutional amendment extended that policy to the remainder of the country.

For additional information, see section 10.1 of the book, *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote.*

2. National Popular Vote is Especially Advantageous for Low-Population States Such as Alaska

Low-population states (such as Alaska) are the most disadvantaged group of states under the current system of electing the President.

The reason is that small states tend to be politically homogeneous, so 12 of the 13 smallest states are one-party

states in presidential elections. In the six presidential elections since 1988, six of the 13 states with three or four electoral votes have regularly gone Republican (Alaska, Idaho, Montana, Wyoming, North Dakota, and South Dakota). Six others have regularly gone Democratic (Hawaii, Vermont, Maine, Rhode Island, Delaware, and the District of Columbia).

Under the winner-take-all rule (i.e., awarding all of a state's electoral votes to the candidate who receives the most popular votes in each state), candidates have no reason to poll, visit, advertise, organize, or pay attention to issues concerning states where they are comfortably ahead or hopelessly behind. Instead, candidates concentrate their attention on a small handful of closely divided battleground states. In 2008, candidates concentrated over two-thirds of their campaign events and advertising money in just states, and 98% in just 15 states.

Alaska and the other small states are ignored in presidential elections not because they are small, but because the winner-take-all rule makes them irrelevant.

The 12 smallest non-competitive states have a combined population of 11.4 million. Coincidentally, Ohio has 11.4 million people. Because of the bonus of two electoral votes that every state receives, the 12 small states have 40 electoral votes. Ohio has 20 electoral votes. However, political power does not arise from the number of electoral votes that a state possesses, but, instead, from whether the state is a closely divided battleground state. In 2008, Ohio received 62 of the 300 post-convention visits (and corresponding amounts of money) whereas the 12 small states together received only 2 visits. The National Popular Vote bill would make a vote cast in Alaska as important as a vote cast in Ohio.

The winner-take-all rule is an especially bad deal for small red states. In 2004, John Kerry won 21 electoral votes from his 444,115-vote lead in the six non-competitive Democratic small states, whereas George W. Bush won only 19 electoral votes from his 650,421-vote lead in the six non-competitive Republican small states. The reason is that the small red states are redder than the blue states are blue. In 2004, the six small red states averaged 65% Republican whereas the Democrats carried three of their six small states with a slender 54% margin, and two more with only 60%.

The National Popular Vote bill is law in Hawaii. It has passed six state legislative chambers in Delaware, Maine, Rhode Island, and Vermont.

For additional information, see section 10.2 of the book, *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote.*

3. The National Popular Vote Bill Does Not Stifle Alaska's Voice, But Instead Would Give Alaska Voters their Rightful Voice in Presidential Elections

The purpose of a presidential election is to elect someone to serve for four years as the nation's chief executive — not to send a group of unknown loyal party activists to a half-hour meeting in Juneau in mid-December for the ceremonial purpose of casting the state's electoral votes.

At the present time, presidential candidates ignore Alaska voters and Alaska issues Alaska because of the winner-take-all rule (i.e., awarding all of a state's electoral votes to the candidate who receives the most popular votes in each state). Under the current winner-take-all system, candidates only pay attention to issues concerning states where they are able to win

or lose electoral votes. Neither party currently has anything to gain or lose in Alaska in a presidential campaign.

The National Popular Vote bill provides a way to make a vote in Alaska as valuable as a vote in a closely divided battleground state such as Ohio or New Hampshire. Tiny New Hampshire, for example, received 12 of the 300 post-convention visits from the 2008 candidates, while12 other non-competitive small states received virtually no attention.

The bill accomplishes this goal by guaranteeing enough votes in the Electoral College (at least 270 of 538) to the candidate who receives the most popular votes in all 50 states (and DC).

The essence of a nationwide popular vote for President is that the winner would be determined by the popular vote of the people in all 50 states — not by the separate state-by-state outcomes.

Ultimately, the choice is whether it is more important for the winner in a particular state to receive the state's electoral votes or for the winner of the entire country to win the White House.

70% of Alaska voters in a 2010 poll agreed that that the President of the United States should be the candidate who receives the most popular votes in all 50 states. In Utah (where support was also 70%), we asked an additional question, namely

> "Do you think it more important that a state's electoral votes be cast for the presidential candidate who receives the most popular votes in that state, or is it more important to guarantee that the candidate who receives the most popular votes in all 50 states becomes president?"

When asked this question, 66% Utah voters supported a national popular vote.

When a voter watches presidential election returns on election night, they are, first and foremost, interested in finding out their candidate won the Presidency. The question of whether their candidate won their state, county, city, or precinct is a secondary concern.

A McCain voter would certainly prefer to see John McCain in the White House, as opposed to seeing three Republican party activists travel to Juneau in mid-December to perform the ceremonial function of casting Alaska's three electoral votes for McCain.

4. There is No Evidence that Ordinary Plurality Voting Creates a Proliferation of Candidates or Permits Candidates to Win with Small Percentages (Such as 15%) of the Vote

Based on actual historical evidence, there is far more fragmentation of the vote under the current state-by-state winner-take-all system of electing the President than in ordinary elections in which the winner is the candidate who receives the most popular votes.

Under the current state-by-state winner-take-all system of electing the President (in which the candidate who receives a plurality of the popular vote wins all of the state's electoral votes), minor-party candidates have significantly affected the outcome in 40% (6 out of 15) of the presidential elections in the past 60 years. Specifically, minor-party candidates affected the outcome in the 1948, 1968, 1980, 1992, 1996, and 2000 presidential elections. Segregationists such as Strom Thurmond (1948) and George Wallace (1968) won 39 and 46 electoral votes, respectively. Candidates such as John Anderson (1980), Ross Perot (1992 and 1996), and Ralph Nader (2000) managed to affect the national outcome by switching electoral votes in

numerous individual states. The reason that the current system has so frequently encouraged minor-party candidacies is that a third-party candidate has 51 separate opportunities to shop around for a particular state that he might shift from one major party to another or win outright.

In contrast, the winning candidate in 91% of the 905 gubernatorial elections in the same 60-year period received an absolute majority of the votes. The winning candidate received less than 45% of the popular vote in only 2% of the elections and received less than 40% in only 1% of the elections. No winning candidate received less than 35% of the popular vote.

Ordinary plurality voting rewards the formation of broad coalitions in which various groups and interests join together in order to win the most votes. The reason is that a vote cast for a splinter candidate generally produces the politically counter-productive effect of helping the major-party candidate whose views are diametrically opposite to those of the voter. For example, votes cast for Bob Barr (the Libertarian Party candidate) in 2008 made it easier for Barack Obama to win North Carolina, and votes cast for Ralph Nader (the Green Party candidate) in 2000 made it easier for George W. Bush to win Florida and New Hampshire.

It should be noted that, under the current system, no state requires that a presidential candidate receive an absolute majority of the popular votes in order to receive all of its electoral votes. Moreover, there is no requirement, under the current system, that a candidate receive an absolute majority of the popular vote nationwide in order to become President. For example, Truman (1948), Kennedy (1960), Nixon (1968), or Clinton (1992 and 1996) were elected with less than an absolute majority of the popular votes.

5. Candidates Would Campaign in Alaska Under a National Popular Vote Because Every Vote Would Matter

It is sometimes argued that some states are too small to attract the attention of presidential candidates. However, the reality is that candidates always go after every vote that matters.

For example, even though the 2nd congressional district of Nebraska contains a tiny percentage of the nation's population, both parties paid attention to the 2nd district because Nebraska awards electoral votes by congressional district, and the 2nd district was closely divided. Sarah Palin visited the 2nd district. Meanwhile, neither campaign paid any attention to Nebraska's 1st and 3rd congressional districts (or to the adjacent states of Kansas, Wyoming, and South Dakota). When votes matter, candidates vigorously solicit them.

It is sometimes argued that big cities would control a national popular election, using examples such as Los Angeles and Chicago. The fact is that a candidate cannot even win California by concentrating on Los Angeles. Ronald Reagan, George Deukmejian, Pete Wilson, and Arnold Schwarzenegger never came close to carrying Los Angeles (or San Francisco, San Jose, or Oakland). If big cities controlled elections, John Kerry (who carried Cleveland) would have won the White House by carrying Ohio in 2004 and Martha Coakley (who carried Boston) would have been elected Senator from Massachusetts.

It is also sometimes argued that candidates would find it more efficient to concentrate on big cities.

However, the facts are that candidates can get considerably more "bang for the buck" by campaigning in low-population areas because TV advertising (the biggest component of

campaign costs) is premium-priced in high-population areas. It is, for example, considerably more expensive to buy television or radio time to reach Ohio's 11 million people than to buy television or radio time to reach the 11 million people who live in the 12 smallest non-competitive states, namely the six "red" states of Alaska, Montana, Idaho, Wyoming, North Dakota, and South Dakota and the six "blue" states of Hawaii, Maine, Vermont, Rhode Island, Delaware, and the District of Columbia.

It should be noted that the populations of the 50 largest cities together constitute only 19% of the nation's population. Arlington, Texas is the nation's 50th largest city (with a population of about 350,000).

Further evidence of the way a nationwide presidential campaign would be run comes from the way that national advertisers conduct nationwide sales campaigns. National advertisers seek out customers in small, medium-sized, and large towns of every small, medium-sized, and large state. National advertisers do not advertise only in big cities. Instead, they go after every potential customer, regardless of where the customer is located.

People are left out of presidential campaigns, under the current system, because of the state-by-state winner-take-all rule. Candidates have no reason to pay any attention to voters who do not live in closely divided battleground states. Under a national popular vote, every vote would be equal, and every vote would matter.

6. Myths about Recounts

Recounts would be far less likely to occur under a national popular vote system than under the current state-by-state

winner-take-all system (i.e., awarding all of a state's electoral votes to the candidate who receives the most popular votes in each separate state).

The reason is that, under the current winner-take-all system, there are 51 separate opportunities for recounts in every presidential election. Thus, our nation's 56 presidential elections have really been 2,084 separate state-level elections. There have been five litigated counts in the nation's 56 presidential elections. The current system has repeatedly created artificial crises in which the vote has been extremely close in particular states, while not close on a nationwide basis.

The 2000 presidential election was an artificial crisis created because of Bush's lead of 537 popular votes in Florida. Given the miniscule number of votes that are changed by a typical recount (averaging only 274 votes), no one would have requested a recount in 2000 if Gore's 537,179-vote nationwide margin had controlled the outcome.

There was a recount, a court case, and a reversal of the original outcome in Hawaii in 1960. There were disputed statewide counts in the 19th Century in Louisiana, South Carolina, and Florida.

Based on a recent study, the probability of a recount is 1 in 332 elections (23 recounts in 7,645 elections). The average change in the margin of victory as a result of a recount was a mere 274 votes. The original outcome remained unchanged in over 90% of the recounts.

A national popular vote would reduce the probability of a recount from five instances in 56 presidential elections to one instance in 332 elections (that is, once in 1,328 years). In fact, the reduction would be even greater because a close result is less likely to occur as the size of the jurisdiction increases.

If anyone is genuinely concerned about minimizing the possibility of recounts, then a single national pool of votes provides a way to drastically reduce the likelihood of recounts and eliminate the artificial crises that are regularly produced by the current state-level winner-take-all system.

In terms of logistics, all states routinely make arrangements for a recount in advance of every election. A recount is a recognized contingency that is occasionally required in the course of conducting elections, and recounts do indeed occur about once in every 332 elections. The personnel and resources necessary to conduct a recount are indigenous to each state. A state's ability to conduct a recount inside its own borders is unrelated to whether a recount is occurring in another state.

In terms of certainty, existing federal law specifies that each state's own "final determination" of its presidential election returns is "conclusive" (if done in a timely manner and in accordance with laws in existence prior to Election Day). The National Popular Vote compact is directly patterned after this existing federal law and requires each state to treat as "conclusive" each other state's "final determination" of its vote for President. No state will get involved in judging the election returns of another state.

Of course, the possibility of recounts should not even be a consideration in debating the merits of a national popular vote. No one has ever suggested that the possibility of a recount constitutes a valid reason why state governors or U.S. Senators, for example, should not be elected by a popular vote.

For additional information, see section 10.3 of the book, *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote.*

Cindy Smith

From: Hardaway, Robert [rhardawa@law.du.edu]
Sent: Thursday, February 18, 2010 4:07 PM
To: Sen. Hollis French
Subject: Professor Hardaway's 10 questions for Koza supporters
Attachments: SKMBT_60110021816530.pdf

To: Senator Hollis

From: Robert Hardaway, Professor of Law, University of Denver Sturm College of Law, and author of "The Electoral College and the Constitution: The Case for Preserving Federalism (Praeger Press)

Re: Senate Bill 92 imposing the Koze electoral scheme

Attached please find my remarks in opposition to the Senate Bill 92 which would impose the Koza electoral scheme on the current American electoral process.

In addition, I would ask that the following **10 questions** be posed to those who support the Koza scheme and that **their answers be recorded for the record.**

Under the Koza scheme:

1. How would Alaska cast it's electoral votes in an election in which the popular vote as tabulated by the media differed from the popular vote as tabulated by the Congressional Quarterly? [For example, in 1960 the Alabama Democratic electoral college slate included five electors pledged to Byrd and eleven to Kennedy. The media allocated all the popular votes cast in Alabama for that electoral slate to Kennedy, thereby concluding the Kennedy won the national popular vote; the Congressional Quarterly, however, allocated only five elevenths of the popular vote for the Democratic electoral slate to Kennedy, thereby concluding that Nixon won the national popular vote.]

2. Would Alaska be bound to accept the popular vote tallies from states whose voting standards violated the public policy of Alaska (such as allowing felons or illegal aliens to vote, or inhibiting voting by members of minority groups)?

3. Does the Koza scheme create an national office or officer which would tabulate a final tally of the national popular vote? If not, would that task be delegated to the media? If so, to which particular newspapers or television stations would that task be delegated? Would a tabulation by selected organs of the media confer any legitimacy on whomever the media chose to designate as the popular vote winner, particulary if federal entities such as

the Congressional Quarterly disagreed with the manner in which the popular votes reported by each state were tabulated (as they did in 1960)?

4. If the voters of Alaska were to overwhelmingly cast its votes in favor of the electors pledged to a Democratic candidate, which officer in Alaska would be empowered to overule the will of the people of Alaska and dictate that Alaska cast its electoral votes instead to the popular vote loser in Alaska?

5. If Alaska state joined in a Koza conspiracy with other states but later decided to withdraw from that conspiracy, what national organ, if any, would be empowered to enforce the original terms of that conspiracy, and what sanctions would that organ be empowered to administer upon a state which wished to withdraw on public policy grounds?

6. If political parties proliferate (as they inevitably do under plebscite schemes currently imposed in Russia and a number of South American countries) resulting in no one candidate receiving a substantial plurality, what provision is there in the Koza scheme for a run-off? If none, would supporters of the Koza scheme support the election of a candidate receiving only, say, as little as 15% of the popular vote? Would they maintain that such an election was "democratic"?

7. If Koza scheme supporters are willing are willing to abrogate the "Grand Compromise" that brought the nation together at the Constitutional Convention and establish the fundamental foundation of federalism (by guaranteeing all states representation in the Electoral College based on equal representation in the Senate) why do they not also, in the name of "one man one vote" take the more logical first step in dismantling federalism by proposing to abolish the U.S. Senate, surely the more violative of the "one man one vote" principle?

8. When in 1974 the Labor party lost the "popular vote" but nevertheless elected more members to parliament (the British version of the Electoral College) and were thereby able to form the government, would Koza supporters claim that the British election was "undemocratic"?

9. If a popular vote tally was very close (as it was in 1960), would a "recount" be limited to just one state (as it was in 2000), or would recounts be required in every state in over 248,000 voting districts? If such recounts in 50 different states generated lawsuits in all 50 states, thus delaying a final national recount by up to a year (the length of time a recount it has been estimate that a national recount would have taken in 1960), would that be an acceptable outcome under the Koza scheme?

10. What if close popular vote tallies in some states triggered recounts in those states under those states' law, but did not trigger recounts in many other states where the popular vote in those states was not close, how could a national recount even be administered under the Koza scheme with only a few states participating in the recount? What provisions are there in the Koza scheme for one state to force another state to conduct a recount in violation of the other states' recount laws?

From: law_407@law.du.edu [mailto:law_407@law.du.edu]
Sent: Thursday, February 18, 2010 4:54 PM
To: Hardaway, Robert
Subject: Message from KMBT_601

The proposed Compact among states to establish direct election of the President does:

1. **Violate Section 10 of Article I of the U.S. Constitution which specifically states that "*no state shall, without the consent of Congress...enter into any Agreement or Compact with another state...*"**

2. **Undermine American federalism, and constitute a cynical scheme to illegally subvert Section I, Article II of the "U.S. Constitution which guarantees to *every* state, not just a favored eleven, a number of electors "*equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress:...*"**

3. **Cynically by-pass the established amending process set forth in Article V, including the approval of "*two thirds of both houses...and the Legislatures of three fourths of the several states...*" of any proposed amendment.**

4. **Diminish the political influence of racial and ethnic minorities in the United States in presidential elections** [Ref: testimony of Vernon Jordan, president of the National Urban League at 1979 Congressional Hearings: *"Take away the Electoral College and the importance of being black melts away. Blacks, instead of being crucial to victory in major states, simply become 10% of the electorate, with reduced impact"]*

5. **Subvert the "Grand Compromise" entered into by the Founding Fathers at the Constitutional Convention as the basis for federalism and our national union, the two prongs of which were: 1) the equal representation of each state in the Senate along with popular representation in the House, and 2) a number of presidential electors based on the number of representatives to which they were entitled in both the Senate and the House** [Ref: statement of Senator John F. Kennedy in 1956 in opposition to a Republican proposal to abolish the Electoral College: *"It is not only the unit vote for the presidency we are talking about, but a whole solar system of governmental power. If it is proposed to change the balance of power of one of the elements of the solar system, it is necessary to consider the others." (In other words, abolishing the U.S. Senate).]*

6. **Result in the chronic election of candidates who are supported by only a minority of the popular electorate by weakening the two party system and encouraging encourage splinter parties, eventually generating into a prolonged run-off system under which two minor party candidates enjoying little overall popular support can win the presidency despite being opposed by the vast majority of the electorate.**[Ref: note the 1993 Russian multi-party "popular" vote election in which the electorate came within a whisker of being presented with a "runoff" choice between Fascists and Communists, despite the fact that 80% of the electoral opposed both].

7. **Compromise the intention of the Founding Fathers that national support for a presidential candidate be broad as well as deep. The need to create concurrent pluralities throughout the United States would be eliminated and replaced by a myopic focus on population centers largely found in coastal areas.**

8. **Doom the United States to a destabilizing electoral crisis in *every* election in which the popular vote is close. When the electoral vote is close, as in 2000 (but which occurs only once every hundred years), the recount is isolated to one state. In a so-called "popular vote" election, a recount would be required in *every one* of 170,000 voting precincts and hamlets nationwide, enormously magnifying crises such as that endured in 2000. After the inevitable multiple lawsuits were filed, every recount would doubtlessly show a different result.**

9. Wipe out the influence of "swing" states such as Colorado in the presidential election contest, as well as require Colorado to cast its electoral votes in direct opposition to the will expressed by the Colorado voters when the national popular vote plurality was different from that in Colorado.

10. Violate the Colorado Constitution (Schedule Provisions, Sec. 20) which mandates that "The general assembly shall provide that after the year eighteen hundred and seventy-six the electors of the electoral college shall be chosen by direct vote of the people."

TOP SEVEN MYTHS UPON WHICH THE KOZA SCHEME IS BASED

Myth 1. *The Koza scheme is constitutionally sound.*

Facts: The Art I, Section 10(3), specifically forbids any from entering "into any agreement or compact with another state" without the consent of Congress. Although the Supreme Court has upheld narrowly drawn agreements resolving *actual disputes* between states, such as over water rights, etc., it has NEVER upheld any scheme, compact, or agreement or conspiracy between the states which would reformulate federalism, the structure of the federal government, or the constitutional process for electing a president.

Myth 2: Without a constitutional amendment or federal legislation appointing a national officer with responsibility for conducting a tally of popular votes cast nationwide, it would be possible for a "chief election officer" to conduct a national tally of popular votes by delegating the task to newspapers or other state election officials.

FACTS: Without a constitutional amendment or federal legislation it would be impossible for any given state election official to conduct a "national tally" of popular votes, particular the popular votes in states which only offer electoral slates including electors pledged to more than one candidate (as was the case in Alabama in 1960).

MYTH 3. *In the case of a presidential election in which the popular vote is very close and a recount were demanded, there is a way that a Koza state could force a non-Koza state to conduct a recount, even if such a recount were contrary to the law in the non-Koza state.*

FACTS: There exists no provision in the U.S. Constitution whereby one state can force another state to violate its own election laws or to otherwise enforce any agreement, compact, or conspiracy.

MYTH 4. *The two party system would continue under a Koza Scheme.*

FACTS: One need only look at elections in countries which have neither an Electoral College of parliamentary (the functional equivalent of an Electoral College) to see that parties proliferate in their absence. (See, e.g. the 'popular vote" elections in Russia, Mexico, etc.) As a socialist testified at the 1977 congressional hearings on abolishing the Electoral College: "We thing we "(splinter) parties had in common was an absolute detestation of the Electoral College...We always started with 5 to 6 per cent who said they were for Norman Thomas.. By election day was that there was no chance for victory in any state..."

MYTH 5. *Under a Koza scheme, presidential campaigns would be more likely to campaign in under populated states.*

FACTS: Under the Electoral College, candidates have an incentive to visit small states since, as in 2000, even the smallest states have electoral votes which can determine the winner in an election. Under the Koza scheme, the incentive would be to campaign only in the areas of the greatest concentration of population in order to win the most popular votes.

MYTH 6. *Elections in which the popular vote is close occus on average only once in "362" years, so there need be no concern about recounts would be conducted under Koza (which has no provision at all for a nationwide recount). In 1960, Kennedy "won" the popular vote by 118,000 votes.*

FACTS: Kennedy's popular vote margin was reported by the media based on counting all of the popular votes cast in Alabama for both unpledged electors and electors pledged in to Byrd. According to the Congressional Quarterly, however, only five elevenths of the popular votes cast for Democratic electors in Alabama should have been allocated to Kennedy. Under the CQ tally, Nixon won the national popular vote by a handful of popular votes. `As Pierce and Longley's massive study of American elections observed: "It is impossible to determine what Kennedy's voter plurality—*if it existed at all*—really was."(Emphasis added).

MYTH 7. *Under the Electoral College, the "wrong winner" was elected 7% of the time. ("Wrong" being defined as a candidate who won the electoral vote, but not the popular vote).*

FACTS: In any parliamentary or Republican democracy, it is possible that the popular vote does not tally precisely with the parliamentary or electoral vote. In 1974 in England, for example, Labor lost the popular vote but gained three more seats in parliament and was able to form the government. Was the labor election "wrong"? A much better example of a "wrong" winner would be in countries such as Russian and Mexico, where the proliferation of parties results in run-off elections between minority candidates who are opposed by the vast majority of the people.

The only elections in which the popular vote did not match the electoral vote were in 1888 and 2000. (The election of 1876 was decided by a "bi-partisan electoral commission" compromise without regard to either the electoral or the popular vote). (Perhaps the Koza myth makers are counting the election of 1960, though this seems unlikely given that they have chosen to adopt the media's tally of popular votes instead of the tally conducted by the Congressional Quarterly.)

STATE OF ALASKA
SENATE JUDICIARY COMMITTEE

Hearing on SB 92:
An Act ratifying an interstate compact to elect the
President and Vice-President of the United States by national popular vote
February 19, 2010

Submitted By: Tara Ross
Author of *Enlightened Democracy: The Case for the Electoral College*

Full Testimony

The bill before you, SB 92, represents the latest attempt to eliminate America's unique and successful presidential system. Abolishing the Electoral College would be unhealthy for the country and especially detrimental to small states such as Alaska. But eliminating the Electoral College through this roundabout manner, without going through a formal constitutional amendment process, carries its own special dangers.

Proponents claim the National Popular Vote plan outlined in SB 92 will ensure that all voters receive equal attention because each vote will be weighted equally. But the truth is the precise opposite. NPV will lessen the need of presidential candidates to obtain the support of voters in rural areas and in less densely populated states such as Alaska.

Problems Created by NPV

The plan proposed by NPV is fraught with difficulties—some logistical, some philosophical. I will discuss these latter issues—arguments "for" and "against" the Electoral College—in a moment. But the logistical difficulties of changing the presidential election process without a constitutional amendment need to be fully explored.

The compact contemplated by SB 92 would give the presidency to the candidate winning the "largest national popular vote total." Note that it says the "*largest*" total. It is not looking for a majority winner. It is not even looking for a minimum plurality. Thus, a candidate could win with only 15 percent of votes nationwide. But it gets worse. Under this scheme, Alaska could be forced to award its entire slate of electors to a candidate who was not on its own ballot. What if voters in New York and Massachusetts throw all their weight behind one regional candidate? That person may not be on the ballot in a state like Alaska, but all 3 electors from Alaska would be given to that Northeastern regional candidate if that candidate obtains any winning (albeit small) plurality.

Alaska probably did not nominate a slate of electors for the third-party candidate in this example. But don't worry. NPV's compact allows the winning candidate to select his own

slate. Perhaps he would select three New Yorkers to represent Alaska in the Electoral College vote. He'd hate to be undermined by a "faithless" Alaska elector, determined to vote for the choice of Alaskan voters.

There are other inconsistencies among states' ballots that would skew the election results. Some states allow felons to vote. States such as Alaska do not. States differ in their requirements for ballot qualification. Inevitably, Alaska would have to abide by national election results derived from policies with which it disagrees.

I wish I were done, but I am not. It gets even worse. States have different criteria for what does (or does not) trigger recounts within their borders. These differences could cause a whole host of problems. What if the national total is close—close enough to warrant a recount—but a recount can't be conducted because the margins in individual states were not close? Or perhaps recounts are conducted, but only in two or three states, each with a different idea of how to count a hanging chad. Perhaps a fourth state would see what is going on and choose to conduct a recount that its statutes previously deemed optional. Maybe this fourth state has a different definition of "hanging chad," and its sole goal is to counteract the efforts of the other states.

Such a state of affairs invites chaos, litigation, and confusion each and every election year. Some voters will be disenfranchised by the widely differing ideas of how to count a vote.

What if such problems caused one state to pull out of the compact in violation of its terms? How would compliance be enforced? How much litigation would ensue before the presidential election could be resolved?

Formally eliminating the Electoral College through a constitutional amendment would be unhealthy for the country. But NPV's efforts to skirt the constitutional amendment process altogether would create added difficulties. These logistical nightmares could haunt the country each and every presidential election year.

The Benefits of the Electoral College

I do not mean to imply that the only problem with NPV is its logistical difficulties. Eliminating the Electoral College would do serious harm to a country as diverse as our own. The system provides our country with many great benefits that tend to remain unnoticed and thus unappreciated by most Americans.

The history of the Electoral College must be understood if its benefits are to be appreciated. The delegates to the Constitutional Constitution had to reconcile two seemingly irreconcilable goals: They wanted the people to govern themselves, but they also wanted to ensure that minority interests could not be completely ignored by the majority. A pure democracy would not accomplish their objective. In a pure democracy, 51 percent of the

people rule the other 49 percent all the time, without exception. If we lived in a pure democracy, imagine what could happen in the wake of an event like 9/11. A bare majority could enact any law it desired, even if that law was tyrannical, racist, or penalized some people for their religious beliefs.

The Founders decided not to create a pure democracy. Instead, they created a Constitution that tempered its democratic aspects with republican and federalist characteristics. Constitutional safeguards such as the Senate (with its one state, one vote representation), the presidential veto, supermajority requirements to amend the Constitution, and the Electoral College allow the majority to rule, but only while they act reasonably. Minority political interests, particularly the small states, are protected.

The Electoral College provides three benefits that still protect Americans today.

The Benefits of Federalism

Electoral College opponents argue that presidential elections are undemocratic. They are wrong. America holds 51 purely democratic elections each presidential election year (one in each state and one in D.C.). Such a process combines democracy and federalism into one process. The result is that candidates can't win unless they build nationwide support.

Obama can't rely solely on big cities in California. Republicans can't rely solely on Texas. They must win simultaneous, concurrent majorities nationwide. They can't achieve those victories unless they reach out to a wide variety of voters. They will fail if they rely upon isolated pockets of support in one region or among voters in one special interest group.

Many dispute that our system creates national coalition-building, arguing that it instead causes a disproportionate focus on mid-sized "swing" states. These arguments appear true if we focus on one or a handful of election years in isolation. But if we look at the states' full histories of voting, we see that the identity of "swing" and "safe" states changes all the time. West Virginia, for example, was considered a safe Democrat state for years. Since 2000, however, it has been voting Republican. Likewise, California is often viewed as irreversibly Democrat, but it voted for Republican candidate George H.W. Bush as recently as 1988. Texas used to be as undeniably Democrat as it is Republican today. States such as Georgia, Kentucky, and Louisiana all voted for Bill Clinton in the 1990s, but they were considered very safe Republican states in 2008.

Ultimately, the Electoral College ensures that the political parties must reach out to all the states. As a matter of history, no political party has ever been able to ignore any state for too long without feeling the ramifications at the polls.

Moderation and Compromise

The most likely consequence of a change to a direct popular vote is the breakdown of the two-party system. Today, third-party candidates do not receive much support. In a direct

popular election, everything changes. A vote for Ross Perot or Ralph Nader is no longer "wasted," and the number of presidential candidates would increase drastically. Voters would fracture their votes across many candidates. The result will be lower vote totals per candidate and an increased likelihood that two or more candidates will have close popular vote totals. Recounts would proliferate. Worse, extremist candidates could more easily sway an election, because no candidate is required to obtain majority support. This problem is exacerbated by the fact that SB 92 does not include a run-off provision. Electoral votes are given to the winner of any plurality—even a very small one.

NPV proponents argue that the President should have the support of most Americans. But in real life, "most" Americans will never agree on their ideal candidate. Individuals' opinions differ too greatly. Given the general inability to obtain majority consensus (or even the consensus of a large plurality), the Electoral College provides the country with the next best alternative. Electing Presidents by states' electoral votes, rather than individuals' votes, creates a method of electing a President who is a good compromise candidate for most Americans, as represented by their states. The Electoral College requires moderation, compromise, and coalition-building from any candidate before he can be successful.

Stability and Certainty in Elections.

The Electoral College encourages stability and certainty in our political system. Events such as those that occurred in 2000 are rare. The Electoral College typically produces quick and undisputed election outcomes for two reasons: First, the system (in combination with the winner-take-all rule) tends to magnify the margin of victory, giving the victor a certain and demonstrable election outcome. Such certainty couldn't be provided by a direct popular election. Popular votes are often close, and these close votes would result in constant litigation and recounts. Second, the system controls the impact of fraud and error. In part, this is because it is difficult to predict where stolen votes will make a difference to the national outcome. But if one person can identify a problematic state (think Ohio in 2004), then, in all likelihood, everyone knows and that area is closely watched. It becomes harder to steal votes. To the degree that fraud and errors do occur, the Electoral College makes it possible to isolate the problem to one or a handful of states. The country is given a clear set of problems to resolve one way or another before moving on to a definitive election outcome.

Conclusion

The Electoral College is an important safeguard in our constitutional system of checks and balances, and it is critical to the success of our nation's republican democracy. I urge you to protect the Electoral College by voting "no" on SB 92.

Cindy Smith

From: Sen. Hollis French
Sent: Friday, February 19, 2010 11:33 AM
To: Cindy Smith
Subject: FW: SB 92

-KP

----Original Message----
From: Deborah Brollini [mailto:deb_brollini@yahoo.com]
Sent: Friday, February 19, 2010 4:11 AM
To: Sen. Lesil McGuire
Cc: Sen. Hollis French; Sen. Bettye Davis
Subject: SB 92

Senator McGuire,

I am writing to ask you to support the National Popular Vote bill (SB92), currently under consideration by the Senate Judiciary Committee.
It is plainly obvious that the candidate who gets the most votes should become President.

This is not only fairer than the current way, but it would make candidates more likely to visit Alaska during the election cycle.

Deborah Brollini
209 Dailey Avenue, #10
Anchorage, AK 99515
(907) 345-3320

Cindy Smith

From: Sen. Hollis French
Sent: Friday, February 19, 2010 11:34 AM
To: Cindy Smith
Subject: FW: Current Bill

Importance: High

-KP

From: Jennifer Stackhouse [mailto:jstackhouse@acsalaska.net]
Sent: Thursday, February 18, 2010 4:48 PM
To: Sen. Hollis French
Cc: Sen. Bettye Davis
Subject: Current Bill
Importance: High

Hollis,

I've read about the plan to elect the President by a nationwide popular vote (SB92), and I think it is an idea that has demonstrated its necessity since the 2000 election cycle. This is the way we fill other offices. The Electoral College method is a thing of the past.

I'm pleased to know that you support this bill and look forward to moving this bill moving out of committee.

Thank you for considering my opinion.

Jennifer Stackhouse

Cindy Smith

From: Sen. Hollis French
Sent: Friday, February 19, 2010 11:35 AM
To: Cindy Smith
Subject: FW: NO ELECTORAL COLLEGE

-KP

From: Kaye Laughlin [mailto:laughlin.kaye11@gmail.com]
Sent: Thursday, February 18, 2010 3:07 PM
To: Sen. Hollis French
Subject: NO ELECTORAL COLLEGE

Dear Senator French,

I agree with you that the person with the most votes gets to be president of the U.S. I was copied on an email to you from Grant Hunter (don't know who he is). I disagree with him and **I SUPPORT YOUR INTENT**. We are a literate society and do not need and do not want the electoral college casting determining votes for us.

--
Kaye Laughlin
10719 Tradition Avenue
Eagle River, AK 99577

Cindy Smith

From: Sen. Hollis French
Sent: Friday, February 19, 2010 11:36 AM
To: Cindy Smith
Subject: FW: Senate Bill 92

-KP

From: Erma Doggett [mailto:edoggett@gci.net]
Sent: Wednesday, February 17, 2010 8:04 PM
To: Sen. Hollis French
Cc: Sen. Bill Wielechowski; Sen. John Coghill; Sen. Lesil McGuire
Subject: Senate Bill 92

The brief discussion I heard regarding SB 92 causes me to wonder why anyone would even consider wasting time on such legislation. Can anyone explain to me how Alaskans could possibly benefit from something like this? I'm listening.
Thank you
Erma Doggett
District P

Cindy Smith

From: Sen. Hollis French
Sent: Friday, February 19, 2010 11:36 AM
To: Cindy Smith
Subject: FW: SB92

-KP

From: Lora Reinbold [mailto:lorareinbold@yahoo.com]
Sent: Tuesday, February 16, 2010 4:19 PM
To: Sen. Hollis French
Subject: SB92

Please vote NO on SB 92 we want Alaskans to have the same voice they have had in the past. Please don't change a system that is working.

thank you Hollis!

National Popular Election of the President

National Popular Vote!

www.NationalPopularVote.com

February 19, 2010

Recounts in Presidential Elections in Connection with the National Popular Vote Bill

(SB 92)

Hon. Hollis French, Chair
Senate Judiciary Committee
Alaska State Senate
State Capitol
Juneau, AK 99801

Dear Senator French,

This letter comments on recounts in presidential elections in connection with the National Popular Vote bill.

- Recounts would be far less likely under a National Popular Vote than under the current state-by-state winner-take-all system (section 1).
- The current state-by-state winner-take-all system is a not a firewall that helpfully isolates recounts to particular states, but, instead, is the repeated cause of unnecessary artificial crises (section 2).
- Resolution of all disputes relating to a presidential election must, under current federal law, be completed prior to the meeting of the Electoral College in mid-December, which is constitutionally required to be held on the same day in all 50 states (section 3).
- A recount is conducted by personnel indigenous to each state, and no state needs the help of any other state in order to conduct its own recount (section 4).
- No state is put in the position of judging election returns from other states under the National Popular Vote bill (section 5).
- Under a national popular vote, there would be less incentive for fraud and mischief, and less drastic consequences for whatever fraud and mischief does occur (section 6).
- The currently existing schedule for the "final determination" of presidential election results (established by current federal law) and the triggers for recounts should be improved; however, these changes are far more urgently needed for the current state-by-state winner-take-all system than for the National Popular Vote system (section 7).

Phone: 650-472-1587 • Fax: 650-941-9430 • Box K, Los Altos, CA 94023 • info@NationalPopularVote.com

1. **Recounts would be far less likely under a National Popular Vote than under the current state-by-state winner-take-all system.**

Recounts in presidential elections would be far less likely to occur under a national popular vote system than under the current state-by-state winner-take-all system (i.e., awarding all of a state's electoral votes to the candidate who receives the most popular votes in each separate state).

In fact, if the President were elected from a single nationwide pool of votes, one would expect a recount once in 332 elections, or once in 1,328 years.

Based on a recent study of 7,645 statewide elections in the 26-year period from 1980 through 2006 by FairVote,[1] the probability of a recount is 1 in 332 elections (23 recounts in 7,645 elections). Thus, with 420 statewide races on the ballot in 2006, there was one statewide recount (the Vermont State Auditor's race). Similarly, there was one recount in 2004 (the Washington state governor) and one in 2008 (the U.S. Senate race in Minnesota).

Under the current state-by-state winner-take-all system, there are 51 separate opportunities for recounts in every presidential election. Thus, our nation's 56 presidential elections have really been 2,084 separate state-level elections. In this group of 2,084 separate elections, there have been five seriously disputed counts. The current system has repeatedly created artificial crises in which the vote has been extremely close in particular states, while not close on a nationwide basis. Note that five seriously disputed counts out of the 2,084 separate state-level elections is closely in line with the historically observed probability of 1 in 332.

A national popular vote would reduce the probability of a recount from five instances in 56 presidential elections to one instance in 332 elections (that is, once in 1,328 years).

A good way to visualize this is to think of the chance of a recount as loading one bullet into a 332-chamber gun. Under a national popular vote, the gun is fired once every 4 years. We can therefore expect a recount once in 332 elections, or once in 1,328 years. In contrast, under the current system, the gun is fired 51 times every 4 years. Therefore, we should not be surprised to have had five seriously disputed counts out of the 2,084 separate state-level elections.

The 2000 presidential election was an artificial crisis created because of Bush's lead of 537 popular votes in Florida. Gore's nationwide lead was 537,179 popular votes (1,000 times larger). Given the miniscule number of votes that are changed by a typical statewide recount (averaging only 274 votes), no one would have requested a recount or disputed the results in 2000 if the national popular vote had controlled the outcome. Indeed, no one (except perhaps almanac writers and trivia buffs) would have cared that one of the candidates happened to have a 537-vote margin in Florida.

There was a recount, a court case, and a reversal of the original outcome in Hawaii in 1960. Kennedy ended up with a 115-vote margin in Hawaii in an election in which his nationwide margin was 118,574.

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[1] Fair Vote. 2007. *Survey and Analysis of Statewide Election Recounts 1980-2006* available at http://www.fairvote.org/reports/?page=1786&articlemode=showspecific&showarticle=2736.

Samuel Tilden's 3% lead in 1876 was a solid victory in terms of the national popular vote (equal to Bush's solid percentage lead in the 2004 election). However, an artificial crisis was created because of the razor-thin margin of 889 votes in South Carolina, 922 in Florida, and 4,807 in Louisiana. No one would have cared who received more votes in these closely divided states if the President had been elected by a nationwide popular vote.

In fact, the reduction of the chance of a presidential recount would be even greater than stated above because a close result is less likely to occur as the size of the jurisdiction increases. Indeed, only two of the 23 recounts among the 7,645 statewide elections in the 26-year period from 1980 through 2006 were in big states.

Critics of a national popular vote have argued that there could be an extremely close nationwide count in the future (and historical data indeed indicate that there would be one such extremely close election every 1,328 years). However, because about a third of the 50 states are closely divided battleground states even in that rare situation, there would also be, almost inevitably, one or more states with razor-thin popular vote margins. Thus, such an election would also be controversial under the current system.

The average change in the margin of victory as a result of a recount was a mere 274 votes. The original outcome remained unchanged in over 90% of the recounts.

It is important to note that the question of recounts comes to mind in connection with presidential elections only because the current system so frequently creates artificial crises and unnecessary disputes.

More importantly, the possibility of a recount should not even be a consideration in debating the merits of a national popular vote. No one has ever suggested that the possibility of a recount constitutes a valid reason why state governors or U.S. Senators, for example, should not be elected by a popular vote.

2. The current state-by-state winner-take-all system is a not a firewall that helpfully isolates recounts to particular states, but, instead, is the repeated cause of unnecessary artificial crises.

It is sometimes argued that the current state-by-state winner-take-all rule acts as a helpful firewall that helpfully isolates post-election disputes to individual close states. In fact, the state-by-state winner-take-all system is not a helpful firewall, but instead the cause of unnecessary fires.

Under the current state-by-state winner-take-all system, there are 51 separate vote pools in every presidential election that matter. Thus, our nation's 56 presidential elections have really been 2,084 separate state-level elections. These 51 separate pools regularly create artificial crises in elections in which the vote is not at all close on a nationwide basis, but close in particular states. This is the reason why there have been five seriously disputed counts in only 56 presidential elections (as listed in section 1).

If anyone is genuinely concerned about minimizing the possibility of recounts, then a single national pool of votes provides a way to drastically reduce the likelihood of recounts and eliminate the artificial crises that are regularly produced by the current state-level winner-take-all system.

3. **Resolution of all disputes relating to a presidential election must, under current federal law, be completed prior to the meeting of the Electoral College in mid-December, which is constitutionally required to be held on the same day in all 50 states.**

The laws governing the finalization of the count (and completion of any recount) for a presidential election are entirely different than those governing, say, a disputed race for, say, one of the 100 seats in the U.S. Senate (e.g., the 2008 Senate race in Minnesota).

The U.S. Constitution establishes a strict overall national schedule for finalizing the results of a presidential election. These existing provisions would apply to elections conducted under the proposed National Popular Vote legislation in the same way that they apply to elections conducted under the current system.

The U.S. Constitution provides:

> "The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States."[2] [Spelling as per original]

Congress has exercised this constitutional power to set the uniform nationwide date for meeting of the Electoral College.

> "The electors of President and Vice President of each State shall meet and give their votes on the first Monday after the second Wednesday in December next following their appointment at such place in each State as the legislature of such State shall direct."[3]

Under both the current system and the National Popular Vote approach, all counting, recounting, and judicial proceedings must be conducted so as to reach a "final determination" prior to the uniform nationwide date for the meeting of the Electoral College in mid-December.

The U.S. Supreme Court has made it clear that the states are expected to make their "final determination" six days before the Electoral College meets (the so-called "safe harbor" date established by section 5 of title 3 of the United States Code).

In 2008, the "safe harbor" date was December 8, and the Electoral College meeting date was December 15.

It may be argued that the schedule established by the U.S. Constitution, existing federal statutes, and existing state statutes may sometimes rush the count (and may possibly even create injustice). However, there can be no argument that this schedule exists in the U.S. Constitution, federal statutes, and state statutes and that this existing schedule guarantees "finality" prior to the meeting of the Electoral College in mid-December. The existing constitutional and statutory schedule would govern the National Popular Vote compact in exactly the same way that it governs elections under the current system.

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[2] U.S. Constitution. Article II, section 1, clause 4.

[3] United States Code. Title 3, chapter 1, section 7.

4. A recount is conducted by personnel indigenous to each state, and no state needs the help of any other state in order to conduct its own recount.

A recount is not an unimaginable horror or a logistical impossibility. All Secretaries of State routinely have plans in place for a recount in advance of every election. A recount is a recognized contingency that is occasionally required in the course of conducting elections, and recounts do indeed occur about once in every 332 statewide elections.

No state needs the help of any other state in order to conduct its own recount. The personnel and resources necessary to conduct a recount are indigenous to each state. Thus, a state's ability to conduct a recount inside its own borders is unrelated to whether a recount is being conducted in another state.

Under both the current system and the National Popular Vote approach, all counting, recounting, and judicial proceedings must be conducted so as to reach a "final determination" prior to the uniform nationwide date for the meeting of the Electoral College in mid-December.

In fact, the U.S. Supreme Court has made it clear that the states are expected to make their "final determination" six days before the Electoral College meets (the so-called "safe harbor" date established by section 5 of title 3 of the United States Code).

Because all states must finalize their count (or finish their recount) by the "safe harbor" date in early December, and because the only remaining step required by the National Popular Vote bill is adding up the vote totals from all 50 states and the District of Columbia, the final national vote totals will be available six days before the Electoral College meets.

5. No state is put in the position of judging election returns from other states under the National Popular Vote bill.

Existing federal law specifies that each state's own "final determination" of its presidential election returns is "conclusive" (if done in a timely manner and in accordance with laws in existence prior to Election Day). The wording of the National Popular Vote compact is directly patterned after this existing federal law and requires each state to treat as "conclusive" each other state's "final determination" of its presidential vote.

The "safe harbor" provision of federal law specifies the conditions under which a state's "final determination" is considered "conclusive."

> "If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned."[4]

The fifth clause of article III of the National Popular Vote compact provides:

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[4] United States Code. Section 5 of title 3, chapter 1.

> "The chief election official of each member state shall treat as conclusive an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a state's final determination conclusive as to the counting of electoral votes by Congress."

In short, no state has any power to judge the presidential election returns of any other state under either the National Popular Vote compact or the current system.

6. Under a national popular vote, there would be less incentive for fraud and mischief, and less drastic consequences for whatever fraud and mischief does occur.

The potential for political fraud and mischief is not uniquely associated with either the current system or a national popular vote. In fact, the current state-by-state winner-take-all system magnifies the incentive for fraud and mischief because all of a state's electoral votes are awarded to the candidate who receives a bare plurality of the votes in each state.

Under the current system, the national outcome can be affected by mischief in one of the closely divided battleground states (e.g., by placing insufficient or defective voting equipment into the other party's precincts, by selectively and overzealously purging voter rolls). The ill-advised use of the butterfly ballot by a Democratic election official in one county in Florida cost Gore an estimated 6,000 votes — far more than the 537 popular votes that he needed to carry Florida and win the White House in 2000. However, an incident involving 6,000 votes would have been a mere footnote if the nationwide count had governed the presidential election (where Gore's margin was 537,179).

Senator Birch Bayh (D–Indiana) summed up the concerns about possible fraud in a 1979 Senate speech by saying:

> "One of the things we can do to limit fraud is to limit the benefits to be gained by fraud. Under a direct popular vote system, one fraudulent vote wins one vote in the return. In the electoral college system, one fraudulent vote could mean 45 electoral votes."[5]

In the 1950s and 1960s, accusations of voter fraud by both political parties were commonplace in Illinois and various other states. In 1960, a switch of 4,430 votes in Illinois and a switch of 4,782 votes in South Carolina would have given Nixon a majority of the electoral votes. However, 4,430 votes in Illinois were only a focus of controversy in 1960 because of the statewide winner-take-all rule. John F. Kennedy led Richard M. Nixon by 118,574 popular votes nationwide. So, four thousand votes in two states would not have been decisive in 1960 in terms of changing the national popular vote. If Nixon had carried Illinois and South Carolina in 1960, he would have won a majority of the votes in the Electoral College without receiving a majority of the popular votes nationwide.

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[5] *Congressional Record*. March 14, 1979. Page 5000.

7. **The currently existing schedule for the "final determination" of presidential election results (established by current federal law) and the triggers for recounts should be improved; however, these changes are far more urgently needed for the current state-by-state winner-take-all system than for the National Popular Vote system.**

As discussed in section 1, recounts in presidential elections would be far less likely to occur under a national popular vote system than under the current state-by-state winner-take-all system (i.e., awarding all of a state's electoral votes to the candidate who receives the most popular votes in each separate state). Under a national popular vote, one can expect a recount once in 332 elections, or once in 1,328 years.

Having said that, the current schedule for the "final determination" of the results of a presidential election (established by current federal law) and the triggers for recounts should be improved in the following five ways.

First, Congressman David Price of North Carolina has filed bills in Congress in recent years (e.g., J.R. 1579 in 2005) to move the meeting of the Electoral College from the first Monday after the second Wednesday in December to January 2 (or January 3 if January 2 is a Sunday). This change would add 17 (or 18) days to the period available to the states to make their "final determination" of presidential election results.

Second, we believe that federal law should be amended to say that a state must complete its initial count of votes for President no later than two weeks after election day (i.e., the schedule already required by Minnesota and some other states).

Third, we believe that federal law should be amended to give the presidential candidate himself (or herself) the unconditional right to initiate a recount immediately after the initial count, with such a recount being paid for by the presidential candidate. According to Election Line,[6] a candidate already has an unconditional right to initiate a recount in 25 states and a conditional right to do so in 14 additional states.

Fourth, because time is of the essence in resolving disputes involving presidential elections, no time should be sacrificed by perfunctory (and often cosmetic) "automatic recounts" (unless they can be directed at the specific issues that must be decided in a particular race).

Fifth, because time is of the essence in resolving disputes involving presidential elections, we believe that federal law should be amended to give the presidential candidate the right to initiate the "contest" phase of the dispute, without any delay.

Note that the above changes are more urgently needed under the current winner-take-all system than they would be under the National Popular Vote compact, because there are 51 separate opportunities for a recount in every presidential election under the current winner-take-all system, whereas there is only one pool of votes under a national popular vote.

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[6] ElectionLine.Org Briefing. *Recounts: From Punch Cards to Paper Trails*. Briefing No. 12. October 2005. http://www.pewcenteronthestates.org/uploadedFiles/ERIPBrief12.SB370updated.pdf.

8. Additional Information

For additional information about the details of operation of the National Popular Vote bill and the issue of recounts, see chapter 6 and sections 10.3 and 9.2 of the book *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote.*

Our web site is www.NationalPopularVote.com.

Yours truly,

Dr. John R. Koza, Chair
National Popular Vote
Phone: 650-941-0336
Email: koza@NationalPopularVote.com

cc: Senator Bill Wielechowski, Vice-Chair

Senator Dennis Egan

Senator Lesil McGuire

Senator John Coghill

3/4/2010

Senate Judiciary Committee

State Capitol, #417

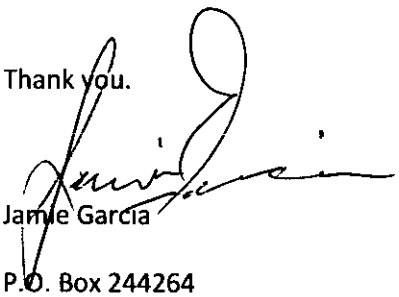
Juneau, Alaska 99801

Dear Members of the Senate Judiciary Committee:

I have become aware thru several news reports that SB 92, Popular National Vote is being considered in the Alaska Legislature. There is no doubt that the presidential election process needs revision as many, myself included continue to be baffled that we as Americans elect the president thru just a handful of states instead of a direct national vote.

Please consider carefully as you deliberate on this legislation, as passing SB 92 is the right thing to do.

Thank you.



Jamie Garcia

P.O. Box 244264

Anchorage, AK 99524

March 4, 2010

Senator Hollis French

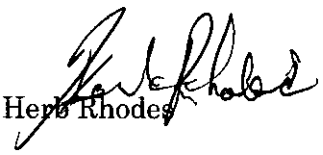
State Capitol

Juneau, Alaska 99801

Dear Senator,

Very glad to see that finally there is a remedy (SB 92, Popular Vote of President) to the current system of electing the President of the United States. The election of the most powerful position should no longer be any different of how we choose other elected officials. Every vote needs to be counted.

Sincerely,



Herb Rhodes

2219 Lord Baranof Dr

Anchorage AK, 99509

1440

3/1/10

Senator Hollis French, Chairman

Senate Judiciary Committee

Room 417

State Capitol

Juneau, Alaska 99801

Dear Senator French:

I would like to thank you for supporting SB 92, National Popular Vote.

As you know, Alaska has never been a player in presidential elections. But, that could change under SB 92, National Popular Vote legislation in Alaska. With electoral reform like SB 92, Alaska cannot be ignored as candidates will need to visit all the states, not just battleground types that have decided too many elections.

Thanks again for giving Alaska the opportunity to have a voice in presidential politics.

Thank you,

John Fabek

3831 Crosson Circle

Anchorage, AK 99517

3/1/10

Senator Hollis French

Chairman, Senate Judiciary Committee

Capitol Room 417

State Capitol

Juneau, Ak 99801

Dear Senator Hollis French,

I recently heard a discussion, this past Saturday on the KBYR AM program, "Citizen's Soap Box" on the National Popular Vote. After a little research, the concept of a popular vote makes a lot of sense.

You don't have to go back very much in our presidential election history to see why the system is broken, ie··· a simple shift of just 60, 000 votes in Ohio in 2004 would have defeated Bush, despite the fact that he had a nationwide lead of 3.5 million votes.

Please pass SB 92, as it's about time the electoral system is fixed.

Sincerely,

Bernadette Kuchinsky

Bernadette Kuchinsky
101 W. Benson Blvd. Ste 503
Anchorage, Ak 99503

2-28-10

Senate Judiciary Committee
Beltz 105
Juneau, Ak 99801

Dear Committee,

The National Popular Vote is an issue that has been a topic of discussion this past week on several radio talk shows. The following points makes sense, 1/ the President of the United States should be elected by a national popular vote instead of a winner take all system. 2/the bill in Alaska, SB 92, would according to the nationalpopularvote.com, "enact the proposed interstate compact entitled the "Agreement among the States to Elect the President by National Popular Vote." The compact would take effect only when enacted, in identical form, by states possessing a majority of the membership of the Electoral College (that is 270 of 538 electoral votes)."

So, please support SB 92, as it will finally help reform the Electoral College.

Sincerely,

James Dooley

James Dooley
230 Center Court
Anchorage, Alaska 99518

March 3, 2010

Senate Judiciary Committee
Beltz Room, 105
State Capitol
Juneau, Alaska 99801

Chairman French

Dear Senate Judiciary:

I recently read at the national popular vote web site (nationalpopularvote.com) that 70% of Alaskans support the idea that the president of the United States should be the candidate that receives the most popular votes in all 50 states. Another important point of the poll is that support comes from a wide range of political thought, Democrats(78%) , Republicans(66%), Non Partisan(70%), Alaska Independent Party (82%), and among others @ 69%.

Please join the majority of Alaskans and support the National Popular Vote, which is currently being considered in Senate Judiciary as SB 92.

Most sincerely,

James C. Wilkins

P.O. Box 190742

Anchorage, AK 99519

Senator Hollis French
Capitol, 417
Juneau, Alaska 99801

Dear Senator French,

I would like to ask your consideration in supporting the proposal to elect the President by a national popular vote in all 50 states (SB92). When we vote for other offices, ie. legislative, mayor, senator, etc....., the candidate who receives the most votes wins and so, it should be for president as well!

Thank you.

Evangeline J. Lee

EVANGELINE J. LEE

Alaska State Legislature

Senate
Health & Social
Services
Committee
Chair
•
Senate
Education Committee
Vice - Chair

Legislative Council
Vice - Chair
•
Senate
Transportation
Committee
•
Senate
Labor & Commerce
Committee

Senator_Bettye_Davis@legis.state.ak.us
http://www.aksenate.org

Session: (Jan. - May)
State Capitol, Suite 30, Juneau, AK 99801-1182 Phone: (907) 465-3822 • Fax: (907) 465-3756 •Toll free: (800) 770-3822
Interim: (May - Dec.)
716 W. 4th Ave, Suite 400, Anchorage, AK 99501 Phone: (907) 269-0144 • Fax: (907) 269-0148

SPONSOR STATEMENT: SB 92

Under the National Popular Vote interstate compact, electoral votes which are based on the number of U.S. Representatives and U.S. Senators in each state, would be awarded to the national winner, not the state winner. The U.S. Constitution gives the states exclusive and plenary control over the manner of awarding their electoral votes. The winner-take-all rule is not in the Constitution. The fact that Maine and Nebraska award electoral votes by Congressional district, is a reminder that an amendment to the U.S. Constitution is not required to change the way the President is elected.

As of January 2010, this interstate compact has been joined by Hawaii, Illinois, Maryland, New Jersey, and Washington. Their 61 electoral votes amount to 23% of the 270 votes needed for the compact to take effect. The bill has also passed in one or both houses in many states and has continued to gain support nationally.

Because of the current winner-take-all rule, a candidate can, and has won the Presidency Without winning the Most popular votes nationwide. This has occurred in 4 of the nation's 56 presidential elections (and 1 in 7 of the non-landslide elections). In 2004, A shift of fewer than 60,000 votes in Ohio would have defeated President Bush despite his nationwide lead of 3,500,000 votes.

Another shortcoming of the winner-take-all rule is that presidential candidates have no reason to poll, visit, advertise, or organize in states where they are comfortably ahead or hopelessly behind. In 2008, candidates concentrated over two-thirds of their campaign visits and ad money in just six closely divided "battleground" states. A total of 98% went to just 15 states. In other words, voters in two thirds of the states were essentially spectators to the election.

Under the National Popular Vote Interstate Compact bill, all the electoral votes from the enacting states would be awarded, as a bloc, to the presidential candidate who receives the most popular votes in all 50 states (and DC). The bill would take effect only when enacted by states possessing a majority of the electoral votes — that is, enough electoral votes to elect a President (270 of 538).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 2, 2009

SUBJECT: Sectional summary of SB 92 (Work Order No. 26-LS0441/A)

TO: Senator Bettye Davis
Attn: Thomas Obermeyer

FROM: Alpheus Bullard
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Ratifies an interstate compact to elect the President and Vice- President of the United States by national popular vote. Under the compact and the bill, the presidential candidate who receives the most popular votes in all 50 states and the District of Columbia will win the presidency. Under the compact, all of the state's electoral votes would be awarded to the presidential candidate who receives the most popular votes in all 50 states and the District of Columbia. This compact would take effect only when enacted by states possessing a majority of the electoral votes, that is, enough electoral votes to elect a President, which is 270 of 538 electoral votes.

Sections 2 -5. Conform statutes to the changes made by section one of the bill.

TLAB:ljw
09-055.ljw

12th Amendment

Amendment 12 - Choosing the President, Vice-President. Ratified 6/15/1804.

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;

We the People National Popular Vote!

"The appointment, and mode of appointment, of electors belong exclusively to the states" - U.S. Supreme Court

Endorsed by 1,777 State Legislators

Massachusetts Rep. Charles A. Murphy

In addition to 829 state legislative sponsors (shown above), 948 other legislators have cast recorded votes in favor of the National Popular Vote bill.

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Chicago Sun-Times
Minneapolis Star Tribune
Los Angeles Times
Sacramento Bee
The Columbian
Wichita Falls Times
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Fayetteville Observer
Boston Globe
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Daily Astorian
Sarasota Herald Tribune
Miami Herald
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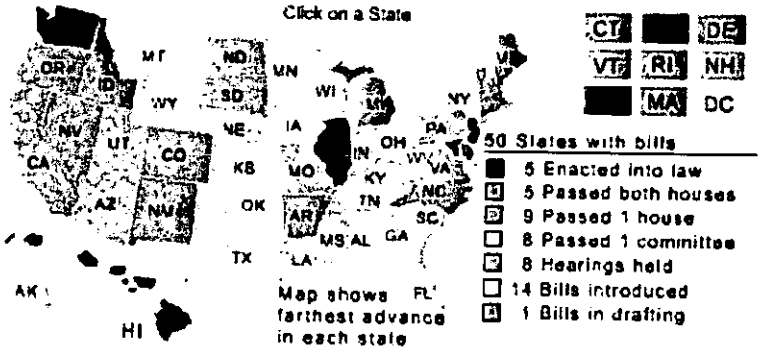

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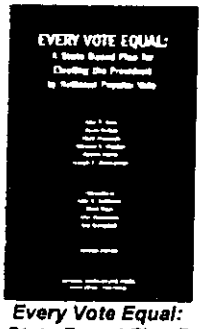

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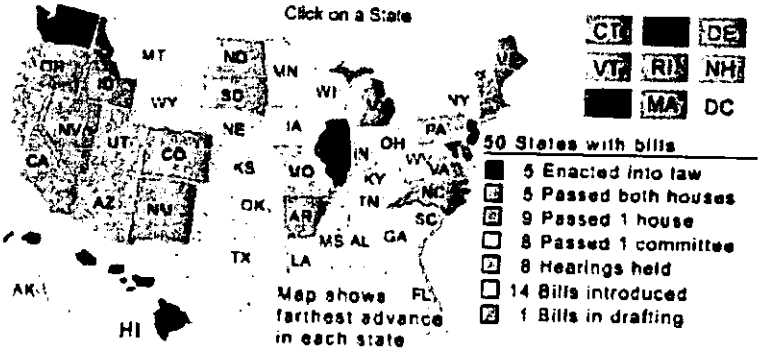

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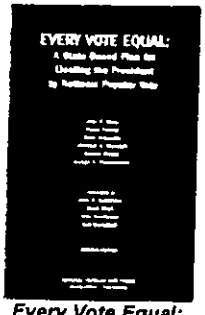

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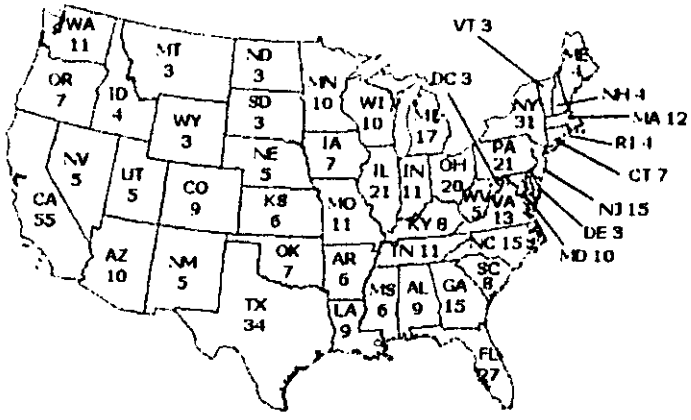
The Electoral College



The U.S. Constitution specifies that the President and Vice President of the United States are to be chosen every four years by a small group of people who are individually referred to as "presidential electors." The electors are collectively referred to as the "Electoral College."

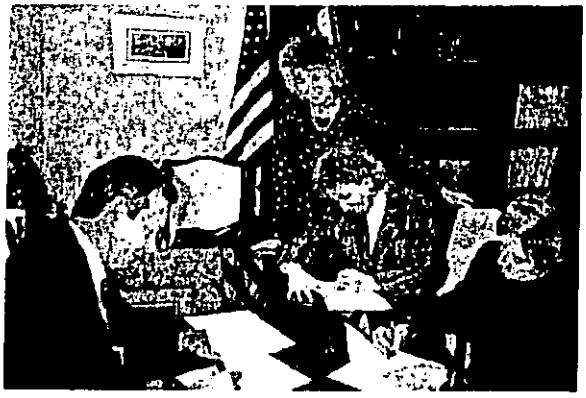
The Constitution specifies that each state is entitled to one member of the Electoral College for each of its U.S. Representatives and U.S. Senators. Today, there are a total of 538 electoral votes in the Electoral College. This total corresponds to the 435 U.S. Representatives from the 50 states *plus* the 100 U.S. Senators from the 50 states *plus* the three members of the Electoral College to which the District of Columbia became entitled under the 23rd Amendment (ratified in 1961). Every 10 years, the 435 U.S. Representatives are reapportioned among the states in accordance with the latest federal census, thereby automatically reapportioning the membership of the Electoral College among the states.

Members of the Electoral College are chosen by each state and the District of Columbia on the Tuesday after the first Monday in November in presidential election years. Each political party nominates its own candidates (typically long-standing party activists) for the position of presidential elector.

The 538 members of the Electoral College cast their votes for President and Vice President in meetings held in the 50 state capitals and the District of Columbia in mid-December of presidential election years. If all 538 electors are appointed, 270 electoral votes (i.e., a majority of 538 members of the Electoral College) are required to elect the President and the Vice President.

The three North Dakota members of the Electoral College met on December 15, 2000, in Bismarck to cast their votes for the Bush-Cheney ticket. Gov. John Hoeven (left) observes former Gov. Ed Schafer put his signature to ballot for Electoral College. The other two electors are former state Senator Bryce Streibel of Fressenden and former Lieutenant Governor Rosemarie Myrdal. more

Washington - 11 votes



The three Wyoming members of the Electoral College met in December 1996 in Cheyenne to cast their votes for the Robert Dole for President and Jack Kemp for Vice President.

The table below shows the distribution of electoral votes among the 51 jurisdictions that appoint members of the Electoral College. Because each state has two Senators and at least one Representative, no state has fewer than three members of the Electoral College. The states with the most members of the Electoral College are California (55), Texas (34), and New York (31). There are 13 low-population states with three or four members of the Electoral College. The average number of members of the Electoral College per state is about 11.

Distribution of electoral votes

Jurisdiction	Representatives	Senators	Total Members of the Electoral College
Alabama	7	2	9
Alaska	1	2	3
Arizona	8	2	10
Arkansas	4	2	6
California	53	2	55
Colorado	7	2	9
Connecticut	5	2	7
Delaware	1	2	3
DC	0	0	3
Florida	25	2	27
Georgia	13	2	15
Hawaii	2	2	4
Idaho	2	2	4
Illinois	19	2	21
Indiana	9	2	11
Iowa	5	2	7
Kansas	4	2	6
Kentucky	6	2	8
Louisiana	7	2	9
Maine	2	2	4
Maryland	8	2	10
Massachusetts	10	2	12
Michigan	15	2	17
Minnesota	8	2	10
Mississippi	4	2	6
Missouri	9	2	11
Montana	1	2	3
Nebraska	3	2	5
Nevada	3	2	5
New Hampshire	2	2	4
New Jersey	13	2	15
New Mexico	3	2	5
New York	29	2	31
North Carolina	13	2	15
North Dakota	1	2	3
Ohio	18	2	20

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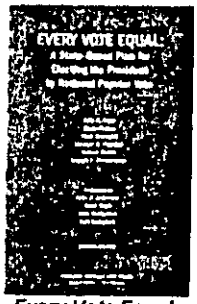

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Oregon	5	2	7
Pennsylvania	19	2	21
Rhode Island	2	2	4
South Carolina	6	2	8
South Dakota	1	2	3
Tennessee	9	2	11
Texas	32	2	34
Utah	3	2	5
Vermont	1	2	3
Virginia	11	2	13
Washington	9	2	11
West Virginia	3	2	5
Wisconsin	8	2	10
Wyoming	1	2	3
Total	435	100	538

The date for the meeting of the Electoral College is established by federal election law (United States Code. Title 3, chapter 1, section 7). In 2004, the designated day for the meeting of the Electoral College was Monday, December 13. This statute was enacted in 1934 after the 20th Amendment changed the date for the presidential inauguration from March 4 to January 20.

The people have the right, under the U.S. Constitution, to vote for U.S. Representatives. The 17th Amendment (ratified in 1913) gave the people the right to vote for U.S. Senators (who were elected by state legislatures under the original Constitution). The people, however, have no federal constitutional right to vote for President or Vice President or for their state's members of the Electoral College. Instead, the Constitution (Article II, section 1, clause 2) provides:

> "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress...."

As the U.S. Supreme Court observed in the 1892 case of *McPherson v. Blacker*:

> "The constitution does not provide that the appointment of electors shall be by popular vote, nor that the electors shall be voted for upon a general ticket, nor that the majority of those who exercise the elective franchise can alone choose the electors." ...
>
> "In short, the appointment and mode of appointment of electors belong exclusively to the states under the constitution of the United States."

In 2000, the U.S. Supreme Court in *Bush v. Gore* reiterated the principle that the people have no federal constitutional right to vote for President or Vice President or for their state's members of the Electoral College..

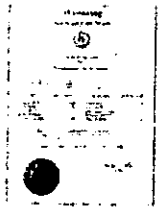
> "The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the Electoral College."

The Constitution's delegation of power to the states to choose the manner of selecting their members of the Electoral College is unusually unconstrained. It contrasts significantly with the limitations contained in the Constitution on state power over the manner of conducting congressional elections (Article II, section 4, clause 1).

> "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations...."

In a 1919 case involving a state statute entitled "An act granting to women the right to vote for presidential electors," the Maine Supreme Judicial Court wrote (*In re Opinion of the Justices*):

> "[E]ach state is thereby clothed with the absolute power to appoint electors in such manner as it may see fit, without any interference or control on the part of the federal government, except, of course, in case of attempted discrimination as to race, color, or previous condition of servitude...."



Certificate of Ascertainment showing that Wyoming cast its three electoral votes for the Bush-Cheney ticket because that state received more popular votes in Wyoming than any other state.

Reform the Electoral College so that the electoral vote reflects the nationwide popular vote for President

Endorsed by 1,777 State Legislators

Pennsylvania Rep. Timothy J. Solobay

In addition to 829 state legislative sponsors (shown above), 948 other legislators have cast recorded votes in favor of the National Popular Vote bill.

Editorial Support

New York Times
Chicago Sun-Times
Minneapolis Star Tribune
Los Angeles Times
Sacramento Bee
The Columbian
Wichita Falls Times
Anderson Herald Bulletin
Fayetteville Observer
Boston Globe
Hartford Courant
The Tennessean
Daily Astorian
Sarasota Herald Tribune
Miami Herald
Connecticut Post
more endorsements

Short Explanation

The National Popular Vote bill would guarantee a majority of the Electoral College to the presidential candidate who receives the most popular votes in all 50 states and the District of Columbia. The bill would reform the Electoral College so that the electoral vote in the Electoral College reflects the choice of the nation's voters for President of the United States. more

5 Enactments

Hawaii - 4 votes
New Jersey - 15 votes
Illinois - 20 votes
Maryland - 10 votes

2. Myths about Small States

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2.1 MYTH: The small states would be disadvantaged by a national popular vote.

The small states are the most disadvantaged group of states under the current system.

Although the small states theoretically benefit from receiving two extra electoral votes corresponding to their U.S. Senators, this "bonus" does not, in practice, translate into political power. Political power in presidential elections comes from being a closely divided battleground state—not from the two-vote bonus conferred on the small states in the Electoral College.

Under the winner-take-all rule (i.e., awarding all of a state's electoral votes to the candidate who receives the most popular votes in each state), candidates have no reason to poll, visit, advertise, organize, or pay attention to the concerns of states where they are comfortably ahead or hopelessly behind. Instead, candidates concentrate their attention on a small handful of battleground states. This means that voters in the vast majority of the states are ignored in presidential elections. In 2004, candidates concentrated over two-thirds of their money and campaign visits in five states; over 80% in nine states; and over 99% of their money in 16 states. In 2008, candidates concentrated over two-thirds of their campaign events and ad money in just states, and 98% in just 15 states.[20]

The reason that the small states are the most disadvantaged group of states under the current system is that almost all of them are one-party states in terms of presidential elections. In the last six presidential elections (1988 through 2008), six of the 13 least populous states (i.e., those with three or four electoral votes) have regularly gone Republican (Alaska, Idaho, Montana, Wyoming, North Dakota, and South Dakota). Six others (Hawaii, Vermont, Maine, Rhode Island, Delaware, and the District of Columbia) have regularly gone Democratic.[21] New Hampshire has been the only battleground state among the 13 smallest states.

The 12 smallest non-competitive states have a combined population of 11.4 million. Because of the bonus of two electoral votes that every state receives, these 12 small states have 40 electoral votes. Coincidentally, Ohio has 11.4 million people. Ohio has 20 electoral votes. That is, the 11 million people in Ohio have "only" 20 electoral votes, whereas the 11 million people in the 12 smallest non-competitive states have 40 electoral votes. However, political power does not arise from the number of electoral votes that a state possesses, but, instead, from whether the state is a closely divided battleground state. The battleground state of Ohio (with "only" 20 electoral votes) received 62 visits in the 2008 presidential election. However, the 12 non-battlegound small states (with their 40 electoral votes) were politically irrelevant. In 2008, the 12 small non-competitive states received no visits, advertising, polling, or policy consideration by presidential candidates because the outcome of the presidential race in those states is generally a foregone conclusion. The winner-take-all rule makes the 11 million people in the closely divided battleground state of Ohio crucial in presidential races, while rendering the 11 million

Washington - 11 votes

Organizations

Common Cause
FairVote
more endorsements

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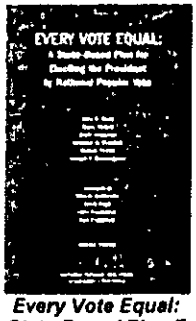

Every Vote Equal: A State-Based Plan For Electing The President By National Popular Vote
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70% Public Support

National - 72%
Arkansas - 80%
Arkansas - 74%
California - 69%
California - 70%
Colorado - 68%
Connecticut - 73%
Connecticut - 74%
Delaware - 75%
Florida - 78%
Kentucky - 80%
Idaho - 77%
Iowa - 75%
Maine - 77%
Maine - 71%
Massachusetts - 73%
Michigan - 70%
Michigan - 73%
Minnesota 75%
Mississippi - 77%
Missouri - 66%
Missouri - 70%
Nebraska - 74%
Nevada - 72%
New Hampshire - 69%
New Mexico - 76%

people in the nation's smallest states irrelevant. This is a situation in which 20 is much more than 40. A national popular vote would make every vote equal throughout the United States. A national popular vote would make a vote cast in a small state as important as a vote cast in Ohio.

Most of the states with five or six electoral votes are similarly non-competitive in presidential elections (and therefore similarly disadvantaged). In fact, of the 22 least populous states (i.e. those with between three and six electoral votes), only New Hampshire (four electoral votes), New Mexico (five electoral votes), and Nevada (five electoral votes) have been battleground states in recent elections.

The fact that the small states are disadvantaged by the current system has been recognized by prominent officials from smaller states. In a 1979 Senate speech, Senator Henry Bellmon (R–Oklahoma) described how his views on the Electoral College had changed as a result of serving as National Campaign Director for Richard Nixon and a member of the American Bar Association's commission studying electoral reform.

> "While the consideration of the electoral college began—and I am a little embarrassed to admit this—I was convinced, as are many residents of smaller States, that the present system is a considerable advantage to less populous States such as Oklahoma. ... As the deliberations of the American Bar Association Commission proceeded and as more facts became known, **I came to the realization that the present electoral system does not give an advantage to the voters from the less populous States. Rather, it works to the disadvantage of small State voters who are largely ignored in the general election for President.**"[22] [Emphasis added]

Senator Robert E. Dole of Kansas, the Republican nominee for President in 1996 and Republican nominee for Vice President in 1976, stated:

> "Many persons have the impression that the electoral college benefits those persons living in small states. I feel that this is somewhat of a misconception. Through my experience with the Republican National Committee and as a Vice Presidential candidate in 1976, it became very clear that the populous states with their large blocks of electoral votes were the crucial states. It was in these states that we focused our efforts.
>
> "Were we to switch to a system of direct election, I think we would see a resulting change in the nature of campaigning. While urban areas will still be important campaigning centers, there will be a new emphasis given to smaller states. **Candidates will soon realize that all votes are important, and votes from small states carry the same import as votes from large states. That to me is one of the major attractions of direct election. Each vote carries equal importance.**
>
> "Direct election would give candidates incentive to campaign in States that are perceived to be single party states.[23] [Emphasis added]

Because so few of the least populous states are battleground states in presidential elections, the current system actually shifts power from voters in the small and medium-sized states to voters in a handful of big states. As early as the spring of 2008, both major political parties acknowledged that there would be at most 14 battleground states (involving only 166 of the 538 electoral votes) in the 2008 presidential election.[24] In other words, two-thirds of the states were regarded as irrelevant under the current system. Among this group of 14 battleground states, Michigan (17 electoral votes), Ohio (20), Pennsylvania (21), and Florida (27) contain over half (85) of the 166 electoral votes. Among the 22 least populous states, only three (i.e., New Hampshire, New Mexico, and Nevada) were among this group of 14 battleground states. These three states contain only 14 of the 166 electoral votes. The net result is that the current system shifts power from voters in the least populous states to voters in a handful of closely divided battleground states (almost all of which are big states).

2.2 MYTH: The small states oppose a national popular vote.

New York - 79%
North Carolina - 74%
Ohio - 70%
Oklahoma - 81%
Oregon - 76%
Pennsylvania - 78%
Rhode Island - 74%
South Dakota - 75%
Utah - 70%
Vermont - 75%
Virginia - 74%
Washington state - 77%
Washington state - 77%
Wisconsin - 71%

29 Houses Pass Bill

Arkansas House
California Senate
California Assembly
Colorado House
Colorado Senate
Connecticut House
Delaware House
Hawaii House
Hawaii Senate
Illinois House
Illinois Senate
Maine Senate
Maryland House
Maryland Senate
Massachusetts House
Massachusetts Senate
Michigan House
Nevada Assembly
New Jersey Assembly
New Jersey Senate
New Mexico House
North Carolina Senate
Oregon House
Rhode Island House
Rhode Island Senate
Vermont House
Vermont Senate
Washington House
Washington Senate

What Do You Think

How should we elect the President?

The candidate who gets the most votes in all 50 states.

The current Electoral College system.

Cast Your Vote
View Results

Add this poll to your web site

The facts speak for themselves. Hawaii was the fourth state to enact the National Popular Vote bill. As of 2008, the bill has been approved by a total of seven state legislative chambers in small states, including one house in Maine and both houses in Hawaii, Rhode Island, and Vermont.

The concept of a national popular vote for President is far from being politically "radioactive" in small states. Indeed, the concept of a national popular vote for President is popular in small states. Polls in 2008 showed a high level of support for a nationwide election for President in small states such as Vermont (75%), Maine (71%), New Hampshire (69%), and Rhode Island (74%).[25] These results are consistent with the fact that more than 70% of the American people have favored a nationwide election for President since the Gallup poll started asking this question in 1944. The *Washington Post*, Kaiser Family Foundation, and Harvard University poll in 2007 showed 72% support for direct nationwide election of the President. This recent national result is similar to recent statewide polls in Arkansas (74%), California (70%), Connecticut (73%), Massachusetts (73%), Michigan (73%), Missouri (70%), and Washington (77%). In short, there is very little difference in the level of political support for a national popular vote in small, medium-sized, and large states.

The small states are the most disadvantaged group of states under the current system (as discussed in section 10.2.1 of this book). The fact that the bonus of two electoral votes is an illusory benefit to the small states is not a new revelation. This fact has been widely recognized by the small states for some time. In 1966, Delaware led a group of 12 predominantly low-population states (including North Dakota, South Dakota, Wyoming, Utah, Arkansas, Kansas, Oklahoma, and Iowa) in suing New York in the U.S. Supreme Court. These states argued that New York's use of the winner-take-all rule effectively disenfranchised voters in their states.[26] The Court declined to hear the case (presumably because of the well-established constitutional provision that the manner of awarding electoral votes is exclusively a state decision). Ironically, the defendant (New York) is no longer an influential battleground state (as it was in the 1960s). Today, New York suffers the very same disenfranchisement as most of the less populous states because it too has become politically non-competitive. Today, a vote in New York is equal to a vote in Wyoming—votes in both are equally irrelevant in presidential elections.

The Electoral College is not the bulwark of influence for the small states in the U.S. Constitution. The 13 smallest states (with 3% of the nation's population) have 25% of the votes in the U.S. Senate—a very significant source of political clout. However, the 13 smallest states (i.e., those with three or four electoral votes) have only 26 extra votes in the Electoral College by virtue of the two-vote bonus—not a large number in relation to the total of 538 electoral votes. Although the 13 smallest states cast 3% of the nation's popular vote while possessing 6% of the electoral votes, the extra 3% is a minor numerical factor in the context of a presidential election. More significantly, this small theoretical advantage is eradicated by the fact that the small states are equally divided between the two major political parties and because the one-party character of the small states makes 12 out of 13 of them irrelevant in presidential elections. In fact, the bulwark of influence for the small states is the equal representation of the states in the U.S. Senate—not the small number of additional electoral votes that they have in the Electoral College.

2.3 MYTH: The National Popular Vote bill threatens the equal representation of the states in the U.S. Senate.

Equal representation of the states in the U.S. Senate is explicitly established in the U.S. Constitution. This feature of the U.S. Constitution cannot be changed by state law. In fact, it may not even be amended by an ordinary federal constitutional amendment. Instead, this feature of the U.S. Constitution may only be changed by unanimous consent of all 50 states.[27] In contrast, the U.S. Constitution explicitly assigns the power to choose the manner of electing the President to the state legislatures. The adoption by a state legislature of the National Popular Vote bill is an exercise of a legislature's existing powers under the U.S. Constitution. Such action has no impact or bearing on the constitutional provisions concerning representation in the U.S. Senate.

2.4 MYTH: A national popular vote would undermine a partisan advantage in favor of the Republican Party in the small states.

The small state issue sometimes serves as a surrogate for the unstated political concern (and misconception) that the small states confer a partisan advantage in favor of the Republican Party. However, this belief does not reflect current political reality. In the last six presidential elections (1988 through 2008), six of the 13 least populous states have regularly gone

Republican (Alaska, Idaho, Montana, Wyoming, North Dakota, and South Dakota), while six others (Hawaii, Vermont, Maine, Rhode Island, Delaware, and the District of Columbia) have regularly gone Democratic.[28] New Hampshire has been, in recent years, the one closely divided battleground state among the 13 smallest states (having supported the Democrat in 1992 and 1996, the Republican in 2000, and the Democrat in 2004 and 2008).

Interestingly, the 12 smallest non-competitive states actually confer a slight political advantage on the Democratic presidential candidate. For example, in 2004, John Kerry won 21 electoral votes from his 444,115-vote lead in the six non-competitive Democratic small states, whereas George W. Bush won only 19 electoral votes from his 650,421-vote lead in the six non-competitive Republican small states. The reason that the Democrats enjoy a partisan advantage in presidential elections in the smallest states is that the six regularly Republican small states are very heavily Republican (Alaska 64%, Idaho 69%, Montana 61%, Wyoming 70%, North Dakota 64%, and South Dakota 61%). In contrast, the Democrats carried three of their six small states (Delaware, Hawaii, and Maine) with only 54% of the vote. A 54% margin is generally viewed as placing a state safely out of reach for the opposition during a typical presidential campaign;[29] however, 54% is considerably less than the Republican Party's margin in their six small states. In two additional states (Vermont and Rhode Island), the Democrats won with 60% of the vote (again a smaller margin than the Republican Party's margin in their six small states). If the boundaries of the small states had been recently drawn, there would be accusations that the boundaries were a Democratic gerrymander.

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[20] http://fairvote.org/tracker/?page=27&pressmode=showspecific&showarticle=230.

[21] Among the six regularly Republican-leaning small states Clinton carried Montana in 1992 (presumably due to Perot's presence on the ballot). Among the six Democratic-leaning small states, George H. W. Bush carried Delaware, Maine, and Vermont in 1988.

[22] *Congressional Record.* July 10, 1979. Page 17748.

[23] *Congressional Record.* January 14, 1979. Page 309.

[24] "Already, Obama and McCain Map Fall Strategies." New York Times. May 11, 2008.

[25] These polls (and many others) are available on National Popular Vote's web site at http://www.nationalpopularvote.com/pages/polls.php#2007WPKHU.

[26] Information about *State of Delaware v. State of New York* (and links to the pleadings) may be found at http://www.nationalpopularvote.com/pages/misc/de_lawsuit.php.

[27] Article V of the U.S. Constitution provides: "No State, without its Consent, shall be deprived of its equal Suffrage in the Senate."

[28] Among the six regularly Republican-leaning small states, Clinton carried Montana in 1992 (presumably due to Perot's presence on the ballot). Among the six Democratic-leaning small states, George H. W. Bush carried Delaware, Maine, and Vermont in 1988.

[29] Although there is no universally accepted definition of a battleground state, battleground states are, more or less, those in which the spread between the top two candidates is less than 8%.

Hartford Courant.

For National Popular Vote

Hartford Courant editorial
March 2, 2008

Connecticut, to everyone's surprise, was in play during the Super Tuesday primaries. Three major candidates visited the state.

But that may not happen in the run-up to the November general election (minus a quick fundraising visit or two to Fairfield County). If, say, the state is considered safe for the Democrats, neither candidate will feel the need to campaign here. The same thing is likely to happen in two-thirds of the other states.

Our system of electing the president and vice president is flawed and archaic. There is a way to change it without amending the U.S. Constitution. The states can simply agree to give their electoral votes — regardless of who wins each state's popular vote — to the winner of the national popular vote. There is a serious proposal to adopt the "National Popular Vote" plan here and across the country. It's worth supporting.

Connecticut Often Ignored

The problem with the present system is the winner-take-all rule used in 48 states. In all states except Maine and Nebraska, the candidate who wins the state's popular vote gets all of the state's electoral votes.

So if a candidate is assured of winning, say, 55 percent of the popular vote, the campaign is over. He or she will get all the electoral votes, and there's no point in trying to get more votes, nor is there any point in the losing candidate losing by fewer votes. Although it's possible that the losing candidate could try to reverse the numbers, what almost always happens is that both candidates put their money and time into battleground states.

According to the FairVote organization, 99 percent of the campaign advertising money in the 2004 presidential election was spent in just 17 states, and 92 percent of the campaign visits were in only 16 states. Issues in those states are thrust to the fore, at the expense of whatever Connecticut and other less-noticed states are concerned about. Federal grants tend to find their way to contested states, especially as elections near.

The way we elect presidents now thwarts the democratic principle of majority rule. Four times in our nation's history, most recently in 2000, a president has won the office while losing the popular vote. It almost happened in a number of other elections. A shift of only 60,000 votes in Ohio would have given the 2004 election to John Kerry, despite President George W. Bush's 3.5 million-vote lead in the popular tally.

Also, the lack of a meaningful campaign depresses voter turnout, which in turn makes things worse for the minority party.

Reformers have been trying to scuttle the Electoral College system for at least 50 years. Twice in the 1970s, a proposed constitutional amendment passed one house of Congress, only to be blocked by beneficiaries of the current system. It is difficult, as it should be, to amend the U.S. Constitution. But because states have the power to allocate their electoral votes, some clever folks have come up with another way around the block.

Change How States Use Votes

The National Popular Vote creates a compact. All of the states that join agree to give their electoral votes to the candidate who receives the most popular votes in all 50 states and the District of Columbia. The compact only kicks in when enacted by states possessing a majority of the electoral votes — 270 of 538, enough to elect a president.

The bill has passed in two states, Maryland and New Jersey, and is in the pipeline in more than 40 other states, including Connecticut. The bill, which failed to pass last year, has been introduced again, and backers say it has a better chance of passage this year.

Support is not universal. Critics such as Gov. Arnold Schwarzenegger, who vetoed the bill after it passed both houses in the California legislature, object to the possibility that a state could give its electoral votes to a candidate it didn't support.

Others in favor of the devil-we-got say the new method could increase the cost of elections and focus campaigning on population centers at the expense of rural areas.

Those points are well-taken, but the positives of National Popular Vote outweigh the negatives. There are no other indirect elections left in government; they are a relic of the past. The Electoral College was supposed to help small-population states (and Southern states where slaves couldn't vote), but most small-population states aren't in play on Election Day. That the 2000 election was hanging on hanging chads was absurd.

If a million votes in Connecticut count as much as a million votes in Ohio, we'll see the candidates again. National Popular Vote is worth a try.

The New York Times

Maryland Takes the Lead

New York Times Editorial
April 14, 2007

As the nation braces for a long and numbing presidential election, the State of Maryland has done voters a favor by rejecting the Electoral College as a fossil in need of a democratic makeover. Gov. Martin O'Malley and the Annapolis legislature made the state the first in the nation to decide that its Electoral College members should someday be required to vote for the presidential candidate chosen by a plurality of the nation's voters, not according to the state's parochial tally.

The change would not take effect until it won final acceptance by enough states to amount to a 270-vote majority in the college. (Maryland has 10 votes.) But it is something all Americans would benefit from, particularly the masses of voters routinely ignored when candidates focus on a few battleground states — just 16 in 2004 — that increasingly settle modern campaigns.

The need to scrap the creaky college machinery was made clear in the angst of the 2000 election. George W. Bush lost the popular election by almost 544,000 votes, yet won in a Supreme Court showdown over Florida's electors that hinged on far fewer disputed state ballots. Four years later, it was Mr. Bush's turn to sweat as he handily won the national vote yet came close to losing Ohio — and the White House — in the college's arcane state-by-state fragmentation of the popular majority.

The reform movement, driven by a bipartisan coalition called National Popular Vote, has a long way to go. But Hawaii is close to approval, and hundreds of legislators are sponsoring the change in more than 40 other states. It is an ingenious way around the fact that the alternative strategy of trying to amend the Constitution would require the approval of three-fourths of the states, leaving veto power in the hands of smaller states over-represented in the college.

The objection that reform would mean that rural interests would be ignored is a canard. The change would require candidates to present positions that galvanized all Americans. This is the truer and more certain path of democracy.

CHICAGO SUN-TIMES
suntimes.com

We vote for a fairer way to decide national elections

Chicago Sun-Times editorial
March 1, 2006

Calls to reform or abolish the Electoral College hit a fever pitch after the 2000 presidential election, when Al Gore won the popular tally but didn't have enough votes in the right states to carry the electoral vote. That call quieted somewhat after the 2004 election, when President Bush won the popular vote but still could have lost the election if John Kerry had won Ohio. Despite interest in reform, nothing has happened, mostly due to the difficulty in amending the Constitution.

Now a bipartisan commission, whose members include former Rep. John Anderson (R-Ill.) and former Sen. Birch Bayh (D-Ind.), has proposed an idea to retain the Electoral College while still ensuring it reflects the will of the majority of voters. The Sun-Times News Group backs the concept and applauds the National Popular Vote group for thinking outside the box.

The group's plan is to get enough states to agree to give all their electoral votes to the national vote winner, regardless of the results in their individual states. Under the proposal, each state would pass laws to change the way their electoral votes are awarded, a process the Constitution leaves for the states to set. They would also enter an interstate compact with other states that make the same change, agreeing that the new system won't take effect until states representing 270 electoral votes -- the number needed to carry the Electoral College -- have joined.

In Illinois, the plan is backed by a group that includes state Senators Jacqueline Collins, a Chicago Democrat, and Kirk Dillard, a Hinsdale Republican and chairman of the DuPage County Republican Party.

Using such a system in the last election would have meant Bush won all of Illinois' electoral votes, even though Kerry easily carried the state. If that sounds strange, it's no stranger than Illinois and other populous states being virtually ignored by both parties during the last campaign, since one candidate or the other had them locked so early. That likely hurt the turnout in those noncompetitive states, affecting elections further down the ticket.

What of awarding electoral votes by the top vote-getter in each congressional district, as is currently done in Nebraska and Maine? That would simply set up a situation where candidates concentrate on a small number of battleground districts, because, thanks to gerrymandering, most districts are noncompetitive.

Republicans may be hardest to persuade to support this plan, over fears that large urban centers that tend to vote Democratic will dominate elections. But that wasn't an impediment to Bush's re-election. And polls show most Americans want the president to be elected by the popular vote. It's time to make the change with this innovative plan.

This editorial represents the view of the Sun-Times News Group of 100 newspapers in the Chicago metro area.

Los Angeles Times
latimes.com.

States join forces against electoral college

A piecemeal approach may be the only way to kill the anachronistic institution

Los Angeles Times Editorial

June 5, 2006

A PROPOSED EXPERIMENT with majority rule has generated plenty of naysayers who apparently think that some nations are simply too immature to let people directly choose their own leaders. But we say the United States is ready for real democracy.

The experiment is the National Popular Vote campaign, which intends to undermine the Constitution's anachronistic Electoral College. If the campaign succeeds, future presidents will take office only if they win the popular vote nationwide.

The ingenious scheme was developed by John R. Koza, a Stanford professor who also invented the scratch-off lottery ticket. It calls on state legislatures to pass a measure dictating that all the electoral votes from that state go to the winner of the national popular vote. It goes into effect only if enough states approve it to represent a majority of the electoral votes. In other words, if states that represent at least 270 of the 538 electoral votes all approve the measure, the winner of the popular vote nationwide would automatically win the presidency. It thus renders the Electoral College moot without eliminating it.

This kind of end run is necessary because the only way to get rid of the Electoral College entirely is via a constitutional amendment, which would be nearly impossible to pass. Enough small states benefit from the current system to block an amendment. The beauty of this approach is that each state is constitutionally allowed to allot its electoral votes as it sees fit. The measure was approved by California's Assembly on Tuesday and is pending in four other states; backers hope to get it before all 50 states by January.

Anyone wondering why he should care about the Electoral College need look no further than the 2000 election, when George W. Bush won the presidency despite getting about half a million fewer votes than Al Gore. If that makes conservatives think they should be thankful that the majority doesn't always rule in the United States, they should think again. The same thing nearly happened in reverse in 2004. If John Kerry had picked up a mere 60,000 more votes in Ohio, he would have won — even though Bush took in 3 million more votes overall.

The Electoral College doesn't skew just election results; it skews elections. Candidates know they don't have to campaign in states that either clearly favor them or clearly don't; they have to focus only on swing states. In the 2004 campaign, Bush and Kerry spent a great deal of time brushing up on agricultural policy and other issues of vital concern in Iowa, while ignoring matters important to people in states such as California, Texas and New York.

Opponents argue that the current system ensures that smaller states continue to have a say in setting national policy. But the U.S. Senate already gives Delaware every bit as much clout as California. Any method besides majority vote empowers some citizens at the expense of others and makes the president beholden to minority interests.

At its inception, the United States was, well, a union of states. But it is now one nation, and our president should be elected by the citizens of that nation, not by its constituent states. To argue otherwise is to say that some Americans should have more power to elect a president than others simply because of where they live. Remember, all men are created equal. Including Californians and New Yorkers.

http://www.latimes.com/news/printedition/opinion/la-ed-college05jun05,1,6822980.story

StarTribune.com
Minneapolis - St. Paul, Minnesota

How to drop out of the Electoral College:

There's a way to ensure top vote-getter becomes president

Editorial—Minneapolis Star Tribune
March 27, 2006

This country could form a more perfect union by accepting a novel idea: that the president of the United States should be elected by the people of the United States.

That's not the way it's done, of course, and, given the Constitution's enshrinement of the Electoral College, things aren't likely to change. To quit the college would take approval of two-thirds of both houses of Congress and three-quarters of state legislatures, so fuggedaboudit.

But now comes a gaggle of bipartisan reformers with a cheeky idea worth considering. What if legislatures, one by one, entered their states into an interstate compact under which members would agree to award their electoral votes to the winner of the national popular vote? The compact would kick in only when enough states had joined it to elect a president—that is, when a majority of the 538 electoral votes were assembled. As few as 11 states could ensure that the candidate with the most popular votes nationally would win the presidency. As a result, the Constitution and the Electoral College would stay intact, but the college's fangs would be removed.

That approach would be more democratic than current practice. Recall that Al Gore lost the 2000 election to George W. Bush despite getting a half-million more popular votes, and that Bush nearly lost the 2004 election despite getting 3 million more popular votes (a shift of only 60,000 votes in Ohio would have thrown the election to John Kerry). So, both parties have reason to fear the college's distortions.

That the Electoral College has "worked" in all but one election since 1888 isn't a good enough reason to stay with the status quo. The college has a perverse impact on campaigns. With no incentive to compete in states that are predictably red or blue, candidates concentrate on the battleground states—only 13 of them in 2004, down from 24 in 1960. That's not the national campaign voters deserve. In the last election, 92 percent of campaign events took place in just 13 states, which also absorbed 97 percent of advertising during the campaign's final month. Three dozen red and blue states as large as California, New York and Texas and as small as Delaware, Utah and Wyoming were mere spectators.

Now that Minnesota is a battleground getting lots of attention, it's a lot to ask the Legislature to do the right thing and endorse the new compact. But it really should. So should other states—both red and blue—join, for the sake of a better democracy.

The Sacramento Bee

Editorial: Rx for U.S. elections

States can assure the popular vote rules

Saturday, June 3, 2006

The election of the U.S. president should reflect the directly expressed will of the American people. But it doesn't.

The current Electoral College system can produce perverse results: A candidate can lose the popular vote and win the Electoral College vote and, thus, the presidency. That has happened several times in American history, most recently in 2000. With the nation so closely divided politically, this is likely to be an ongoing problem, undermining the legitimacy of our presidential elections.

It doesn't have to be that way.

Polls for the last 30 years have shown that Americans overwhelmingly support direct election of the president, but Congress hasn't budged on a constitutional amendment.

A new campaign, "National Popular Vote," spearheaded by several former members of Congress, including California's Tom Campbell (most recently Gov. Arnold Schwarzenegger's finance director), has a creative way to get the same result.

The campaign uses an old mechanism -- an interstate compact -- to achieve the direct election of the president. The idea is modeled on existing interstate compacts, such the Colorado River Compact, which divides water among seven Western states. The compact depends on states changing their own rules for dividing up their electoral votes.

We'd prefer a constitutional amendment simply abolishing the Electoral College, but this state-by-state reform is an achievable second-best solution to a defective product that even the Founding Fathers regarded wearily and warily.

The strongest arguments at the 1787 Constitutional Convention favored direct election of the president by the people. Proponents wanted the president to be the "guardian of the people" and as independent as possible of Congress and the states. But the delegates were hopelessly divided between direct election by the people and election by Congress.

The Electoral College was a last-minute compromise, reached under what James Madison called the "hurrying influence produced by fatigue and impatience." The Electoral College has been patched many times since.

The interstate compact proposal wouldn't abolish the Electoral College, but at least it would ensure that it reflects the national popular vote.

Election officials in the compact states would award all of their electoral votes to the candidate receiving the greatest number of votes nationally.

Clearly, one state could not do this on its own. So each of the states has the same 888-word bill entering into a binding interstate compact (you can find the text at www.nationalpopularvote.com). States would join the agreement one by one. The compact would take effect only after enough states joined to represent a majority of Americans and electoral votes -- 270 of the 538 electoral votes.

So far, the bill has been introduced in five legislatures -- California, Illinois, Colorado, Missouri and Louisiana. The campaign's goal is 10 states by the end of 2006 and enough states by the end of 2007 to make direct election the governing rule for the 2008 presidential election.

In California, the Assembly approved the bill Tuesday. Because California has such strong influence nationally, the governor and senators can get this process rolling in other states by acting this session. Otherwise, in presidential elections, unhappy Americans are bound to continue paying for the Founding Fathers' fatigue.

The Fayetteville Observer

Our View: Electoral vote change would be good for the state and its people

The Fayette Observer Editorial
May 16, 2007

Four times since the framers met in Philadelphia in 1787, the presidency has gone to the candidate on the losing end of the popular vote. The republic still stands.

That's hardly a compelling argument for leaving things as they are. The Electoral College less than perfectly reflects the will of the people, and the threat of the "faithless elector" who tips an election the way his partisan bias dictates is real, if remote. Both threats would vanish if the election automatically went to the candidate for whom most registered voters pulled the lever.

This is the point at which the conversation normally would turn to amending the federal Constitution to abolish the Electoral College. But the state Senate has just passed a bill that would achieve a comparable effect by simple statute.

The bill provides that, if enough states join in to command a majority in the Electoral College, all of North Carolina's electoral votes will be awarded to the winner of the popular vote — not the statewide winner, but the one who wins nationwide. More than 40 states are already looking at substantially the same bill.

If it works as planned, the problem goes away, with no violence done to the Constitution.

Something else happens, too. North Carolina will less often find itself in political obscurity when the nation chooses its top leader.

During the 2000 election, one analyst noted that the candidates were focusing most of their time and effort on 11 swing states. Ironically, only three of those had more electoral votes than North Carolina, which was not one of the 11. If candidates understand that they have a real shot at our 15 electoral votes right up until the polls close on that fateful Tuesday in November, we are unlikely to be shrugged off or taken for granted again.

The arguments against it are no stronger than those for retaining the Electoral College in all its supreme majesty: (1) it's different; and (2) it means that North Carolina could end up giving its 15 votes to someone not favored by the majority of Tar Heel voters. The first argument lacks heft. The second would make perfect sense, but only if one could ignore the fact that presidential elections are held to enable individual Americans to put someone in the White House, not merely to express each state's collective pique or pleasure.

This is worth a try — for the sake of simplicity and fairness, and in the interest of raising our state's political profile.

Drop Out of the College

New York Times editorial
March 14, 2006

The Electoral College is an antidemocratic relic. Everyone who remembers 2000 knows that it can lead to the election of the candidate who loses the popular vote as president. But the Electoral College's other serious flaws are perhaps even more debilitating for a democracy. It focuses presidential elections on just a handful of battleground states, and pushes the rest of the nation's voters to the sidelines.

There is an innovative new proposal for states to take the lead in undoing the Electoral College. Legislatures across the country should get behind it.

Both parties should have reason to fear the college's perverse effects. In 2000, the Democrats lost out. But in 2004, a shift of 60,000 votes in Ohio would have elected John Kerry, even though he lost the national popular vote decisively.

Just as serious is the way the Electoral College distorts presidential campaigns. Candidates have no incentive to campaign in, or address the concerns of, states that reliably vote for a particular party. In recent years, the battleground in presidential elections has shrunk drastically. In 1960, 24 states, with 327 electoral votes, were battleground states, according to estimates by National Popular Vote, the bipartisan coalition making the new proposal. In 2004, only 13 states, with 159 electoral votes, were. As a result, campaigns and national priorities are stacked in favor of a few strategic states. Ethanol fuel, a pet issue of Iowa farmers, is discussed a lot. But issues of equal concern to states like Alabama, California, New York and Indiana are not.

The Electoral College discourages turnout because voters in two-thirds of the nation know well before Election Day who will win their states. It also discriminates among voters by weighing presidential votes unequally. A Wyoming voter has about four times as much impact on selecting that state's electors as a California voter does on selecting that state's.

The answer to all of these problems is direct election of the president. Past attempts to abolish the Electoral College by amending the Constitution have run into difficulty. But National Popular Vote, which includes several former members of Congress, is offering an ingenious solution that would not require a constitutional amendment. It proposes that states commit to casting their electoral votes for the winner of the national popular vote. These promises would become binding only when states representing a majority of the Electoral College signed on. Then any candidate who won the popular vote would be sure to win the White House.

The coalition is starting out by trying to have laws passed in Illinois and a few other states. Americans are rightly cautious about tinkering with mechanisms established by the Constitution. But throughout the nation's history, there have been a series of reforms affecting how elections are conducted, like the ones that gave blacks and women the vote and provided for the direct election of United States senators. Sidestepping the Electoral

Sen. Bettye Davis

From: Joyce Hilyard [alaskajoyce2003@yahoo.com]
Sent: Sunday, January 31, 2010 7:56 PM
To: Senator_Joe_Paskavan@legis.state.ak.us
Cc: "Senator_ Linda_ Menard"@legis.state.ak.us; "Senator _Kevin_Meyer"@legis.state.ak.us; "Senator_ Hollis_French"@legis.state.ak.us; Sen. Albert Kookesh; Sen. Bettye Davis
Subject: Fw:

> To the Senate State Affairs
> Committee
> I would like to lend my support to SB 92, US Presidential Election
> Compact.
>
> Currently, the modern machinations of political campaigning, many
> states are essentially "left out" and their results of little concern
> to campaigns, their pollsters, or the news media. How disheartening
> is it for Alaskans to discover the election has already been called
> even before all our votes are cast?
>
> Alaska deserves better.
> Respectfully,
> Joyce G. Hilyard
>
>
>
>

Sen. Bettye Davis

From: lori@motznik.com on behalf of Lori Davey [lori@trentandlori.com]
Sent: Monday, February 01, 2010 5:49 PM
To: Sen. Linda Menard
Cc: Sen. Kevin Meyer; Sen. Hollis French; Sen. Albert Kookesh; Sen. Joe Paskvan; Sen. Bettye Davis
Subject: SB 92 Pular Vote

Sen. Linda Menard, Chair
Members of the State Affairs Committee

I strongly support SB 92, a bill to enter into an interstate compact for a popular vote for Presidential elections.

After looking at a number of sources on this important issue, I have concluded three basic advantages of this type of election; those being:
Nationwide popular election of the President is the only system that:
(1) makes all states competitive in presidential elections,
(2) guarantees that the candidate with the most popular votes nationwide wins the Presidency, and most importantly
(3) makes every vote equal.
I have been following the issue and am very excited to see that Alaska will now have an opportunity to comment in the form of this proposed legislation. This bill will give Alaska an opportunity to gain parity in Presidential elections.

Sincerely,

Lori Davey
17420 Mountainside Village Dr
Anchorage, AK 99516

RECEIVED
FEB 0 2 2010

Sen. Bettye Davis

From: james gilles [bigchief46@hotmail.com]
Sent: Monday, February 01, 2010 4:27 PM
To: Sen. Linda Menard; Sen. Kevin Meyer; senator_hollis_french@legis.state.ak.su; Sen. Albert Kookesh; Sen. Joe Paskvan; Sen. Bettye Davis
Subject: popular vote

Dear Senator Linda Menard, Chair
& Members of the State Affairs Committee:

Please consider supporting SB 92, in reference to a popular vote for Presidential elections. The current electoral system needs updating, a direct election of the president is just plain common sense as that is the system that's in place for all other elective officials.....

Thank you,

Jim Gilles

HC 52

P.O. Box 8505

Bird Creek, Alaska

99540

907-223-0324

Hotmail: Free, trusted and rich email service. Get it now.

Alaska State Legislature

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Committee

Senator_Bettye_Davis@legis.state.ak.us
http://www.aksenate.org

Session: (Jan. - May)
State Capitol, Suite 30, Juneau, AK 99801-1182 Phone: (907) 465-3822 • Fax: (907) 465-3756 •Toll free: (800) 770-3822
Interim: (May - Dec.)
716 W. 4th Ave, Suite 400, Anchorage, AK 99501 Phone: (907) 269-0144 • Fax: (907) 269-0148

Dear Senator French:

I respectfully request a hearing to be scheduled at your earliest convenience for Senate Bill 92: An Act ratifying an interstate compact to elect the President and Vice-President of the United States by national popular vote; and making related changes to statutes applicable to the selection by voters of electors for candidates for President and Vice-President of the United States and to the duties of those electors.

If the Committee requires additional information, please contact me.

Sincerely,

Quinn Kendall
Senator Davis's Intern

SB 96

Central Council
Tlingit and Haida
Indian Tribes of Alaska

CENTRAL COUNCIL
tlingit and haida indian tribes of alaska
ANDREW P. HOPE BUILDING
320 West Willoughby Avenue • Suite 300
Juneau, Alaska 99801-1726

Legislative Testimony

HEARING: (S) JUD Mar 11, 2009 @ 1:30 PM BELTZ 211
TELECONFERENCE

Thank you Mr. Chairman and members of the committee. My name is Eddie Brakes, IV-D Director, for Central Council Tlingit and Haida Indian Tribes of Alaska (CCTHITA) Tribal Child Support Unit (TCSU).

I am offering this testimony in support of SB 96 Sec. 2. Alaska Statutes 25.25.101 (19) concerning changing the definition of State to include "the Virgin Islands" and "an Indian tribe" which puts Alaska in compliance with federal regulations.

Child support programs that receive federal funding under Title IV-D of the Social Security Act are called Title IV-D programs. In March of 2004, the final rule for Tribal Child Support Programs was published at 45 CFR 309. This rule provides regulations for Tribes to receive federal funding to operate Tribal IV-D programs. The State of Alaska and the CCTHITA both operate federally funded and approved programs. CCTHITA does not receive any funding from the State to operate its child support program.

In March of 2007, the CCTHITA received federal funding to operate a comprehensive IV-D Program. TCSU has been working collaboratively with State of Alaska CSSD. CSSD has transferred for services approximately 700 Child Support cases to the Tribe. Both CSSD and TCSU are working together to provide child support services

Federal regulations require states and Tribes to work together and cooperate, providing one another the full range of services. These are available to all other IV-D programs throughout the country.

This amendment will assist the State and Tribe in their ongoing collaborations. The TCSU, CSSD, and Department of Law have been in monthly telephonic meetings, working together towards the common goal of ensuring all children receive the critical financial and emotional support they deserve.

It is important to note that every other state in the U.S. has adopted the federal definition of "State" to include an Indian Tribe. According to the CSSD sponsor statement, SB 96 puts the State of Alaska CSSD in compliance with federal child support regulations, and does not jeopardize 17 million dollars in federal funding.

TEL. 907-586-1432 www.ccthita.org TOLL FREE 800-344-1432

In conclusion, CCTHITA is in absolute support of the State of Alaska CSSD's efforts to be in compliance with the Uniform Interstate Family Support Act through amending the definition of "State" in SB 96. Both CSSD and the TCSU provide resources and opportunities to families to better the lives of Alaska children. Making sure the State of Alaska continues to receive federal funding for the Child Support Program is in the best interest of all Alaska families and children.

This concludes my testimony, thank you.

State of Alaska

Department of Revenue

Administrative Services Division

SARAH PALIN, GOVERNOR
333 Willoughby Avenue, 11th Floor
P.O. Box 110400
Juneau, Alaska 99811-0405
Phone: (907) 465-2300
Fax: (907) 465-2394

March 16, 2009

The Honorable Hollis French
Chair, Senate Judiciary Committee
State Capitol, Room 417
Juneau, AK 99811

Dear Senator French,

This letter is in support of SB 96 to help inform the legislature of necessary actions required to bring Alaska into federal compliance with the federal law. If the state remains out of compliance after this legislative session, CSSD could lose more than $17 million federal dollars. This is nearly the entire operating budget required to operate the child support activities mandated by state and federal law.

The Alaska Child Support Services Division (CSSD) needs to amend state law on two issues. The first amendment is less controversial and only requires that child support orders include a provision for obligors to pay cash medical assistance to the custodial parent to help with health costs when insurance is not provided for that child.

The second amendment is more sensitive to certain legislators. The Uniform Interstate Family Support Act (UIFSA) contains a definition of "state." Under federal law, all states must adopt the uniform act's definition of "state" that includes "the United States Virgin Islands" and "an Indian tribe." For Alaska, the impact of adopting a definition that would include Indian tribes, means Indian tribes can issue and serve income-withholding orders on employers. The obligor would be entitled to contest the jurisdiction of the tribe to issue the order and the usual rights to contest the validity or enforcement of an order by an obligor would still apply. The change would also affect the process for state recognition of tribal orders. A tribal child support order would be registered in the Alaska state courts under the UIFSA procedures instead of a comity process. These changes are consistent with the purpose of UIFSA. The purpose of UIFSA is to unify state laws relating to child support orders, to provide efficient procedures for collecting child support in interstate cases, and to eliminate multiple support orders that were permitted under prior child support laws.

One question raised by the changes required by UIFSA is whether the tribal amendment would result in an expansion of tribal authority. The Department of Law has examined this question and came to the following conclusion:

> "UIFSA's underlying purpose is not to define jurisdiction. Nor does the state have the ability to define tribal jurisdiction. The overall purpose of UIFSA is simply to unify state laws relating to child support orders, to provide efficient procedures for collecting child support in interstate cases, and to eliminate multiple support orders that were permitted under prior child support laws. These purposes do not trigger broader jurisdictional concerns."

A letter of intent could be included in the introduced child support legislation (SB 96) to ease concerns of legislators who are not comfortable with issues related to Indian tribes. The letter of intent could be attached as a separate letter or as an amendment to the bill. I might suggest the following as an amendment:

LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that

(1) failure to bring AS 25.25.101 into compliance with the federal Social Security Act Title IV-D could result in the loss of approximately $17,000,000 in administrative funding;

(2) of the 33 states that have federally recognized tribes, Alaska is the only state that has not yet passed conforming legislation; and

(3) to bring Alaska into conformity with UIFSA, the legislature finds that it is necessary to amend AS 25.25.101 to include "an Indian tribe" and "the United States Virgin Islands" in the definition of "state."

(b) It is the intent of the legislature that this Act not alter or expand in any way the governmental relationship between federally recognized tribes and the state.

Thank you for working with us on this issue.

Sincerely,

VBlaisdell

Ginger Blaisdell
Director

CC: Stacy Steinberg, AAG, Department of Law
John Mallonee, Director, Child Support Services Division

State of Alaska

Department of Revenue

Administrative Services Division

SARAH PALIN, GOVERNOR
333 Willoughby Avenue, 11th Floor
P.O. Box 110400
Juneau, Alaska 99811-0405
Phone: (907) 465-2300
Fax: (907) 465-2394

March 3, 2009

The Honorable Hollis French
Chair, Senate Judiciary Committee
Alaska State Legislature
State Capitol, Room 417
Juneau, AK 99801-1182

Dear Senator French:

The Senate Health and Social Services Committee introduced legislation on behalf of the Division of Child Support Services (CSSD). SB 96 passed out of (S) HSS on Monday, March 2, 2009 and has been transmitted to Senate Judiciary Committee for consideration.

SB 96 addresses two time sensitive amendments to the Uniform Interstate Family Support Act (UIFSA) that will bring the Division into federal compliance. Briefly, the two changes are; 1) providing for cash medical assistance for children in custodial homes, and 2) clarifying the definition of "state" to include the US Virgin Islands and Indian tribes. If these two amendments are not adopted during this state fiscal year, the Department of Revenue will be at risk to lose more than $17 million federal receipts to support the fiduciary services provided by CSSD.

I respectfully request that CSSB96(HSS) be scheduled for hearing in the Senate Judiciary Committee as early as possible. CSSB96(HSS) carries with it a zero fiscal note.

If the Committee requires any additional information, please contact me.

Sincerely,

G Blaisdell

Ginger Blaisdell
Director

Alaska State Legislature

Interim: (May - Dec.)
716 W. 4th Ave
Anchorage, AK 99501
Phone: (907) 269-0144
Fax: (907) 269-0148

Session: (Jan. - May)
State Capitol, Suite 30
Juneau, AK 99801-1182
Phone: (907) 465-3822
Fax: (907) 465-3756
Toll free: (800) 770-3822

Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

SB 96

TITLE: "An Act relating to nonpayment of child support: relating to certain judicial and administrative orders for medical support of a child;."

SPONSOR STATEMENT (B)

In July 2008, the federal government issued new medical support regulations that require states to have guidelines addressing how either or both parents will provide for a child's healthcare needs through accessible health insurance coverage, cash medical support, or both. Under the federal regulations, states must order either or both parents to purchase reasonably-priced, accessible health insurance coverage, provide cash medical support or both. Cash medical support may be required in those cases where no reasonably-priced health insurance coverage is accessible to the child. If a parent is ordered to pay cash medical support, the Child Support Services Division must enforce the ongoing cash medical support obligation as well as collect any cash medical support arrears. Failure to satisfy these mandated jeopardizes 17 million dollars in federal funding for the state's child support program.

This bill adds to existing law the authority for a tribunal to order either or both parents to pay cash medical support, if warranted. In addition, the bill directs CSSD to review child support orders for modification on a federally mandated three-year cycle. The bill adds cash medical support to the definition of arrearage and the definition of support order thereby enabling CSSD to use

its existing enforcement tools to collect a cash medical support obligation on behalf of the child. Finally, the bill removes the language limiting who may request the correction of a clerical mistake in an administrative order or request the vacation of an administrative order based upon a default income.

This bill puts Alaska in compliance with the federal requirements. As explained above, this bill will assure that Alaska's children receive the medical support to which they are entitled.

Alaska State Legislature

Interim: (May - Dec.)
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Anchorage, AK 99501
Phone: (907) 269-0144
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Session: (Jan. - May)
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This bill adds to existing law the authority for a tribunal to order either or both parents to pay cash medical support, if warranted. In addition, the bill directs CSSD to review child support orders for modification on a federally mandated three-year cycle. The bill adds cash medical support to the definition

of arrearage and the definition of support order thereby enabling CSSD to use its existing enforcement tools to collect a cash medical support obligation on behalf of the child. Finally, the bill removes the language limiting who may request the correction of a clerical mistake in an administrative order or request the vacation of an administrative order based upon a default income.

This bill puts Alaska in compliance with the federal requirements. As explained above, this bill will assure that Alaska's children receive the medical support to which they are entitled.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 27, 2009

SUBJECT: Sectional Summary (CSSB 96( ); (Work Order No. 26-LS0485\E))

TO: Senator Betty Davis
Attn: Lynda Zaugg

FROM: Jean M. Mischel
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Adds reference to cash medical support to the crime of aiding the nonpayment of child support in the second degree.

Section 2. Adds the Virgin Islands and Indian Tribes to the definition of "state."

Section 3. Amends order of support provision to include both parents, medical support, and insurance.

Section 4. Adds medical support to provision authorizing the initiation of administrative action to establish a duty of support.

Section 5. Amends periodic reviews of support orders to require a three year cycle of review.

Section 6. Deletes motion requirement for correcting an administrative mistake in a support order.

Section 7. Deletes motion requirement for vacating a support order that is based on a default amount.

Section 8. Redefines "arrearage" for child support purposes.

Section 9. Amends the definition of "support order" to include cash medical support.

Section 10. Amends garnishment provision to include insurance and cash medical support.

Section 11. Amends the Alaska Native family assistance program to include obligations for cash medical support.

Section 12. Provides for an indirect court rule amendment to Rule 90.3, Alaska Rules of Civil Procedure for changes made in the bill.

Section 13. Makes bill changes applicable to child support actions filed on or after the bill's effective date.

Section 14. Authorizes the Department of Revenue to proceed to adopt regulations needed under the bill.

Section 15. Provides for a conditional effect for the court rule amendment in sec. 12 only for two-thirds majority vote.

Section 16. Makes sec. 14 effective immediately.

Section 17. Provides for a July 1, 2009, effective date for all other bill sections.

JMM:ljw
09-125.ljw

Alaska State Legislature

Interim: (May - Dec.)
716 W. 4th Ave
Anchorage, AK 99501
Phone: (907) 269-0144
Fax: (907) 269-0148

Session: (Jan. - May)
State Capitol, Suite 7
Juneau, AK 99801-1182
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Fax: (907) 465-3756
Toll free: (800) 770-3822

Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

Senator Bettye Davis

Date: 3/3/2009

To: Senator Hollis French, Chair
Judiciary Committee

From: Senator Bettye Davis BD

Re: CS for SB 96 "An Act relating to nonpayment of child support, to the definition of the term "state" for the purposes of the Uniform Interstate Family Support Act, to certain judicial and administrative orders for medical support of a child, to periodic review and adjustment of child support orders, to relief from administrative child support order, to child support arrearages, and to medical support of a child and the Alaska Native family assistance program; amending Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date."

This is a request that you schedule a hearing on CS for SB 96 at the earliest possible date.

Please find attached a copy of the CS for SB 96, the bill, a sponsor statement, a fiscal note and a sectional analysis. Your attention to this request would be appreciated. Thank you.

SB 35 Sponsor Statement
Revised 1/23/09

SB 102

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 12, 2009

SUBJECT: Sectional Summary of CSSB 102( )
(Work Order No. 26-LS0514\R)

TO: Senator Bettye Davis
Attn: Tom Obermeyer

FROM: Jean M. Mischel
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Raises the age from 16 to 18 for the crime of contributing to the delinquency of a minor for repeated absences from school.

Section 2. Raises the compulsory school age from 16 to 18.

Section 3. Amends an exception to the compulsory school attendance age to provide for graduation for a secondary school.

JMM:ljw
09-088.ljw

26-LS0514\R
Mischel
2/12/09

CS FOR SENATE BILL NO. 102( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS DAVIS, McGuire

A BILL

FOR AN ACT ENTITLED

"An Act relating to compulsory school attendance; and relating to the crime of contributing to the delinquency of a minor."

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

*** Section 1.** AS 11.51.130(a) is amended to read:

(a) A person commits the crime of contributing to the delinquency of a minor if, being 19 years of age or older or being under 19 years of age and having the disabilities of minority removed for general purposes under AS 09.55.590, the person aids, induces, causes, or encourages a child

(1) under 18 years of age to do any act prohibited by state law unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590;

(2) under 18 years of age or allows a child under 18 years of age to enter or remain in the immediate physical presence of the unlawful manufacture, use, display, or delivery of a controlled substance knowing that the manufacture, use,

display, or delivery is occurring, unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590;

(3) under **18** [16] years of age to be repeatedly absent from school, without just cause; or

(4) under 18 years of age to be absent from the custody of a parent, guardian, or custodian without the permission of the parent, guardian, or custodian or without the knowledge of the parent, guardian, or custodian, unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590 or the person has immunity under AS 47.10.350 or 47.10.398(a); it is an affirmative defense to a prosecution under this paragraph that, at the time of the alleged offense, the defendant

(A) reasonably believed that the child was in danger of physical injury or in need of temporary shelter; and

(B) within 12 hours after taking the actions comprising the alleged offense, notified a peace officer, a law enforcement agency, or the Department of Health and Social Services of the name of the child and the child's location.

*** Sec. 2.** AS 14.30.010(a) is amended to read:

(a) Every child **who is** [BETWEEN] seven **years of age or older** and **under 18** [16] years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian, or other person having the responsibility for or control of a child **who is** [BETWEEN] seven **years of age or older** and **under 18** [16] years of age shall maintain the child in attendance at a public school in the district in which the child resides during the entire school term, except as provided in (b) of this section.

*** Sec. 3.** AS 14.30.010(b) is amended to read:

(b) This section does not apply if a child

(1) is provided an academic education comparable to that offered by the public schools in the area, [EITHER] by

(A) attendance at a private school in which the teachers are certificated according to AS 14.20.020;

(B) tutoring by personnel certificated according to AS 14.20.020; or

(C) attendance at an educational program operated in compliance with AS 14.45.100 - 14.45.200 by a religious or other private school;

(2) attends a school operated by the federal government;

(3) has a physical or mental condition that a competent medical authority determines will make attendance impractical;

(4) is in the custody of a court or law enforcement authorities;

(5) is temporarily ill or injured;

(6) has been suspended or expelled under AS 14.03.160 or suspended or denied admittance under AS 14.30.045;

(7) resides more than two miles from either a public school or a route on which transportation is provided by the school authorities, except that this paragraph does not apply if the child resides within two miles of a federal or private school that the child is eligible and able to attend;

(8) is excused by action of the school board of the district at a regular meeting or by the district superintendent subject to approval by the school board of the district at the next regular meeting;

(9) has completed the 12th grade **or has graduated from a secondary school**;

(10) is enrolled in

(A) a state boarding school established under AS 14.16; or

(B) a full-time program of correspondence study approved by the department; in those school districts providing an approved correspondence study program, a student may be enrolled either in the district correspondence program or in the centralized correspondence study program;

(11) is equally well-served by an educational experience approved by the school board as serving the child's educational interests despite an absence from school, and the request for excuse is made in writing by the child's parents or guardian and approved by the principal or administrator of the school that the child attends;

(12) is being educated in the child's home by a parent or legal guardian.

Alaska State Legislature

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Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

Senator Bettye Davis

SB 102 "An Act relating to compulsory school attendance; relating to the crime of contributing to the delinquency of a minor; and relating to school disciplinary action and truancy."

Sponsor Statement

SB 102 increases the Alaska compulsory school attendance age from 7-16 to 7-18. At the same time it necessarily amends the crime of contributing to the delinquency of a minor from the maximum age 16 to 18. This bill will not preclude parents from homeschooling children, or using charter or alternative schools, or any other of the twelve enumerated exceptions to compulsory education under AS14.30.010(b), including completion of grade 12 or graduation from a secondary school before age 18.

3283 Alaska students dropped out and 62.4% graduated in the 2007-2008 school year per the Alaska Department of Education and Early Development (DEED). Nationally, the graduation rate is 70% or higher. The highest dropout rates in Alaska are among minorities with Alaska Natives at double the rate of others. These numbers have not changed much in many years and Alaska's compulsory school attendance age has not changed in decades.

17 states have increased the compulsory school attendance age to 18. 9 states maintain age 17, and 23 states maintain age 16, per the US Department of Labor February 10, 2009. The legislative intent by states which have increased compulsory school attendance age to 18 is to encourage more students to stay in school long enough to graduate, attend institutions of higher education, and decrease dropout rates, juvenile crime, and teen pregnancy. Studies have shown that students without a diploma earn less than 75% of those with a diploma; they are more likely to live in poverty, go to jail, and have health problems.

National Education Association's "12-Point Action Plan for Reducing the School Dropout Rate" lists as a first priority to ***"mandate high school graduation or equivalency as compulsory for everyone below the age of 21."*** It reports:

"Just as we established compulsory attendance to the age of 16 or 17 in the beginning of the 20th century, it is appropriate and critical to eradicate the idea of 'dropping out' before achieving a diploma. To compete in the 21st century, all of our citizens, at minimum, need a high school education."

Increasing compulsory school attendance age is the first step in reducing dropouts and increasing graduation rates. The NEA also recommended high school graduation centers for students 19-21; individual attention in smaller learning communities; expanding graduation options in partnership with community colleges in career and technical fields and with alternative schools to provide other ways to earn a high school diploma; increasing workforce readiness programs; acting early to provide high-quality universal preschool and full-day kindergarten; involving families in students' learning at school and home; monitoring academic progress during the school year to prevent falling behind; involving the entire community in dropout prevention; providing educators with the training and resources to prevent dropouts; and asking Congress to invest $10 billion over 10 years to support dropout prevention programs and states which make high school graduation compulsory.

Remedial programs, work-study programs, alternative schools, and parental support to age 18 have proven effective in other states. Opponents to increasing compulsory school age who are concerned about forcing students to be in the classroom against their will argue that these students may become disruptive and require more time and expense on behavior and truancy problems. For those students who want to work or are not as academically inclined, school districts are encouraged to continue accredited alternative schools and work-study programs to help students earn credits toward a diploma while they often work at the same time. Students will want to come to school, stay in school, and graduate, if academic problems are identified early and they helped long before they dropout. Coupled with early efforts to retain, train, and graduate, SB 102 can bring hope and success to thousands of Alaskan students who otherwise might not stay in school and graduate

Alaska State Legislature

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Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

Senator Bettye Davis

CSSB 102 ( ) 26-LS0514\R

"An Act relating to compulsory school attendance; and relating to the crime of contributing to the delinquency of a minor."

Explanation of Committee Substitute

The Committee Substitute for Senate Bill 102 ( ), 26-LS0514\R was required because the first version of SB 102, 26-LS0514\A, inadvertently also included a subsection on truancy from a former bill which was not intended in this bill.

The Committee Substitute for Senate Bill 102 ( ), 26-LS0514\R effectively eliminated sections 4 and 5 from the original bill, SB 102, 26-LS0514\A.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: SB 102
Bill Version:
() Publish Date:

Identifier (file name): SB102-EED-ESS-02-20-09
Dept. Affected: Education & Early Development
Title "An Act relating to compulsory school attendance; relating to the crime of contributing to the delinquency of a minor; and relating to ..."
RDU K-12 Support
Component Foundation Program
Sponsor Senators Davis & McGuire
Requester Education, Judiciary, Finance
Component Number 141

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims	16,626.6	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous							
TOTAL OPERATING	**16,626.6**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	16,626.6	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**16,626.6**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

The bill would change the compulsory age of a student attending public school in their district to begin no later than age 7 and under the age of 18. Exceptions to this would be if the student either graduates or completes the 12th grade.

In FY08 there were approximately 1,661 students between the ages of 16 and 18 that dropped out of public school after the student count period. The average cost of a student run through the FY10 foundation formula is $10,010.
1,661 x $10,010 = $16,626,610

Prepared by: Eddy Jeans, Director
Phone 465-8679
Division School Finance
Date/Time 2/20/09 12:00 AM
Approved by: Larry LeDoux, Commissioner
Date 2/20/2009

(Revised 9/10/2008 OMB)

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 12, 2009

SUBJECT: Sectional Summary of CSSB 102( )
(Work Order No. 26-LS0514\R)

TO: Senator Bettye Davis
Attn: Tom Obermeyer

FROM: Jean M. Mischel
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Raises the age from 16 to 18 for the crime of contributing to the delinquency of a minor for repeated absences from school.

Section 2. Raises the compulsory school age from 16 to 18.

Section 3. Amends an exception to the compulsory school attendance age to provide for graduation for a secondary school.

JMM:ljw
09-088.ljw

ASSOCIATION OF ALASKA SCHOOL BOARDS

ADVOCATES FOR ALASKA'S YOUTH

Position Statement on SB 102
Compulsory School Attendance

School boards believe that 16-year-olds are not ready to make the enormous decision to give up a high school education. Increasing the mandatory attendance age from 16 to 18 helps ensure that students who have not yet graduated from high school and are too young to make the life-changing decision to forego basic education will stay in school and have more opportunities to meet performance standards and pass the High School Graduation Qualifying Exam. AASB believes that the best way to keep students in school is to fund and provide education programs that engage students.

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NEA-ALASKA

Affiliated with the National Education Association

February 20, 2009

Senator Bettye Davis
State of Alaska
State Capital
Juneau, AK 99801-1182

Dear Senator Davis:

NEA-Alaska supports SB 102, a raise in the age of compulsory school attendance to eighteen for Alaska's children. Truancy and dropout rates are too high and we believe every effort should be made to encourage our youth to become as fully educated as possible. Raising the age of mandatory school attendance may serve to keep students in school longer than they now stay. If this bill causes even one child to complete their education it will be worthwhile.

Further, the annual Delegate Assembly of members in January 2009 passed a resolution which states:

> NEA-Alaska believes the Legislature should establish penalties for non-compliance with Alaska's compulsory attendance laws.

It is our belief that a law with no teeth serves little purpose. Alaska's school employees work hard to offer our children opportunities which prepare them for life. We cannot fulfill the promise of a high quality education for Alaska's children if they are not in our classrooms.

Thank you for sponsoring this piece of legislation and the work you do on behalf of Alaska's future.

Respectfully,

Barb Angaiak

Barb Angaiak, President

NEA's 12-Point Action Plan for Reducing the School Dropout Rate

To address the nation's school dropout crisis, NEA has developed a 12-point action plan that includes the most promising actions supported by experience and data.

1. Mandate high school graduation or equivalency as compulsory for everyone below the age of 21. Just as we established compulsory attendance to the age of 16 or 17 in the beginning of the 20th century, it is appropriate and critical to eradicate the idea of "dropping out" before achieving a diploma. To compete in the 21st century, all of our citizens, at minimum, need a high school education.

2. Establish high school graduation centers for students 19-21 years old to provide specialized instruction and counseling to all students in this older age group who would be more effectively addressed in classes apart from younger students.

3. Make sure students receive individual attention in safe schools, in smaller learning communities within large schools, in small classes (18 or fewer students), and in programs during the summer, weekends, and before and after school that provide tutoring and build on what students learn during the school day.

4. Expand students' graduation options through creative partnerships with community colleges in career and technical fields and with alternative schools so that students have another way to earn a high school diploma. For students who are incarcerated, tie their release to high school graduation at the end of their sentences.

5. Increase career education and workforce readiness programs in schools so that students see the connection between school and careers after graduation. To ensure that students have the skills they need for these careers, integrate 21st century skills into the curriculum and provide all students with access to 21st century technology.

6. Act early so students do not drop out with high-quality, universal preschool and full-day kindergarten; strong elementary programs that ensure students are doing grade-level work when they enter middle school; and middle school programs that address causes of dropping out that appear in these grades and ensure that students have access to algebra, science, and other courses that serve as the foundation for success in high school and beyond.

7. Involve families in students' learning at school and at home in new and creative ways so that all families-single-parent families, families in poverty, and families in minority communities-can support their children's academic achievement, help their children engage in healthy behaviors, and stay actively involved in their children's education from preschool through high school

graduation.

8. Monitor students' academic progress in school through a variety of measures during the school year that provide a full picture of students' learning and help teachers make sure students do not fall behind academically.

9. Monitor, accurately report, and work to reduce dropout rates by gathering accurate data for key student groups (such as racial, ethnic, and economic), establishing benchmarks in each state for eliminating dropouts, and adopting the standardized reporting method developed by the National Governors Association.

10. Involve the entire community in dropout prevention through family-friendly policies that provide release time for employees to attend parent-teacher conferences; work schedules for high school students that enable them to attend classes on time and be ready to learn; "adopt a school" programs that encourage volunteerism and community-led projects in school; and community-based, real-world learning experiences for students.

11. Make sure educators have the training and resources they need to prevent students from dropping out including professional development focused on the needs of diverse students and students who are at risk of dropping out; up-to-date textbooks and materials, computers, and information technology; and safe modern schools.

12. Make high school graduation a federal priority by calling on Congress and the president to invest $10 billion over the next 10 years to support dropout prevention programs and states who make high school graduation compulsory.

For the Spanish version of this plan, see El Plan de la NEA para Reducir el Abandono de los Estudios.

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Don Burrell

From: Friedman_Jeff [Friedman_Jeff@asdk12.org]
Sent: Saturday, February 21, 2009 7:16 PM
To: Sen. Kim Elton; Sen. Bettye Davis; Sen. Charlie Huggins; Sen. Donny Olson; Sen. Gary Stevens
Cc: Don Burrell; Thomas Obermeyer; Comeau_Carol; Siegfried_Robin; Sen. Lesil McGuire
Subject: SB 102

Dear Senator Elton and Education Committee Members:

I am writing in support of SB 102, a bill to raise the compulsory age of school attendance.

The Anchorage School Board has consistently supported raising the age of school attendance to 18 years of age or graduation with a high school diploma, which ever comes first. This bill would accomplish that. While raising the school age would not prevent all students from dropping out, it would change the minds of some students. Over the years, we have heard of students whose parents tell them to leave school and get a job because the family needs the money and school is not required once they turn 16. We also hear of students who convince their parents that they should be permitted to stop going to school after they turn 16 because the current law says it is okay.

It is not okay for a 16 or 17 year old to stop going to school if they do not have a diploma. A high school diploma has become too important in today's society. We need to take all reasonable steps to reduce the number of students who leave school before graduating, and this is one of those steps. It is not the entire solution, but it is one piece of the solution.

The second part of this bill addresses procedures to reduce truancy. The Anchorage School Board has not yet had an opportunity to take a position on this issue, but I am confident that the Board would be interested in looking at ways to reduce truancy. I have personally noticed one thing in this portion of the bill that I want to bring to your attention.

The proposed definition of truancy says it is an unexcused absence without the prior knowledge and consent of the parent or guardian. From talking to teachers, it seems that a significant problem is that some parents routinely give their children permission to be absent from school. Because they have permission, they could not be considered truant under this bill. From an educational point of view, I don't think it would matter whether a student misses class with or without parental permission. The problem is missing too many instructional days. I don't know how best to address this, but I thought I would bring it to your attention.

Thank you for your consideration, and I urge you to support raising the compulsory age for school attendance.

Jeff Friedman
Anchorage School Board
1534 D St
Anchorage, AK 99501
907-742-4699 (home)
friedman_jeff@asdk12.org

Wage and Hour Division (WHD)

Printer-Friendly Version

ESA OFCCP OLMS OWCP WHD
WHD U.S. Wage and Hour Division
To promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce.

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Employment Related Provisions in State Compulsory School Attendance Laws - January 1, 2009

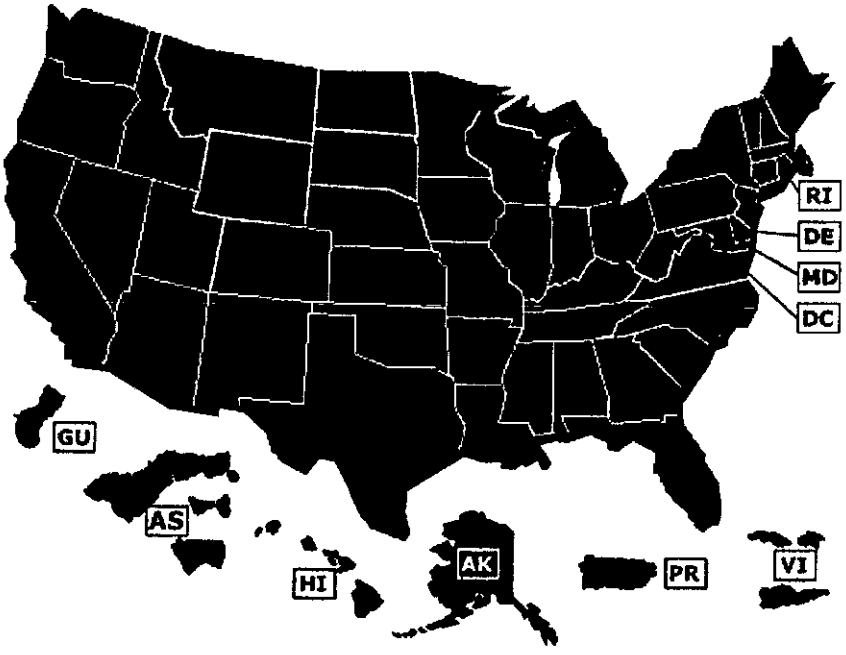

Table of Employment Related Provisions in State Compulsory School Attendance Laws By State

State	Age of Required School Attendance		Exemptions 1/ Employed		High School Graduate
	from	to	Age	Completion of Grade	
Alabama	7	16	legally and regularly employed under child labor law.	---	X
	3	21	permitted for special education students.		
Alaska	7	16	---	---	X
			14 with parental		

Arizona	6	16	consent and gainfully employed.	---	---
Arkansas	5	17 must complete school year.	---	---	X
California	6	18	---	---	X
Colorado	7	16	has current age and school certificate or work permit.	---	X
Connecticut	5	18	16 with parental consent.	---	---
Delaware	5	16	---	---	---
District of Columbia	5	18	children who are age 5 by September 30 are required to be enrolled in kindergarten.	---	---
Florida	6	17	may terminate attended at 16 with parental consent.	---	---
Georgia	6	16	---	---	X
Hawaii	6	18	15	---	X
Idaho	7	16	---	---	---
Illinois	7	17	employed and excused by school official.	---	---
Indiana	7	18	16 with consent of parent and principal. 14 if a parent agrees and State Labor bureau issues a certificate. must go back to school within 5 days of termination of employment for which certificate was issued.	---	X
Iowa	6	16	---	---	X
Kansas	7	18	17 or 16 with parental consent.	---	---
Kentucky	6	16	---	---	X
Louisiana	7	18 or 17 with parental consent.	---	---	X
Maine	7	17	15 or	9	X
Maryland	5	16	---	---	---
Massachusetts	6	16	14	---	---
Michigan	6	16	---	---	---
Minnesota	7	16	---	---	X

Mississippi	6	17	5 years of age if in public kindergarten.	---	---
Missouri	7	16	14	---	---
Montana	7	16 or completion of 8th grade, whichever is later.	---	---	---
Nebraska	7	18	14 and16 with parental consent; special legislation for home schooling.	8 ---	X
Nevada	7	upper age limit has been changed to 18 unless the child has graduated from high school.	14 and excused by board of trustees. 14 if work is necessary for own or parents' support.	8 ---	X
New Hampshire	6	16 presently; however, effective July 2009, upper age limit will change to 18 or the student must have received diploma or qualifies for exception. With passage of NH House Bill 927, all districts are making plans to offer kindergarten.	---	---	---
New Jersey	6	16	---	---	---
New Mexico	5, or 8 if parents and school board agree	effective July 1, 2007, neither school districts or state chartered school districts shall excuse a student from attending school except as provided by law or for parent-authorized medical reasons.	---	---	X
New York	6	17 in cities with 4,500 or more population and union-free school districts, otherwise 16 if approved by local school board.	---	---	X
North Carolina	7	16	---	---	---
North Dakota	7	16	necessary to support of family.	---	X

Ohio	6	18	16 with parents' and superintendents permission.	---	X
Oklahoma	5	18 or 16 if excused by written joint agreement.	---	---	X
Oregon	7	18 or excused by district school board; 16 with consent of school administration and parent; 21 for a child with a disability.	16	---	X
Pennsylvania	8	17	16 if regularly engaged in employment with a certificate. 15 in farm work or domestic service in private home with permit. Or, 14 employed as above if completed elementary school with permit recommended by district superintendent of schools or principal of private school.	---	X
Rhode Island 2	6	18	16 with written parental consent. Dropout Prevention Act of 2007.	---	---
South Carolina	5	17	16 further attendance is determined by court to be disruptive, unproductive or not in best interest of child.	8th grade completed and employment is necessary for maintenance of home.	X
South Dakota	6	16 or completion of 8th grade if member of certain religious organizations. effective July 1, 2009, the upper limit of the compulsory age law changes to	---	---	---

		18.			
Tennessee	6	18th birthday.	---	local exemptions at 17th birthday for discipline problems.	X
Texas	6	18; person 18 years of age may enroll but failure to attend can result in permanent revocation if 5 or more unexcused absences occur in a semester. Students suspected of violating school attendance laws when apprehended must be taken into custody and delivered to their school campus.	---	---	---
Utah	6	18	16 and 8th grade completed. home schooled minors has exempt from attendance.	8th for employment purposes.	X
Vermont	6	16	15 and completed 6th grade and services needed for support of family.	---	---
Virginia	5	18	exempt any pupil with parent's consent along with that of principal or superintendent or a court which believes the minor cannot benefit from education at school.	---	X
Washington	8	18 16 and parent agrees that child should not be required to attend, or child is emancipated, or child has received certificate of competence.	16	---	X and age 16
West Virginia	6	16	---	---	X
Wisconsin	6	18	---	---	X

Wyoming	7	16	---	---	---

1 Nearly all States exempt those whose physical or mental condition precludes attendance. Other exemptions not directly related to employment include those because of distance from school or school transportation; expulsion, suspension or determined to be disruptive; marriage; excused by court or judge; and receiving religious education.

2 The Dropout Prevention Act is a comprehensive program to have all the schools within the state make an attempt to keep students in school. There were no changes to the age limits for school attendance, but the establishment of a state-wide program is a major effort to prevent students from leaving school early - for any reason.

Prepared By:

Office of Performance, Budget, and Departmental Liaison
Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor

This document was last revised in December 2008; unless otherwise stated, the information reflects requirements that were in effect, or would take effect, as of January 1, 2009.

Education Program

Compulsory Education

Overview

Legislation & Laws

News Articles

Overview

More than 150 years have passed since Horace Mann helped Massachusetts establish a statewide system of education that eventually led to the requirement that all children attend public school. In 1852, Massachusetts became the first state to pass compulsory school attendance laws, and by 1918, all states required children to receive an education.

Compulsory Education Requirements

Today, every state and territory requires children to enroll in public or private education or to be home-schooled. More than half—32 states—require students to begin their education by age 6. Some states' set their age requirements as low as age 5 and as high as age 8. All children are required to continue their education into their high school years, with 26 states setting the cutoff age at 16. The remaining states require students to stay in school through age 17 or 18.

Compulsory education laws vary greatly from state to state. While some states use a student's date of birth to determine the beginning and ending dates for compulsory education, other states require a student to begin school if he or she will turn 6 during the school year and require a student to remain in school until completion of the school year in which he or she turns 17. Four states—Arizona, Montana, Vermont and Wyoming—require students to remain in school through a specified grade. Most states allow parents to petition their local school board or principal for a waiver of these requirements under certain circumstances, such as enrollment in a vocational education program or an institution of higher education or early completion of required coursework.

Kindergarten Enrollment

States and territories also set a minimum age for children to enroll in kindergarten, which is typically one or two years earlier than the compulsory education age. Every state or territory with a policy on this issue has established age 5 as the minimum age. However, six states—Colorado, Massachusetts, New Hampshire, New Jersey, New York and Pennsylvania—leave this decision up to local education agencies. In addition to the age requirement, each state also sets a date by which students must have attained the specified age in order to attend kindergarten. The cutoff dates range from August 1 in Indiana and Missouri to Jan. 1 in Connecticut and Vermont.

The School Age Debate

School attendance ages are often controversial. Many early childhood experts argue that if policymakers establish early cutoff dates for kindergarten, they should also establish aggressive school readiness programs to ensure students' success. Others argue that because there has been an increased emphasis on early childhood development and school readiness, we should continue to challenge children at a younger age. Some experts assert that age may be an arbitrary indicator or measure of a child's ability to succeed in school and should not be used at all. Others point out that when a state considers legislation, such as Nebraska, allowing younger children to enter kindergarten, policymakers must understand that there is likely to be a large increase in the number of children entering kindergarten during the first year of the new policy, thereby straining already tight school district budgets and increasing the need for teachers.

Featured Links

- Education Bill Tracking Database
- American Association of School Administrators
- Council of Chief State School Officers
- Education Commission of the States
- Education Week
- National Association of Elementary School Principals
- National Association of Secondary School Principals
- National Association of State Boards of Education
- National School Boards Association
- National Center for School Engagement
- Contact NCSL Staff

The age through which students must attend school can also be controversial. To encourage more students to attend institutions of higher education and to decrease dropout rates, juvenile crime and teen pregnancy, some state legislatures have increased the school attendance requirement to age 17 or 18. Opponents are concerned about forcing students to be in the classroom against their will. They say that these students may become disruptive and may require teachers and principals to spend more time and resources disciplining such students for disruptive or violent behavior and truancy. They also point out that there probably will be a greater need for funding, teachers and classrooms for alternative education.

State Action

Many state legislatures continue to debate school attendance policies. During the 2005 legislative session, Indiana changed their kindergarten enrollment date from July 1st to August 1st. During the 2004 legislative session, at least seven states enacted legislation regarding compulsory education. Alaska extended the required school age for a child who is six years of age on or before Sept. 1 following the beginning of the school year, and who is under the age of 20 and has not completed the 12th grade. Illinois increased the compulsory school age from 16 to 17 years of age, with certain exceptions. Kansas and Kentucky will both, under specific circumstances, grant exemptions from compulsory attendance. Nebraska changed the mandatory ages for compulsory education beginning in the 2005-06 school year to age of 6 by Jan. 1 of the current school year through the age of 17, with certain exceptions. In New York, local school districts will have the power to require minors from 16 to 17 years of age to attend full time day instruction. Finally, Virginia strengthened the mechanisms for enforcement of the compulsory school attendance law.

Visitor counts for this page.

Education Home Page

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ALLIANCE FOR EXCELLENT EDUCATION

FactSheet

Updated February 2009

High School Dropouts in America

Over a million of the students who enter ninth grade each fall fail to graduate with their peers four years later. In fact, about seven thousand students drop out every school day. Perhaps this statistic was acceptable fifty years ago, but the era in which a high school dropout could earn a living wage has ended in the United States. Dropouts significantly diminish their chances to secure a good job and a promising future. Moreover, not only do the individuals themselves suffer, but each class of dropouts is responsible for substantial financial and social costs to the communities, states, and country in which they live.

Although graduation rates are a fundamental indicator of how schools are ultimately performing, only recently have those rates been rigorously scrutinized and the extent of the crisis in America's high school been revealed. For decades, schools and districts published misleading or inaccurate graduation rates, and as a result, the American public knew little of the scope and gravity of the problems faced by far too many of the nation's high schools. Reputable, independent research has exposed alarmingly low graduation rates that were previously hidden behind inaccurate calculations and inadequate data.

Who Is Dropping Out?

Overall, far too many students are not graduating on time with a regular diploma; low-income and minority students fare the worst in the dropout epidemic.

- Each year, approximately 1.2 million students fail to graduate from high school, more than half of whom are from minority groups. [1]
- Nationally, about 71 percent of all students graduate from high school on time with a regular diploma, but barely half of African American and Hispanic students earn diplomas with their peers. In many states the difference between white and minority graduation rates is stunning; in several cases there is a gap of as many as 40 or 50 percentage points.[2]
- A sixteen- to twenty-four-year-old coming from the highest quartile of family income is about seven times as likely to have completed high school as a sixteen- to twenty-four-year-old coming from the lowest quartile.[3]

Where Are Students Dropping Out?

A relatively small number of chronically underperforming high schools are responsible for more than half of the nation's dropouts.

- Approximately two thousand high schools (about 12 percent of American high schools) produce more than half of the nation's dropouts. In these "dropout factories," the number of seniors enrolled is routinely 60 percent or less than the number of freshmen three years earlier.[4]
- Eighty percent of the high schools that produce the most dropouts can be found in a subset of just fifteen states. The majority of dropout factories are located in northern and western cities and throughout the southern states.[5]

1201 Connecticut Avenue, NW · Suite 901· Washington, DC 20036
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- Dropout factories produce 69 percent of all African American dropouts and 63 percent of all Hispanic dropouts, compared to 30 percent of all white dropouts.[6]

Why Do Students Drop Out?

While there is no single reason that students drop out, research indicates that difficult transitions to high school, deficient basic skills, and a lack of engagement serve as prominent barriers to graduation.

- Most dropouts are already on the path to failure in the middle grades and engage in behaviors that strongly correlate to dropping out in high school. Various researchers have identified specific risk factors, such as low attendance or a failing grade, which can identify future dropouts—in some cases as early as sixth grade.[7]
- Ninth grade serves as a bottleneck for many students who begin their freshman year only to find that their academic skills are insufficient for high school-level work. Up to 40 percent of ninth grade students in cities with the highest dropout rates repeat ninth grade; only 10 to 15 percent of those repeaters go on to graduate.[8]
- Academic success in ninth grade course work is highly predictive of eventual graduation; it is even more telling than demographic characteristics or prior academic achievement.[9] Unfortunately, many students are not given the extra support they need to successfully make the transition to high school. As a result, over one third of all dropouts are lost in ninth grade.[10]
- The six million secondary students who comprise the lowest 25 percent of achievement are twenty times more likely to drop out of high school than students in the top-performing quartile.[11]
- Both academic and social engagement are integral components of successfully navigating the education pipeline. Research shows that a lack of student engagement is predictive of dropping out, even after controlling for academic achievement and student background.[12]

What Are the Costs of Dropping Out of High School?

Dropouts suffer from reduced earnings and lost opportunities; there is also a significant social and economic cost to the rest of the nation.

- Over the course of his or her lifetime, a high school dropout earns, on average, about $260,000 less than a high school graduate.[13]
- Dropouts from the Class of 2008 alone will cost the nation more than $319 billion in lost wages over the course of their lifetimes.[14]
- If the United States' likely dropouts from the Class of 2006 had graduated, the nation could have saved more than $17 billion in Medicaid and expenditures for uninsured health care over the course of those young people's lifetimes.[15]
- If U.S. high schools and colleges raise the graduation rates of Hispanic, African American, and Native American students to the levels of white students by 2020, the potential increase in personal income would add more than $310 billion to the U.S. economy.[16]
- Increasing the graduation rate and college matriculation of male students in the United States by just 5 percent could lead to combined savings and revenue of almost $8 billion each year by reducing crime-related costs.[17]

Endnotes

[1] Editorial Projects in Education, "Diplomas Count 2008: Diplomas Count 2008. School to College: Can State P–16 Councils Ease the Transition?," special issue, *Education Week* 26, no. 40 (2008).
[2] Ibid.
[3] U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics 2006* (NCES 2007-017) (Washington, DC: U.S. Government Printing Office, 2007).
[4] R. Balfanz, "Locating and Transforming the Low Performing High Schools Which Produce the Nation's Dropouts," paper presented at Turning Around Low-Performing High Schools : Lessons for Federal Policy from Research and Practice, August 16, 2007, Washington, DC.
[5] R. Balfanz and N. Legters, *Locating the Dropout Crisis: Which High Schools Produce the Nation's Dropouts? Where Are They Located? Who Attends Them?* (Baltimore, MD: John Hopkins University Center for Social Organization of Schools, 2004).
[6] Balfanz, "Locating and Transforming the Low Performing High Schools Which Produce the Nation's Dropouts."
[7] C. Jerald, "Dropping Out is Hard to Do," (Washington, DC: The Center for Comprehensive School Reform and Improvement, 2006).
[8] R. Balfanz and N. Legters, "Closing 'Dropout Factories': The Graduation Rate Crisis We Know and What Can Be Done About It," *Education Week* 25, no. 42 (2006): 42–43.
[9] E. Allensworth and J. Easton, *What Matters for Staying On-Track and Graduating in Chicago Public High Schools: A Close Look at Course Grades, Failures and Attendance in the Freshman Year* (Chicago, IL: Consortium on Chicago School Research at the University of Chicago, University Publications Office, 2007).
[10] Editorial Projects in Education, "Diplomas Count 2007: Ready for What? Preparing Students for College, Careers, and Life After High School," special issue, *Education Week* 26, no. 40 (2007).
[11] A. Carnevale, *Help Wanted...College Required. ETS Leadership 2000 Series* (Princeton, NJ: Educational Testing Service, 2001).
[12] R. Rumberger, "Why Students Drop Out of School," in *Dropouts in America: Confronting the Graduation Rate Crisis* ed. G. Orfield, 131–155 (Cambridge, MA: Harvard Education Press, 2004).
[13] C. Rouse, "Labor Market Consequences of an Inadequate Education," paper prepared for the symposium on the Social Costs of Inadequate Education," October 24, 2005, New York.
[14] Alliance for Excellent Education, "The High Cost of High School Dropouts: What the Nation Pays for Inadequate High Schools," (Washington, DC: Author, 2008).
[15] ———, "Healthier and Wealthier: Decreasing Health Care Costs by Increasing Educational Attainment," (Washington, DC: Author, 2006).
[16] ———, "Demography as Destiny: How America Can Build a Better Future," (Washington, DC: Author, 2006).
[17] ———, "Saving Futures, Saving Dollars: The Impact of Education on Crime Reduction and Earnings," (Washington, DC: Author, 2006).

Article 1. Compulsory Education

Sec. 14.30.010. When attendance compulsory. (a) Every child between seven and 16 years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and 16 years of age shall maintain the child in attendance at a public school in the district in which the child resides during the entire school term, except as provided in (b) of this section.

(b) This section does not apply if a child

(1) is provided an academic education comparable to that offered by the public schools in the area, either by

(A) attendance at a private school in which the teachers are certificated according to AS 14.20.020;

(B) tutoring by personnel certificated according to AS 14.20.020; or

(C) attendance at an educational program operated in compliance with AS 14.45.100-14.45.200 by a religious or other private school;

(2) attends a school operated by the federal government;

(3) has a physical or mental condition that a competent medical authority determines will make attendance impractical;

(4) is in the custody of a court or law enforcement authorities;

(5) is temporarily ill or injured;

(6) has been suspended or expelled under AS 14.03.160 or suspended or denied admittance under AS 14.30.045;

(7) resides more than two miles from either a public school or a route on which transportation is provided by the school authorities, except that this paragraph does not apply if the child resides within two miles of a federal or private school that the child is eligible and able to attend;

(8) is excused by action of the school board of the district at a regular meeting or by the district superintendent subject to approval by the school board of the district at the next regular meeting;

(9) has completed the 12th grade;

(10) is enrolled in

(A) a state boarding school established under AS 14.16; or

(B) a full-time program of correspondence study approved by the department; in those school districts providing an approved correspondence study program, a student may be enrolled either in the district correspondence program or in the centralized correspondence study program;

(11) is equally well-served by an educational experience approved by the school board as serving the child's educational interests despite an absence from school, and the request for excuse is made in writing by the child's parents or guardian and approved by the principal or administrator of the school that the child attends;
(12) is being educated in the child's home by a parent or legal guardian.
(c) If a parent, legal guardian, or other person having the responsibility for or control of the child elects to enroll a child who is six years of age in the first grade at a public school, after enrollment, the child is subject to the provisions of (a) and (b) of this section. If the parent or guardian of a child who is six years of age and is enrolled in first grade at a public school determines, within 60 days after the child is enrolled, that the best interests of the child are not being served by enrollment in the first grade, the child may be withdrawn from school, and the provisions of (a) and (b) of this section do not apply to the child until the child is seven years of age.

What are the differences between the dropout rate and the graduation rate?

Dropout Rate

The dropout rate is a **one-year** calculation.

The dropout rate uses enrollment information from grades **7-12**.

A student can be reported in the dropout rate over **multiple** years. If a student dropped out in 2006-07, they would be reported as a dropout. If they returned in 2007-08 and dropped out again, they would be included in that year as a dropout as well.

If a student comes back as a 5th year senior and drops out, **they are counted** in the dropout rate for that year.

The dropout rate includes any student in grades **7-12** who dropped out in that **specific year.**

Graduation Rate

The graduation rate is an estimated **four-year** cohort calculation.

The graduation rate uses enrollment from grades **9-12**.

In the graduation rate calculation, the numbers are unduplicated so a student who drops out multiple times is only counted **once** in the calculation.

If a student comes back as a 5th year senior and does not graduate, it has **no impact** on the graduation rate. The senior is removed from the calculation because they were already counted against the school as a continuing COA student the previous year.

If a student comes back as a 5th year senior and does graduate, it **helps** the graduation rate because the student is counted as a graduate in that school year.

The graduation rate includes the **9-12** cumulative unduplicated dropouts over the **4-year cohort**.

Alaska State Legislature

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Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

Office of Senator Bettye Davis

March 16, 2009

Senator Hollis French, Chair
Senate Judiciary Committee

RE: Request for Hearing for CSSB 102 - Compulsory School Attendance Age

"An Act relating to compulsory school attendance; and relating to the crime of contributing to the delinquency of a minor."

Dear Senator French:

Senator Davis respectfully requests a hearing by the Senate Judiciary Committee on CSSB 102. A committee substitute was required and adopted by EDU because the first version of SB 102, 26-LS0514\A, inadvertently also included a subsection on truancy from a former bill which was not intended in this bill. This bill increases the compulsory school attendance to age 18 and also necessarily amends the Title 11 section relating to the crime of contributing to the delinquency of a minor to the age 18. As explained *infra*, this is but one of many steps recommended by the NEA to reduce dropouts and increase graduation rates in Alaska. The bill is supported by Alaska school districts, superintendents, and the Alaska School Board Association.

Included in this hearing package are:

1. Sponsor Statement
2. Explanation of Committee Substitute
3. Committee Substitute for SB 102
4. Sectional Summary of CSSB 102
5. Original Bill, SB 102, 26-LS0514\A
6. Fiscal notes
7. Additional Documentation
8. Anticipated teleconference testimony from educators, parents, and the department

Sincerely,

Thomas S. Obermeyer
465-3762
Thomas_Obermeyer@legis.state.ak.us

1518

SB

110

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax

Pages (including cover sheet): 4

Date: April 6, 2009

To: LAA Legal

From: Cindy Smith

RE: As passed CS for SB110

Please make the amendments, attached, to CSSB110 (LS0560\E). Please call me if you have any questions.

Cindy

SB 110

AMENDMENT #1

moved

OFFERED IN THE SENATE BY

TO: SB 110

Page 4, following line 3:
~~Page 3, following line 25:~~

Insert new bill sections to read:

"* **Sec. 2.** AS 44.41.035(g) is amended to read:

(g) A person from whom a sample has been collected under this section

(1) may inspect and obtain a copy of the identification data regarding the person contained within the DNA identification registration system**; and**

(2) may request the Department of Public Safety to destroy the material in the system regarding the person under the provisions described in (i) of this section.

* **Sec. 3 .** AS 44.41.035(i) is amended to read:

(i) The Department of Public Safety shall [, UPON RECEIPT OF A COURT ORDER,] destroy the material in the system relating to a person **or minor upon the written request of the person or minor, if the request is accompanied by a certified copy of a court order indicating that** [THE COURT SHALL ISSUE THE ORDER IF] the person's or minor's DNA was included in the system under

(1) (b)(1) or (2) of this section, and the court **order establishes** [DETERMINES] that

(A) the conviction or adjudication that subjected the person to having a sample taken under this section **was** [IS] reversed; and

(B) the person

(i) **was** [IS] not retried, readjudicated, or convicted or adjudicated for another crime that requires having a sample taken under this section; or

(ii) after retrial, **was** [IS] acquitted of the crime or after readjudication for the crime **was** [IS] not found to be a delinquent, and **was** [IS] not convicted or adjudicated for another crime that requires a sample under this section;

(2) (b)(6) of this section and the court **order establishes** [DETERMINES] that

(A) the person arrested was released without being charged; [OR]

(B) the criminal complaint, indictment, presentment, or information for the offense for which the person was arrested was dismissed, and a criminal complaint, indictment, presentment, or information for an offense requiring submission of a DNA sample **was** [IS] not refiled**; or**

(C) the person was found by the trier of fact to be not guilty of the offense for which the person was arrested, and was not convicted of another offense requiring submission of a DNA sample under (b)(1) or (2) of this section.

*** Sec. 4.** AS 44.41.035 is amended to read by adding a new subsection to read:

(r) A DNA sample collected or placed in the DNA identification registration system, that was taken or retained in good faith, may be used as provided by law in a criminal investigation. Evidence obtained from a match from a data collection system may be used in a criminal prosecution if the DNA sample was taken or retained in good faith, even if the DNA sample is later removed from the DNA identification registration system."

Renumber the following bill sections accordingly.

Offered in the Senate #2

TO: CSSB 110 LS0560\E By:

On page 3 at line 19, delete the language in (h) and replace with

A person may not bring a civil action for damages against the state or political subdivision of the state, their officers, agents, or employees, or a law enforcement agency, its officers, or employees for any failure to comply with the provisions of this section.

unintentional

#4

Offered in the Senate #3

TO: CSSB 110 LS0560\E

At page 4, line 18, insert:

(8) a representative of the State Crime Lab.

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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

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Joseph Young
Anchorage

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Unalaska
Pres. Aleutian Islands Chapter

Thecla LaLonde, Member
Wrangell
Pres. Wrangell Chapter

March 27, 2009

Senator Hollis French
Alaska State Senate
State Capitol
Juneau AK 99801-1182

Dear Senator French:

On behalf of the Alaska Peace Officers Association (APOA), I am writing regarding your introduction of SB 110, an act relating to the preservation of evidence.

The APOA State Board's Legislative Committee recently reviewed this proposed legislation and decided to unanimously oppose this bill. We believe this would be over burdensome for a number of agencies. Our suggestion would be amending the bill for time limits and/or storage options after all appeals are exhausted—maybe the Crime Lab.

We urge you to reconsider this legislation. Please contact the APOA office in Anchorage at 277-0515, if you have any questions.

Sincerely,

Angella Long
State President

26-LS0560\E
Luckhaupt
3/17/09

CS FOR SENATE BILL NO. 110(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR FRENCH

A BILL

FOR AN ACT ENTITLED

"An Act relating to the preservation of evidence."

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

*** Section 1.** AS 12.36 is amended by adding a new section to read:

Article 2. Preservation of Evidence.

Sec. 12.36.200. Preservation of evidence. (a) Notwithstanding AS 12.36.010 - 12.36.090, the Department of Law, the Department of Public Safety, the Alaska Court System, or a municipal law enforcement agency shall preserve

(1) all evidence that is obtained in relation to an investigation or prosecution of a crime under AS 11.41.100 - 11.41.130, 11.41.410, or 11.41.434 for the period of time that the crime remains unsolved;

(2) biological evidence in an amount and manner that is sufficient to develop a DNA profile from any material contained in or included on the evidence that was obtained in relation to the prosecution of a person convicted of, or adjudicated a delinquent for, a crime under AS 11.41.100 - 11.41.130, a person convicted of a crime after being indicted under AS 11.41.410 or 11.41.434 while the

person remains a prisoner in the custody of the Department of Corrections or subject to registration as a sex offender, or a person adjudicated a delinquent for a crime after the filing of a petition alleging a violation of AS 11.41.410 or 11.41.434 while the person remains committed to a juvenile facility or subject to registration as a sex offender.

(b) Under (a) of this section, an agency is not required to preserve physical evidence of a crime that is of a size, bulk, quantity, or physical character that renders preservation impracticable. When preservation of evidence of a crime is impracticable, the agency shall, before returning or disposing of the evidence, remove and preserve portions of the material likely to contain relevant evidence related to the crime in a quantity sufficient to permit future DNA testing. In making decisions under this section, an agency shall follow written policies on evidence retention.

(c) Upon written request of a person convicted of a crime and a prisoner, adjudicated delinquent for a crime and committed, or subject to registration as a sex offender, an agency shall prepare or provide an inventory of biological evidence that has been preserved under (a)(2) of this section in connection with the person's criminal case.

(d) An agency required to preserve biological evidence under (a) of this section may destroy biological evidence before the expiration of the time period in (a)(2) of this section if

(1) the agency is not required to maintain the evidence under another provision of state or federal law;

(2) the agency mails a certified delivery of notice of intent to destroy evidence to

(A) each person who remains a prisoner or committed or subject to registration as a sex offender for the crime for which the evidence was preserved under (a)(2) of this section;

(B) the attorney of record for each person listed in (A) of this paragraph;

(C) the Public Defender Agency;

(D) the district attorney responsible for prosecuting the crime;

and

(3) no person who is notified under (2) of this subsection, within 120 days after receiving the notice,

(A) files a motion for testing of the evidence; or

(B) submits a written request for continued preservation of the evidence.

(e) Upon receipt of a request for continued preservation of biological evidence under (d)(3)(B) of this section, an agency may petition the court for permission to destroy the evidence. The court may grant the petition if the court finds that the request is without merit or that the evidence has no significant value for biological material.

(f) When an agency is required to produce biological evidence required to be preserved under this section and the agency is unable to locate the evidence, the chief evidence custodian of that agency shall submit an affidavit, executed under penalty of perjury, describing the evidence that could not be located and detailing the efforts taken to locate the evidence.

(g) If a court finds that evidence was destroyed in violation of the provisions of this section, the court may order remedies the court determines to be appropriate.

(h) The unintentional failure of an agency to preserve evidence as required by this section is not a basis for civil liability.

(i) In this section,

(1) "agency" means the Department of Law, the Department of Public Safety, the Alaska Court System, or a municipal law enforcement agency;

(2) "biological evidence" means

(A) the contents of a sexual assault forensic examination kit;

(B) semen, blood, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable human bodily material, collected as part of a criminal investigation;

(C) a slide, swab, or test tube containing material described in (B) of this paragraph; and

(D) swabs or cuttings from items that contain material

described in (B) of this section;

(3) "DNA" means deoxyribonucleic acid;

(4) "prisoner" has the meaning given in AS 33.30.901.

*** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TASK FORCE ON STANDARDS AND TRAINING OF EVIDENCE TECHNICIANS. (a) The Task Force on Standards and Training of Evidence Technicians is created in the Department of Law. The task force consists of the following persons appointed by the governor:

(1) the attorney general;

(2) the public defender;

(3) the director of the office of public advocacy;

(4) a chief of a municipal police department not on the state's interconnected road system;

(5) the commissioner of public safety;

(6) a chief of a municipal police department; and

(7) a representative of the Alaska Innocence Project.

(b) There shall be three ex officio members of the task force as follows:

(1) a member of the House Judiciary Committee selected by the speaker of the house of representatives;

(2) a member of the Senate Judiciary Committee selected by the president of the senate; and

(3) the victims' advocate.

(c) Persons appointed under (a) of this section or identified under (b) of this section may select a designee from the same agency or organization to act on the person's behalf as a member of the task force.

(d) Not later than December 31, 2011, the task force shall

(1) devise standards regarding the proper collection, retention, and cataloging of evidence, for ongoing investigations and prosecutions;

(2) recommend practices, protocols, models, and resources for the cataloging and accessibility of preserved evidence.

* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 12.36.200, enacted in sec. 1 of this Act, applies to all evidence in the possession of an agency listed in AS 12.36.200(a) on the effective date of this Act for crimes committed before the effective date of this Act and all evidence collected on or after the effective date of this Act.

* **Sec. 4.** Section 2 of this Act is repealed January 1, 2012.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Kim Elton
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

MEMORANDUM

March 10, 2009

TO: Jerry Luckhaupt, Leg Legal

From: Cindy Smith

RE: new CS for SB110 Preservation of Evidence 26-LS0560\A

Please prepare a Judiciary CS for SB110 with the following amendments:

1. Add language to include juveniles adjudicated for the offenses to the requirements in (2) on page one.

2. On page two in (b) please add language that says that in determining what evidence cannot be kept due to size etc., the agency will abide by its written policies on evidence retention.

3. On page 2 at line 25, after (d), the Department of Law and at least one committee member thought an "and" should be inserted, but we all defer to the wisdom the drafter as to whether this is correct!

4. After (g) on page 3, please add a provision like those developed in victims' rights that provides immunity to agencies from civil suits for unintentional loss or destruction of evidence.

5. Please eliminate the Supreme Court appointment on the task force (page 4 at line 10) and roll the dates back on the task force and the repealer by a year (lines 19 and 30).

6. Please add the provisions on DNA destruction, attached (Law drafted this language - feel free to redraft if/as needed. These are provisions needed to meet CODIS requirements - I don't know if you will need to make any changes to the bill's title or not....

Thanks, Jerry! Call me if you have any questions: 465-6641

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
February 25, 2009
1:37 p.m.

DRAFT

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Kim Elton
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 110
"An Act relating to the preservation of evidence."
HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 110
SHORT TITLE: PRESERVATION OF EVIDENCE
SPONSOR(s): SENATOR(s) FRENCH

02/17/09	(S)	READ THE FIRST TIME - REFERRALS
02/17/09	(S)	JUD, FIN
02/25/09	(S)	JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

CINDY SMITH, Staff
to Senator Hollis French
Alaska State Legislature
Juneau AK
POSITION STATEMENT: Introduced SB 110 on behalf of the sponsor.

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Department of Law
Juneau AK
POSITION STATEMENT: Commented on SB 110.

BILL OBERLY, Executive Director
Alaska Innocence Project
Anchorage AK
POSITION STATEMENT: Testified in support of SB 110.

BARBARA BRICK, representing herself and board member
Alaska Innocence Project
Anchorage AK
POSITION STATEMENT: Testified in support of SB 110.

RICH NORGARD, Board President and representing himself
Alaska Innocence Project
Anchorage AK
POSITION STATEMENT: Testified that SB 110 is needed.

REBECCA BROWN, Policy Analyst
Innocence Project
POSITION STATEMENT: Described SB 110 as a reform whose time has come.

ORIN DYM, Forensic Laboratory Manager
Department of Public Safety (DPS),
POSITION STATEMENT:

RODNEY DIAL, Lieutenant
Alaska State Troopers
Department of Public Safety (DPS)
Ketchikan AK
POSITION STATEMENT:

MIKE MOBERLY, representing himself
Anchorage AK
POSITION STATEMENT: Testified in support of SB 110.

ACTION NARRATIVE

1:37:00 PM
CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:37 p.m. Present at the call to order were Senators Elton, Wielechowski, McGuire and French. Senator Therriault arrived soon thereafter.

SB 110-PRESERVATION OF EVIDENCE

1:37:16 PM

CHAIR FRENCH announced the consideration of SB 110. He informed the committee that Lieutenant Dial with the troopers, John Glass and Orin Dym from DPS, and Rebecca Brown with the Innocence Project are online.

CINDY SMITH, Staff to Senator Hollis French, said the concept of SB 110, which is preserving biological evidence, was put forth for the first time last year. Reading from the sponsor statement she stated the following:

> The American system of justice is founded on balancing the twin protections of the rights of those harmed by crimes, and the rights of the accused. Criminal convictions are guided by evidence of innocence or guilt, and no one in the criminal justice system wants innocent people to be convicted of crimes they did not commit. The availability and use of physical evidence at trials and during appeals is a critical part of a meaningful justice system.
>
> The point of SB 110 is to address the issue by requiring that biological evidence in murder and sexual assault cases is properly retained while cases are unsolved and during the period after conviction that an offender is imprisoned or required to register as a sex offender. The bill does provide for police departments to return or dispose of evidence that's too large to keep after portions of the material that are likely to contain biological evidence have been removed. The bill asks that that evidence also be retained while cases are unsolved. It then provides a notice process for cases where evidence will be destroyed and establishes … a temporary task force.

1:39:14 PM
MS. SMITH provided an explanation of the bill.

Section 1, page 1, requires the Department of Law, the Department of Public Safety, the Alaska Court System, or a municipal law enforcement agency to preserve all evidence that is related to unsolved cases of murder in the first degree, murder in the second degree, manslaughter, criminally negligent homicide, sexual assault in the first degree or child sexual assault in the first degree.

CHAIR FRENCH added that those crimes are listed on page 1, line 9.

MS. SMITH agreed; AS 11.41.100 - AS 11.41.130 are the murder crimes, AS 11.41.410 is sexual assault in the first degree, and AS 11.41.434 is child sexual assault in the first degree.

The bill requires preservation of biological evidence in an amount that is sufficient to develop a DNA profile in cases where the person convicted remains a prisoner in the custody of the state or is subject to registration as a sex offender. "Biological evidence" is defined on page 3, beginning on line 16. The sponsor worked with the Department of Law and the Department of Public Safety to develop a list of kinds of biological evidence including slides, swabs, and contents of forensic kits.

Then the bill provides two broad exceptions to the requirements for evidence preservation. One is if the physical evidence is "of a size, bulk, quantity, or physical character that renders preservation impracticable," it can be returned or disposed of after removal of materials that are likely to contain relevant evidence for DNA testing. The language is intentionally broad and allows agency discretion because of the different storage capabilities at different locations throughout the state. The situation in Nome, for example, may be very different than in the Anchorage area.

The agency may destroy biological evidence, but before doing so it must provide notice of intent to destroy the evidence. There is a list of parties to notify and a process for doing that.

Finally, SB 110 establishes a one-year task force to develop standards and best practices for collection, retention, and storage of evidence.

1:42:45 PM
CHAIR FRENCH asked when the task force will be created.

MS. SMITH said it will be named essentially at the passage of this Act. Page 4, line 19, states that the task force will deliver a report not later than [December 31,] 2010. The task force is repealed January 1, 2011.

ANNE CARPENETI, Assistant District Attorney, Criminal Division, Department of Law (DOL), said testimony from the Department of Public Safety will probably be more helpful, but she has several things to mention.

CHAIR FRENCH said it's worth pointing out that the Department of Law will not have to store any evidence.

MS. CARPENETI agreed. Referring to subsection (b) on page 2, lines 2-7, relating to practicable preservation of physical evidence, she said DOL's only concern is that a small village police department not be held to the same standard of keeping large items as an agency in a larger community.

She pointed out that on page 2, all the standards for disposing of biological need to be met. Therefore, she believes that the word "and" needs to be inserted [at the end of] line 25.

1:45:18 PM
CHAIR FRENCH thanked her for bringing that to their attention.

SENATOR WIELECHOWSKI referred to page 3, lines 10-11, and asked if the state will be exposed to liability if there isn't preservation of evidence.

MS. CARPENETI said that was her third point. DOL would suggest the committee add a provision similar to the domestic violence statute, AS 18.66.180, which provides that state agencies and their employees will not be subject to civil liability.

CHAIR FRENCH said the bill will receive careful consideration and certainly won't move today.

1:47:55 PM
SENATOR THERRIAULT joined the committee.

SENATOR WIELECHOWSKI asked if a person who has been convicted would be able to file an appeal on the grounds that certain evidence wasn't considered and, under this law, that evidence wasn't preserved. "It's something to think about," he said.

MS. CARPENETI said that general statement you're describing has given DOL pause. [Subsection (g) on page 3] says that if the court finds that evidence was destroyed, it may order appropriate remedies. She would read that to mean remedies the court deems appropriate as provided in law so that you could file a post-conviction relief action or something similar. But it has to be some procedure that is available now, she added.

1:49:23 PM

SENATOR ELTON asked if there shouldn't be a provision that protects individuals from somebody who intentionally destroys evidence.

MS. CARPENETI said that could be part of the protection that's included. You could have some standard that everybody knows about such as recklessly or intentionally. She added that she believes they need to protect little police departments in small villages that are doing their best.

CHAIR FRENCH pointed out that a tampering with evidence crime is already in statute. It almost always applies to criminals, but once in awhile you could imagine a police officer tampering with evidence. The charge applies to any violator.

SENATOR WIELECHOWSKI asked if the provision on page 1, lines 11-13, increases the requirements for law enforcement agencies to retain biological evidence.

MS. CARPENETI said the statute doesn't state that this is what police departments have to do now, but she believes there will be testimony that this is what they actually do.

1:51:24 PM
SENATOR THERRIAULT asked how adjudicated minors are handled under this.

MS. CARPENETI said it might not apply to minors because this talks about convictions. Minors aren't convicted for an offense, they're adjudicated. It's something to think about.

SENATOR THERRIAULT asked Senator French if the split was purposeful.

CHAIR FRENCH said no, but it's a good point. Any 16-year-old or 17-year-old who is convicted of an adult crime would have the evidence preserved because it's a conviction, and an unsolved crime would have the evidence preserved. But under the strict reading of the bill, the evidence wouldn't be preserved in the case of a 14-year-old or a 15-year-old who committed an adult crime.

SENATOR THERRIAULT suggested the committee give that some thought.

CHAIR FRENCH said it's a good point because it would seem that the same principle would apply to adults and minors.

SENATOR THERRIAULT asked if there was any specific talk about what happens to the evidence after someone has served their time and is no longer on probation.

MS. CARPENETI said she assumes the evidence would not be retained as long as it isn't a sex crime - sexual abuse of a minor in the first degree and sexual assault of a minor in the first degree. SB 110 requires biological evidence to be retained if someone is indicted for those crimes, but subsequently convicted of a lesser crime. People who are convicted of a sex crime in the first degree have to register as a sex offender for life, and under the bill that means the police would have to retain the evidence for the life of that individual. DOL has concern with that because it could be a long time, but it only applies to biological evidence. Mr. Dym from the crime lab will probably testify that they keep that type of evidence anyway, but this may mean that they'll need more space.

1:54:17 PM
CHAIR FRENCH told her she'll hear the committee ask police officers and the folks who are testifying on behalf of law enforcement the extent to which current practices comport with the bill as written. He believes they'll say that the bill is fairly consistent with what they do now, but it is something they're a bit worried about.

SENATOR WIELECHOWSKI said he'll be interested in hearing about security measures to protect the victims of sexual violence because their DNA will be retained forever.

MS. CARPENETI said she believes Mr. Dym will say they keep that information in different databases.

SENATOR ELTON asked if the language on page 1, lines 8-10, means there is no need to retain evidence once there is a conviction.

MS. CARPENETI explained that paragraph (2) on line 13, talks about preservation of biological evidence if a person is convicted of a crime under [AS 11.41.100-11.41.130]. She believes the sponsor chose these because they are the type of crimes that you have by DNA evidence.

SENATOR ELTON asked what happens to biological evidence that's collected at the scene that doesn't belong to the person who was convicted.

MS. CARPENETI deferred the question.

1:57:42 PM
SENATOR THERRIAULT asked if paragraphs (1), (2) and (3) under subsection (d) on page 2, are connected with an "and" or an "or."

CHAIR FRENCH said Ms. Carpeneti highlighted that earlier and it's a crucial point to square away with the drafters.

1:59:19 PM
BILL OBERLY, Executive Director, Alaska Innocence Project, said he sees SB 110 as securing justice for Alaskans. Alaska needs this legislation because the state has no universal policy on evidence preservation. As it stands now, justice depends on where you live in the state. You're lucky if you live in Galena because as of February 2008 they retain evidence indefinitely as possible exculpatory evidence for potential future appeals and cold case investigations. According to Police Chief Rob Heun, Anchorage retains indefinitely evidence from homicides and sexual assault cases. From there evidence preservation drops precipitously, he said.

SB 110 is limited to evidence in cold cases and those involving homicides and the most serious sex crimes. It calls for retention of all evidence in cold cases and in post conviction cases it calls for retention of evidence likely to contain biological evidence. Referring to page 3, subsection (h)(2)(B), he suggested the committee insert the words "items containing" at the beginning of line17. That would clarify that these are evidentiary items and not just test tubes and things like that. It certainly makes more sense when read with [subsection (b) on page 2] that talks about the size of evidence. He described the provision that calls for preservation of evidence as long as the person has to register as a sex offender appropriate and fair.

2:03:21 PM
MR OBERLY said the bill has practical safety valves related to evidence retention. If the evidence is too big, it allows removal of areas likely to contain relevant biological evidence. It also establishes a procedure for early destruction. Significantly, it provides the impact of destruction in violation of the statute as a remedy rather than a sanction. Hopefully that will address some of the concerns the state has. Finally, it creates a task force to review the standards and practices for collection, retention and cataloging of evidence. This will allow the state to look at how this law is working and

tweak it where necessary. The bill allows for extraction of portions of material likely to contain relevant evidence and he would suggest waiting for the task force report before placing further limitations on the size of items to be retained.

MR OBERLY said His final comments relate to the benefits of SB 110. First, it will improve and standardize cold case evidence retention, which doesn't currently exist. Second, it will ensure that individuals with viable claims of actual innocence will have the evidence that can establish their innocence. Third, this will help bring actual perpetrators to justice because when someone is wrongly convicted there is a perpetrator who has not been caught. Finally, there is a fiscal benefit. Justice For All grant money is available and could be used to upgrade DNA testing, help with the DNA work backlog and help identify and test claims of wrongful conviction. The money is available to states that have a statewide evidence retention statute, which is what SB 110 provides.

2:07:50 PM

BARBARA BRICK, representing herself and speaking as a board member of the Alaska Innocence Project, said she was a public defender in Alaska for 23 years. During that time there were huge increases in technology. In 1982 it was a big deal to get facsimile machines and word processors and today she can't imagine the practice of law without a computer. Similar advances have been made in scientific evidence including fingerprinting, firearm analysis, bite mark identification, blood spatter, hair analysis, and handwriting analysis. Each has been hailed as an advance and gave the sense that they were reliable and provided trustworthiness to jury decisions.

But last week the National Academy of Science issued findings and conclusions indicating that these items of evidence that had been used nationwide to convict or exonerate people were, for the most part, handled by poorly-trained technicians. Furthermore, their reports and testimony exaggerated the accuracy of their methodologies as well as their conclusions. A primary reason for drawing this conclusion was that none of the scientific laboratories were truly independent or objective. Instead they were closely affiliated with law enforcement and the prosecution and the work was done by human beings, all of whom are fallible. This isn't the first time that scientific evidence has been discredited, she said. In 2004 the FBI had to notify hundreds of potentially wrongfully convicted individuals because the reliability of chemical bullet analysis had been far overstated.

MS. BRICK said she provided the history lesson because most people today believe that DNA evidence is the be-all and end-all. It's true that 124 people who were on death row after they went through jury trials and lost their appeals have been exonerated and advances in DNA testing techniques have exonerated over 200 people nationwide. That's the state of the state today, but she would like a preservation of evidence bill to cover things that haven't been thought of.

Preservation of evidence is critical because it can help exonerate innocent people and help prosecute people who aren't identifiable at the time of the crime. Less than 10 percent of violent crimes involve DNA evidence so an evidence preservation bill like SB 110, which limits its approach to biological evidence, may be missing an opportunity for greater justice. It only applies to a narrow category of crimes and a narrow category of biological evidence if the case has been solved. It's a good start, but we don't know what advances in technology are going to be made in the future and it seems that we're doing ourselves a disservice as far as unsolved crimes and their consequences, she said. Every piece of preserved evidence has the potential to improve justice.

2:13:22 PM
MS. BRICK said it's been important to the people who work in criminal justice that there is just one standard of justice statewide and Alaska's preservation of evidence policies need reform to do the same. Procedures need to be standardize so that the amount of justice and public safety that's available does not depend on where a person happens to live or what the local police remember to put in the refrigerator. "We can do better than that," she said.

2:14:32 PM
RICH NORGARD, Board President, Alaska Innocence Project, said he is also speaking on his own behalf as someone who has worked in the criminal justice system for 16 years. He said he echoes what Ms. Brink said. SB 110 is needed because we know that testing has changed dramatically over the years and we just don't know what we might be able to test tomorrow. DNA testing may be just the tip of the iceberg.

MR. NORGARD urged the committee to pass SB 110 with the changes that the National Innocence Project submitted and those Mr. Oberly recommended. He cautioned against narrowing the bill and emphasized that it needs to say that items containing biological

evidence will be preserved - not just the biological evidence itself. He encouraged passing a strong bill that preserves evidence now and for the future.

2:17:47 PM
REBECCA BROWN, Policy Analyst, Innocence Project, described SB 110 as a reform whose time has come. She explained that the Innocence Project was founded in 1992 at the Benjamin Cardozo School of Law to exonerate the innocent through post-conviction DNA testing. Since that time forensic DNA testing has proven the innocence of 232 people and identified the real perpetrator in 100 of those cases. None of this would have been possible without the proper preservation of biological evidence. She cited the Ricky Johnson case, which shows the promise that new technology holds for solving long-forgotten cases. It's a testament to the crime-solving potential of modern DNA technology, she said.

MS. BROWN said that evidence rooms across the country have become crime solving gold mines and it's understandable that evidence custodians become concerned when legislation is considered that will require them to save evidence for which they have little room. But SB 110 is incredibly modest compared to other retention laws across the country. It only requires retention of evidence in a very narrow category of serious violent offenses. In fact the language in Section 1, subsection (b), is consistent with the federal standard. The federal government also issued regulations to make the law practicable and she would encourage Alaska to look at those federal regulations for guidance. There is no sanction identified in this law so no one is going to be liable in the small number of cases where a mistake might happen, she said.

2:22:13 PM
MS. BROWN said the creation of a task force will ensure that a range of stakeholders can take part in a deliberative process to consider the contours of the issue over time. This expert work will allow for reasoned refinements. It may narrow the concept of retention and it may consider expanded retention policies. The provision of guidance and direction to evidence custodians won't create an unfunded mandate and may well save money over time by creating space for future evidence through the identification of evidence that can be lawfully destroyed, she said.

Safeguarding biological evidence is in the interest of all members of the criminal justice community - from crime victims

to law enforcement to the wrongfully convicted. Often when the innocent are exculpated, the guilty are identified through CODIS hits, she said. Many states realize that their retention policies have not kept up with DNA advances. Just last year three states passed laws mandating the preservation of biological evidence in several crime categories. SB 110 promises to shape an evidence management policy that is respectful of Alaska's specific concerns articulated by a range of stakeholders. "I think this is a wonderful bill," she said.

2:23:49 PM
ORIN DYM, Forensic Laboratory Manager, Department of Public Safety (DPS), said he would first respond to some of the questions that have come up. First he clarified that victim DNA samples are not uploaded into the national CODIS database system. When a case comes in for analysis it may have from one to several hundred items of evidence. He and his staff first look at the most intimate and probative pieces of evidence and work out to the least intimate and least probative. Depending on what they find, not all the evidence will be analyzed.

If a piece of evidence is analyzed, a sample is obtained where biological evidence is expected to be present. Those samples are retained by the laboratory indefinitely. But if an item is not looked at in the laboratory - perhaps because they have body swabs that contain sufficient evidence - it will never be opened, looked at or sampled in the laboratory and nothing will be retained.

2:26:19 PM
MR. DYM commented that although people are very proud that DNA has exonerated 200 people in the last several years, he can say that exonerations are happening every day with DNA in the laboratory. Not every DNA exam identifies a suspect; more often than not it eliminates an individual as a suspect.

MR. DYM expressed concern about laboratory resources. They already retain many samples that technically belong to law enforcement agencies throughout the state because they recognize that most law enforcement agencies throughout the state do not have sufficient resources and expertise to store these samples properly. We are committed to retaining and storing these samples properly and that's what we've done, he said.

The existing crime laboratory has had 500 square feet of storage space for the last 22 years. It simply is not enough so there is a resource issue with the storage of samples, he said. The

laboratory also have a great number of biological samples that predate computerization and he recognizes that those have to be brought up to computer standards for easy tracking and ready preparation of lists of where evidence is located.

2:28:14 PM
SENATOR ELTON asked if some of the things that are collected at a crime scene that are not initially tested are, in fact, evidence.

MR. DYM said yes; evidence that is not analyzed the first time through may become highly probative later on.

SENATOR ELTON said that's what he wanted to hear because then the laboratory would be required to hold as evidence everything else that may have been collected but not tested.

MR. DYM said that's correct. He's looked at the possibility of screening more evidence when a case initially comes in, but there is absolutely no space in the existing laboratory to place an additional biological screener. The next issue that comes up relates to an agency that wants to dispose of the clothing or chair or jeep seat that hasn't been analyzed. He believes that it falls to the crime laboratory to evaluate and sample that item. That too impacts the laboratory.

SENATOR ELTON questioned adding $40,000 in cost to the bill when the laboratory already needs more space to store evidence. "That's just a question that I might ask at finance," he said.

2:32:04 PM
MR. DYM said we'll address that there.

SENATOR WIELECHOWSKI asked if everything in a room that is splattered with blood is typically preserved as evidence.

MR. DYM said it depends, but potentially everything is submitted to the laboratory. In general they would not retain the entire item. Rather, they would swab blood samples or cellular material that might be present from the item and retain the swab. In the case of a picture that has 27 droplets of blood, they might photograph the document and only collect and retain 2 or 3 representative droplets.

SENATOR WIELECHOWSKI asked how he might examine this committee room; 17 people are present and DNA is everywhere.

MR. DYM said they rely on the investigators to apply good detective work to determine what might have scientific value and limit the number of samples collected.

2:34:31 PM
CHAIR FRENCH asked how full the 500 square foot crime laboratory evidence room is now, how long it has taken to get that full, and when it will be physically impossible to fit anything else in.

MR. DYM replied it's been full since he arrived 1.5 years ago. Recently they installed a CONEX container to hold non-evidentiary items to free closet space in the laboratory for evidence storage and they might be able to utilize a closet in the back of the boiler room to handle evidence overflow. Also, they've quadrupled the volume of evidence they ship back to agencies. Things that are not related to DNA are shipped back.

CHAIR FRENCH asked what in this bill is specifically different from current practice.

MR. DYM said the bill requires more evidence to be sampled and retained than current practice. Before agencies dispose of items that have been returned, they will probably send those items back to the laboratory for sampling or identification of potential biological evidence.

2:37:25 PM
JOHN GLASS, Deputy Commissioner, Department of Public Safety, said he is available to answer questions.

RODNEY DIAL, Lieutenant, Alaska State Troopers, Department of Public Safety (DPS), provided an overview of DPS evidence procedures at trooper posts across the state. Currently department evidence custodians are required to be knowledgeable of Alaska statutes that apply to evidence. Those include AS 12.36 and AS 34.45, which relate to disposal of evidence. They are also required to be knowledgeable of the department's operating procedures manual and the detachment SOPs. Before evidence is disposed of, the custodian must have one or more of the following: written authorization from the case officer, a court order, permission from the district attorney's office, or permission from the state medical examiner. Standard practice is to retain evidence from serious crimes for a significant amount of time. Retention is also dependent on factors such as statute of limitations, involved parties, whether or not appeals have

been exhausted, and if it's reasonably believed that there is no value in continuing to retain the evidence.

Referring to the question about exculpatory evidence, he explained that evidence in cases where a person was convicted of a crime is retained until the department obtains a release from the district attorney's office.

CHAIR FRENCH asked whether the DA's office allows evidence to be disposed of before a person is released from prison.

LIEUTENANT DIAL said yes, but generally not in murder cases or other serious violent offenses where appeals are expected.

2:40:21 PM
SENATOR ELTON asked what kind of training occurs now and what might be envisioned after the task force is finished.

LIEUTENANT DIAL explained that all academy recruits receive basic procedures and instructions on evidence handling, collection, and preservation techniques. Once they're in the field they go through additional field training. At most trooper posts primary and secondary evidence custodians are identified. They must be knowledgeable of the statutes relating to the collection of evidence as well as the department's operating procedures manual. Detachment commanders are also required to inventory evidence facilities on a regular basis to ensure that those standards are adhered to. It's an ongoing process of following rigid guidelines coupled with oversight, he said.

SENATOR ELTON asked if the current training procedures are good enough to assume that the task force wouldn't suggest more training.

LIEUTENANT DIAL said he believes more training would be required before taking steps to dispose of certain types of evidence in certain cases.

2:43:16 PM
MIKE MOBERLY, representing himself, Anchorage, said he works in the courts on a daily basis and believes that everyone in the process works hard to see that the right results occur. But it doesn't always happen. "One needs only to look at the disproportionate representation of minorities or economically disadvantaged peoples in custody to know that that just isn't the case." SB 110 is a modest effort to ensure that convictions that are obtained are sound and that we can have confidence in

the system. He said he supports legislation that reasonably preserves evidence to provide confidence in the outcome that's obtained through the justice system.

CHAIR FRENCH closed public testimony and held SB 110 in committee for further work.

2:45:25 PM
There being no further business to come before the committee, Chair French adjourned the Senate Judiciary Standing Committee at 2:45 pm.

SENATOR FRED DYSON

February 25, 2008

Senator Hollis French
Alaska Senate
Juneau, AK 99801

Dear Hollis,

Further to our brief conversation about your bill on evidence SB110 I have two concerns that might be addressed in your bill.

RELAEASE OF EVIDENCE TO THE VICTIM
I have a constituent who runs a boat building shop. Two "potential customers" visited his shop, looked around and left. That night $35,000 worth of boxed marine electronics were stolen. The shop owner called APD filed a report and then got busy trying to locate his client's stolen equipment. He found most of it in local hock shops and some on Craig's list. He also got most of the information on the perpetrator's identities which he turned over to APD. The police probably had other priorities and I do not think that a trial has happened yet. Never the less, the boat builder has been forced to purchase identical equipment for his client because the police have not released the stolen evidence, even after 2+ years.

I have done some research and it appears that our state statues do a good job of authorizing the release of evidence after police have recorded it (generally photographs) and documented the chain of custody. The problem is that it largely doesn't happen. I talked with Walt Monegan and one prosecutor and it seems that the victim's property problem is not high priority for the overworked prosecutors and they have to get an approval form the defense attorney to release the stolen goods. Walt says the prosecutor could by-pass the defense attorney problem by going to a magistrate for release approval, but that is a bit of a hassle.

At Walt's suggestion, I am going to write to the State and local prosecutors offices, asking them to help these stolen property victims. I may also contact the Attorney General's office.

I would like you to consider adding a sentence or section to your bill making it very clear that police and prosecutors have a clear duty to get stolen material returned to the victims as soon as possible except in the rare cases when the properties appearance in court is essential to the prosecution's case.

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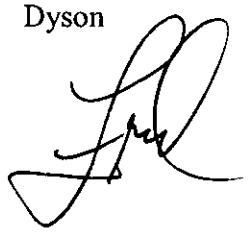
senator.fred.dyson@legis.state.ak.us • www.akrepublicans.org

RETENTION OF DNA FOR INNOCENT CITIZENS

I have a UofA professor in my area who is adamant that when a citizen's DNA is taken by law enforcement, it should be destroyed when the citizen is no longer being considered for criminal prosecution. The civil libertarian part of me is attracted to this issue but I understand the other considerations. Lt. Dave Parker of APD says that DNA often proves more people innocent than guilty. I am of two minds about this and I would appreciate your thoughts on it. I did tell my constituent Bill Kirk that I would talk to you about it.

I would greatly appreciate your consideration of both of these issues.

Dyson



INNOCENCE PROJECT

Benjamin N. Cardozo School of Law, Yeshiva University

WRITTEN TESTIMONY OF REBECCA BROWN
POLICY ANALYST, INNOCENCE PROJECT
BEFORE THE ALASKA SENATE JUDICIARY COMMITEE
RE: SB 110 – AN ACT RELATING TO THE PRESERVATION OF EVIDENCE
FEBRUARY 25, 2009

Thank you for the opportunity to speak before you today and submit written comments for your consideration of SB 110, which would mandate the preservation of certain probative biological evidence and create a task force for the development of standards on the same.

In the emerging DNA era, preserving and readily retrieving evidence from adjudicated cases has clear benefits for all members of the criminal justice system. As we recognize the incredible identification power of DNA evidence, it has also become clear that amazing crime solving potential resides, latent, in biological evidence from crime scenes. Innocence claims can be settled. "No subject" cold cases can be solved. True culprits can be identified. In addition, crime scene DNA can provide "value added" by enabling us to link an unknown perpetrator of a given crime to other crimes - across time periods and across jurisdictions.

In the Justice for All Act of 2004, Congress recognized the importance of preserved biological evidence by strongly enhancing federal preservation of evidence policies and making hundreds of millions of dollars in authorized state grant programs contingent upon proper preservation practices. In doing so, Congress recognized that modernizing evidence retention practices not only benefits the potentially innocent; properly preserved biological evidence also allows law enforcement to solve decades-old, previously unsolvable cases.

Determining questions of fact in our criminal justice system is an unavoidably imperfect venture. While the system surely gets it right in the vast majority of cases, in an important minority of cases credible questions of innocence linger. Where that is the case, post-conviction DNA testing of biological evidence can also provide true finality in the face of lingering doubt by proving guilt or strong evidence of actual innocence. To be able to ensure justice, however, that biological evidence must have been preserved, and saved in such a way that it can be located when necessary.

A clear examination of all facets of this issue will show that the benefits of ensuring a comprehensive evidence preservation scheme far outweigh the costs, that it is an endeavor most efficiently and effectively undertaken statewide, and that changes to current practice will enhance Alaska's crime-solving potential.

Technological advances make preserved evidence a critically important tool for justice

Modern DNA technology, coupled with today's comprehensive information and communications technology, has exponentially increased the power of preserved evidence, to levels unimaginable just a generation ago. DNA found at crime scenes can now, with a simple keystroke, be compared to DNA found at other crime scenes as well as the DNA of millions of individuals, thereby linking previously un-linkable cases and perpetrators to one another. As a result, evidence preservation practices that may have seemed adequate – if still a bit disconcerting – in the early 1980's are today an incredible waste of criminal justice potential. Our governments can be forgiven for their failure to

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anticipate the future power of preserved evidence, but there is no excuse for perpetuating this situation in light of preserved evidence's new power to provide justice in some of our most serious and violent cases.

Many of these serious and violent cases could not have been solved even a few years ago. A review of the National Institute of Justice's list of items where biological evidence can be found in criminal cases illustrates the variety of items that can be successfully tested with improved technology: fingernail scrapings analyzed with Y DNA tests; skins cells in the hinge of eyeglasses; dandruff, saliva, hair, sweat, and skin cells from hats, bandanas and masks; saliva cells on tape or ligatures; traces of blood on a bullet; traces of blood and/or hairs on, or in the crevices of, a variety of weapons used to inflict injury; or even blood and tissue cells swabbed from the bullet inside a gun, identifying the person who might have last loaded it.[1] The list of these evidence items that are being successfully tested now, but could never have been tested successfully only a few years ago, is enormous. I have attached an appendix to this statement in which I describe just a few cases where innocence was proven through more modern DNA testing methods.

Tapping this potential is as simple as properly identifying, collecting, preserving, storing, and organizing biological crime scene evidence. The task before Alaska is to undertake this process in order to make evidence– and in particular, biological evidence - readily accessible when it is sought to advance justice.

The alternative is for Alaska to fail to preserve evidence in a manner that allows its ready retrieval. This would needlessly result in failure to solve solvable crimes and denial of justice to victims. It would also prevent the wrongfully convicted from proving their innocence and leave the public at large vulnerable to previously unidentified offenders who are eminently identifiable.

SB 110: A Conservative Approach

As compared to other state laws mandating the preservation of evidence, SB 110 has a modest approach. While some states go so far as to require biological evidence retention in all crimes, or even all felony crimes, SB 110 defines a narrow category of crimes for which evidence must be preserved (e.g. A.S. 11.41.100- 11.41.130; 11.41.410; or 11.41.434). Further, while SB 110 requires the preservation of "all evidence" associated with certain unsolved crimes, it creates a restricted threshold for the retention of biological evidence associated with those cases in which an innocent person might seek to obtain postconviction DNA testing. For these cases, SB 110 only requires that biological evidence "in an amount and manner that is sufficient to develop a DNA profile" is retained.

Indeed, because the evidence that is preserved for the purposes of solving a cold case is no different from the type of evidence that is retained for the purposes of settling an innocence claim, I would

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[1] In the 2002 report by the National Institute of Justice, "Using DNA to Solve Cold Cases" available at http://www.ncjrs.gov/pdffiles1/nij/194197.pdf, the authors identify "some common items of evidence that may have been collected previously but not analyzed for the presence of DNA evidence (Exhibit 4), p. 21.

recommend the following small changes to the proposed legislation:

1) In section (a)(2), I recommend changing the term "all evidence" to "biological evidence" so that the entire clause reads: "~~all~~ *biological* evidence that is obtained in relation to an investigation or prosecution of a crime under A.S. 11.41.100- 11.41.130, 11.41.410, or 11.41.434 for the period of time that the crime remains unsolved."

   This recommendation is based on the idea that there should be no differentiation between evidence saved for the purposes of solving a cold case and evidence saved for the purposes of settling a claim of innocence. The guidelines defining what evidence should be retained should be the same in both scenarios. By making this change to the language, it will be made clear to evidence custodians that there is only one standard guiding what evidence needs to be retained.

2) In section (h)(2)(B), for the purposes of clarity, I would add the following clause: "*any physical item that contains* semen, blood, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable human material, collected as part of the criminal investigation."

   This recommendation is predicated on the notion that biological evidence itself is generally culled from physical items collected at crime scenes. In many cases, those physical items contain biological evidence that was never tested at trial. Under the framework currently contemplated in SB 110, a test tube containing an extract of what is believed to be probative biological material from trial may be preserved for posterity, while the physical item from which that extract was obtained and that may contain other additional evidence that would prove more probative, can be destroyed. Since this legislation already contains a clause aimed at addressing law enforcement concerns about the possible burden of saving unnecessary evidence (i.e. allowing a police agency to use its discretion in destroying bulk items of evidence), adding this language will clarify the desire to retain that evidence which has the ability to shed light on innocence and guilt.

These modest changes promise to bring clarity to the legislative intent of SB 110, ensuring that probative evidence in Alaska's most serious and violent crimes is retained for DNA testing using modern testing methods. In addition, SB 110 also creates a task force charged with the creation of standards and training for evidence custodians. Such an approach ensures that a range of stakeholders can take part in a deliberative process that considers all of the contours of the issue in a thoughtful way over time. The task force may decide that a narrower conception of evidence retention may be appropriate, and the creation of an expert work group will allow for reasoned refinements or, perhaps, the consideration of an expanded retention policy. In the following section, I humbly offer some ideas for consideration by the task force.

Recommended steps to properly store and organize preserved evidence in Alaska

Even the most well-intentioned evidence custodian can only do as good a job as the system allows. Systemic changes are needed. Order can only be brought to chaos through legislation such as this, which defines those crime categories for which evidence must be preserved and the manner in which

it should be retained. A law like this will also ensure uniformity of practice across jurisdictions statewide, so that the availability of evidence does not depend on the jurisdiction in which the crime was committed.

Other jurisdictions, recognizing the crime-solving potential of old evidence for cold cases and observing the miscarriages of justice likely to occur when innocence claims cannot be addressed, have undertaken just such a process. For instance, police officials in Charlotte, NC, America's 5th largest urban region, launched an initiative in 1995 to re-catalogue all of its evidence. In nine months, all of Charlotte's evidence was re-catalogued and placed in one 6,700 square foot storage space. Following the re-cataloguing of old evidence, Charlotte's Police Department formed a Homicide Cold Case Unit. To date, the Cold Case Unit has cleared fifteen cases, charged fourteen persons with murder and is actively investigating a dozen reopened cases. The re-cataloguing and bar-coding of old evidence, as was accomplished in Charlotte, is one method Alaska should consider, both statewide and/or in key jurisdictions. These are questions that are perhaps best answered by the task force which would be established by SB 110.

There are a number of steps that the task force established in this legislation might consider to effectively preserve, organize, and make accessible biological evidence in the state of Alaska. The expert task force that would be established by this legislation – representing key stakeholders from different corners of the criminal justice system – is well-positioned to study and discuss this issue thoroughly, and outside of the glare of the political spotlight. Evidence, after all, belongs to the People, and not any one side. The Task Force's recommendations for a comprehensive evidence preservation scheme for the state of Alaska could include consideration of the following:

- **Definition of the Proper Period of Preservation:** The Justice For All Act mandates the preservation of biological evidence connected to federal crimes for the period of time in which a defendant remains incarcerated in connection with that crime. It is the position of the Innocence Project that biological evidence should be preserved in all cases where it may be probative, for at least as long as a sentence or collateral consequence of a wrongful conviction is in effect. Biological evidence, as a general principle, should also be preserved as long as a case remains unsolved, so that it is readily available to law enforcement officers investigating old cases. Although if SB 110 were to become law, it would mandate the preservation of biological evidence in certain discrete crime categories, this Task Force should soberly assess the potential risks involved in destroying evidence associated with crime categories before the conclusion of a case resolution and/or the completion of a sentence, including the collateral consequences of a conviction.
- **The Manner in Which Evidence Should Be Preserved**
- **The Amount of Evidence Which Should be Preserved**
- **Determining Where Evidence is Kept:** Identification all of the facilities (courthouses; hospitals; laboratories; prosecutors' offices; etc.) where old evidence is currently stored.
- **Inventory of Evidence:** Provision of a brief description of the evidence located in each facility.
- **Repackaging Evidence:** The repackaging, as necessary, of all relevant biological evidence that may be vulnerable to degradation.
- **The Organization and Cataloguing of Evidence by Case:** The identification and inventorying of all voucher numbers associated with evidence, ensuring that all pieces of

evidence associated with a particular case are grouped together, and identifying a means through which that evidence can be readily located. This can be accomplished, as was done in Charlotte, through a bar coding system. Such automated systems have enabled jurisdictions such as Salt Lake City, UT, Phoenix and Tucson, AZ, and El Paso, TX to realize the full-scale crime-solving potential of biological evidence. Alaska might consider the jurisdictions in which such a system may be advisable and practicable.

- **Contemplation of Remedies That Should Be Offered If Evidence is Destroyed**: The task force may further consider the articulation of remedies for those whose innocence claims that can never be settled in the face of evidence destruction.
- **Clearly Articulated Policies and Procedures/Training:** Finally, the task force should consider the substance of uniform statewide policies directing the preservation and accessibility of biological evidence for all evidence custodians in the state. The task force will also need to address attendant training needs so that evidence custodians can ensure the proper implementation of such policies and guidelines.

Conclusion

With today's technology, preserved evidence is nothing less than a goldmine of potential justice. Crimes can be solved, thus enhancing public safety and serving the victims whose cases were never before solved; and the innocent and their families will no longer have to endure the terrible nightmare of a wrongful conviction.

But as long as this important issue is largely ignored, victims, the wrongfully convicted, and the public at large are denied access to this incredible crime solving potential that is in our possession, yet beyond access. Indeed, reforming evidence preservation policies are integral to a 21st century justice system in the state of Alaska.

The reliability of our criminal justice system cannot depend on the serendipitous discovery of evidence. By establishing a reasonable evidence preservation policy that is both comprehensive and provides ready access to those in need, Alaska will tap into the potential of preserved evidence – and more importantly, provide Alaskans with the quality of justice that it would be unconscionable to deny.

By empowering a cross-section of experts from throughout your criminal justice system to explore this subject and issue recommendations, you have greatly increased Alaska's ability to identify the most effective steps for enhancing the proper collection, retention, preservation, and cataloguing of biological evidence. And by conducting your business in the thorough and balanced manner which seems assured, you will provide other states with a model for addressing such questions, and ultimately improve the accuracy and justice of their systems as well.

Thank you for the opportunity to share these views with you. I hope you will contact me if there is any additional information that I can provide on the subject.

APPENDIX – Case Studies Demonstrating the Critical Need to Preserve Evidence and/or the Value of Subjecting Old Evidence to Modern DNA Testing Methods

Luis Diaz: Luiz Diaz's case involved multiple rapes. Although he was convicted in 1980, it wasn't until 2005 that Mr. Diaz was released from a Florida prison after DNA testing of a rape kit proved that he was not the notorious "Bird Road Rapist." This individual had been responsible for the attacks, and in some cases sexual assaults, of more than twenty-five women. By the time Mr. Diaz petitioned for testing in 2003, the only evidence that could be located was one rape kit, which was sent to a private lab in California. As the results were awaited, more evidence from the same case was located and sent to the Miami Dade Police Department Crime Lab. In June of 2005, testing results from both labs indicated that the male profile that was found did not match Mr. Diaz. Prosecutors then searched for evidence in all of the cases attributed to the Bird Road Rapist. Only one rape kit was located from an uncharged crime that occurred in August 1979. This kit was sent to the Miami Dade Police Department Crime Laboratory. The results indicated that, again, Luis Diaz was not the male contributor to the semen evidence. Further, the tests yielded evidence that the same unknown male had raped both victims, thereby providing investigators with important information with which to pursue the cold cases. Had the evidence in Mr. Diaz's case been lost or destroyed, he would have died in prison. None of the evidence in Mr. Diaz's case had previously been subjected to DNA analysis, as the technology was simply unavailable at the time of his conviction.

Chad Heins: Chad Heins, another Floridian, was convicted of the rape and murder of his sister-in-law. Several pieces of evidence had been collected at the crime scene, including hairs that excluded Mr. Heins, fingernail scrapings taken from under the victim's nails, and the bedsheet where the rape and murder took place. At the time of the trial in 1994, DNA testing methods were not advanced enough to identify any semen on the bedsheet or to yield a profile from the fingernail scrapings. As a result, the only biological evidence available at the time of trial was the hair evidence and prosecutors successfully argued that a stray hair from a stranger had accidentally ended up in the victim's bedroom. Mr. Heins first sought post-conviction DNA testing in 2001, and DNA tests that were eventually performed in 2003 using a more modern STR DNA testing method. The tests demonstrated that the hairs collected from the victim's bed matched to the fingernail scrapings, and that these pieces of evidence could not be tied to Mr. Heins. A more modern STR DNA testing method also demonstrated that there was, indeed, semen from the victim's bedsheet and that it also matched to the unknown man. Mr. Heins was released from prison 13 years after his conviction. This case study demonstrates the impact that modern DNA testing methods can have, teaching us that old evidence – such as the semen-stained bedsheet – that might never have been subjected to more than presumptive DNA testing could be tested today and yield a valuable crime-solving profile.

Scott Fappiano: Scott Fappiano was convicted of a rape in 1985 and consistently maintained his innocence throughout his incarceration. While a wealth of samples had been collected from the crime scene, DNA technology at the time was not sufficient to produce a result that would conclusively identity the perpetrator of the heinous crime for which he was convicted. Some exhibits containing biological evidence used at trial were returned to the DA's office; others

were vouchered and sent to New York Police Department evidence storage facilities. Two items of evidence – the rape kit and a pair of sweatpants containing semen stains—were sent in 1989 by the DA's office to a now-defunct DNA laboratory called Lifecodes, which at the time performed rudimentary DNA analysis for the state of New York. DNA in the late 1980's was limited, and although Lifecodes found semen to be present on the available evidence, they could not produce a conclusive result. In 1998, more advanced DNA testing methods had developed and a search for the original crime scene evidence was initiated. The DA's office fully cooperated with a search of its storage areas, but none of the original exhibits could be located. A similar search of NYPD storage facilities yielded nothing. After a long and uncertain search, Orchid Cellmark, a private DNA laboratory in Texas which had, after a series of mergers, taken over the Lifecodes lab, was contacted. Remarkably, in August of 2005, two test tubes containing biological samples from the crime scene were located. DNA testing of those extracts, using more progressive DNA testing methods, excluded Mr. Fappiano. He was freed from prison in October of 2006 – 21 years after his wrongful conviction. Had the liquid DNA material not been preserved by a private lab, Mr. Fappiano would still be in prison despite his actual innocence. Like Mr. Heins's case, Mr. Fappiano's case also demonstrates the value of subjecting preserved biological evidence to modern DNA testing methods.

Calvin Willis: Calvin Willis was convicted in 1982 of the brutal rape of a ten-year-old girl in Louisiana. Critical evidence had been collected, including a rape kit that contained fingernail scrapings, a bedspread, the victim's underwear and nightgown, and a pair of boxer shorts that were left on the couch at the crime scene. DNA testing wasn't yet available and so the state crime lab performed conventional serological testing on the rape kit evidence and blood typing on stains from the nightgown and bedspread. Because the victim is a type A secretor and Willis is an O secretor, he could not be excluded as the contributor to the stain. Perhaps even more troubling, Mr. Willis was identified through a flawed lineup procedure. In 1998, our office accepted his case and DNA testing was performed on the boxer shorts and the fingernail scrapings. Mr. Willis was excluded from being a contributor to any of the samples. He was released from prison in 2003, after having spent more than 21 years behind bars. Had it not been for the preserved evidence – which had not previously been subjected to DNA testing – Mr. Willis would still be in prison since he had been sentenced to life without parole.

Rickey Johnson: Rickey Johnson was convicted in1983 of aggravated rape and was sentenced to life without parole in Louisiana's Angola Farm Prison. His conviction was secured based upon the strength of conventional serological testing and an eyewitness identification made by the victim. With the case going to trial years before DNA tests were to become a common law-enforcement tool, no DNA tests were performed on the evidence. Throughout his ordeal, Mr. Johnson maintained his innocence and held out hope that the truth would one day be discovered. In 2006, after the Innocence Project took on Mr. Johnson's case, the DA agreed to test vaginal swabs from the rape kit using conventional STR testing. The tests produced just three markers--enough to potentially exculpate Mr. Johnson, but not a sufficient number to help identify the perpetrator. In 2007, a new form of STR testing, minifiler-STR, was performed. Minifiler-STR makes possible the examination of badly degraded evidence. Through the use of this new technology, eight additional markers were found, yielding a full profile. That profile not only proved Mr. Johnson's innocence, thereby leading to his exoneration, but also enabled the

evidence to be run through CODIS. The process resulted in a CODIS hit and the true perpetrator, a man who was housed in the same prison as Mr. Johnson himself, was identified. Mr. Johnson's case shows the promise that new technology holds for solving long forgotten cases and is a testament to the crime solving potential of modern day DNA technology.

Alaska State Legislature

Senator Hollis French

Sponsor Statement
Senate Bill 110 Preservation of Evidence

The American system of justice is founded on balancing the twin protections of the rights of those harmed by crimes, and the rights of the accused. Criminal convictions are guided by evidence of innocence or guilt, and no one in the criminal justice system wants innocent people to be convicted of crimes they did not commit. The availability and use of physical evidence at trials and during appeals is a critical piece of a meaningful justice system.

Modern DNA technology, coupled with today's comprehensive information and communications technologies, has exponentially increased the power of preserved evidence. Preserved evidence can solve cold cases and prove or disprove claims of innocence in ways unimaginable just a few years ago. The problem is, however, that evidence collection and preservation policies have not always kept pace with these new technologies.

Senate Bill 110 begins to address this issue by requiring that biological evidence in murder and sexual assault cases is properly retained while cases are unsolved and during the period after conviction that an offender is imprisoned or required to register as a sex offender. The bill still provides for police departments to return or dispose of evidence too large to keep after portions of the material likely to contain biological evidence have been removed and preserved. The bill provides for a notice process in cases where evidence will be destroyed, and it establishes a temporary task force to look at other issues involved in this emerging field of technology and make recommendations on standards and practices in cataloging and handling evidence.

Recently in Denver, Colorado a young man who had been convicted of murder at the age of 15 and who served over a decade in prison was released and his conviction was vacated as a result of DNA evidence that proved his innocence. And in cases closer to home, DNA was used after 13 years to identify a suspect in the murder of Bonnie Craig, a UAA student. The preservation of evidence is a vital and effective way to ensure the criminal justice system meets its goal of protecting the innocent and convicting the guilty. Join me in supporting this important bill.

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Prison inmate charged in Bonnie Craig killing

DNA Database connects man held Outside to 1994 slaying of Anchorage teen.

By MEGAN HOLLAND
Anchorage Daily News
(05/01/07 05:39:00)

A grand jury has charged a former Anchorage man with murder in the slaying of Bonnie Craig, an 18-year-old college student who was raped and savagely beaten before she toppled over a cliff into a creek in 1994.

Kenneth Dion, now 37 and in prison in New Hampshire for a series of armed robberies, has also been charged with rape in one of the most highly publicized and emotional slayings in Anchorage in recent decades.

DNA evidence that prosecutors say links Dion to the slaying was central to the solution, according to cold-case investigators.

"It's a major step in a case that was of significance to Anchorage and a burden to the family for years," prosecutor Pat Gullufsen said.

Dion was on probation on an Anchorage robbery conviction and had been out of prison for only a few months when Bonnie was killed.

"Just to know he's already in jail and there's no way he can hurt anyone else is a relief," said Bonnie's mother, Karen Foster, reached Monday morning. She said she had been told in January that charges could be coming in the slaying of her daughter, who had been a high school wrestler and had taught swimming to junior high kids.

Troopers were able to match semen found on Bonnie with Dion through a national computer database of DNA profiles. Dion was never known to troopers and wasn't a suspect in the case until the DNA match came back in November.

"There is no doubt about this one," trooper cold-case investigator Jim Stogsdill said of the match. "There's no confusion."

Dion likely did not know Bonnie, Stogsdill said, but apparently picked her up as she walked to a bus stop on Lake Otis Parkway on the way to an early-morning class on Sept. 28, 1994, at the University of Alaska Anchorage. Her body was found that afternoon by a hiker at McHugh Creek.

FORT RICHARDSON

Dion, originally from New Hampshire, came to Alaska as a soldier and was stationed at Fort Richardson, then stayed for a couple of years after he left the military. He did not have a job at the time of Bonnie's slaying and was in and out of jail on robbery and assault charges. He was 25 years old when Bonnie was killed.

He was in jail in Alaska at the end of July 1994, two months before Bonnie's death. And he

returned to jail on a probation violation about two months after the slaying.

Troopers say Bonnie was beaten and raped before she fell off a cliff near the Seward Highway. Her body was found floating in McHugh Creek near Mile 112.

Troopers have said she died of a head injury and hypothermia.

As to how Bonnie got to McHugh Creek, 10 miles from her home, or where she was raped, or whether she was struck in the head by her killer or she injured her head in the fall off the 30-foot cliff, "we can only surmise," Stogsdill said.

The hunt for her killer mesmerized Anchorage. Family and friends posted photocopies of the doe-eyed teenager who graduated from Service High School, asking for anyone with information about her killer to call troopers. She was not the kind of young woman to get in trouble. She lived with her parents and played the violin. She didn't drink.

Clues, though, were few and far between. And as the years passed, the crime remained unsolved and a reminder to young women walking alone that a brutal rapist had not been found.

As authorities kept looking, technology advanced to better match DNA, and more people were put into a national database.

DNA from Bonnie's case was put in the national database in 2000. New Hampshire authorities entered Dion's information in November 2006. Immediately, when workers with the Alaska state crime lab were conducting their weekly routine check of the database on Nov. 9, they had a hit.

Tammy Gregory, who was married to Dion at the time Bonnie was killed, broke down crying when reached Monday afternoon in Kenai. She said Dion was in and out of jail, on drugs, and generally abusive during those years. She hasn't seen or spoken to him in a decade. She doesn't want to remember that time in her life.

But still, she said, "I would never have thought he was capable of that. I would never have thought I was associated with someone like that."

NEW HAMPSHIRE RECORD

Dion, who left Alaska around 1996, made it back to New Hampshire, where he committed a series of robberies beginning in May 2002, according to authorities there and in Alaska. One robbery was of a pharmacy. He didn't have a weapon but, using his finger, pretended to, said Tom Velardi, deputy county attorney for Strafford County, N.H.

Dion ordered the pharmacy workers to give him OxyContin, a prescription painkiller similar to heroin that has become a popular street drug. "He had very serious addiction to it," Velardi said.

After the initial DNA match in November, authorities collected new DNA from Dion, which was taken back to Anchorage and matched again, Stogsdill said.

The grand jury in Anchorage indicted Dion on one count of first-degree murder, two counts of second-degree murder and one count of first-degree sexual assault. The two counts of second-degree murder are because it could have been a situation in which Dion didn't intend to kill Bonnie, Stogsdill said.

According to the New Hampshire Department of Corrections, Dion was sentenced to 15 years in

prison in February 2003 for five robberies that occurred from spring 2002 until he was incarcerated. Dion was living in Rochester, N.H., before he went to prison. According to the department's Web site, he is eligible for parole in August 2008.

Alaska troopers and New Hampshire authorities interviewed Dion recently, but Stogsdill said he revealed little information.

"This is a long-overdue resolution to the Bonnie Craig case," Stogsdill said.

Bonnie's mother said the news of the charges is a relief, but it also opens old wounds and memories of what happened to her little girl. She said she doesn't want a trial to deepen those wounds. She hopes Dion will admit to the crime and make a deal with prosecutors. That would be easier, she said.

Alaska authorities will try to have him extradited here to face the new charges, Gullufsen said. And, if he is convicted, he will likely finish out his sentence in New Hampshire, then transfer to an Alaska prison.

Daily News reporter Megan Holland can be reached at mrholland@adn.com.

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Family seeks to clear man who died in prison

STORY HIGHLIGHTS
- A Texas court will determine whether the state will exonerate Timothy Cole
- DNA tests later showed Cole did not commit the crime
- If exonerated, this would be first posthumous DNA exoneration in Texas
- "His greatest wish was to be exonerated," Cole's mother says

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From Ed Lavandera
CNN

TEXT SIZE

DALLAS, Texas (CNN) -- The family of Timothy Cole, a Texas man who died in prison nearly a decade ago while serving a sentence for a rape he swore he did not commit, is hoping a court will issue the state's first posthumous exoneration.

Timothy Cole died in prison while serving a sentence for a rape DNA tests show he did not commit.

1 of 2

Cole was convicted and sentenced to 25 years in prison for the 1985 rape of 20-year-old Michele Mallin. He maintained his innocence, but it was not confirmed by DNA until years after his 1999 death, when another inmate confessed to the rape.

"Everybody thinks he died a felon, a hardened criminal," Cole's brother, Cory Session, told CNN. "That's what hurts."

The court hearing on the exoneration began Thursday afternoon, according to the Austin American-Statesman.

Mallin, who has spoken publicly about the case, will join Cole's family in the Austin, Texas, courtroom. They want a judge to clear Cole's name, according to the Innocence Project of Texas, a nonprofit organization that seeks to help the wrongfully convicted.

Among those expected to testify are Mallin and Jerry Wayne Johnson, her confessed rapist.

Watch Cole's mother make emotional plea »

Then a student at Texas Tech University in Lubbock, Mallin was walking to her car, intending to move it to another parking lot, when a man approached her asking about jumper cables, she told CNN. In a matter of seconds, he put her in a chokehold, a knife to her neck. He forced himself into her car and drove her to the outskirts of town, where he raped her.

The next day, police investigators showed Mallin pictures of possible suspects. She chose a picture of Cole and said he was her attacker. She later identified him in a physical lineup, according to the Innocence Project of Texas.

"I was positive," she told CNN. "I really thought it was him."

But there was one detail: Mallin told police her attacker was a smoker. "He was smoking the entire time."

And Cole, who suffered from severe asthma, "was never a smoker," Session said. "He took daily medications (for asthma) when he was younger."

"He was the sacrificial lamb. To them, my brother was the Tech rapist, there was no backtracking. It was the trial of the decade for Lubbock."

The "Tech rapist" attacked four women other than Mallin -- abducting them in parking lots near campus and driving them to a vacant location, where he would rape them and flee on foot, according to the Innocence Project of Texas. The rapist "terrorized" the Texas Tech campus in the mid-1980s, the organization said.

Cole, like Mallin, was a student at Texas Tech. He had finished two years of college previously and was returning to school after spending two years in the Army, his brother said.

But his dreams of getting married and having children never materialized. He was arrested and charged with Mallin's rape, declining a plea bargain offer that would have put him on probation. A jury convicted him and imposed a 25-year sentence.

That night, "he hugged my mother, and he said, 'Mother, why these people lie on me? Why they do this to me?' " Cole's brother Reggie Session recounted for the Lubbock Avalanche-Journal, which published a three-part series on the case in June.

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"He said, 'They know I ain't done nothing to that girl. I don't even know that girl. Why they do this to me, mother?' ... He cried in my mother's arms on the floor."

Later, while in prison, Cole rejected an offer of parole that would have required him to admit his guilt. "His greatest wish was to be exonerated and completely vindicated," his mother, Ruby Session, told CNN affiliate News 8 Austin.

But the asthma that plagued Cole throughout his life brought about his death on December 2, 1999. The cause was determined to be heart complications due to his asthmatic condition. He was 39.

It was 2007 when a letter addressed to Cole arrived at his family's home, written by Johnson.
Read the letter »

"You may recall my name from your 1986 rape trial in Lubbock," says the letter, dated May 11, 2007. "Your Lubbock attorney, Mike Brown, tried to show I committed the rape.

"I have been trying to locate you since 1995 to tell you I wish to confess I did in fact commit the rape Lubbock wrongly convicted you of. It is very possible that through a written confession from me and DNA testing, you can finally have your name cleared of the rape ... if this letter reaches you, please contact me by writing so that we can arrange to take the steps to get the process started. Whatever it takes, I will do it."

Johnson did not know Cole had died. In fact, according to the Avalanche-Journal, he had been writing to court officials for years to confess to the rape, but got nowhere.

Upon finding out that Cole was dead, Johnson wrote he "cried and felt double guilty, even though I know the system's at fault," according to the Avalanche-Journal.

"A day later, I am still bothered, terribly, by the death revelation. Because, not knowing Mr. Cole at all, I wonder if the wrongful incarceration contributed to his death."

Johnson has been in prison since 1985 on two convictions for aggravated sexual assault, according to the Texas Department of Corrections. He was given a life sentence for the rape of a 15-year-old girl, and a jury later tacked on a 99-year sentence for another rape, according to the Avalanche-Journal. He cannot be charged with the Mallin case, as the statute of limitations has expired.

The Innocence Project became involved after Cole's family received Johnson's letter. DNA tests confirmed that Johnson was Mallin's attacker. Now, Cole's family hopes the court hearing will be the final step in clearing his name.

Mallin is helping them. "I was very traumatized," she told CNN. "I was scared for my life. I tried my hardest to remember what he looked like.

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"I'm trying to get his name cleared. It's the right thing to do."

Cory Session said, "We don't blame Michele. She's very gracious." E-mail to a friend | Mixx it | Share

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Missing rape kits foil justice

Rape kits routinely vanish, unfuriating victims and prosecutors alike. Even when evidence is intact, laws can keep suspects like William Harold Johnson walking free in our midst.

By Miles Moffeit and Susan Greene
Denver Post Staff Writers

Posted: 07/24/2007 01:00:00 AM MDT

"The only way I can describe it is that I felt drunk but I hadn't had enough to feel drunk." That's how Joanna remembers the night she suspects she was slipped a date-rape drug while drinking with other New Mexico Tech students. Further testing of material from her rape evidence kit might have shed light on what was in her system, but the hospital discarded it and the case was never prosecuted. (Post / Helen H. Richardson)

Socorro, N.M. - Bruised and shaking, Joanna watched the doctor prepare the instruments that could cull traces of a gang rape from her body.

At a party the night before, three fellow New Mexico Tech students had drugged her, overpowered her and raped her, she told the hospital staff.

Now, she was lying unclothed on a cold table splashed with bright light, allowing another set of prying hands - a female physician's - to probe her body.

"Just please get it over with," the 19-year- old recalls saying to herself last November.

In the age of DNA and other forensic advances, victims endure the invasive rape evidence exam, knowing that one plucked hair or fluid specimen alone can seal a case against their attackers.

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Joanna wouldn't be so lucky.

Only a week later, the Socorro County district attorney gave her a jolt: the hospital had thrown away biological evidence from her case, in violation of its own policy. Among the casualties: a urine specimen the doctor had characterized as containing a "date-rape drug," according to records.

Because of the lost evidence, the criminal charges against Depesh Patel, Ibrahim Hassan and Sandro Santos were dropped. None has responded to repeated interview requests from The Denver Post.

Today, eight months later, neither local authorities in the tiny town of 5,000 nor hospital officials have provided Joanna and her family a full explanation of how the evidence was destroyed - and by whom.

New Mexico statutes, like those in most states, do not require formal inquiries into the destruction of biological evidence in criminal cases. Nor do they require preservation of biological evidence at the outset of criminal investigations.

Joanna, whose full name is being withheld to protect her identity, said the evidence loss only compounds her personal anguish.

She has dropped out of school, and flashbacks still haunt
her, including several words spoken by the physician.

"For the hospital not to hang onto the rape kit, the blood and the urine samples from the victim was really, really hard to deal with," said Deputy District Attorney Stacey Ward. The hospital investigated the disposal and said it found no wrongdoing. (Post / Helen H. Richardson)

"'I know them,'" Joanna recalls the doctor saying before the exam, referring to her alleged attackers.

Rape evidence destruction, the most common evidence loss discovered by The Post, represents a hidden crucible for countless sex-assault victims in the U.S.

Behind 5,515 rape evidence kits destroyed or lost by authorities nationwide in the past decade are thousands of women like Joanna who endured the scraping of fingernails and the swabbing of their most private parts, only to be cheated of justice and, often, true healing.

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And behind those evidence purges are thousands of offenders who escaped prosecution.

The full scope of the lost specimens and their impacts may never be known because most state governments don't require that police, hospitals and other public agencies report the evidence they toss.

I THINK I VE BEEN TAKEN ADVANTAGE OF | Those were Joanna's words to her mother the morning after she says she was gang-raped by fellow students at a New Mexico college. She endured a rape exam, but the hospital threw the evidence kit away just days later, leaving the deputy district attorney no choice but to drop the case. (Helen Richardson | The Denver Post)

The problem flows from widespread ignorance, rape-crisis experts say. Ignorance about the kits' forensic value. Ignorance about rape trauma.

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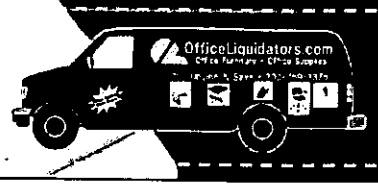

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Ignorance about the small spaces the kits consume. And ignorance about how DNA may render rape statutes of limitations obsolete.

"The destructions defy belief because (biological evidence) is the cleanest, least emotional, most unbiased and least politically fraught evidence there is," said Kim Tolhurst, a Washington, D.C., attorney.

Working as legal counsel for a coalition of victim advocacy groups, Tolhurst successfully pushed for a kit-preservation law in Iowa, ensuring they are kept for a decade. She had tape-measured her own shower to show lawmakers how hundreds of kits would easily fit in it.

While most of the rape evidence purges found by The Post were carried out by police agencies, untold numbers of kits also have been discarded by hospitals. Like law-enforcement agencies, medical facilities typically wield wide discretion to destroy samples. In many states, victims go through rape-kit exams but wait before approaching police - to work through their trauma - leaving the kits' fate up to the medical facilities.

Some hospitals in New York and Pennsylvania have disposed of kits as early as weeks to a month after the rape-kit exam is performed, foiling possible prosecutions, advocacy groups say.

In Joanna's case, the New Mexico hospital's procedures were to retain samples for seven days.

"If you destroy it, you not only destroy an option to prosecute but a sense of hope and justice," said Susan Lewis, spokeswoman for the National Sexual Violence Resource Center in Pennsylvania. "Generally, there's just no uniformity in the country for how hospitals deal with things like rape kits."

Such scenarios have played out along the West Coast, too.

"It's appalling to think of all the offenders we can't identify and who've gone free," said Terrence Newsome, a former analyst for the California governor's office who learned of thousands of rape-kit destructions in unsolved cases in the Golden State five years ago. These kits were never analyzed, thus never matched against offenders in the national FBI database.

Victims were outraged, and California later passed one of the few laws in the country requiring kits to be preserved.

But most destructions are carried out in the shadows, without accountability.

Drinks with acquaintances

Joanna's story, like so many rape cases, starts over drinks with someone she knew.

As recounted in police reports, the New Mexico Tech student took up Patel's offer of music and beers at Santos' apartment. Hassan was there. Santos arrived later in the evening.

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"It seemed innocent at the time, but I remember they kept moving the bottles closer to me," she recalls.

Though she's uncertain when it kicked in, she felt an unusual buzz, she told police. She remembers them playing with her jacket zipper, telling her "it wasn't Alaska" and that she should remove her coat. She remembers consuming several drinks, at one point leaving the apartment to get margarita mix.

Most of all, she remembers making decisions that evening she didn't want to make.

"The only way I can describe it is that I felt drunk but I hadn't had enough to feel drunk."

The evening blurred into numbness, dizziness, then blackouts. She awoke the next morning in her own apartment with bruises and a swollen lip, all documented on hospital reports. She also had memories of sex acts with the three men.

She rushed to the shower, letting the hot water flow over her for an hour.

"I think I've been taken advantage of," Joanna told her mother.

"We have to go to the police," her mom said.

Joanna, who began to believe she had been slipped a drug, was nervous about pursuing charges. "I knew there was so much blame put on the victim when this happens."

But she decided she needed medical attention.

At Socorro General Hospital, she agreed to a rape-evidence exam. The doctor, Susan Lewark, stepped into the exam room. Joanna told her the story, told her the names of her alleged attackers.

The doctor paused. She told Joanna she knew the men from the campus clinic, where she worked part time, Joanna recalls.

She then asked a couple of questions: "Do you still want me to do the exam? Do you want someone else to do it?"

Joanna didn't grasp the possible conflict. Didn't practically every one in Socorro know each other?

"If you're OK with it, I am," Joanna recalls saying.

Later that morning, after learning of Joanna's report, New Mexico Tech campus police officer Billy Romero stopped the three men as they were driving from the apartment complex's parking lot. He told the students he was investigating a rape case.

Patel, police reports show, had an immediate answer: He claimed he had been in Albuquerque the previous night. Romero arrested all of them.

Back at the hospital, Lewark found a barbiturate in Joanna's urine sample, according to hospital records.

In a conversation with Joanna and her mother,

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Lewark referred to it as a date- rape drug, Joanna said.

"That explained a lot," her mom said.

Lewark told police the same thing, according to Romero's report.

Meanwhile, the three suspects conceded that they had been with Joanna, contradicting Patel's initial account of his whereabouts that night. But they stressed that the sex was consensual. They said they even used their cellphones during the sex encounters to record her, asking whether she was having sex of her own free will.

They denied slipping her drugs.

After "three to five days," according to Deputy District Attorney Stacey Ward, Romero phoned the hospital from her office to make sure the staff had saved the rape specimens for further testing.

The hospital response: The small samples no longer existed. Ultimately, Ward said, they blamed the problem on lack of storage space.

Ward was astonished, she said. Without the specimens, more advanced testing to identify the drug and other substances in Joanna's system wouldn't be possible. "Their main problem was that they failed to recognize this was evidence," Ward said.

In interviews with police, Lewark also backed off her assertion that the drug could be a date-rape drug, Ward and Romero said.

Barbiturates, indeed, are not common date-rape drugs, but rape-crisis experts say a variety of intoxicants are used to take advantage of women.

As a result of the evidence destruction, Ward felt the case was just too murky to pursue.

It was dead-ended.

"For the hospital not to hang onto the rape kit, the blood and the urine samples from the victim was really, really hard to deal with," Ward said. "I was excited about having a provable case. The problem is that we had a victim voluntarily drinking large amounts of alcohol with these guys, and at one point, leaving and coming back. We needed more evidence.

"As it is, a cloud hangs over everything."

Joanna, meanwhile, has never been told the full story, including who threw out her evidence. She wonders, was it simply an accident? Or was there more to it?

The last person she knew to have custody of the evidence was the doctor, Lewark.

Officer Romero said Lewark also told him that she knew the three suspects. The doctor, he said, works with international students at the college. At least two of the accused are international students. At one point, Romero said, Lewark told him the three "were real nice guys."

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Lewark declined interview requests and would not answer written questions from The Post.

In interviews in January, Ward said she found Lewark's reversal in characterizing the substance found in Joanna's urine as a date-rape drug unusual. Last week, however, she said had become convinced that the evidence destruction was simply a bureaucratic bungle.

Ward said the hospital told her that the person who disposed of the evidence was a technician.

Last week, Socorro hospital administrator Bo Beames released a statement to The Post. He declined to detail what happened or say who tossed the evidence.

He stressed that the hospital had reviewed the case carefully and found no wrongdoing. He also said that in a small town he would not be surprised if a caregiver at the hospital knew a suspect in a criminal case.

"We are confident that our employees involved acted ethically and honored their medical duty."

Evidence-handling practices are being revamped, he said. "We also know from recent events that we can improve - and are committed to improving - the cross-training and communication between law enforcement and our caregivers in matters of sample collections to be used as evidence."

That's little solace to Joanna's father. He said he has tried repeatedly through meetings with hospital officials and law-enforcement authorities to find more answers.

"As a one-man task force, I've only hit walls," he said. "We deserve to know more."

Joanna said she's beginning to heal. But she is no longer attending classes, no longer pursuing her dream of being a veterinarian.

She is taking a year off from school to think about her future. During the break, she's joined AmeriCorps, helping teach art to the disabled.

And she's also working as a rape-crisis advocate in Albuquerque.

She recently answered a hotline call from a rape victim who had a familiar story: Her case evidence had been destroyed.

"Before she got off the phone, she told me, 'You've helped me so much,'" Joanna said. "At least something good has come out of this."

Staff writer Miles Moffeit can be reached at 303-954-1415 or mmoffeit@denverpost.com .

Staff writer Susan Greene and researcher Monnie Nilsson contributed to this report.

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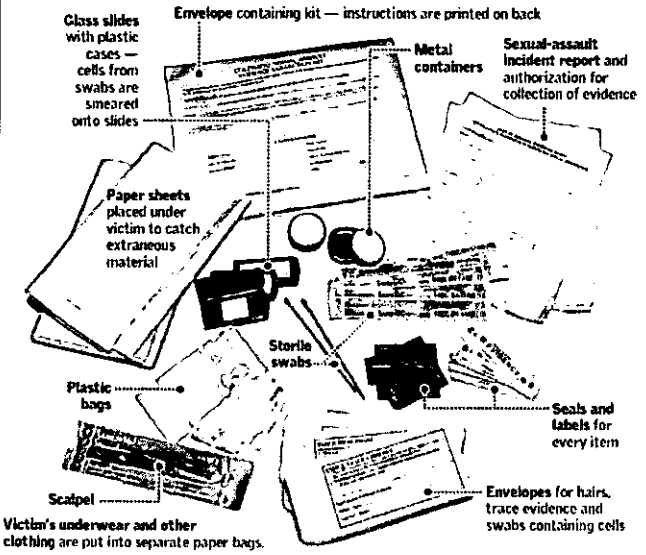
The "black box" of sex-crime investigations

A rape kit can contain multiple pieces of evidence, primarily specimens carrying DNA and other biological information taken from the victim's body during a rape exam. The destruction of a single kit can mean multiple specimens with crime-solving value are lost. Contents of a rape kit:



What investigators look for

- Foreign material swabbed from patients' bodies, including blood, semen and saliva — often collected with swabs.
- Foreign material dislodged from mouth with dental floss.
- Loose hairs, possibly belonging to the assailant, captured by swabs, tweezers or a towel placed under the patient during the exam.
- Blood and urine samples from victims that may reveal traces of drugs or other substances slipped to the victim.

A genetic profile often can be extracted from many of these biological traces, then matched against the accused or other suspects. It also can be entered into the national FBI database of archived sex offenders and other criminals for a match.

Source: U.S. Department of Justice

Miles Moffeit and Thomas McKay | The Denver Post

CLICK TO ENLARGE RAPE KIT DETAILS

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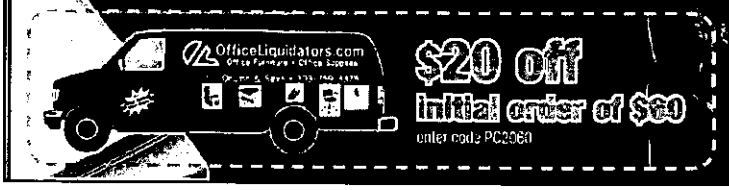

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Masters released from jail

By Howard Pankratz
The Denver Post
Posted: 01/22/2008 01:02:20 PM MST

Tim Masters leaves the Larimer County courtroom where he was released after serving nearly a decade of a life term in prison for the murder of Peggy Hettrick in 1987. (THE DENVER POST | CRAIG F. WALKER)

FORT COLLINS — Special prosecutors today said that DNA testing of murder victim Peggy Hettrick's clothing revealed the partial profiles of three men but that the profiles excluded Tim Masters as the source of the DNA.

Minutes after the prosecutors handed their findings to Judge Joe Weatherby, Weatherby vacated the judgment of conviction and sentence against Masters, who was immediately released from custody on a $200,000 personal recognizance bond.

Masters' next court date is Feb. 5, after the Larimer County district attorney assesses the status of the case.

A short time after Masters' release, longtime Colorado defense attorney David Wymore — who led the effort to free Masters for a crime Masters maintained he didn't commit — praised former employees of the Colorado Bureau of Investigation, the FBI and Fort Collins Police Department for their help in freeing Masters.

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Freedom

- Read the Larimer County DA's motion to dismiss charges against Masters.
- View the full multi-media special report on Masters' release, including exclusive photos.
- Follow the courtroom action, minute-by-minute
- Discuss freedom for Tim Masters, after more than nine years in prison. What should happen next?
- Watch video of what jurors and the public didn't know at the time of the Tim Masters trial.
- Moments to Freedom Read the live blog from the court hearing that ended Masters' incarceration
- Read The Denver Post's full series on the mishandling of criminal evidence, "Trashing the Truth."

"The reason why we are here is because Tim is innocent," Wymore told a room packed with Masters supporters and press. "He remains the victim of an unfair conviction."

Masters, dressed in a new suit, was humble and appeared surprised by the attention, which included television cameras from at least 20 regional affiliates and national networks.

"I'm a little overwhelmed," he said as supporters and media jammed a conference room. "I want to thank my family and friends. I want to thank the media."

Weatherby presided over months of hearings in which Wymore and co-counsel Maria Liu argued that prosecutors in the original case had withheld evidence from Masters' defense team and had failed to look at alternate suspects.

Rather, they said, they focused solely on Masters.

The key alternate suspect, they claimed, was Dr. Richard Hammond, who lived near where Hettrick's body was found.

But special prosecutor Mike Goodbee made it clear today that the DNA of Hammond, who is now deceased, was not on Hettrick's clothing.

Goodbee said that he first became aware on Dec. 6 that CBI testing had revealed the partial profiles of the three men on Hettrick's clothing.

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Christy Peters holds onto her cousin, Tim Masters, at his release party in Fort Collins on January 22, 2008. (THE DENVER POST | HELEN RICHARDSON)

Then on Jan. 15, Goodbee said, the defense provided the special prosecutors a DNA profile developed in the Netherlands which the defense said belonged to a potential suspect in the early investigation of Peggy Hettrick's murder. The defense findings were presented to the CBI, which conducted its own tests.

"On Jan. 18, we learned (from the CBI) that the results of this new testing and comparison confirmed the presence of DNA on clothing of Hettrick at the time of her murder was consistent with the alternate suspect and inconsistent with Tim Masters," said Goodbee.

During the relatively short proceedings this morning, which were delayed because of paperwork, Weatherby's courtroom was packed.

More than 40 of Masters' relatives stood to the left of the judge and in front of Masters.

There were not, however, any of Hettrick's relatives present. Wymore specifically addressed the victim's family at the press conference, saying it had never been the defense's intention to open old wounds in trying to free Masters.

"We'd like to acknowledge Peggy Hettrick," said Wymore. "We are sorry if we have opened any wounds."

The murder of Hettrick on Feb. 11, 1987, sickened the city of Fort Collins. Her murder was particularly gruesome, and she was sexually mutilated.

Masters, who was 15 at the time of the murder, was convicted of the crime in 1999.

In the years that followed, both the Colorado Court of Appeals and then the Colorado Supreme Court upheld the conviction.

Much of the case was based on the testimony of Reid Meloy, a forensic psychologist.

In February 2001, in a precedent-setting ruling, the Colorado Court of Appeals said it is permissible for forensic psychologists to testify about "sexual homicides" in Colorado courts.

Masters' attorneys told the Court of Appeals that such testimony amounted to "impermissible psychological profiling."

But the judges rejected that argument.

They stated that there were fundamental

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differences between the psychological theories and analysis offered in the Masters case and impermissible profiling.

And in October 2002, the Colorado Supreme Court, again breaking new legal ground in Colorado, upheld the conviction in a 4-3 vote.

The majority of justices said that writings and drawings by men that depict hatred of women are admissible in court and forensic psychologists may testify about the traits that drive men to commit "sexual homicides."

The two appellate courts were presented with evidence uncovered by the Fort Collins Police Department.

When investigators searched Masters' bedroom, they found a large collection of knives with long blades, one containing a scalpel in its handle. Also found was a fillet knife, a machete, a ninja sword, a suitcase of pornographic depictions of the female anatomy and a large number of drawings and narratives.

The drawings were made by Masters and depicted surprise attacks, gruesome death scenes and scenes of violence and sex, authorities said.

The case languished for 10 years because police couldn't find Hettrick's blood on Masters' clothing or property.

But then a field of expertise in sexual homicides developed, and in 1997, the Fort Collins Police Department contacted Meloy.

Meloy reviewed the drawings and narratives produced by Masters, together with other evidence in the case. He concluded that Masters killed Hettrick and in doing so, had symbolically killed his own mother. Masters' mother and Hettrick looked similar — including wavy red hair.

Meloy testified that a primary reason perpetrators of sexual homicides fantasize is to express deeply felt hostility toward women.

The majority of four justices said Meloy's expertise met court standards and the bulk of Masters' writings was properly admitted.

At the time of Hettrick's death, Masters was 15. He became a prime suspect because his window faced a field where he could see Hettrick's sexually mutilated body. Masters failed to report the body, later telling police he thought it was a mannequin.

Several detectives who worked on the case never believed that Masters committed the crime.

Former Fort Collins Detective Linda Wheeler, who has long believed that Masters was innocent, asked Masters' attorneys to submit Hettrick's clothing for advanced forensic analysis in the Netherlands.

There, scientists targeted spots where the killer, or killers, may have touched her forcefully,

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embedding skin cells in her clothes.

The Dutch lab found a full genetic profile last summer of a person who left DNA inside Hettrick's waistband.

That man, a former boyfriend who still lives in Fort Collins, told police he had seen her about a week earlier for dinner but did not reveal whether they had intimate contact since that date.

He denied any involvement in her death.

Howard Pankratz: 303-954-1939 or hpankratz@denverpost.com

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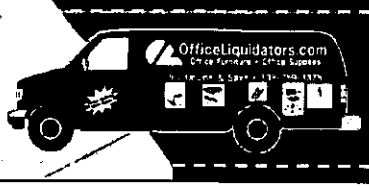

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SB 146

SENATOR FRED DYSON

MEMORANDUM

April 11, 2009

To: Senator Hollis French, Chair
Senate Judiciary Committee

From: Senator Fred Dyson

Subject: Request Hearing on SB 146 – AK Firearms Exempt From Federal Regulation

---

Please schedule Senate Bill 146 for hearing in the Senate Judiciary Committee. Forwarded herewith is a copy of the bill and the sponsor statement.

Contact Information:
Lucky Shultz x-6580

Enclosure: SB 146 and Sponsor Statement

During Session (January-May): Alaska State Capitol • Juneau, Alaska 99801 • (800) 342-2199 • (907) 465-2199 • (907) 465-4587 FAX
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Senator.Fred.Dyson@Legis.state.ak.us • www.akrepublicans.org

SENATOR FRED DYSON

Sponsor Statement for SB 146

"An Act declaring that certain firearms and accessories are exempt form federal regulation."

April 11, 2009

Contact: Lucky Shultz at Senator Fred Dyson's office (907) 465-2199

The United States Constitution gives Congress the authority to regulate interstate commerce between the states. Furthermore, 18 USC 922 makes it unlawful for any person not licensed as a manufacturer or dealer in firearms to engage in the business of manufacturing or dealing in firearms. Take together, the Interstate Commerce Clause and 18 USC 922 effectively allow the federal government to regulate firearms.

Senate Bill 146 addresses this breach of our second amendment rights by exempting firearms, firearm accessories, and ammunition manufactured and retained in the state from federal firearm control laws, including registration, since firearms meeting this criteria will not fall under interstate commerce and therefore shouldn't be regulated by the federal government. It should be noted that firearms addressed by this bill, and exempt from federal regulation, must have the words, "Made in Alaska" clearly stamped on a central metallic part such as the receiver or frame.

This bill frees certain firearms and accessories from federal regulation as long as certain conditions are met. It frees the state of Alaska from restrictive federal firearms regulations and allows the state to take responsible fire arm regulation into her own hands. SB 146 also provides a mechanism for protecting those Alaskans taking advantage of this action by requiring the state's Attorney General to defend such individuals who beforehand advise the Attorney General of the citizen's intent to manufacture firearms and accessories under this bill. Outdoorsmen, hunters, and Alaskans defending their families and property will benefit from the passage of SB 146.

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SB 148

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax

Pages (including cover sheet): 1

Date: April 6, 2009

To: LAA Legal

From: Cindy Smith 465-6641

RE: Final CS on SB148

Please amend LS0685\E as follows:

1. On page 1, line 13, delete the words "occurs and"

2. On page 2, line 1, after the word "or" add the words "due to"

26-LS0685\E
Kane
4/6/09

CS FOR SENATE BILL NO. 148(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE TRANSPORTATION COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

"An Act relating to limitation of state liability on certain federal highway programs; and providing for an effective date."

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

*** Section 1.** AS 44.42.300 is amended by adding a new subsection to read:

(d) Except for actions alleging independent negligence by the state or its employees, an action may not be brought against the state or employees of the state for a claim arising out of design, operations, maintenance, or construction activities performed by, or under the management of, federally recognized tribes in Alaska acting in furtherance of the Indian Reservation Roads Program under 25 C.F.R. 170 or the Indian Reservation Roads Bridge Program under 23 U.S.C. 202, and the program or relevant state-tribal agreement requires compliance with all applicable federal and state standards. In this subsection, "independent negligence" means negligence ~~that occurs and~~ is not due to the state's selection, supervision, administration, monitoring, or controlling of the activities of the tribe, the tribe's agents, employees, or contractors,

"due to"

or the state's approving or accepting any of the work performed under programs listed in this subsection.

*** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to claims arising on or after the effective date of this Act.

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTION. The revisor of statutes shall change the section heading of AS 44.42.300 from "Authorization to participate in certain federal highway programs" to "Participation in certain federal highway programs."

*** Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

Except for actions alleging independent negligence of the state or its employees, an action may not be brought against the state or employees of the state for a claim arising out of design, operations, maintenance, or construction activities performed by, or under the management of, federally recognized tribes in Alaska in furtherance of the Indian Reservation Roads Program under 25 C.F.R. 170 or the IRR Bridge Program under 23 U.S.C. 202. ~~, and the action can be maintained against the tribe under the Federal Tort Claims Act,~~ and the program or relevant state-tribal agreement requires compliance with all applicable federal and state standards. Independent negligence means negligence other than in the state's selection, supervision, administration, monitoring, or controlling of the activities of the tribe, its agents, employees or contractors, or in approving or accepting any of the work performed.

Deleted: A

Deleted: other federal transportation programs or transportation grants designed to benefit tribes,

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RUBY TRIBAL COUNCIL

AGNES M. WRIGHT BLDG.
P.O. BOX 68210
RUBY, ALASKA 99768

TELEPHONE: 907-468-4479
FAX: 907-468-4474

VIA Electronic Mail

Sen. Albert Kookesh
Alaska State Capital Building
Capital Room 11
Juneau, Alaska 99801

Re: Letter of Support for SB -148

Dear Senator Kookesh,

I am writing this letter on behalf of the Ruby Tribal Council and all its Tribal Members to fully support SB -148 a bill you sponsored and introduced during the Senate Transportation Committee hearing this past week. This bill will complete the circle of federal funds that comes to Alaska to build and maintain Alaska's entire public infrastructure, especially in rural Alaska where the absence of funding for infrastructure improvements is felt the most.

This bill, SB – 148 will be a first step in bridging Tribal and State funding strategies for years to come when it concerns public community streets, highways, bridges, trails, and ferry systems.

Thank you for all the work you do for the State of Alaska, and our tribal communities.

Sincerely,

Patrick McCarty

Patrick McCarty, 1st Chief

Cc: IRR FILE

Manley Village Council - P.O. Box 105 - Manley Hot Springs, Alaska 99756
Voice: (907) 672-3177 Fax: (907) 672-3200

VIA Electronic Mail

Sen. Albert Kookesh
Alaska State Capital Building
Capital Room 11
Juneau, Alaska 99801

Re: Letter of Support for SB -148

Dear Senator Kookesh,

I am writing this letter on behalf of the Manley Village Council and all its Tribal Members to fully support SB -148 a bill you sponsored and introduced during the Senate Transportation Committee hearing this past week. This bill will complete the circle of federal funds that comes to Alaska to build and maintain Alaska's entire public infrastructure, especially in rural Alaska where the absence of funding for infrastructure improvements is felt the most.

This bill, SB – 148 will be a first step in bridging Tribal and State funding strategies for years to come when it concerns public community streets, highways, bridges, trails, and ferry systems. Thank you for all the work you do for the State of Alaska, and our tribal communities.

Sincerely,

Jack Wright, 1st Chief

Cc: IRR file

Manley Village Council - P.O. Box 105 - Manley Hot Springs, Alaska 99756
Voice: (907) 672-3176 Fax: (907) 672-3200 Email: mvcirr@gmail.com

Resolution No. 2009 - 07

Resolution Supporting Senate Bill – 148 that Would Limit the State of Alaska's Liability & Shield the State from lawsuits arising from IRR and other Federal/Tribal Transportation Projects in Alaska

WHEREAS; the Manley Village Council is a federally recognized tribe; and

WHEREAS; the Manley Village Council is the governing body of the Tribe; and

WHEREAS; to preserve our Alaska Native cultural and tribal values, and otherwise promote the economic health and welfare of tribal members, residents of the surrounding area, and the traveling public; and

WHEREAS; the Manley Village Council has the authorities and duty to provide for a safe and healthy environment for all our tribal members, residents of the surrounding area, and the traveling public; and

WHEREAS; the Manley Village Council fully supports **SB-148** and Alaska's Department of Transportation & Public Facilities sponsorship of **SB-148**; and

WHEREAS; the Manley Village Council is currently under contract the Bureau of Indian Affairs to plan, design, construct, and maintain the routes currently identified as Official listed in the National Indian Reservation Roads (IRR) Inventory and are part of the Tribes' 20 year Long Range Transportation Plan (LRTP) 2009 update; and

NOW THEREFORE, BE IT RESOLVED; NOW THEREFORE, BE IT RESOLVED; that the Manley Village Council fully supports Senator Kookesh's **SB – 148** and urged the legislature to vote to enact this important legislation as soon as possible.

CERTIFICATION

The foregoing resolution **2009 – 07** was adopted at a regular monthly meeting of the Manley Village Council held on **March 31st, 2009**, at which a quorum was present and certified by a vote of;

5 **IN FAVOR, __ AGAINST, __ ABSTAIN, __ ABSENT**

Signed:

Jack Wright, 1st Chief

Attest:

William Bredeman-Woods, Secretary-Treasurer

SENATOR ALBERT M. KOOKESH
ALASKA STATE LEGISLATURE SENATE DISTRICT C

State Capitol, Room 11
Juneau AK, 99801-1182
907-465-3473
888-288-3473
FAX 907-465-2827

Sponsor Statement

SB 148

SB 148 will resolve the issue of liability to the state or employees of the state when partnering with federally recognized tribes under the Indian Reservations Roads Program. With the decline in state and federal highway funds it's imperative we collaborate and work together. This bill will assist the partnering process, and ultimately benefit all Alaskans by leading to long-term improvements in the state's overall transportation infrastructure.

To take advantage of all available federal transportation dollars on state highways, Alaska DOT&PF and Indian Tribes may enter a series of inter-governmental agreements outlining respective obligations. The process of drafting such inter-governmental agreements can be time consuming and costly. Negotiations will often center on liability concerns, and sometimes months may elapse while trying to resolve the issues. This bill will lessen inter-governmental disputes or disagreements about liability concerns and will enable the tribe and the state to focus instead on the core transportation project(s).

Tribes have both the legal authority and financial capacity to assist with the improvements to the state transportation infrastructure. Congress made significant transportation dollars available under the Indian Reservation Roads (IRR) program. These IRR funds were made available upon the passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A legacy for users (SAFETEA-LU), Pub.L.No. 109-59 (2005). In FY **2008 the Alaska share of IRR funds is over $45 million** and the recent **stimulus package supplemented those funds by approximately $40 million.**

This bill has the benefit of advancing state-tribal relations, advancing the state-tribal interest in improving state transportation infrastructure (including access to Alaska native villages) and minimizing nuisance litigation which can cost the state significant moneys to defend and settle.

This bill has the support of DOT& PF and I would appreciate your prompt and favorable action on this measure.

Indian Reservation Road (IRR) Program Within Alaska
Synopsis by Alaska DOT&PF
February, 2009

Overview

IRR program established in federal law in 1982. Though initially managed primarily by the Bureau of Indian Affairs, this has evolved to a joint management structure between tribal governments and two federal agencies (BIA and FHWA). Participation by Alaska tribes in this program was limited prior to 2005 by two factors: First, the BIA held most decision and performance authority, and second, the funding allocated to Alaska was relatively small, resulting in very little road work being accomplished.

Under SAFETEA-LU (2005 surface transportation authorization) the statutory foundation for the program changed significantly. First, the amount of nationwide funding increased each year (starting at $300 Million per year in 2005 and rising to $450 Million per year in 2009). Second, each tribe was allotted funding annually based on a formula established through regulations. The formula is complex, but apart from population, the most important variable to each tribe is the number of road miles in their tribe's inventory.

Road Inventory and Funding

This identification of road miles takes place between each tribe and BIA and can include roads owned by other entities (such as Alaska DOT&PF, USFS and local governments). Since 2005 there has been a very active effort by tribes in Alaska to add as many road miles as possible to their individual inventories. While there was at one point (in 2007) a legal complication between the tribes and the State of Alaska over the inventory process (because BIA was requiring that road owners such as the state must "consent" to their roads being added to an inventory), this has been favorably resolved and the state is no longer involved in the inventory process.

The inventory process for Alaska tribes is different than most other tribes, which have reservations and thus clear boundaries. The tribal inventory of reservation-based tribes was largely based on the roads within their reservation boundary. In Alaska, with only one reservation-based tribe, essentially all but one of Alaska's 228 or so tribes must rely on road miles in and around each tribe's geographic location. Because some tribes are located in areas with a substantial number of roads, their tribal inventories are large. Other Alaska tribes, in areas with limited road mileage, have much smaller inventories and thus garner far less funding each year under the federal formula.

Another factor is the national split of funds between tribes. As Alaska's tribes have increased their inventory of IRR road miles since 2005, this has led to a smaller share of funding to other tribes in the United States. In response, these tribes have sought to expand their own inventory of miles, by expanding to include roads that lead to the reservation but are not within the reservation. Since Alaska, taken as a whole, has relatively few miles of total road in the state, this effort by non-Alaska tribes is likely to shift the balance of miles under IRR inventory back to these other non-Alaskan tribes as their inventories expand.

There are also some other categories of funding that are allocated on a discretionary (competitive) basis, such as $14 million per year for bridge projects across all tribes in the U.S.

Examples of IRR Funding to Alaska Tribes

In 2008 Alaska tribes received about $40 Million in funding based on the Relative Need" formula used by BIA. This formula uses several factors, including population, amount of vehicle travel, the total number of road miles and a "cost to construct factor" (which is designed to normalize funds across different construction cost circumstances). This is somewhat less than an average of $175,000 per Alaska tribe per year. However, the distribution of funds varies widely from this average. Some tribes garner nearly $2 million per year, while others earn less than $5,000. In general, the tribes in Southeast Alaska do the best under the formula, in part because of their population, and also because there are relatively high number of road miles in this region due to USFS logging road construction. (See attached table from BIA)

Use of IRR Funding by Tribes

The rules governing the use of IRR funding gives substantial latitude to each tribe as to how they use their funds. Some examples of what they can perform with their funding includes:

- Maintenance: 25% of each year's funding is eligible for routine road and bridge maintenance
- Match to other federal: IRR road funds can be used to match other federal funds, including FHWA highway funds and/or Denali Commission funds
- Design and Construction: IRR funds can be used for the tasks required to plan and engineer roads, as well as the actual construction. Construction can occur under force-account rules, unlike most other federal fund sources, which require competitive bids.
- Projects types include:
    - Transportation facility planning, research, engineering, construction and reconstruction
    - Tourism enhancement and recreational development
    - Vehicular parking area improvements and additions
    - Interpretive signage installation
    - Scenic easement and scenic or historic site acquisition
    - Pedestrian and bicycle on-and-off road system improvements, including modification of public walkways to comply with the Americans with Disabilities Act (ADA)
    - Construction and reconstruction of roadside rest areas, including sanitary and water facilities
    - Provision of transit facilities and services within public lands, national parks and Indian reservations
    - Other appropriate facilities such as visitor centers

In order to use their funds, each tribe must prepare a Transportation Improvement Program or TIP (much like the state STIP) which identifies the project scope, cost and location of each project and activity to be funded.

Successful Examples of DOT&PF-Tribal Cooperation

Several groups of tribes within Alaska have established mutual organizations to better manage the program and take advantage of a pooled approach. For example, twenty tribes in the Bering Strait area operate a transportation organization called the Kawerak Transportation Program, which has professional road engineers, planners and accountants to internally identify and manage projects. By pooling their IRR funds and taking turns at project construction within their several communities, they are able to accomplish one or more projects each year, in order to improve employment opportunities and the road system in their communities. Several of these multi-tribe transportation organizations, sometimes called compacts, have been established in the state.

There have also been examples of tribes wishing to help fund work on state roads. For example, in Petersburg, the Petersburg Indian Association has helped to fund two state projects, including intending to perform the work on one project the tribe funded. This work is planned to be accomplished in cooperation with Alaska DOT&PF. Other examples of state-tribal partnerships include:

- Cordova: Native Village of Cordova (Eyak) is performing highway work on the state-owned Copper River Highway and intends to perform bridge work in the future.
- Sitka: Sitka Tribe of Alaska is operating a community-wide transit system and has received state managed transit funds.
- Mat-Su Borough: Chickaloon Native Village is evaluating the possibility of a transit system that might run from Glenallen to Anchorage on a daily or several times per week basis. This latter project received a transit grant from the Federal Transit Administration. DOT&PF transit planners have assisted the planning for this effort.
- Gambell: A federal highway earmark for road work in Gambell is being performed by Kawerak, under a transfer of funds from Alaska DOT&PF.

Impact of Stimulus Funds to Alaska Tribes

The American Recovery and Reinvestment Act contains $310 M nationally for funding to tribes for stimulus purposes. This is about 75% increase to regular 2009 funding to all tribes, including Alaska tribes or about $35 Million. The law's language requires that priority be given to projects that can be completed in 2 years or less, and after one year, BIA may be redistribute funds among the tribes. The allocation of IRR stimulus funds, and any redistribution of funds, is determined by the two federal agencies involved: BIA and FHWA.

Role of DOT&PF in the IRR Program

DOT&PF has been active in working with tribes in order to better achieve transportation improvements for all Alaskans. We have recently agreed to participate in a task force between the state and tribes to find workable solutions, including standard legal formats, in order to accelerate projects. That work is underway this year. We have also entered into several agreements, or otherwise assisted tribes in their use of IRR funds. Perhaps one key factor, as we prepare the next STIP, is that for the first time tribes can bring both matching funds, and maintenance funds to the table. Both factors will permit tribes' nominated projects to score higher, and thus improve the chances of garnering funds.

2008

Tribal Code	Tribe/Village	Alloc %	Approx. Alloc.
E01002	AFOGNAK	0.000233152	$ 65,329
E01004	AKHIOK	0.000198866	$ 55,722
E01007	AKUTAN	0.000218151	$ 61,126
E01011	ALEKNAGIK	0.000175729	$ 49,239
E01027	ATKA	0.000660474	$ 185,065
E01041	BELKOFSKI	9.57506E-06	$ 2,683
E01065	CANTWELL	9.57506E-06	$ 2,683
E01081	CHICKALOON	0.00207013	$ 580,051
E01083	CHIGNIK BAY	0.000290969	$ 81,529
E01084	CHIGNIK LAGOON	0.000255934	$ 71,713
E01085	CHIGNIK LAKE	0.00016138	$ 45,219
E01087	CHEESH-NA (CHISTOCHINA)	8.38246E-05	$ 23,488
E01088	CHITINA	2.26866E-05	$ 6,357
E01096	CLARKS POINT	4.36678E-05	$ 12,236
E01102	KLUTI KAAH (COPPER CENTER)	3.61871E-05	$ 10,140
E01121	CURYUNG (DILLINGHAM)	0.000623763	$ 174,778
E01133	EGEGIK	0.000476694	$ 133,570
E01135	EKLUTNA	0.000151737	$ 42,517
E01136	EKUK	0.000185869	$ 52,081
E01137	EKWOK	4.35034E-05	$ 12,190
E01142	NANWALEK (ENGLISH BAY)	0.000847514	$ 237,473
E01148	EYAK (CORDOVA)	0.001172167	$ 328,441
E01149	FALSE PASS	2.11834E-05	$ 5,936
E01165	GAKONA	9.28783E-05	$ 26,024
E01185	GULKANA	6.16666E-05	$ 17,279
E01214	IGIUGIG	0.000444181	$ 124,459
E01216	ILIAMNA	0.000559303	$ 156,717
E01222	IVANOFF BAY	1.21538E-05	$ 3,405
E01237	KARLUK	0.000440235	$ 123,354
E01246	KENAITZE INDIAN TRIBE	0.000402272	$ 112,716
E01252	AGDAAGUX TRIBE (KING COVE)	0.00037297	$ 104,506
E01254	KING SALMON TRIBE	4.09893E-05	$ 11,485
E01260	KNIK TRIBE	0.000283909	$ 79,551
E01264	KOKHANOK	0.000203144	$ 56,921
E01266	NEW KOLIGANEK (KOLIGANEK)	0.000131406	$ 36,820

E01279	LARSEN BAY	1.80799E-05	$ 5,066
E01283	LEVELOCK	0.0010243	$ 287,009
E01295	MANOKOTAK	0.000253994	$ 71,169
E01309	MENTASTA	2.72634E-05	$ 7,639
E01324	PAULOFF HARBOR	0.00017393	$ 48,735
E01330	NAKNEK	0.001855871	$ 520,015
E01336	NELSON LAGOON	0.000114157	$ 31,987
E01339	NEW STUYAHOK	0.000132432	$ 37,107
E01340	NEWHALEN	0.002782963	$ 779,786
E01346	NIKOLSKI	2.07679E-05	$ 5,819
E01348	NINILCHIK	0.000471152	$ 132,017
E01353	NONDALTON	6.39638E-05	$ 17,923
E01367	OLD HARBOR	4.28449E-05	$ 12,005
E01370	OUZINKIE	0.000262691	$ 73,606
E01376	PEDRO BAY	0.000208515	$ 58,426
E01378	PERRYVILLE	0.000157744	$ 44,200
E01383	PILOT POINT	0.000348278	$ 97,587
E01396	PORT GRAHAM	0.000173799	$ 48,699
E01397	PORT HEIDEN	0.000465471	$ 130,425
E01398	PORT LIONS	0.000341681	$ 95,739
E01402	PORTAGE CREEK	4.80145E-05	$ 13,454
E01419	SALAMATOFF	0.00041533	$ 116,375
E01424	QAGAN TAYAGUNGIN (SAND POINT)	0.000271481	$ 76,069
E01431	SELDOVIA	0.000384164	$ 107,643
E01450	SOUTH NAKNEK	0.000267407	$ 74,927
E01455	SAINT GEORGE	0.000412542	$ 115,594
E01458	SAINT PAUL	0.000474003	$ 132,816
E01477	TATITLEK	9.36216E-05	$ 26,233
E01478	TAZLINA	0.000102185	$ 28,632
E01487	TOGIAK	0.000590746	$ 165,527
E01503	TWIN HILLS	0.000254801	$ 71,395
E01505	TYONEK	0.000375801	$ 105,299
E01506	UGASHIK	0.000386458	$ 108,286
E01510	QAWALANGIN (UNALASKA)	0.00031642	$ 88,661
E01511	UNGA	0.000309438	$ 86,704
E01531	LESNOI (WOODY ISLAND)	8.80288E-06	$ 2,467
E01578	CHENEGA (CHANEGA)	0.000820165	$ 229,810

E01586	KAGUYAK	4.6331E-07	$	130
E01623	KANATAK	8.80288E-06	$	2,467
E01804	SUN'AQ TRIBE (KODIAK)	0	$	-
E01850	SUN'AQ TRIBE (KODIAK) (POP)	0.000229362	$	64,267
E02005	AKIACHAK	0.000467675	$	131,042
E02006	AKIAK	9.40498E-05	$	26,353
E02008	ALAKANUK	0.000353685	$	99,102
E02019	YUPIIT (ANDREAFSKI)	0.000231501	$	64,867
E02021	ANIAK	0.000111517	$	31,247
E02029	ATMAUTLUAK	0.000183679	$	51,467
E02043	ORUTSARAMUIT (BETHEL)	0.000527704	$	147,863
E02047	BILL MOORE'S SLOUGH	0.000621648	$	174,186
E02077	CHEFORNAK	6.84154E-05	$	19,170
E02080	CHEVAK	0.000223468	$	62,616
E02092	CHULOONAWICK	7.56739E-06	$	2,120
E02109	CROOKED CREEK	0.001763482	$	494,128
E02132	EEK	0.00013771	$	38,586
E02141	EMMONAK	0.000260013	$	72,856
E02170	GEORGETOWN	0.00036578	$	102,491
E02189	HAMILTON	3.86091E-06	$	1,082
E02199	HOOPER BAY	0.00017266	$	48,379
E02232	KALSKAG	3.69103E-05	$	10,342
E02241	KASIGLUK	9.42591E-05	$	26,411
E02255	KIPNUK	0.000128287	$	35,946
E02267	KONGIGANAK	0.000298045	$	83,512
E02268	KOTLIK	0.000151138	$	42,349
E02275	KWETHLUK	0.000190269	$	53,313
E02276	KWIGILLINGOK	5.86859E-05	$	16,444
E02288	LIME VILLAGE	0.00010261	$	28,751
E02291	LOWER KALSKAG	5.43935E-05	$	15,241
E02297	MARSHALL (FORTUNA LEDGE)	0.000503771	$	141,157
E02307	MEKORYUK	0.000169488	$	47,491
E02323	ASA'CARSARMIUT	0.000159698	$	44,747
E02325	GOODNEWS BAY	0.000102407	$	28,694
E02332	NAPAIMUTE	1.15827E-05	$	3,245
E02333	NAPAKIAK	0.000196848	$	55,157
E02334	NAPASKIAK	0.000193489	$	54,216

E02341	NEWTOK	0.001162596	$	325,760
E02343	NIGHTMUTE	0.00036304	$	101,724
E02361	NUNAPITCHUK	8.03066E-05	$	22,502
E02366	OHOGAMIUT	1.25094E-05	$	3,505
E02369	OSCARVILLE	1.08106E-05	$	3,029
E02371	PAIMIUT	1.01928E-05	$	2,856
E02384	PILOT STATION	0.000114705	$	32,140
E02385	PITKAS POINT	2.61512E-05	$	7,328
E02388	PLATINUM	6.7952E-06	$	1,904
E02407	KWINHAGAK (QUINHAGAK)	0.000187433	$	52,519
E02411	RED DEVIL	6.17936E-05	$	17,315
E02418	IQURMUIT (RUSSIAN MISSION)	0.000450209	$	126,148
E02428	SCAMMON BAY	0.00021422	$	60,025
E02436	NUNAM IQUA (SHELDON'S POINT)	2.73353E-05	$	7,659
E02446	SLEETMUTE	3.27425E-05	$	9,174
E02456	ALGAACIQ (ST. MARY'S)	5.74504E-05	$	16,098
E02464	STONY RIVER	0.000204835	$	57,395
E02490	NUNAKAUYARMIUT (TOKSOOK BAY)	0.000126532	$	35,454
E02497	TULUKSAK	0.000121326	$	33,995
E02499	TUNTUTULIAK	0.000113756	$	31,875
E02500	TUNUNAK	9.66292E-05	$	27,076
E02508	UMKUMIUTE	2.16211E-06	$	606
E02841	CHUATHBALUK (RUSSIAN MISSION)	0.000210273	$	58,919
E03010	ALATNA	5.40528E-06	$	1,515
E03013	ALLAKAKET	0.000159164	$	44,598
E03016	ANAKTUVUK PASS	0.000145615	$	40,801
E03022	ANVIK	2.6414E-05	$	7,401
E03025	ARTIC VILLAGE(VENETIE)	0.000537883	$	150,715
E03028	ATQASUK VILLAGE (ATKASOOK)	0.00010439	$	29,250
E03033	BARROW INUPIAT	0.001400071	$	392,300
E03038	BEAVER	7.4365E-05	$	20,837
E03049	BIRCH CREEK TRIBE	0.000106643	$	29,881
E03072	CHALKYITSIK	0.000177107	$	49,625
E03093	CIRCLE	5.28041E-05	$	14,796
E03127	DOT LAKE	8.17887E-05	$	22,917
E03130	EAGLE	4.81887E-05	$	13,502
E03146	EVANSVILLE	0.000175431	$	49,156

E03162	FORT YUKON	0.00053164	$	148,966
E03166	GALENA (LOUDEN VILLAGE)	0.000102979	$	28,855
E03195	HOLY CROSS	0.000733543	$	205,539
E03205	HUGHES	0.000200634	$	56,218
E03210	HUSLIA	0.000392228	$	109,902
E03230	KAKTOVIK (BARTER ISLAND)	0.000302508	$	84,763
E03233	KALTAG	0.000164646	$	46,134
E03271	KOYUKUK	4.75324E-05	$	13,319
E03294	MANLEY HOT SPRINGS	0.000190645	$	53,419
E03303	MCGRATH	0.000559825	$	156,863
E03314	MINTO	8.36019E-05	$	23,425
E03337	NENANA	0.000158136	$	44,310
E03345	NIKOLAI	0.000397715	$	111,440
E03354	NUIQSUT (NOOIKSUT)	0.000971049	$	272,088
E03358	NORTHWAY	8.77483E-05	$	24,587
E03359	NULATO	0.000318201	$	89,160
E03389	POINT HOPE	0.001055683	$	295,802
E03390	POINT LAY	0.00018705	$	52,412
E03410	RAMPART	0.000413387	$	115,831
E03416	RUBY	0.000156708	$	43,910
E03434	SHAGELUK	6.64438E-05	$	18,618
E03463	STEVENS	0.000819964	$	229,754
E03472	TAKOTNA	3.50281E-05	$	9,815
E03474	TANACROSS	4.88519E-05	$	13,688
E03475	TANANA	0.00025781	$	72,238
E03479	TELIDA	9.52838E-06	$	2,670
E03483	TETLIN	0.000290328	$	81,350
E03518	VENETIE	0.001908435	$	534,743
E03519	WAINWRIGHT	0.000373051	$	104,529
E03634	HEALY LAKE	0.000702448	$	196,826
E03672	GRAYLING	0.000121694	$	34,099
E03842	INUPIAT (ARCTIC SLOPE	0	$	-
E04014	AMBLER	0.000179062	$	50,173
E04056	BREVIG MISSION	0.002234208	$	626,025
E04059	BUCKLAND	0.000196699	$	55,115
E04107	COUNCIL	0.000645823	$	180,960
E04117	DEERING	0.000304929	$	85,441

E04139	ELIM	0.003003718	$ 841,642
E04167	GAMBELL	0.000802277	$ 224,798
E04177	CHINIK (GOLOVIN)	0.002476734	$ 693,981
E04219	DIOMEDE (INALIK)	0.000871644	$ 244,235
E04249	KIANA	0.000195189	$ 54,692
E04253	KING ISLAND	0.001959187	$ 548,964
E04256	KIVALINA	0.000497913	$ 139,515
E04261	KOBUK	0.000419178	$ 117,454
E04269	KOTZEBUE	0.001277088	$ 357,840
E04270	KOYUK	0.00400364	$ 1,121,820
E04299	MARY'S IGLOO	0.002848064	$ 798,027
E04350	NOATAK	0.000268066	$ 75,112
E04352	NOME	0.000693125	$ 194,214
E04355	NOORVIK	0.001667867	$ 467,336
E04425	SAVOONGA	0.003275815	$ 917,883
E04429	SELAWIK	0.00033264	$ 93,206
E04435	SHAKTOOLIK	0.002637548	$ 739,041
E04438	SHISHMAREF	0.001510506	$ 423,244
E04440	SHUNGNAK	0.000527017	$ 147,670
E04447	SOLOMON	0.001445523	$ 405,036
E04457	SAINT MICHAEL	0.001628392	$ 456,275
E04460	STEBBINS	0.001026155	$ 287,529
E04480	TELLER	0.001117104	$ 313,013
E04509	UNALAKLEET	0.000998426	$ 279,759
E04521	WALES	0.001487735	$ 416,863
E04525	WHITE MOUNTAIN	0.002138295	$ 599,150
E09020	ANGOON	0.000748292	$ 209,671
E09108	CRAIG	0.003172434	$ 888,916
E09128	DOUGLAS	0.000432239	$ 121,113
E09186	CHILKOOT (HAINES)	0.00070501	$ 197,544
E09198	HOONAH	0.000879626	$ 246,471
E09211	HYDABURG	0.006521119	$ 1,827,217
E09229	KAKE	0.002654215	$ 743,711
E09238	KASAAN	0.005074374	$ 1,421,839
E09248	KETCHIKAN	0.002287486	$ 640,954
E09257	KLAWOCK	0.004286807	$ 1,201,163
E09259	CHILKAT (KLUKWAN)	0.001069984	$ 299,810

E09380	PETERSBURG	0.003387362	$ 949,139
E09427	SAXMAN	0.000137306	$ 38,473
E09442	SITKA TRIBE	0.000676279	$ 189,493
E09443	SKAGWAY	5.59855E-05	$ 15,687
E09532	WRANGELL	0.000909776	$ 254,919
E09533	YAKUTAT TLINGIT TRIBE	0.000693867	$ 194,421
E09801	TLINGIT & HAIDA TRIBES	0.00208879	$ 585,279
			$ 36,628,493

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B07814 - TONKAWA TRIBE		0.003283			0.000826	552	0.000426	595,680	14,838	0.00197455846
TONKAWA TRIBE OF INDIANS	138,673	0.003283	289.6	14,840	0.000826	552	0.000426	595,680	14,838	0.00197455846
B06804 - WICHITA TRIBES		0.000723			0.001031	1,101	0.000850	253,678	6,319	0.00084089092
WICHITA AND AFFILIATED TRIBES (WICHIT,	30,541	0.000723	118.4	18,521	0.001031	1,101	0.000850	253,678	6,319	0.00084089092
Region– 24 Tribes 24 Reserv	1,080,402	0.025577	3,439.8	563,099	0.031351	72,591	0.056053	10,077,385	251,016	0.03340451077
C - Rocky Mtn										
C58280 - WIND RIVER		0.016403			0.016925	7,563	0.005840	4,358,360	108,562	0.01444708864
ARAPAHOE & SHOSHONE TRIBES-WIND RI\	692,902	0.016403	1,580.7	303,983	0.016925	7,563	0.005840	4,358,360	108,562	0.01444708864
C56206 - FORT PECK		0.028621			0.008544	7,289	0.005628	5,430,034	135,256	0.01799947386
ASSINIBOINE & SIOUX TRIBES-FORT PECK	1,208,982	0.028621	2,322.6	153,468	0.008544	7,289	0.005628	5,430,034	135,256	0.01799947386
C51201 - BLACKFEET		0.007328			0.010860	9,503	0.007338	2,530,937	63,043	0.00838954911
BLACKFEET TRIBE	309,539	0.007328	865.3	195,057	0.010860	9,503	0.007338	2,530,937	63,043	0.00838954911
C59205 - ROCKY BOYS		0.005938			0.006569	3,305	0.002552	1,644,256	40,957	0.00545037815
CHIPPEWA CREE INDIANS - ROCKY BOY'S	250,847	0.005938	533.1	117,989	0.006569	3,305	0.002552	1,644,256	40,957	0.00545037815
C52202 - CROW TRIBE		0.020674			0.014317	5,910	0.004564	4,689,431	116,808	0.01554452263
CROW TRIBE OF MONTANA	873,275	0.020674	1,507.0	257,145	0.014317	5,910	0.004564	4,689,431	116,808	0.01554452263
C55204 - FORT BELKNAP		0.008636			0.008319	2,976	0.002298	2,194,186	54,655	0.00727328775
FORT BELKNAP INDIAN COMMUNITY	364,800	0.008636	673.8	149,414	0.008319	2,976	0.002298	2,194,186	54,655	0.00727328775
C57207 - NORTHERN CHEYENNE		0.007792			0.005819	4,715	0.003641	1,921,632	47,866	0.00636982620
NORTHERN CHEYENNE TRIBE	329,147	0.007792	678.5	104,510	0.005819	4,715	0.003641	1,921,632	47,866	0.00636982620
Region– 7 Tribes 7 Reserv	4,029,493	0.095392	8,161.0	1,281,565	0.071353	41,261	0.031861	22,768,836	567,146	0.07547412633
E - Alaska										
BRISTOL BAY NATIVE ASSOCIATION										
E01136 - EKUK		0.000341			0.000051	2	0.000002	56,073	1,397	0.00018586928
EKUK, NATIVE VILLAGE OF	14,389	0.000341	18.3	913	0.000051	2	0.000002	56,073	1,397	0.00018586928
E01137 - EKWOK		0.000042			0.000007	133	0.000103	13,124	327	0.00004350339
EKWOK VILLAGE	1,773	0.000042	2.0	118	0.000007	133	0.000103	13,124	327	0.00004350339
E01383 - PILOT POINT		0.000604			0.000095	117	0.000090	105,067	2,617	0.00034827754

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PILOT POINT, NATIVE VILLAGE OF	25,498	0.000604	46.9	1,700	0.000095	117	0.000090	105,067	2,617	0.00034827754
E01402 - PORTAGE CREEK		0.000082			0.000006	34	0.000026	14,485	361	0.00004801450
PORTAGE CREEK VILLAGE (OHGSENAKLE	3,458	0.000082	2.2	110	0.000006	34	0.000026	14,485	361	0.00004801450
E01503 - TWIN HILLS		0.000446			0.000069	71	0.000055	76,868	1,915	0.00025480118
TWIN HILLS VILLAGE	18,857	0.000446	24.8	1,235	0.000069	71	0.000055	76,868	1,915	0.00025480118
5 Tribes 5 Reserv KAWERAK, INC.	63,975	0.001515	94.2	4,076	0.000227	357	0.000276	265,617	6,616	0.00088046588
E04056 - BREVIG MISSION		0.004043			0.000565	281	0.000217	674,010	16,789	0.00223420751
BREVIG MISSION, NATIVE VILLAGE OF	170,766	0.004043	203.9	10,148	0.000565	281	0.000217	674,010	16,789	0.00223420751
E04177 - CHINIK (GOLOVIN)		0.004535			0.000622	147	0.000114	747,175	18,611	0.00247673388
CHINIK ESKIMO COMMUNITY (GOLOVIN)	191,554	0.004535	225.4	11,175	0.000622	147	0.000114	747,175	18,611	0.00247673388
E04107 - COUNCIL		0.001166			0.000155	105	0.000081	194,830	4,853	0.00064582287
COUNCIL, NATIVE VILLAGE OF	49,265	0.001166	71.9	2,782	0.000155	105	0.000081	194,830	4,853	0.00064582287
E04219 - DIOMEDE (INALIK)		0.001557			0.000233	152	0.000117	262,955	6,550	0.00087164406
DIOMEDE (INALIK), NATIVE VILLAGE OF	65,750	0.001557	84.6	4,185	0.000233	152	0.000117	262,955	6,550	0.00087164406
E04139 - ELIM		0.005457			0.000788	250	0.000193	906,154	22,571	0.00300371824
ELIM, NATIVE VILLAGE OF	230,525	0.005457	281.9	14,156	0.000788	250	0.000193	906,154	22,571	0.00300371824
E04167 - GAMBELL		0.001197			0.000325	689	0.000532	242,029	6,029	0.00080227677
GAMBELL, NATIVE VILLAGE OF	50,548	0.001197	75.6	5,840	0.000325	689	0.000532	242,029	6,029	0.00080227677
E04253 - KING ISLAND		0.003436			0.000601	394	0.000304	591,042	14,722	0.00195918671
KING ISLAND NATIVE COMMUNITY	145,138	0.003436	207.7	10,799	0.000601	394	0.000304	591,042	14,722	0.00195918671
E04270 - KOYUK		0.007276			0.001059	310	0.000239	1,207,808	30,085	0.00400364021
KOYUK, NATIVE VILLAGE OF	307,365	0.007276	366.2	19,013	0.001059	310	0.000239	1,207,808	30,085	0.00400364021
E04299 - MARY'S IGLOO		0.005214			0.000750	106	0.000082	859,196	21,402	0.00284806355
MARY'S IGLOO, NATIVE VILLAGE OF	220,228	0.005214	270.4	13,465	0.000750	106	0.000082	859,196	21,402	0.00284806355
E04352 - NOME		0.000647			0.000191	2,022	0.001561	209,100	5,208	0.00069312506
NOME ESKIMO COMMUNITY	27,336	0.000647	260.2	3,430	0.000191	2,022	0.001561	209,100	5,208	0.00069312506

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E04457 - SAINT MICHAEL		0.002876			0.000440	380	0.000293	491,249	12,236	0.00162839203
SAINT MICHAEL, NATIVE VILLAGE OF	121,466	0.002876	138.2	7,900	0.000440	380	0.000293	491,249	12,236	0.00162839203
E04435 - SHAKTOOLIK		0.004766			0.000723	242	0.000187	795,689	19,820	0.00263754784
SHAKTOOLIK, NATIVE VILLAGE OF	201,339	0.004766	249.2	12,990	0.000723	242	0.000187	795,689	19,820	0.00263754784
E04438 - SHISHMAREF		0.002625			0.000358	588	0.000454	455,686	11,351	0.00151050628
SHISHMAREF, NATIVE VILLAGE OF	110,877	0.002625	132.1	6,422	0.000358	588	0.000454	455,686	11,351	0.00151050628
E04447 - SOLOMON		0.002658			0.000388	3	0.000002	436,082	10,862	0.00144552329
SOLOMON, VILLAGE OF	112,259	0.002658	165.6	6,961	0.000388	3	0.000002	436,082	10,862	0.00144552329
E04460 - STEBBINS		0.001724			0.000252	574	0.000443	309,568	7,711	0.00102615541
STEBBINS COMMUNITY ASSOCIATION	72,806	0.001724	89.8	4,534	0.000252	574	0.000443	309,568	7,711	0.00102615541
E04480 - TELLER		0.001986			0.000273	275	0.000212	337,005	8,394	0.00111710446
TELLER, NATIVE VILLAGE OF	83,874	0.001986	99.7	4,900	0.000273	275	0.000212	337,005	8,394	0.00111710446
E04509 - UNALAKLEET		0.001577			0.000325	726	0.000561	301,203	7,503	0.00099842646
UNALAKLEET, NATIVE VILLAGE OF	66,628	0.001577	84.3	5,846	0.000325	726	0.000561	301,203	7,503	0.00099842646
E04521 - WALES		0.002700			0.000381	152	0.000117	448,816	11,179	0.00148773456
WALES, NATIVE VILLAGE OF	114,046	0.002700	138.5	6,845	0.000381	152	0.000117	448,816	11,179	0.00148773456
E04525 - WHITE MOUNTAIN		0.003882			0.000557	194	0.000150	645,075	16,068	0.00213829454
WHITE MOUNTAIN, NATIVE VILLAGE OF	163,989	0.003882	194.6	10,012	0.000557	194	0.000150	645,075	16,068	0.00213829454
19 Tribes 19 Reserv	2,505,761	0.059320	3,339.8	161,400	0.008986	7,590	0.005861	10,114,670	251,945	0.03352810376
MANIILAQ ASSOCIATION										
E04355 - NOORVIK		0.002882			0.000408	677	0.000523	503,158	12,533	0.00166786656
NOORVIK NATIVE COMMUNITY	121,741	0.002882	148.0	7,322	0.000408	677	0.000523	503,158	12,533	0.00166786656
E04440 - SHUNGNAK		0.000904			0.000110	272	0.000210	158,989	3,960	0.00052701727
SHUNGNAK, NATIVE VILLAGE OF	38,192	0.000904	41.5	1,973	0.000110	272	0.000210	158,989	3,960	0.00052701727
2 Tribes 2 Reserv	159,933	0.003786	189.5	9,294	0.000517	949	0.000733	662,147	16,493	0.00219488383
SOUTHEAST TDOT										
E09801 - TLINGIT & HAIDA TRIBES		0.000907			0.002568	5,598	0.004323	630,141	15,696	0.00208879000
CENTRAL COUNCIL TLINGIT & HAIDA INDIA	38,333	0.000907	45.7	46,131	0.002568	5,598	0.004323	630,141	15,696	0.00208879000

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E09128 - DOUGLAS		0.000562			0.000351	298	0.000230	130,397	3,248	0.00043223899
DOUGLAS INDIAN ASSOCIATION	23,740	0.000562	61.7	6,299	0.000351	298	0.000230	130,397	3,248	0.00043223899
E09198 - HOONAH		0.001427			0.000237	616	0.000476	265,363	6,610	0.00087962600
HOONAH INDIAN ASSOCIATION	60,272	0.001427	91.8	4,255	0.000237	616	0.000476	265,363	6,610	0.00087962600
E09427 - SAXMAN		0.000168			0.000009	328	0.000253	41,422	1,032	0.00013730599
SAXMAN, ORGANIZED VILLAGE OF	7,088	0.000168	6.6	165	0.000009	328	0.000253	41,422	1,032	0.00013730599
E09532 - WRANGELL		0.001421			0.000349	611	0.000472	274,459	6,836	0.00090977612
WRANGELL COOPERATIVE ASSOCIATION	60,034	0.001421	108.1	6,275	0.000349	611	0.000472	274,459	6,836	0.00090977612
5 Tribes 5 Reserv	189,466	0.004485	313.9	63,125	0.003515	7,451	0.005754	1,341,782	33,422	0.00444773710
E01002 - AFOGNAK		0.000243			0.000033	660	0.000510	70,337	1,752	0.00023315188
AFOGNAK, NATIVE VILLAGE OF	10,261	0.000243	11.7	585	0.000033	660	0.000510	70,337	1,752	0.00023315188
E01252 - AGDAAGUX TRIBE (KING COVE)		0.000560			0.000103	400	0.000309	112,517	2,803	0.00037296982
AGDAAGUX TRIBE OF KING COVE	23,669	0.000560	17.7	1,858	0.000103	400	0.000309	112,517	2,803	0.00037296982
E01004 - AKHIOK		0.000354			0.000030	83	0.000064	59,993	1,494	0.00019886598
AKHIOK, NATIVE VILLAGE OF	14,949	0.000354	11.2	545	0.000030	83	0.000064	59,993	1,494	0.00019886598
E02005 - AKIACHAK		0.000655			0.000133	648	0.000500	141,087	3,514	0.00046767452
AKIACHAK NATIVE COMMUNITY	27,680	0.000655	82.2	2,393	0.000133	648	0.000500	141,087	3,514	0.00046767452
E02006 - AKIAK		0.000082			0.000003	338	0.000261	28,373	707	0.00009404980
AKIAK NATIVE COMMUNITY	3,462	0.000082	2.1	53	0.000003	338	0.000261	28,373	707	0.00009404980
E01007 - AKUTAN		0.000370			0.000048	123	0.000095	65,811	1,639	0.00021815083
AKUTAN, NATIVE VILLAGE OF	15,619	0.000370	17.5	855	0.000048	123	0.000095	65,811	1,639	0.00021815083
E02008 - ALAKANUK		0.000470			0.000017	735	0.000568	106,699	2,658	0.00035368473
ALAKANUK, VILLAGE OF	19,860	0.000470	12.2	305	0.000017	735	0.000568	106,699	2,658	0.00035368473
E03010 - ALATNA		0.000000			0.000000	35	0.000027	1,631	41	0.00000540528
ALATNA VILLAGE		0.000000			0.000000	35	0.000027	1,631	41	0.00000540528
E01011 - ALEKNAGIK		0.000251			0.000062	204	0.000158	53,013	1,321	0.00017572851
ALEKNAGIK, NATIVE VILLAGE OF	10,600	0.000251	15.4	1,123	0.000062	204	0.000158	53,013	1,321	0.00017572851

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E02456 - ALGAACIQ (ST. MARY'S)		0.000000			0.000000	372	0.000287	17,331	432	0.00005745036
ALGAACIQ NATIVE VILLAGE (ST. MARY'S)		0.000000			0.000000	372	0.000287	17,331	432	0.00005745036
E03013 - ALLAKAKET		0.000264			0.000022	133	0.000103	48,016	1,196	0.00015916429
ALLAKAKET VILLAGE	11,147	0.000264	10.0	400	0.000022	133	0.000103	48,016	1,196	0.00015916429
E04014 - AMBLER		0.000255			0.000017	301	0.000232	54,019	1,346	0.00017906240
AMBLER, NATIVE VILLAGE OF	10,777	0.000255	5.0	300	0.000017	301	0.000232	54,019	1,346	0.00017906240
E03016 - ANAKTUVUK PASS		0.000198			0.000014	276	0.000213	43,929	1,094	0.00014561455
ANAKTUKVUK PASS, VILLAGE OF	8,359	0.000198	5.8	243	0.000014	276	0.000213	43,929	1,094	0.00014561455
E09020 - ANGOON		0.001217			0.000204	510	0.000394	225,743	5,623	0.00074829185
ANGOON COMMUNITY ASSOCIATION	51,388	0.001217	40.0	3,668	0.000204	510	0.000394	225,743	5,623	0.00074829185
E02021 - ANIAK		0.000060			0.000024	481	0.000371	33,642	838	0.00011151723
ANIAK, VILLAGE OF	2,525	0.000060	5.0	440	0.000024	481	0.000371	33,642	838	0.00011151723
E03022 - ANVIK		0.000019			0.000003	105	0.000081	7,969	198	0.00002641404
ANVIK VILLAGE	798	0.000019	0.9	45	0.000003	105	0.000081	7,969	198	0.00002641404
E03025 - ARTIC VILLAGE(VENETIE)		0.000973			0.000097	145	0.000112	162,267	4,042	0.00053788339
ARCTIC VILLAGE	41,102	0.000973	39.4	1,735	0.000097	145	0.000112	162,267	4,042	0.00053788339
E02323 - ASA'CARSARMIUT		0.000060			0.000013	813	0.000628	48,177	1,200	0.00015969841
ASA'CARSARMIUT TRIBE	2,554	0.000060	2.3	234	0.000013	813	0.000628	48,177	1,200	0.00015969841
E01027 - ATKA		0.001212			0.000137	87	0.000067	199,250	4,963	0.00066047447
ATKA, NATIVE VILLAGE OF	51,184	0.001212	35.3	2,466	0.000137	87	0.000067	199,250	4,963	0.00066047447
E02029 - ATMAUTLUAK		0.000229			0.000063	324	0.000250	55,412	1,380	0.00018367941
ATMAUTLUAK, VILLAGE OF	9,689	0.000229	35.2	1,135	0.000063	324	0.000250	55,412	1,380	0.00018367941
E03028 - ATQASUK VILLAGE (ATKASOOK)		0.000125			0.000016	239	0.000185	31,492	784	0.00010438967
ATQASUK VILLAGE (ATKASOOK)	5,284	0.000125	6.8	295	0.000016	239	0.000185	31,492	784	0.00010438967
E03033 - BARROW INUPIAT		0.001212			0.000970	3,257	0.002515	422,370	10,521	0.00140007091
BARROW INUPIAT TRADITIONAL GOV., NAT	51,197	0.001212	487.4	17,426	0.000970	3,257	0.002515	422,370	10,521	0.00140007091

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E03038 - BEAVER		0.000116			0.000011	83	0.000064	22,434	559	0.00007436495
BEAVER VILLAGE	4,914	0.000116	5.1	203	0.000011	83	0.000064	22,434	559	0.00007436495
E01041 - BELKOFSKI		0.000000			0.000000	62	0.000048	2,889	72	0.00000957506
BELKOFSKI, NATIVE VILLAGE OF		0.000000			0.000000	62	0.000048	2,889	72	0.00000957506
E02047 - BILL MOORE'S SLOUGH		0.001114			0.000164	102	0.000079	187,537	4,671	0.00062164781
BILL MOORE'S SLOUGH, VILLAGE OF	47,038	0.001114	60.0	2,941	0.000164	102	0.000079	187,537	4,671	0.00062164781
E03049 - BIRCH CREEK TRIBE		0.000192			0.000020	29	0.000022	32,172	801	0.00010664338
BIRCH CREEK TRIBE	8,127	0.000192	8.3	358	0.000020	29	0.000022	32,172	801	0.00010664338
E04059 - BUCKLAND		0.000244			0.000022	442	0.000341	59,340	1,478	0.00019669896
BUCKLAND, NATIVE VILLAGE OF	10,290	0.000244	10.4	398	0.000022	442	0.000341	59,340	1,478	0.00019669896
E01065 - CANTWELL		0.000000			0.000000	62	0.000048	2,889	72	0.00000957506
CANTWELL, NATIVE VILLAGE OF		0.000000			0.000000	62	0.000048	2,889	72	0.00000957506
E03072 - CHALKYITSIK		0.000302			0.000043	84	0.000065	53,429	1,331	0.00017710677
CHALKYITSIK VILLAGE	12,769	0.000302	15.9	778	0.000043	84	0.000065	53,429	1,331	0.00017710677
E01578 - CHENEGA (CHANEGA)		0.001462			0.000259	74	0.000057	247,425	6,163	0.00082016462
CHANEGA (CHENEGA), NATIVE VILLAGE OF	61,752	0.001462	106.4	4,657	0.000259	74	0.000057	247,425	6,163	0.00082016462
E01087 - CHEESH-NA (CHISTOCHINA)		0.000138			0.000018	63	0.000049	25,288	630	0.00008382463
CHEESH-NA TRIBE (CHISTOCHINA)	5,808	0.000138	7.1	320	0.000018	63	0.000049	25,288	630	0.00008382463
E02077 - CHEFORNAK		0.000000			0.000000	443	0.000342	20,639	514	0.00006841535
CHEFORNAK, VILLAGE OF		0.000000			0.000000	443	0.000342	20,639	514	0.00006841535
E02080 - CHEVAK		0.000171			0.000025	845	0.000652	67,415	1,679	0.00022346783
CHEVAK NATIVE VILLAGE	7,212	0.000171	9.1	455	0.000025	845	0.000652	67,415	1,679	0.00022346783
E01081 - CHICKALOON		0.003707			0.000460	508	0.000392	624,511	15,556	0.00207013030
CHICKALOON NATIVE VILLAGE	156,607	0.003707	237.8	8,259	0.000460	508	0.000392	624,511	15,556	0.00207013030
E01083 - CHIGNIK BAY		0.000521			0.000078	46	0.000036	87,779	2,186	0.00029096887
CHIGNIK BAY TRIBAL COUNCIL	22,014	0.000521	35.7	1,395	0.000078	46	0.000036	87,779	2,186	0.00029096887

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E01084 - CHIGNIK LAGOON		0.000449			0.000063	82	0.000063	77,209	1,923	0.00025593354
CHIGNIK LAGOON, NATIVE VILLAGE OF	18,965	0.000449	20.5	1,125	0.000063	82	0.000063	77,209	1,923	0.00025593354
E01085 - CHIGNIK LAKE		0.000261			0.000041	122	0.000094	48,685	1,213	0.00016137971
CHIGNIK LAKE VILLAGE	11,011	0.000261	13.1	730	0.000041	122	0.000094	48,685	1,213	0.00016137971
E09259 - CHILKAT (KLUKWAN)		0.001972			0.000215	127	0.000098	322,790	8,040	0.00106998416
CHILKAT INDIAN VILLAGE (KLUKWAN)	83,296	0.001972	108.0	3,857	0.000215	127	0.000098	322,790	8,040	0.00106998416
E09186 - CHILKOOT (HAINES)		0.001107			0.000304	392	0.000303	212,686	5,298	0.00070501009
CHILKOOT INDIAN ASSOCIATION (HAINES)	46,745	0.001107	61.2	5,458	0.000304	392	0.000303	212,686	5,298	0.00070501009
E01088 - CHITINA		0.000023			0.000004	65	0.000050	6,844	170	0.00002268658
CHITINA, NATIVE VILLAGE OF	975	0.000023	1.1	66	0.000004	65	0.000050	6,844	170	0.00002268658
E02841 - CHUATHBALUK (RUSSIAN MISSION)		0.000319			0.000102	129	0.000100	63,435	1,580	0.00021027304
CHUATHBALUK (RUSSION MISSION,KUSKO	13,490	0.000319	26.7	1,837	0.000102	129	0.000100	63,435	1,580	0.00021027304
E02092 - CHULOONAWICK		0.000000			0.000000	49	0.000038	2,283	57	0.00000756739
CHULOONAWIK NATIVE VILLAGE		0.000000			0.000000	49	0.000038	2,283	57	0.00000756739
E03093 - CIRCLE		0.000072			0.000011	88	0.000068	15,930	397	0.00005280407
CIRCLE NATIVE COMMUNITY	3,042	0.000072	4.2	192	0.000011	88	0.000068	15,930	397	0.00005280407
E01096 - CLARKS POINT		0.000054			0.000016	75	0.000058	13,174	328	0.00004366781
CLARKS POINT, VILLAGE OF	2,301	0.000054	3.1	291	0.000016	75	0.000058	13,174	328	0.00004366781
E09108 - CRAIG		0.005516			0.001106	535	0.000413	957,052	23,839	0.00317243393
CRAIG COMMUNITY ASSOCIATION	232,994	0.005516	314.2	19,872	0.001106	535	0.000413	957,052	23,839	0.00317243393
E02109 - CROOKED CREEK		0.003219			0.000437	147	0.000114	532,003	13,252	0.00176348189
CROOKED CREEK, VILLAGE OF	135,990	0.003219	161.4	7,849	0.000437	147	0.000114	532,003	13,252	0.00176348189
E01121 - CURYUNG (DILLINGHAM)		0.000541			0.000334	1,638	0.001265	188,175	4,687	0.00062376337
CURYUNG TRIBAL COUNCIL	22,849	0.000541	38.0	6,007	0.000334	1,638	0.001265	188,175	4,687	0.00062376337
E04117 - DEERING		0.000520			0.000076	144	0.000111	91,990	2,291	0.00030492917
DEERING, NATIVE VILLAGE OF	21,948	0.000520	50.3	1,370	0.000076	144	0.000111	91,990	2,291	0.00030492917

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E03127 - DOT LAKE		0.000150			0.000007	31	0.000024	24,674	615	0.00008178870
DOT LAKE, VILLAGE OF	6,336	0.000150	4.8	120	0.000007	31	0.000024	24,674	615	0.00008178870
E03130 - EAGLE		0.000084			0.000004	33	0.000025	14,537	362	0.00004818872
EAGLE, NATIVE VILLAGE OF	3,538	0.000084	2.9	73	0.000004	33	0.000025	14,537	362	0.00004818872
E02132 - EEK		0.000118			0.000102	311	0.000240	41,544	1,035	0.00013770980
EEK, NATIVE VILLAGE OF	4,981	0.000118	91.0	1,840	0.000102	311	0.000240	41,544	1,035	0.00013770980
E01133 - EGEGIK		0.000852			0.000124	86	0.000066	143,808	3,582	0.00047669358
EGEGIK VILLAGE	35,999	0.000852	44.1	2,233	0.000124	86	0.000066	143,808	3,582	0.00047669358
E01135 - EKLUTNA		0.000277			0.000013	60	0.000046	45,776	1,140	0.00015173748
EKLUTNA NATIVE VILLAGE	11,719	0.000277	7.6	225	0.000013	60	0.000046	45,776	1,140	0.00015173748
E02141 - EMMONAK		0.000253			0.000019	829	0.000640	78,440	1,954	0.00026001298
EMMONAK VILLAGE	10,674	0.000253	10.0	338	0.000019	829	0.000640	78,440	1,954	0.00026001298
E03146 - EVANSVILLE		0.000317			0.000042	26	0.000020	52,924	1,318	0.00017543086
EVANSVILLE VILLAGE (BETTLES FIELD)	13,409	0.000317	16.8	760	0.000042	26	0.000020	52,924	1,318	0.00017543086
E01148 - EYAK (CORDOVA)		0.001979			0.000376	454	0.000351	353,616	8,808	0.00117216690
EYAK (CORDOVA), NATIVE VILLAGE OF	83,583	0.001979	338.0	6,747	0.000376	454	0.000351	353,616	8,808	0.00117216690
E01149 - FALSE PASS		0.000028			0.000002	44	0.000034	6,391	159	0.00002118339
FALSE PASS, NATIVE VILLAGE OF	1,166	0.000028	0.7	35	0.000002	44	0.000034	6,391	159	0.00002118339
E03162 - FORT YUKON		0.000849			0.000076	546	0.000422	160,384	3,995	0.00053164027
FORT YUKON, NATIVE VILLAGE OF	35,862	0.000849	37.5	1,367	0.000076	546	0.000422	160,384	3,995	0.00053164027
E01165 - GAKONA		0.000164			0.000026	19	0.000015	28,019	698	0.00009287829
GAKONA, NATIVE VILLAGE OF	6,938	0.000164	12.0	469	0.000026	19	0.000015	28,019	698	0.00009287829
E03166 - GALENA (LOUDEN VILLAGE)		0.000053			0.000012	471	0.000364	31,066	774	0.00010297852
GALENA VILLAGE (LOUDEN VILLAGE)	2,248	0.000053	8.7	218	0.000012	471	0.000364	31,066	774	0.00010297852
E02170 - GEORGETOWN		0.000709			0.000037	3	0.000002	110,347	2,749	0.00036577969
GEORGETOWN, NATIVE VILLAGE OF	29,935	0.000709	25.0	658	0.000037	3	0.000002	110,347	2,749	0.00036577969

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E02325 - GOODNEWS BAY		0.000121			0.000012	248	0.000192	30,894	770	0.00010240661
GOODNEWS BAY, NATIVE VILLAGE OF	5,105	0.000121	5.4	220	0.000012	248	0.000192	30,894	770	0.00010240661
E03672 - GRAYLING		0.000176			0.000018	184	0.000142	36,712	914	0.00012169383
GRAYLING (HOLIKACHUK), ORGANIZED VIL	7,422	0.000176	7.6	325	0.000018	184	0.000142	36,712	914	0.00012169383
E01185 - GULKANA		0.000090			0.000013	84	0.000065	18,603	463	0.00006166658
GULKANA VILLAGE	3,781	0.000090	4.5	236	0.000013	84	0.000065	18,603	463	0.00006166658
E02189 - HAMILTON		0.000000			0.000000	25	0.000019	1,165	29	0.00000386091
HAMILTON, NATIVE VILLAGE OF		0.000000			0.000000	25	0.000019	1,165	29	0.00000386091
E03634 - HEALY LAKE		0.001250			0.000243	29	0.000022	211,913	5,278	0.00070244762
HEALY LAKE VILLAGE	52,815	0.001250	207.4	4,359	0.000243	29	0.000022	211,913	5,278	0.00070244762
E03195 - HOLY CROSS		0.001271			0.000210	227	0.000175	221,293	5,512	0.00073354346
HOLY CROSS VILLAGE	53,687	0.001271	67.7	3,772	0.000210	227	0.000175	221,293	5,512	0.00073354346
E02199 - HOOPER BAY		0.000000			0.000000	1,118	0.000863	52,088	1,297	0.00017265996
HOOPER BAY, NATIVE VILLAGE OF	0	0.000000	3.9	0	0.000000	1,118	0.000863	52,088	1,297	0.00017265996
E03205 - HUGHES		0.000357			0.000041	64	0.000049	60,527	1,508	0.00020063433
HUGHES VILLAGE	15,067	0.000357	15.7	743	0.000041	64	0.000049	60,527	1,508	0.00020063433
E03210 - HUSLIA		0.000635			0.000100	289	0.000223	118,326	2,947	0.00039222795
HUSLIA VILLAGE	26,836	0.000635	36.0	1,793	0.000100	289	0.000223	118,326	2,947	0.00039222795
E09211 - HYDABURG		0.012322			0.001011	366	0.000283	1,967,274	49,003	0.00652111864
HYDABURG COOPERATIVE ASSOCIATION	520,514	0.012322	344.3	18,164	0.001011	366	0.000283	1,967,274	49,003	0.00652111864
E01214 - IGIUGIG		0.000802			0.000123	42	0.000032	133,999	3,338	0.00044418052
IGIUGIG VILLAGE	33,860	0.000802	59.1	2,209	0.000123	42	0.000032	133,999	3,338	0.00044418052
E01216 - ILIAMNA		0.000942			0.000265	57	0.000044	168,729	4,203	0.00055930296
ILIAMNA, VILLAGE OF	39,781	0.000942	72.3	4,767	0.000265	57	0.000044	168,729	4,203	0.00055930296
E03842 - INUPIAT (ARCTIC SLOPE)		0.000000			0.000000		0.000000			0.00000000000
INUPIAT COMMUNITY OF THE ARTIC SLOPI		0.000000			0.000000		0.000000			0.00000000000

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E02418 - IQURMUIT (RUSSIAN MISSION)		0.000744			0.000096	320	0.000247	135,818	3,383	0.00045020871
IQURMUIT TRADITIONAL COUNCIL (RUSSIA	31,416	0.000744	34.8	1,732	0.000096	320	0.000247	135,818	3,383	0.00045020871
E01222 - IVANOFF BAY		0.000017			0.000002	20	0.000015	3,667	91	0.00001215380
IVANOFF BAY VILLAGE	709	0.000017	0.8	40	0.000002	20	0.000015	3,667	91	0.00001215380
E01586 - KAGUYAK		0.000000			0.000000	3	0.000002	140	3	0.00000046331
KAGUYAK VILLAGE		0.000000			0.000000	3	0.000002	140	3	0.00000046331
E09229 - KAKE		0.004543			0.000915	701	0.000541	800,716	19,945	0.00265421453
KAKE, ORGANIZED VILLAGE OF	191,904	0.004543	320.1	16,430	0.000915	701	0.000541	800,716	19,945	0.00265421453
E03230 - KAKTOVIK (BARTER ISLAND)		0.000405			0.000194	273	0.000211	91,260	2,273	0.00030250764
KAKTOVIK VILLAGE (AKA BARTER ISLAND	17,088	0.000405	118.3	3,478	0.000194	273	0.000211	91,260	2,273	0.00030250764
E02232 - KALSKAG		0.000000			0.000000	239	0.000185	11,135	277	0.00003691031
KALSKAG, VILLAGE OF		0.000000			0.000000	239	0.000185	11,135	277	0.00003691031
E03233 - KALTAG		0.000231			0.000058	207	0.000160	49,670	1,237	0.00016464649
KALTAG, VILLAGE OF	9,737	0.000231	16.1	1,043	0.000058	207	0.000160	49,670	1,237	0.00016464649
E01623 - KANATAK		0.000000			0.000000	57	0.000044	2,656	66	0.00000880288
KANATAK, NATIVE VILLAGE OF		0.000000			0.000000	57	0.000044	2,656	66	0.00000880288
E01237 - KARLUK		0.000836			0.000059	29	0.000022	132,809	3,308	0.00044023517
KARLUK, NATIVE VILLAGE OF	35,318	0.000836	21.2	1,060	0.000059	29	0.000022	132,809	3,308	0.00044023517
E09238 - KASAAN		0.009134			0.001680	20	0.000015	1,530,824	38,131	0.00507437359
KASAAN, ORGANIZED VILLAGE OF	385,846	0.009134	592.5	30,182	0.001680	20	0.000015	1,530,824	38,131	0.00507437359
E02241 - KASIGLUK		0.000001			0.000002	603	0.000466	28,436	708	0.00009425914
KASIGLUK TRADITIONAL ELDERS COUNCII	45	0.000001	1.8	36	0.000002	603	0.000466	28,436	708	0.00009425914
E01246 - KENAITZE INDIAN TRIBE		0.000037			0.000043	2,400	0.001853	121,356	3,023	0.00040227151
KENAITZE INDIAN TRIBE	1,583	0.000037	5.5	771	0.000043	2,400	0.001853	121,356	3,023	0.00040227151
E09248 - KETCHIKAN		0.003029			0.001244	2,589	0.001999	690,083	17,189	0.00228748597
KETCHIKAN INDIAN CORPORATION	127,947	0.003029	203.8	22,342	0.001244	2,589	0.001999	690,083	17,189	0.00228748597

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E04249 - KIANA		0.000251			0.000024	405	0.000313	58,884	1,467	0.00019518904
KIANA, NATIVE VILLAGE OF	10,603	0.000251	10.7	428	0.000024	405	0.000313	58,884	1,467	0.00019518904
E01254 - KING SALMON TRIBE		0.000063			0.000005	53	0.000041	12,366	308	0.00004098928
KING SALMON TRIBE	2,651	0.000063	3.4	85	0.000005	53	0.000041	12,366	308	0.00004098928
E02255 - KIPNUK		0.000032			0.000002	725	0.000560	38,701	964	0.00012828738
KIPNUK, NATIVE VILLAGE OF	1,334	0.000032	1.4	32	0.000002	725	0.000560	38,701	964	0.00012828738
E04256 - KIVALINA		0.000842			0.000046	409	0.000316	150,209	3,742	0.00049791272
KIVALINA, NATIVE VILLAGE OF	35,564	0.000842	16.5	825	0.000046	409	0.000316	150,209	3,742	0.00049791272
E09257 - KLAWOCK		0.007581			0.001381	531	0.000410	1,293,233	32,213	0.00428680697
KLAWOCK COOPERATIVE ASSOCIATION	320,228	0.007581	495.7	24,807	0.001381	531	0.000410	1,293,233	32,213	0.00428680697
E01102 - KLUTI KAAH (COPPER CENTER)		0.000002			0.000004	218	0.000168	10,917	272	0.00003618705
KLUTI-KAAH (COPPER CENTER), NATIVE VI	100	0.000002	4.0	80	0.000004	218	0.000168	10,917	272	0.00003618705
E01260 - KNIK TRIBE		0.000045			0.000009	1,674	0.001293	85,649	2,133	0.00028390888
KNIK TRIBE	1,919	0.000045	1.9	160	0.000009	1,674	0.001293	85,649	2,133	0.00028390888
E04261 - KOBUK		0.000699			0.000173	115	0.000089	126,457	3,150	0.00041917804
KOBUK, NATIVE VILLAGE OF	29,523	0.000699	95.1	3,111	0.000173	115	0.000089	126,457	3,150	0.00041917804
E01264 - KOKHANOK		0.000299			0.000100	152	0.000117	61,284	1,527	0.00020314434
KOKHANOK VILLAGE	12,640	0.000299	73.1	1,800	0.000100	152	0.000117	61,284	1,527	0.00020314434
E02267 - KONGIGANAK		0.000432			0.000067	401	0.000310	89,913	2,240	0.00029804473
KONGIGANAK, NATIVE VILLAGE OF	18,240	0.000432	46.8	1,210	0.000067	401	0.000310	89,913	2,240	0.00029804473
E02268 - KOTLIK		0.000098			0.000004	654	0.000505	45,595	1,136	0.00015113819
KOTLIK, VILLAGE OF	4,133	0.000098	3.0	73	0.000004	654	0.000505	45,595	1,136	0.00015113819
E04269 - KOTZEBUE		0.001429			0.000507	2,658	0.002052	385,269	9,597	0.00127708804
KOTZEBUE, NATIVE VILLAGE OF	60,354	0.001429	116.8	9,113	0.000507	2,658	0.002052	385,269	9,597	0.00127708804
E03271 - KOYUKUK		0.000061			0.000008	95	0.000073	14,339	357	0.00004753236
KOYUKUK NATIVE VILLAGE	2,572	0.000061	2.9	145	0.000008	95	0.000073	14,339	357	0.00004753236

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E02275 - KWETHLUK		0.000124			0.000028	777	0.000600	57,400	1,430	0.00019026850
KWETHLUK, ORGANIZED VILLAGE OF	5,235	0.000124	7.6	497	0.000028	777	0.000600	57,400	1,430	0.00019026850
E02276 - KWIGILLINGOK		0.000000			0.000000	380	0.000293	17,704	441	0.00005868585
KWIGILLINGOK, NATIVE VILLAGE OF		0.000000			0.000000	380	0.000293	17,704	441	0.00005868585
E02407 - KWINHAGAK (QUINHAGAK)		0.000169			0.000024	620	0.000479	56,544	1,408	0.00018743338
KWINHAGAK (QUINHAGAK), NATIVE VILLAG	7,128	0.000169	128.2	438	0.000024	620	0.000479	56,544	1,408	0.00018743338
E01279 - LARSEN BAY		0.000004			0.000001	101	0.000078	5,454	136	0.00001807991
LARSEN BAY, NATIVE VILLAGE OF	189	0.000004	0.3	15	0.000001	101	0.000078	5,454	136	0.00001807991
E01531 - LESNOI (WOODY ISLAND)		0.000000			0.000000	57	0.000044	2,656	66	0.00000880288
LESNOI VILLAGE (WOODY ISLAND)		0.000000			0.000000	57	0.000044	2,656	66	0.00000880288
E01283 - LEVELOCK		0.001860			0.000257	112	0.000086	309,008	7,697	0.00102430021
LEVELOCK VILLAGE	78,573	0.001860	91.2	4,608	0.000257	112	0.000086	309,008	7,697	0.00102430021
E02288 - LIME VILLAGE		0.000183			0.000018	37	0.000029	30,955	771	0.00010260955
LIME VILLAGE	7,738	0.000183	7.7	318	0.000018	37	0.000029	30,955	771	0.00010260955
E02291 - LOWER KALSKAG		0.000016			0.000003	293	0.000226	16,409	409	0.00005439347
LOWER KALSKAG, VILLAGE OF	691	0.000016	4.6	58	0.000003	293	0.000226	16,409	409	0.00005439347
E03294 - MANLEY HOT SPRINGS		0.000360			0.000026	18	0.000014	57,513	1,433	0.00019064481
MANLEY HOT SPRINGS VILLAGE	15,202	0.000360	190.4	474	0.000026	18	0.000014	57,513	1,433	0.00019064481
E01295 - MANOKOTAK		0.000353			0.000047	412	0.000318	76,624	1,909	0.00025399440
MANOKOTAK VILLAGE	14,897	0.000353	16.8	840	0.000047	412	0.000318	76,624	1,909	0.00025399440
E02297 - MARSHALL (FORTUNA LEDGE)		0.000821			0.000108	393	0.000303	151,976	3,786	0.00050377130
MARSHALL (FORTUNA LEDGE), NATIVE VIL	34,698	0.000821	39.0	1,938	0.000108	393	0.000303	151,976	3,786	0.00050377130
E03303 - MCGRATH		0.000967			0.000137	227	0.000175	168,887	4,207	0.00055982539
MCGRATH NATIVE VILLAGE	40,866	0.000967	50.4	2,458	0.000137	227	0.000175	168,887	4,207	0.00055982539
E02307 - MEKORYUK		0.000245			0.000037	233	0.000180	51,131	1,274	0.00016948825
MEKORYUK, NATIVE VILLAGE OF	10,347	0.000245	13.2	660	0.000037	233	0.000180	51,131	1,274	0.00016948825

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E01309 - MENTASTA		0.000020			0.000001	109	0.000084	8,225	205	0.00002726338
MENTASTA TRADITIONAL COUNCIL	858	0.000020	7.2	16	0.000001	109	0.000084	8,225	205	0.00002726338
E03314 - MINTO		0.000083			0.000013	246	0.000190	25,221	628	0.00008360186
MINTO, NATIVE VILLAGE OF	3,525	0.000083	5.3	233	0.000013	246	0.000190	25,221	628	0.00008360186
E01330 - NAKNEK		0.003259			0.000583	333	0.000257	559,874	13,946	0.00185587060
NAKNEK NATIVE VILLAGE	137,675	0.003259	159.7	10,467	0.000583	333	0.000257	559,874	13,946	0.00185587060
E01142 - NANWALEK (ENGLISH BAY)		0.001544			0.000160	179	0.000138	255,676	6,369	0.00084751415
NANWALEK (ENGLISH BAY), NATIVE VILLA(	65,204	0.001544	58.3	2,878	0.000160	179	0.000138	255,676	6,369	0.00084751415
E02332 - NAPAIMUTE		0.000000			0.000000	75	0.000058	3,494	87	0.00001158273
NAPAIMUTE, NATIVE VILLAGE OF		0.000000			0.000000	75	0.000058	3,494	87	0.00001158273
E02333 - NAPAKIAK		0.000230			0.000072	392	0.000303	59,384	1,479	0.00019684755
NAPAKIAK, NATIVE VILLAGE OF	9,697	0.000230	23.5	1,289	0.000072	392	0.000303	59,384	1,479	0.00019684755
E02334 - NAPASKIAK		0.000245			0.000010	440	0.000340	58,371	1,454	0.00019348894
NAPASKIAK, NATIVE VILLAGE OF	10,362	0.000245	5.7	173	0.000010	440	0.000340	58,371	1,454	0.00019348894
E01336 - NELSON LAGOON		0.000189			0.000029	72	0.000056	34,439	858	0.00011415742
NELSON LAGOON, NATIVE VILLAGE OF	7,981	0.000189	11.8	513	0.000029	72	0.000056	34,439	858	0.00011415742
E03337 - NENANA		0.000239			0.000028	197	0.000152	47,706	1,188	0.00015813558
NENANA NATIVE ASSOCIATION	10,084	0.000239	14.1	500	0.000028	197	0.000152	47,706	1,188	0.00015813558
E01266 - NEW KOLIGANEK (KOLIGANEK)		0.000186			0.000039	173	0.000134	39,642	987	0.00013140640
NEW KOLIGANEK VILLAGE COUNCIL	7,860	0.000186	10.8	698	0.000039	173	0.000134	39,642	987	0.00013140640
E01339 - NEW STUYAHOK		0.000099			0.000022	493	0.000381	39,952	995	0.00013243180
NEW STUYAHOK VILLAGE	4,199	0.000099	6.8	395	0.000022	493	0.000381	39,952	995	0.00013243180
E01340 - NEWHALEN		0.005067			0.000759	140	0.000108	839,557	20,912	0.00278296315
NEWHALEN VILLAGE	214,038	0.005067	266.8	13,640	0.000759	140	0.000108	839,557	20,912	0.00278296315
E02341 - NEWTOK		0.002004			0.000351	357	0.000276	350,729	8,736	0.00116259642
NEWTOK VILLAGE	84,661	0.002004	127.6	6,308	0.000351	357	0.000276	350,729	8,736	0.00116259642

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E02343 - NIGHTMUTE		0.000611			0.000076	226	0.000175	109,521	2,728	0.00036303971
NIGHTMUTE, NATIVE VILLAGE OF	25,794	0.000611	28.8	1,367	0.000076	226	0.000175	109,521	2,728	0.00036303971
E03345 - NIKOLAI		0.000726			0.000073	84	0.000065	119,981	2,989	0.00039771450
NIKOLAI VILLAGE	30,646	0.000726	31.1	1,317	0.000073	84	0.000065	119,981	2,989	0.00039771450
E01346 - NIKOLSKI		0.000032			0.000002	28	0.000022	6,265	156	0.00002076788
NIKOLSKI, NATIVE VILLAGE OF	1,333	0.000032	0.8	40	0.000002	28	0.000022	6,265	156	0.00002076786
E01348 - NINILCHIK		0.000602			0.000080	945	0.000730	142,136	3,540	0.00047115203
NINILCHIK VILLAGE	25,450	0.000602	28.7	1,435	0.000080	945	0.000730	142,136	3,540	0.00047115203
E04350 - NOATAK		0.000320			0.000122	462	0.000357	80,870	2,014	0.00026806623
NOATAK, NATIVE VILLAGE OF	13,536	0.000320	25.3	2,185	0.000122	462	0.000357	80,870	2,014	0.00026806623
E01353 - NONDALTON		0.000067			0.000003	191	0.000147	19,296	481	0.00006396376
NONDALTON VILLAGE	2,831	0.000067	2.2	58	0.000003	191	0.000147	19,296	481	0.00006396376
E03358 - NORTHWAY		0.000063			0.000003	358	0.000276	26,472	659	0.00008774829
NORTHWAY VILLAGE	2,654	0.000063	2.2	63	0.000003	358	0.000276	26,472	659	0.00008774829
E03354 - NUIQSUT (NOOIKSUT)		0.001528			0.000469	429	0.000331	292,943	7,297	0.00097104894
NUIQSUT (NOOIKSUT), NATIVE VILLAGE OF	64,556	0.001528	265.1	8,422	0.000469	429	0.000331	292,943	7,297	0.00097104894
E03359 - NULATO		0.000496			0.000066	327	0.000253	95,994	2,391	0.00031820142
NULATO VILLAGE	20,944	0.000496	23.7	1,185	0.000066	327	0.000253	95,994	2,391	0.00031820142
E02490 - NUNAKAUYARMIUT (TOKSOOK BAY)		0.000065			0.000006	596	0.000460	38,172	951	0.00012653234
NUNAKAUYARMIUT TRIBE (TOKSOOK BAY'	2,762	0.000065	2.8	108	0.000006	596	0.000460	38,172	951	0.00012653234
E02436 - NUNAM IQUA (SHELDON'S POINT)		0.000000			0.000000	177	0.000137	8,246	205	0.00002733525
NUNAM IQUA (SHELDON'S POINT), NATIVE '		0.000000			0.000000	177	0.000137	8,246	205	0.00002733525
E02361 - NUNAPITCHUK		0.000002			0.000001	513	0.000396	24,227	603	0.00008030661
NUNAPITCHUK, NATIVE VILLAGE OF	67	0.000002	0.3	17	0.000001	513	0.000396	24,227	603	0.00008030661
E02366 - OHOGAMIUT		0.000000			0.000000	81	0.000063	3,774	94	0.00001250935
OHOGAMIUT, VILLAGE OF		0.000000			0.000000	81	0.000063	3,774	94	0.00001250935

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E01367 - OLD HARBOR		0.000016			0.000001	225	0.000174	12,925	322	0.00004284485
OLD HARBOR, VILLAGE OF	663	0.000016	0.4	15	0.000001	225	0.000174	12,925	322	0.00004284485
E02043 - ORUTSARAMUIT (BETHEL)		0.000046			0.000016	3,236	0.002499	159,196	3,965	0.00052770406
ORUTSARARMUIT NATIVE VILLAGE (BETHI	1,949	0.000046	1.7	292	0.000016	3,236	0.002499	159,196	3,965	0.00052770406
E02369 - OSCARVILLE		0.000000			0.000000	70	0.000054	3,261	81	0.00001081055
OSCARVILLE TRADITIONAL VILLAGE		0.000000			0.000000	70	0.000054	3,261	81	0.00001081055
E01370 - OUZINKIE		0.000438			0.000033	218	0.000168	79,248	1,974	0.00026269093
OUZINKIE, NATIVE VILLAGE OF	18,507	0.000438	12.4	597	0.000033	218	0.000168	79,248	1,974	0.00026269093
E02371 - PAIMIUT		0.000000			0.000000	66	0.000051	3,075	77	0.00001019281
PAIMIUT, NATIVE VILLAGE OF		0.000000			0.000000	66	0.000051	3,075	77	0.00001019281
E01324 - PAULOFF HARBOR		0.000312			0.000047	26	0.000020	52,471	1,307	0.00017393024
PAULOFF HARBOR VILLAGE	13,170	0.000312	16.8	840	0.000047	26	0.000020	52,471	1,307	0.00017393024
E01376 - PEDRO BAY		0.000358			0.000083	31	0.000024	62,904	1,567	0.00020851472
PEDRO BAY VILLAGE	15,112	0.000358	62.1	1,488	0.000083	31	0.000024	62,904	1,567	0.00020851472
E01378 - PERRYVILLE		0.000251			0.000056	101	0.000078	47,588	1,185	0.00015774372
PERRYVILLE, NATIVE VILLAGE OF	10,584	0.000251	47.1	1,010	0.000056	101	0.000078	47,588	1,185	0.00015774372
E09380 - PETERSBURG		0.004667			0.003254	502	0.000388	1,021,890	25,454	0.00338736177
PETERSBURG INDIAN ASSOCIATION	197,160	0.004667	497.0	58,439	0.003254	502	0.000388	1,021,890	25,454	0.00338736177
E02384 - PILOT STATION		0.000036			0.000005	618	0.000477	34,604	862	0.00011470502
PILOT STATION TRADITIONAL VILLAGE	1,507	0.000036	1.7	85	0.000005	618	0.000477	34,604	862	0.00011470502
E02385 - PITKAS POINT		0.000009			0.000002	135	0.000104	7,889	197	0.00002615119
PITKA'S POINT, NATIVE VILLAGE OF	400	0.000009	2.2	34	0.000002	135	0.000104	7,889	197	0.00002615119
E02388 - PLATINUM		0.000000			0.000000	44	0.000034	2,050	51	0.00000679520
PLATINUM TRADITIONAL VILLAGE		0.000000			0.000000	44	0.000034	2,050	51	0.00000679520
E03389 - POINT HOPE		0.001817			0.000099	762	0.000588	318,476	7,933	0.00105568279
POINT HOPE, NATIVE VILLAGE OF	76,733	0.001817	35.6	1,780	0.000099	762	0.000588	318,476	7,933	0.00105568279

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E03390 - POINT LAY		0.000200			0.000166	242	0.000187	56,429	1,406	0.00018705044
POINT LAY, NATIVE VILLAGE OF	8,436	0.000200	136.9	2,983	0.000166	242	0.000187	56,429	1,406	0.00018705044
E01396 - PORT GRAHAM		0.000284			0.000022	164	0.000127	52,431	1,306	0.00017379915
PORT GRAHAM, NATIVE VILLAGE OF	11,986	0.000284	7.2	395	0.000022	164	0.000127	52,431	1,306	0.00017379915
E01397 - PORT HEIDEN		0.000878			0.000042	89	0.000069	140,422	3,498	0.00046547115
PORT HEIDEN, NATIVE VILLAGE OF	37,091	0.000878	30.4	760	0.000042	89	0.000069	140,422	3,498	0.00046547115
E01398 - PORT LIONS		0.000606			0.000037	181	0.000140	103,077	2,568	0.00034168102
PORT LIONS, NATIVE VILLAGE OF	25,578	0.000606	19.4	657	0.000037	181	0.000140	103,077	2,568	0.00034168102
E01424 - QAGAN TAYAGUNGIN (SAND POINT)		0.000386			0.000033	444	0.000343	81,900	2,040	0.00027148081
QAGAN TOYAGUNGIN TRIBE OF SAND POI	16,310	0.000386	13.5	590	0.000033	444	0.000343	81,900	2,040	0.00027148081
E01510 - QAWALANGIN (UNALASKA)		0.000468			0.000063	411	0.000317	95,457	2,378	0.00031642016
QAWALANGIN TRIBE OF UNALASKA	19,779	0.000468	29.8	1,127	0.000063	411	0.000317	95,457	2,378	0.00031642016
E03410 - RAMPART		0.000788			0.000043	42	0.000032	124,710	3,106	0.00041338722
RAMPART VILLAGE	33,274	0.000788	16.5	781	0.000043	42	0.000032	124,710	3,106	0.00041338722
E02411 - RED DEVIL		0.000108			0.000011	29	0.000022	18,642	464	0.00006179359
RED DEVIL, VILLAGE OF	4,568	0.000108	4.4	194	0.000011	29	0.000022	18,642	464	0.00006179359
E03416 - RUBY		0.000254			0.000012	168	0.000130	47,275	1,178	0.00015670820
RUBY, NATIVE VILLAGE OF	10,737	0.000254	8.8	220	0.000012	168	0.000130	47,275	1,178	0.00015670820
E01455 - SAINT GEORGE		0.000710			0.000118	145	0.000112	124,454	3,100	0.00041254153
SAINT GEORGE ISLAND	29,972	0.000710	40.2	2,118	0.000118	145	0.000112	124,454	3,100	0.00041254153
E01458 - SAINT PAUL		0.000704			0.000101	593	0.000458	142,996	3,562	0.00047400315
SAINT PAUL ISLAND	29,758	0.000704	39.6	1,807	0.000101	593	0.000458	142,996	3,562	0.00047400315
E01419 - SALAMATOFF		0.000697			0.000103	231	0.000178	125,296	3,121	0.00041532953
SALAMATOFF, VILLAGE OF	29,457	0.000697	37.1	1,855	0.000103	231	0.000178	125,296	3,121	0.00041532953
E04425 - SAVOONGA		0.005846			0.000826	680	0.000525	988,239	24,616	0.00327581465
SAVOONGA, NATIVE VILLAGE OF	246,951	0.005846	295.2	14,830	0.000826	680	0.000525	988,239	24,616	0.00327581465

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Location	Cost To Construct Amount ($1000)	Cost To Construct Share	Total Length (mi)	VMT Amount (v-mi/d)	VMT Share	Population Count	Population Share	Allocation ($)	Planning ($)	RNDF
E02428 - SCAMMON BAY		0.000256			0.000018	522	0.000403	64,625	1,610	0.00021422042
SCAMMON BAY, NATIVE VILLAGE OF	10,829	0.000256	6.5	325	0.000018	522	0.000403	64,625	1,610	0.00021422042
E04429 - SELAWIK		0.000367			0.000072	827	0.000639	100,350	2,500	0.00033263964
SELAWIK, NATIVE VILLAGE OF	15,486	0.000367	20.8	1,294	0.000072	827	0.000639	100,350	2,500	0.00033263964
E01431 - SELDOVIA		0.000659			0.000113	135	0.000104	115,893	2,887	0.00038416361
SELDOVIA VILLAGE TRIBE	27,841	0.000659	24.4	2,022	0.000113	135	0.000104	115,893	2,887	0.00038416361
E03434 - SHAGELUK		0.000091			0.000004	129	0.000100	20,045	499	0.00006644384
SHAGELUK NATIVE VILLAGE	3,828	0.000091	2.9	73	0.000004	129	0.000100	20,045	499	0.00006644384
E09442 - SITKA TRIBE		0.000261			0.000049	3,438	0.002655	204,018	5,082	0.00067627855
SITKA TRIBE OF ALASKA	11,034	0.000261	38.3	881	0.000049	3,438	0.002655	204,018	5,082	0.00067627855
E09443 - SKAGWAY		0.000081			0.000025	52	0.000040	16,890	421	0.00005598554
SKAGWAY VILLAGE	3,430	0.000081	26.4	440	0.000025	52	0.000040	16,890	421	0.00005598554
E02446 - SLEETMUTE		0.000031			0.000004	102	0.000079	9,878	246	0.00003274252
SLEETMUTE, VILLAGE OF	1,323	0.000031	2.0	80	0.000004	102	0.000079	9,878	246	0.00003274252
E01450 - SOUTH NAKNEK		0.000452			0.000076	120	0.000093	80,671	2,009	0.00026740702
SOUTH NAKNEK VILLAGE	19,110	0.000452	25.4	1,358	0.000076	120	0.000093	80,671	2,009	0.00026740702
E03463 - STEVENS		0.001481			0.000220	86	0.000066	247,365	6,162	0.00081996440
STEVENS, NATIVE VILLAGE OF	62,570	0.001481	79.9	3,955	0.000220	86	0.000066	247,365	6,162	0.00081996440
E02464 - STONY RIVER		0.000367			0.000040	60	0.000046	61,794	1,539	0.00020483468
STONY RIVER, VILLAGE OF	15,510	0.000367	16.5	718	0.000040	60	0.000046	61,794	1,539	0.00020483468
E01804 - SUN'AQ TRIBE (KODIAK)		0.000000			0.000000		0.000000			0.00000000000
E01850 - SUN'AQ TRIBE (KODIAK) (POP)		0.000052			0.000232	867	0.000669	69,193	1,724	0.00022936242
SUN'AQ TRIBE OF KODIAK	2,179	0.000052	38.5	4,172	0.000232	867	0.000669	69,193	1,724	0.00022936242
E03472 - TAKOTNA		0.000057			0.000010	22	0.000017	10,567	263	0.00003502813
TAKOTNA VILLAGE	2,407	0.000057	25.5	188	0.000010	22	0.000017	10,567	263	0.00003502813
E03474 - TANACROSS		0.000050			0.000009	138	0.000107	14,738	367	0.00004885191
TANACROSS, NATIVE VILLAGE OF	2,110	0.000050	5.1	153	0.000009	138	0.000107	14,738	367	0.00004885191

Indian Reservation Roads Program
RNDF Report
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FY 2007 Inventory

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to show reservation detail, and
to suppress ownership detail.

Location	Cost To Construct Amount ($1000)	Cost To Construct Share	Total Length (mi)	VMT Amount (v-mi/d)	VMT Share	Population Count	Population Share	Allocation ($)	Planning ($)	RNDF
E03475 - TANANA		0.000400			0.000060	260	0.000201	77,775	1,937	0.00025781004
TANANA, NATIVE VILLAGE OF	16,878	0.000400	21.4	1,070	0.000060	260	0.000201	77,775	1,937	0.00025781004
E01477 - TATITLEK		0.000148			0.000013	100	0.000077	28,244	704	0.00009362161
TATITLEK, NATIVE VILLAGE OF	6,266	0.000148	4.2	240	0.000013	100	0.000077	28,244	704	0.00009362161
E01478 - TAZLINA		0.000168			0.000010	96	0.000074	30,827	768	0.00010218547
TAZLINA, NATIVE VILLAGE OF	7,116	0.000168	6.0	188	0.000010	96	0.000074	30,827	768	0.00010218547
E03479 - TELIDA		0.000017			0.000002	3	0.000002	2,874	72	0.00000952838
TELIDA VILLAGE	709	0.000017	0.8	40	0.000002	3	0.000002	2,874	72	0.00000952838
E03483 - TETLIN		0.000502			0.000067	126	0.000097	87,585	2,182	0.00029032823
TETLIN VILLAGE	21,193	0.000502	23.9	1,198	0.000067	126	0.000097	87,585	2,182	0.00029032823
E01487 - TOGIAK		0.000764			0.000276	817	0.000631	178,215	4,439	0.00059074616
TOGIAK, TRADITIONAL VILLAGE OF	32,255	0.000764	56.6	4,956	0.000276	817	0.000631	178,215	4,439	0.00059074616
E02497 - TULUKSAK		0.000098			0.000003	463	0.000358	36,601	912	0.00012132583
TULUKSAK NATIVE COMMUNITY	4,121	0.000098	2.5	63	0.000003	463	0.000358	36,601	912	0.00012132583
E02499 - TUNTUTULIAK		0.000096			0.000003	420	0.000324	34,318	855	0.00011375644
TUNTUTULIAK, NATIVE VILLAGE OF	4,046	0.000096	2.4	60	0.000003	420	0.000324	34,318	855	0.00011375644
E02500 - TUNUNAK		0.000076			0.000009	362	0.000280	29,151	726	0.00009662920
TUNUNAK, NATIVE VILLAGE OF	3,215	0.000076	32.4	160	0.000009	362	0.000280	29,151	726	0.00009662920
E01505 - TYONEK		0.000621			0.000115	200	0.000154	113,371	2,824	0.00037580105
TYONEK, NATIVE VILLAGE OF	26,222	0.000621	32.4	2,068	0.000115	200	0.000154	113,371	2,824	0.00037580105
E01506 - UGASHIK		0.000592			0.000298	9	0.000007	116,586	2,904	0.00038645806
UGASHIK VILLAGE	24,989	0.000592	95.1	5,345	0.000298	9	0.000007	116,586	2,904	0.00038645806
E02508 - UMKUMIUTE		0.000000			0.000000	14	0.000011	652	16	0.00000216211
UMKUMIUTE NATIVE VILLAGE		0.000000			0.000000	14	0.000011	652	16	0.00000216211
E01511 - UNGA		0.000564			0.000068	45	0.000035	93,350	2,325	0.00030943788
UNGA, NATIVE VILLAGE OF	23,833	0.000564	24.4	1,220	0.000068	45	0.000035	93,350	2,325	0.00030943788

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E03518 - VENETIE		0.003395			0.000530	336	0.000259	575,732	14,341	0.00190843504
VENETIE TRIBAL GOVERNMENT, NATIVE V	143,419	0.003395	190.3	9,515	0.000530	336	0.000259	575,732	14,341	0.00190843504
E03519 - WAINWRIGHT		0.000329			0.000405	564	0.000436	112,541	2,803	0.00037305132
WAINWRIGHT, VILLAGE OF	13,897	0.000329	356.8	7,271	0.000405	564	0.000436	112,541	2,803	0.00037305132
E09533 - YAKUTAT TLINGIT TRIBE		0.001160			0.000187	375	0.000290	209,324	5,214	0.00069386660
YAKUTAT TLINGIT TRIBE	48,992	0.001160	87.4	3,355	0.000187	375	0.000290	209,324	5,214	0.00069386660
E02019 - YUPIIT (ANDREAFSKI)		0.000247			0.000292	132	0.000102	69,839	1,740	0.00023150131
YUPIIT OF ANDREAFSKY	10,427	0.000247	251.1	5,250	0.000292	132	0.000102	69,839	1,740	0.00023150131
Region-- 226 Tribes 227 Reserv	8,895,280	0.210583	14,201.2	729,213	0.040600	85,805	0.066257	39,436,073	982,308	0.13072267390
F - Midwest										
F55430 - BAD RIVER		0.003258			0.000651	2,212	0.001708	653,412	16,276	0.00216593004
BAD RIVER BAND OF THE LAKE SUPERIOR	137,633	0.003258	311.3	11,686	0.000651	2,212	0.001708	653,412	16,276	0.00216593004
F60470 - BAY MILLS		0.000829			0.000206	1,031	0.000796	191,754	4,776	0.00063562712
BAY MILLS INDIAN COMMUNITY	35,023	0.000829	99.6	3,702	0.000206	1,031	0.000796	191,754	4,776	0.00063562712
F55434 - FOREST CNTY POTAWATOMI		0.001722			0.000717	964	0.000744	369,521	9,204	0.00122488864
FOREST COUNTY POTAWATOMI COMMUN	72,738	0.001722	298.8	12,874	0.000717	964	0.000744	369,521	9,204	0.00122488864
F60474 - GRAND TRAVERSE		0.004742			0.029554	4,996	0.003858	3,622,792	90,240	0.01200882839
GRAND TRAVERSE BAND OF OTTAWA AND	200,317	0.004742	551.9	530,818	0.029554	4,996	0.003858	3,622,792	90,240	0.01200882839
F60471 - HANNAHVILLE INDIAN COMM		0.004270			0.002448	403	0.000311	884,406	22,030	0.00293162946
HANNAHVILLE INDIAN COMMUNITY	180,378	0.004270	455.6	43,962	0.002448	403	0.000311	884,406	22,030	0.00293162946
F55439 - HO-CHUNK NATION		0.006551			0.044590	13,056	0.010082	5,631,898	140,284	0.01866861102
HO-CHUNK NATION OF WISCONSIN	276,711	0.006551	2,435.8	800,878	0.044590	13,056	0.010082	5,631,898	140,284	0.01866861102
F60478 - HURON POTAWATOMI, INC.		0.001410			0.000278	1,342	0.001036	300,404	7,483	0.00099578063
HURON POTAWATOMI, INC.	59,564	0.001410	143.4	4,998	0.000278	1,342	0.001036	300,404	7,483	0.00099578063
F60475 - KEWEENAW BAY		0.004466			0.004483	1,705	0.001317	1,158,784	28,864	0.00384113794
KEWEENAW BAY INDIAN COMMUNITY	188,639	0.004466	418.5	80,522	0.004483	1,705	0.001317	1,158,784	28,864	0.00384113794
F55431 - LAC COURTE OREILLES		0.003808			0.000996	2,968	0.002292	802,752	19,996	0.00266096195

ALASKA STATE LEGISLATURE
Senator Albert M. Kookesh

State Capitol, Room 7
Juneau, Alaska 99801-1182

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Fax (907) 465-2827

E-mail: Senator_Albert_Kookesh@legis.state.ak.us

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DISTRICT C

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Central
Chalkyitsik
Chandalar Lake
Chenega Bay
Chicken
Chisana
Chistochina
Chitina
Chuathbaluk
Circle
Coffman Cove
Cordova
Cube Cove
Coldfoot
Copper Center
Craig
Crooked Creek
Delta Junction
Deltana
Dot Lake
Dry Creek
Eagle
Eagle Village
Edna Bay
Ellamar
Ernestine
Excursion Inlet
Eureka
Evansville
Eyak
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Fort Yukon
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Funter Bay
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Hogatza
Hobart Bay
Holy Cross
Hoonah
Hughes
Huslia
Hydaburg

Hyder
Kake
Kaltag
Kasaan
Katalla
Kennicott
Kenny Lake
Klawock
Klukwan
Koyukuk
Labouchere Bay
Lake Minchumina
Lime Village
Livengood
Long Island
Mankomen Lake
Manley Hot Springs
Marshall
McCarthy
McGrath
Medfra
Metlakatla
Mentasta
Minto
Nabesna
Naukati Bay
Nenana
Nikolai
Northway
Nulato
Ophir
Point Baker
Polk Inlet
Port Alice
Port Protection
Rampart
Red Devil
Ruby
Russian Mission
Shageluk
Skagway
Slana
Sleetmute
Stevens Village
Stony River
Strelna
Takotna
Tanacross
Tanana
Tatitlek
Tazlina
Telida
Tenakee Springs
Tetlin Junction
Tok
Tonsina
Tyonek
Utopia Creek
Venetie
View Cove
Waterfall
Whale Pass
Wiseman
Yakutat

March 24, 2009

Senator Hollis French, Chair
Senate Judiciary Committee
State Capitol Bldg, Rm 417
Juneau, AK 99801

Dear Senator French,

I respectfully request a hearing for Senate Bill 148 " An act relating to limitation of state liability on certain federal highway programs" at your earliest convenience. Time is of the essence for tribes to use stimulus funds and get projects ready for our short construction season. This bill will lessen inter-governmental disputes or disagreements about liability concerns and will enable the tribes and state to focus on transportation projects.

Thank you, your consideration is greatly appreciated.

Sincerely,

Albert Kookesh

Senator Albert Kookesh

Enc: Bill
Sponsor Statement
Indian Reservation Roads (IRR) synopsis by Alaska DOT&PF
List of Tribes and 2008 allocations

SB 153

Alaska Bankers Association
P.O. Box 100720 • Anchorage, Alaska 99510-0720 • 907-777-3011 • Fax 907-777-3029

March 11, 2010

Senator French
State Capitol
Room 417
Juneau, AK 99801

RE: SB-153 Manufactured Housing Conversion Procedure

Dear Senator French:

The Alaska Bankers Association consists of the following eight member banks: Alaska Pacific Bank, Denali State Bank, First Bank Ketchikan, First National Bank Alaska, KeyBank, Mt. McKinley Bank, Northrim Bank, and Wells Fargo Bank.

The Alaska Bankers Association supports SB-153, the Manufactured Housing Conversion Procedure bill.

SB-153 will amend state law in Alaska to provide a formal method of eliminating the certificate of title to a manufactured home, converting the home to real property when the home is or will be permanently affixed to real property, and obtaining a new certificate of title when a home previously affixed to real property is severed.

Alaska, unlike the vast majority of states, has no formal statutory procedure for converting a manufactured home to real property. Under current Alaska law including Alaska's Uniform Commercial Code, a security interest in a manufactured home permanently affixed to land can be perfected only by noting the secured party's interest on the home's certificate of title and recording a deed of trust with a fixtures clause and an appropriate description of the home. The need for legislation arises from the fact that the Alaska Division of Motor Vehicles ("DMV") will not issue a title for a manufactured home that is affixed to a permanent foundation, notwithstanding the requirements of the Uniform Commercial Code, and has created and administers a vaguely defined procedure with no record notice. The result for many Alaska manufactured homeowners is an unmarketable title to their home and for many lenders an unperfected security interest in their collateral.

In addition, Alaska's current statute does not meet the eligibility requirements to sell a mortgage for a manufactured home to Fannie Mae or Freddie Mac, including the process to legally classify the home as real property and placing the lender in first lien position.

Alaska also does not have a clear method to convert a factory built home to real property, especially older manufactured homes that come back on the market for resale.

AK SB-153 will bring state definitions of manufactured housing into accordance with HUD definitions to create a system for title transfer and property conversion. Additionally, the bill will create a means for titling manufactured homes that have been affixed to property, but the title can't be found.

This bill is good for manufactured home owners and good for lenders that finance manufactured homes.

Thank you for the opportunity to provide comment on SB-153.

Sincerely,

David Lawer
President
Alaska Bankers Association

Alaska State Legislature

Senator Hollis French

SB 153 – MOBILE HOMES AS REAL PROPERTY

Sponsor Statement

Senate Bill 153 establishes procedures to convert manufactured homes to real property, through a defined process within the Division of Motor Vehicles. This change will give the owners of manufactured homes better access to traditional mortgage financing, which often features lower interest rates, and it will help homeowners increase the value of their house by allowing them to convert their manufactured home into real property. The legislation will also help to prevent 'clouded' titles that often hinder clean transactions involving manufactured homes.

Currently, when a manufactured home is affixed to a permanent foundation on land owned by an individual, the vaguely defined title surrender procedure currently used by the Division of Motor Vehicles lacks a record notice. Without a record notice, a homeowner is often left with an unmarketable title and an unperfected security interest in their house, placing all parties in a real estate transaction – the buyer, the lender, and the seller - at risk.

Many Alaskans live in manufactured homes. This legislation will treat residents that permanently affix a manufactured home to land they own the same way that traditional homeowners are treated in the state. I urge you to support this fair legislation.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 19, 2009

SUBJECT: Sectional summary for SB 153 relating to manufactured homes (Work Order No. 26-LS0650\R)

TO: Senator Hollis French
Attn: Cindy Smith

FROM: Theresa Bannister
Legislative Counsel

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

Section 1. States the findings and purpose for the bill.

Section 2. Adds a new subsection to AS 06.05.207 of the banking code. Defines "real property" to include a manufactured home that has become real property under new sec. 34.85.010.

Section 3. Adds a new subsection to AS 06.15.250 of the mutual savings bank chapter. Defines "real property" to include a manufactured home that has become real property under new sec. 34.85.010.

Section 4. Amends AS 06.45.060(5)(A) of the credit union chapter to change "mobile home" to "manufactured home."

Section 5. Adds a new subsection to AS 06.45.060 of the credit union chapter to provide a definition of "manufactured home."

Section 6. Amends the definition of "mortgage loan" in AS 06.60.990(19) of the mortgage lending regulation chapter to include a manufactured home that has become real property under new sec. 34.85.010.

Section 7. Adds a new definition section to AS 09.45, the chapter relating to real property actions, to define "real property" to include a manufactured home that has become real property under new sec. 34.85.010 and to define "manufactured home."

Section 8. Amends AS 28.05.061(a), which relates to vehicle records, to list manufactured home documents as records that the Department of Administration is to file, maintain, and index.

Section 9. Adds new subsections to AS 28.05.061, which relates to vehicle records, to indicate what the department record must state for certain documents relating to manufactured homes. Defines "recording information" for AS 28.05.061.

Section 10. Amends AS 28.10.201(b) to reference a new subsection added by bill sec. 11 and to change "mobile home" to "manufactured home."

Section 11. Adds a new subsection to AS 28.10.201. Prohibits the department from issuing a certificate of title to a manufactured home if an application has been filed under secs. 28.10.262 - 28.10.264.

Section 12. Amends AS 28.10.211(c) to substitute "manufacturer's certificate of origin" for "manufacturer's statement of origin."

Section 13. Adds a new subsection to AS 28.10.211, relating to applications for vehicle titles. Allows the holder of a manufacturer's certificate of origin for a manufactured home to deliver the certificate to a person to facilitate the home's conveyance or encumbrance. The recipient holds it in trust.

Section 14. Adds a new subsection to AS 28.10.221, which relates to the refusal, suspension, or revocation of a vehicle title. Prohibits the department, with an exception for new sec. 28.10.263, from suspending or revoking a certificate of title to a manufactured home just because the home is affixed to real property.

Section 15. Adds a new subsection to AS 28.10.261, which relates to evidence. Makes a manufactured home's certificate of title issued by the department prima facie evidence of what it says, even if the home is affixed to real property.

Section 16. Adds new sections to AS 28.10.

Sec. 28.10.262. Directs the department to cancel a manufacturer's certificate of origin to a manufactured home if an application is filed and certain other conditions are met. States that when a person satisfies this section, the manufactured home is not subject to AS 28.10.

Sec. 28.10.263. Directs the department to cancel a certificate of title to a manufactured home if an application is filed and certain other conditions are met. States that when a person satisfies this section, the manufactured home is not subject to AS 28.10.

Sec. 28.10.264. Directs the department to confirm the conversion of a manufactured home to real property if an application is filed and certain other conditions are met. States that when a person satisfies this section, the manufactured home is not subject to AS 28.10.

Sec. 28.10.265. Directs the department to issue a certificate of title for a manufactured home if an application is filed and certain other conditions are met. States that when a person satisfies this section, the manufactured home is subject to AS 28.10.

Sec. 28.10.266. Lists what an application under secs. 28.10.262 - 28.10.265 must provide.

Sec. 28.10.267. Establishes the requirements for the declaration required by sec. 28.10.266(11) for an application under sec. 28.10.264 or 28.10.265.

Sec. 28.10.268. Indicates the time when the requirements of secs. 28.10.262 - 28.10.264 are considered to be satisfied if an application under one of those sections is delivered to the department within 30 days after an affixation affidavit is recorded.

Sec. 28.10.269. Defines terms for AS 28.10.201 - 28.10.269.

Section 17. Adds new subsections to AS 28.10.371, which relates to liens and encumbrances on vehicles, to address certain situations involving liens on manufactured homes.

Section 18. Adds a new subsection to AS 28.10.381, which relates to liens and encumbrances on vehicles, to generally prohibit cancelling certificates while a lien or encumbrance is outstanding, and to state that the validity and priority of the liens and encumbrances continue.

Section 19. Adds a new subsection to AS 28.10.391, which relates to liens and encumbrances on vehicles, to indicate that the liens and encumbrances of converted manufactured homes are governed by real property law.

Section 20. Amends AS 28.10.661(2) to define "mobile home" as a "manufactured home" for the chapter.

Section 21. Adds a new paragraph to AS 28.10.661 to define "manufactured home" for the chapter.

Section 22. Amends AS 29.45.070, which relates to municipal taxation, to reflect the conversion to real property allowed by the new chapter in AS 34.85.

Section 23. Amends AS 34.03.360 of the state's uniform residential landlord and tenant act to add a definition of "mobile home."

Section 24. Amends AS 34.70.200(3) of the chapter dealing with disclosures in residential real property transfers to include as residential real property manufactured homes that have become real property under AS 34.85.010.

Section 25. Amends AS 34.80.090(6) of the chapter that deals with escrow transactions for residential real property to include converted manufactured homes as residential real property.

Section 26. Adds a new chapter relating to converting manufactured homes to real property.

Sec. 34.85.010. Lists the criteria for a manufactured home to become real property.

Sec. 34.85.020. Describes the effects of converting a manufactured home to real property.

Sec. 34.85.040. Describes how the ownership interest requirement of sec. 34.85.010 can be satisfied when the manufactured home owner does not own the real property where the home is located.

Sec. 34.85.060. Establishes what an affixation affidavit must provide.

Sec. 34.85.070. Describes what an owner's statement required for an affixation affidavit must state.

Sec. 34.85.080. Indicates that permanently affixing a manufactured home to real property or recording an affixation affidavit does not affect liens and encumbrances on the manufactured home unless certain conditions are met.

Sec. 34.85.090. Directs the recipient of a certified copy of an affidavit to deliver the copy to the department under secs. 28.10.262 - 28.10.264.

Sec. 34.85.100. States that, except as provided by certain statutes, an affixation affidavit is not necessary or effective to convey or encumber a manufactured home or to change the character of a manufactured home to real property. Indicates what a conveyance of land on which a manufactured home is located must recite. Voids an agreement that waives this section.

Sec. 34.85.110. Directs each person having an interest in the real property from which a converted manufactured home is severed to record a severance affidavit.

Sec. 34.85.120. Establishes what a severance affidavit must contain or be accompanied by.

Sec. 34.85.130. Directs the recipient of a certified copy of a severance affidavit to deliver the copy to the department under secs. 28.10.262 - 28.10.264.

Sec. 34.85.140. Requires an affixation affidavit and a severance affidavit to be acknowledged like real property conveyances and be in a recordable form. Directs the department to establish the forms for the affidavits.

Sec. 34.85.150. Establishes when a manufactured home is considered to be permanently affixed to real property.

Sec. 34.85.190. Defines terms for the new chapter.

Sec. 34.85.195. Gives the chapter a short title.

Section 27. Adds a new section to the state's chapter on the recording of real property documents. Directs the recorder to record an affixation affidavit and a severance affidavit if they meet specified requirements. Indicates what the recording officer must write on the recorded affidavit. Directs the recording officer to send a certified copy to the person designated in the affidavit.

Section 28. Amends the definition of "goods" in the Alaska Retail Installment Sales Act to include manufactured homes.

Section 29. Directs the Department of Administration to adopt regulations for this Act.

Section 30. Preserves rights and claims existing before January 1, 2010.

Section 31. Sets an immediate effective date for bill sec. 29, which authorizes the adoption of implementing regulations.

Section 32. Sets the effective date for all of the bill except bill sec. 29, which authorizes the adoption of implementing regulations.

If I may be of further assistance, please advise.

TLB:ljw
09-169.ljw

Written Testimony in Support of Alaska Senate Bill 153

Submitted by
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On behalf of Wells Fargo, I appreciate the opportunity to submit testimony in support of Alaska Senate Bill 153.

SB-153 will amend state law in Alaska to provide a formal method of eliminating the certificate of title to a manufactured home and converting the home to real property when the home is or will be permanently affixed to real property, and obtaining a new certificate of title when a home previously affixed to real property is later physically severed from it.

Alaska, unlike the vast majority of states, has no formal statutory procedure for converting a manufactured home to real property. Under current Alaska law including Alaska's Uniform Commercial Code, a security interest in a manufactured home permanently affixed to land can be perfected only by noting the secured party's interest on the home's certificate of title and recording a deed of trust with a fixtures clause and an appropriate description of the home. The need for legislation arises from the fact that the Alaska Division of Motor Vehicles ("DMV") will not issue a title for a manufactured home that is affixed to a permanent foundation, notwithstanding the requirements of the Uniform Commercial Code, and has created and administers a vaguely defined procedure with no record notice. The result for many Alaska manufactured homeowners is an unmarketable title to their home and for many lenders an unperfected security interest in their collateral.

We feel the bill will: (1) Help manufactured homeowners in the state increase the value of their homes by allowing them to convert their manufactured homes to real property, including manufactured homes not covered by certificates of title (or for which the certificates of title cannot be found) but permanently affixed to real property before the effective date of the legislation; (2) Help lenders gain perfected security interests in manufactured homes; (3) Help the Alaska Division of Motor Vehicles by putting in place a formalized procedure for canceling a title when a manufactured home is put on a permanent foundation; and (4) Increase property tax revenue in the municipalities in Alaska that levy property taxes as the result of manufactured homes' being converted to and considered real property.

WELLS FARGO

March 20, 2009

Senator French
Alaska State Legislature, State Capitol
Juneau, AK 99801

RE: SB-153 Manufactured Housing Conversion Procedure

Dear Senator French:

Wells Fargo is writing to support SB-153, the Manufactured Housing Conversion Procedure bill.

SB-153 will amend state law in Alaska to provide a formal method of eliminating the certificate of title to a manufactured home, converting the home to real property when the home is or will be permanently affixed to real property, and obtaining a new certificate of title when a home previously affixed to real property is severed.

Alaska is the only state that currently has no statutory conversion procedure. The need for legislation arises from the fact that the Alaska Division of Motor Vehicles ("DMV") will not issue a title for a manufactured home that is affixed to a permanent foundation, notwithstanding the requirements of the Uniform Commercial Code, and has created and administers a vaguely defined procedure with no record notice. The result for many Alaska manufactured homeowners is an unmarketable title to their home and for many lenders an unperfected security interest in their home.

We feel the bill will: (1) Help manufactured homeowners in the state increase the value of their home by allowing them to convert their manufactured homes into real property; (2) Help lenders gain a perfected security interest on manufactured homes; (3) Help the Alaska Division of Motor Vehicles by putting in place a formalized procedure for getting rid of a title when a manufactured home is put on a permanent foundation; and (4) Increase property tax revenue in the municipalities in Alaska that do levy property taxes as the result of manufactured homes being converted and considered real property.

Thank you for the opportunity to provide comment on SB-153.

Sincerely,

Richard Strutz
Regional President

AK SB-153/Manufactured Housing Conversion Procedure Bill

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SB 156

STATE OF ALASKA

SEAN PARNELL, GOVERNOR

DEPARTMENT of HEALTH and SOCIAL SERVICES

DIVISION of JUVENILE JUSTICE

P.O. BOX 110635
JUNEAU, AK 99811-0635
PHONE: (907) 465-2212 FAX: (907) 465-2333

February 2, 2010

The Honorable Hollis French
Chair, Senate Judiciary Committee
Alaska State Legislature
Alaska State Capitol, Room 417
Juneau, AK 99811

Dear Senator French:

Listed below are responses to questions that were posed to the Division of Juvenile Justice (DJJ) on Wednesday, January 28, 2010, during the Senate Judiciary Committee hearing.

Senator Coghill: *It is his understanding that law enforcement is not referring all the youth that it could to the DJJ for minor consuming violations. If it did, DJJ would see its referral trends dramatically increase. Is this DJJ's understanding as well?* DJJ only has jurisdiction for minor consuming offenses when they rise to the habitual level—that is, a youth has to be cited for minor consuming three times before he is referred by law enforcement or the District Court to DJJ. First and second-time referrals for minor consuming are managed through District Courts. We are unable to locate statistics from District Court on the frequency of first- and second minor consuming citations statewide, but for DJJ to manage these violations would undoubtedly and dramatically increase the number of referrals we would need to manage, and require significantly more resources for the division. In addition, changes to the statutes surrounding minor consuming and juvenile delinquency would be needed, as these would be the only violations under the jurisdiction of the division. (The division currently manages offenses only when they rise to the misdemeanor or felony level, unless they occur as probation violations for youth already under our supervision.)

Out of the 7,692 offenses referred to DJJ in FY09, there were 117 (1.5%) alcohol related offenses (primarily "habitual minor consuming" but also a variety of others such as furnishing alcohol to a minor). Additionally, there were 469 (6.1%) probation or conduct violations related to alcohol and drug use.

Senator McGuire: What *neurological anomalies are we seeing with the 10 and under age group?* DJJ has no data readily available on neurological anomalies among its population. A mental health screening for youth at admission would assist us in getting an understanding of the frequency of these anomalies among our youth, so we will continue to explore the possibility of adding such a screen to our practice.

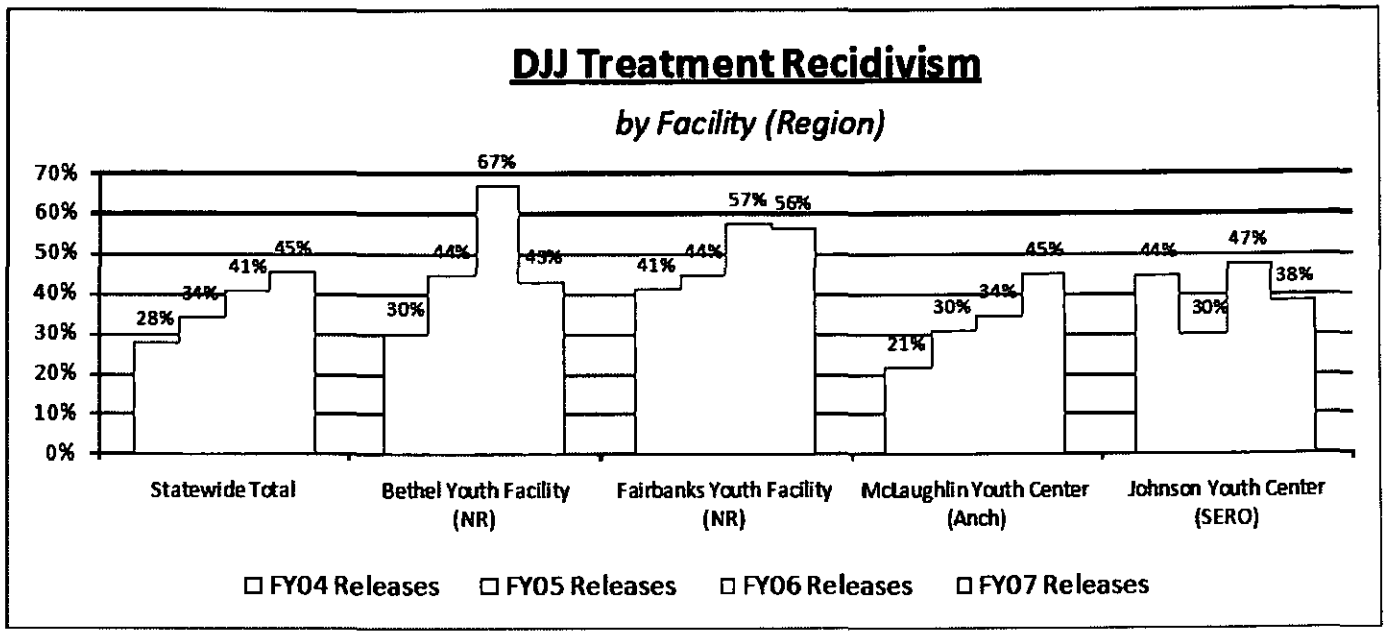
Currently, a mental health assessment required within seven days of institutionalization for youth. At that time we ask each institutionalized youth for a history of head injuries. If there is significant TBI this in noted as a DSM IV diagnosis (axis three, as it is a medical issue) and in our recommendations, we let the treatment team know what to look for with TBI and more effective ways of dealing with the resulting outcomes of TBI. This mental health assessment is presented and reviewed with the treatment team by the mental health clinician as part of our practice.The mental health clinicians who work at the Division have received training on TBI, and at McLaughlin Youth Center they work closely with Dr. Randy Moss, a psychiatrist who is able to assess TBI issues that our mental health clinicians think may be present. Over the years, youth have been sent to a neuropsychologist for specialized assessments and treatment suggestions. They have identified youth with TBI as a result of three- and four-wheeler accidents, abuse, and other issues. In addition, Dr. Moss has worked with the lead McLaughlin mental health clinician to provide training in TBI in March for all interested staff. This will be the second time staff have been offered TBI training, and the expectation is that this training will be offered at McLaughlin once each year.

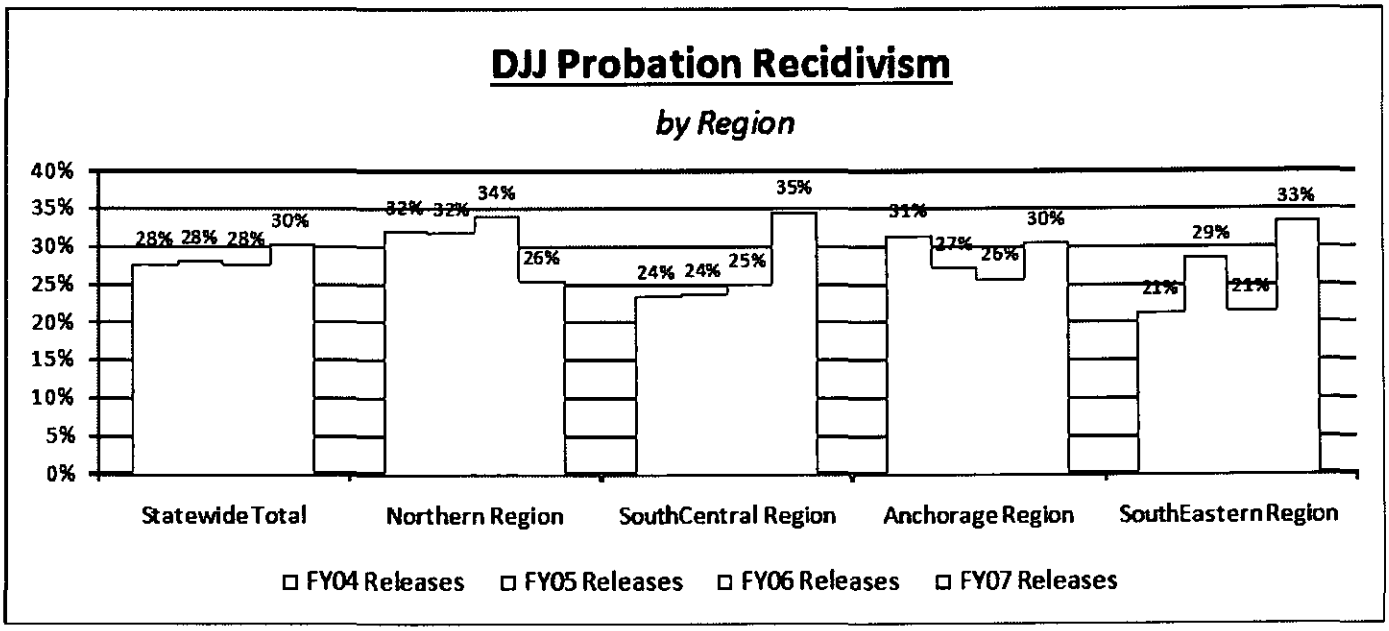
Do you know the number of youth who also experience abuse/neglect? The division has actually been devoting considerable attention to this question recently. Last week, we pulled the current open supervision cases in the six pilot communities for the department's Families First project. The six locations are: Anchorage, Mat-Su, Fairbanks, Nome, Juneau and Sitka. Specifically, of the 1120 youth with open referrals or open supervision within the juvenile justice system, 24% also had an ORCA ID number. This means that the youth has had some current or past involvement with a child abuse or neglect case. The youth could be a sibling or a victim, or in a rare instance, possibly the natural child of a foster parent. This information is consistent with a recent informal survey of juvenile justice supervisors statewide, who estimated that that 10%–20% of the approximately 1,300 juveniles under division custody or supervision on any given day have current or recent involvement with the state's child protective services agency.

The division expects that the development of the Department of Health and Social Services's Master Client Index (MCI) will assist us in our desire to understand how many youth are involved with the juvenile justice and child protection systems, as well as other agencies in the department such as Public Assistance and Behavioral Health. We expect to refine our data-extraction methods as development of the MCI progresses.

In addition, both DJJ and the Office of Children's Services have made recent changes to their divisional databases to increase the ease with which staff may mutually access and share information through these IT systems.

Senator French: *It would be good to see the DJJ Recidivism further broken down by region.* Please see below:





What would be the cost for three positions to provide oversight and quality assurance for our evidence-based practices?: The division has determined that the position ranges would likely be one Range 21 position and two Range 20 positions. These positions would work to ensure the sustainability and effectiveness of evidence-based programs such as Aggression Replacement Training, a curriculum proven to change behavior of youth demonstrating chronic violent behavior and aggressiveness; and the Youth Level of Service Inventory, an assessment tool highly effective in identifying those youth at high risk of reoffending. The cost for the three positions would be approximately $350.0.

If you have additional questions, please do not hesitate to contact me at (907) 261-4335 or via e-mail at Stephen.Mccomb@alaska.gov.

Sincerely,

Stephen F. McComb
Director

cc: Commissioner William H. Hogan
Deputy Commissioner Patrick Hefley
Assistant Commissioner Alison Elgee

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Senate Resources Committee

Chair
Senate Special Committee on Energy
Senate Special Committee on World Trade, Technology & Innovation

Member
Senate Judiciary Committee
Joint Armed Services Committee

SENATOR LESIL MCGUIRE

SPONSOR STATEMENT

SB 156: Compact for Juveniles; Interstate Council

SB 156 updates Alaskan laws regarding juveniles under court supervision by adopting a new Interstate Compact for Juveniles.

Since 1960, Alaska has relied on the Interstate Compact on Juveniles to provide us with model language to regulate the movement of juveniles under court supervision across state lines.

SB 156 adopts a new Interstate Compact on Juveniles and significantly updates the 50-year-old mechanism for tracking and supervising juveniles that move across state borders. Providing enhanced accountability, enforcement, visibility and communication, the new compact seeks to update a crucial yet outdated tool for ensuring public safety and preserving child welfare.

Primary changes to the original Juvenile Compact include requiring that Alaska:

- Support establish and contribute members to an independent, national compact operating authority (a "national commission") to administer ongoing compact activity;
- Agree to be subject to sanctions if the state fails to support essential compact operations;
- Collect and provide standardized information as requested by the national commission;
- Financially support essential compact operations.

The new compact was developed by the Council of State Governments in collaboration with the US Office of Juvenile Justice and Delinquency. Thirty-six other states have adopted the new compact and there is pending legislation to adopt the compact in at least four others.

If Alaska chooses not to adopt the new Interstate Compact, the state will soon face serious and costly challenges in its ability to monitor juveniles who arrive here from out of state, including potentially dangerous juveniles who may present a risk to public safety and a liability concern for Alaskan agencies. In addition, other states would be under no compulsion to accept Alaskan juveniles who seek to visit or reside within their borders. Not adopting the Compact would also likely result in requiring Alaska to form individual agreements with each state, which could prove to be time-consuming, expensive, and less effective.

SB 156 is a timely and important piece of legislation that will help ensure public safety and preserve child welfare.

LEGAL SERVICES

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MEMORANDUM March 30, 2009

SUBJECT: Sectional Summary - SB 156 (Work Order No. 26-LS0758\A)

TO: Senator Lesil McGuire
Attn: Trevor Fulton

FROM: Gerald P. Luckhaupt
Legislative Counsel

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

Section 1 amends AS 33.36.140(a) by changing the name of the State Council for Interstate Adult Offender Supervision and designating the council to implement the compact set out in AS 33.36.110 (current law) and the juvenile offender supervision compact newly created in AS 47.15.101, added by sec. 4.

Section 2 increases the number of members of the council from seven to nine.

Section 3 makes a conforming change.

Section 4 is the new Interstate Compact for Juveniles.

Section 5 allows the commissioner of health and social services to designate a compact administrator.

Section 6 provides that the State Council for Interstate Adult and Juvenile Offender Supervision (see sec. 1) shall serve as the state council for the new juvenile compact (see sec. 4).

Section 7 provides that the Department of Health and Social Services may adopt regulations to implement the juvenile compact.

Section 8 amends AS 47.15.070 to clarify that additional procedures are not precluded by the juvenile compact.

Section 9 provides a conforming change.

Section 10 provides a repealer.

Section 11 provides indirect court rule amendments.

Section 12 provides that the Department of Health and Social Services may continue to implement the old juvenile compact with those states that have not adopted the new juvenile compact.

Section 13 provides notice that the provisions of the new compact that indirectly amend court rules only take effect if they receive the two-thirds majority vote required by the constitution.

Section 14 provides that this Act only takes effect if at least 34 states adopt the juvenile compact.

Section 15 provides a special effective date.

GPL:ljw
09-193.ljw

The New Interstate Compact for Juveniles & Alaska

Since 1955, the Interstate Compact on Juveniles has provided states with the procedural means to regulate the movement of juveniles under court supervision across state lines. (Alaska adopted the original compact into statute in 1960.) A new compact has been developed by the Council of State Governments in collaboration with the U.S. Office of Juvenile Justice and Delinquency Prevention.

What are the major differences between the old compact and the new one?

The old compact set out the rules under which states would operate to return runaways, escapees, and absconders to their home states; a voluntary return procedure; cooperate on supervision of probationers and parolees; responsibility for costs; and other factors. The new compact places more emphasis on how the compact itself will be administered, and what the responsibilities (regarding rules, enforcement procedures, financial management, communications, data sharing) are for states that are party to the compact.

What would change for Alaska under the new compact?

Alaska would be required to:

- Support establishment and contribute members to an independent, national compact operating authority (a "national commission") to administer ongoing compact activity;
- Agree to be subject to sanctions if the State fails to support essential compact operations;
- Collect and provide standardized information as requested by the national commission;
- Financially support essential compact operations.

How many youth are subject to interstate supervision in Alaska?

About 160 juveniles under the supervision of the Department of Health and Social Services leave or enter the State of Alaska each year. This includes about 100 juveniles who make brief, temporary visits either from other states or to Alaska for work or family needs, and about 60 juveniles who move to assume a new residency with relatives, attend college, or assume placement in a residential program or facility. In addition to these 160 juveniles, another 20-25 juveniles are continuing their placement or residency in Alaska or elsewhere from a prior year, and continuing supervision under the Interstate Compact for Juveniles.

Have other states adopted the new compact?

As of January 26, 2009, 35 states have adopted the new compact; legislation to adopt was pending in 5 others. The new Interstate Compact for Juveniles is now officially active. The

interstate commission has held its first meeting and now has less than one year to adopt bylaws that will govern operation of the compact.

What if Alaska doesn't adopt the new compact?

If Alaska chooses not to adopt the new Interstate Compact for Juveniles, the State would soon face serious challenges in its ability to monitor juveniles who arrive here from out of state, including potentially dangerous juveniles who may present a risk to public safety and a liability concern for Alaska. In addition, states would be under no compulsion to accept Alaskan juveniles who seek to visit or reside within their borders. Ultimately, Alaska would be forced to develop individual agreements with each state, perhaps specific to each case, which would ultimately prove more expensive and less effective than adopting the new Interstate Compact for Juveniles.

What will it cost to implement the new compact?

The Division of Juvenile Justice estimates a total cost of $45.0 per year. This costs includes:

- $13.0 for travel associated with membership participation, including travel to required meetings by staff;
- $27.0 Membership Dues, teleconferences, overhead costs that include chargeback, etc;
- $ 5.0 Supplies for staff and required meetings

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Interstate Compact for Juveniles Resource Kit

The Council of State Governments

The Council of State Governments

THE INTERSTATE COMPACT FOR JUVENILES

Resource Kit

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Frequently Asked Questions

FREQUENTLY ASKED QUESTIONS CONCERNING THE INTERSTATE COMPACT FOR JUVENILES

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1. A juvenile compact already exists. Why should we replace it?

Answer: The existing Interstate Compact on Juvenile was created in 1955 when only a few hundred juveniles were being apprehended or found in states other than where they were residents or where their cases were adjudicated. Today that number exceeds twenty thousand (20,000) juveniles. In addition, the existing compact authority and structure are seriously outdated.

Examples include:

- Limited knowledge of who is moving, where and when they are going;
- Limited agreement between states regarding what supervision means;
- Limited ability and commitment to notify victims, communities and law enforcement officials of the movement of juveniles;
- The Association of Juvenile Compact Administrators may identify failures to comply with established rules, but it is severely limited in its ability to enforce compliance when that becomes necessary; and
- No recognized authority to promulgate rules.

2. Why is it important to replace the compact right away?

Answer: Because the existing interstate agreement has been severely compromised by individual state actions; incomplete adoption of three (3) subsequent amendments to the compact; and inability to promptly gather and transmit data concerning these juveniles or enforce provisions for their care and supervision. As soon as the new compact takes effect the 35 (or more) participating states will promptly commence administrative, by-law and rule making decisions to address these deficiencies.

- Since 1958, three amendments to the compact have been drafted and only a few states have adopted all three with a majority adopting only one or two. This lack of uniformity has created substantial inconsistency in interpretation and application of the existing compact. There is no longer a common agreement between states concerning what types of juveniles can be sent to other states for supervision, and no authority to hold other states accountable for following existing compact rules. The existing compact will soon become so dysfunctional that a nationwide system for tracking and monitoring this population will not exist at all. In 2000, a nationwide effort to develop workable alternatives to the existing system commenced and materialized in 2002 with an amended compact entitled *The Interstate Compact for Juveniles*. Without passage of the new interstate compact, individual states will resume addressing concerns by enacting various statutes and executive orders, and even the appearance of interstate cooperation in managing these juveniles will cease.

- The new compact language was subject to critique and comment from a mailing to 200 individuals, agencies and associations. Transition and timing activities were identified as major concerns. As a result, the final compact language raises the number of required jurisdictions (states, the District of Columbia, Puerto Rico or territories) to 35 before implementation; and added July 1, 2004 as the "earliest implementation date" so that states could evaluate and consider their participation.

- After July 1, 2004, the Compact will take effect once it has been enacted into law by the 35th jurisdiction. States that have passed the compact will join together and begin making administrative decisions, by-laws, and the rules to govern signatory states. Non-member states may be present to voice their concerns, but may not vote. When a state joins the compact, after the initial 35, they will have an equal voice in all subsequent rule making matters, but will inherit the decisions made by other states during the start-up phase.

3. We keep hearing that there are over 20,000 juveniles in states other than where they were adjudicated. How reliable is that number and is it changing?

Answer: Nobody can accurately answer this question. The lack of reliable interstate data has long been a problem. The National Institute of Corrections' Information Center completed a survey of states in 1999, the beginning of the project. At that time, the estimated number of individual cases being supervised in other states totaled 15,000. This number does not include juveniles who moved to another state without going through the transfer process or had been issued travel permits, figures that are currently impossible to gather.

The Association of Juvenile Compact Administrators gathers statistics annually on the number of compact transfer requests for juveniles entering and exiting compacting states. According to statistics gathered from July 1, 2001 to June 30, 2002, there were an estimated 25,870 interstate compact transactions. Travel permits are cases not officially transferred, even though the juvenile has been authorized to travel to another state for a period of time. The universal opinion of compact and agency administrators consulted was that more individuals were in the travel category than in the supervised group. Therefore, it is safe to assume that the 20,000 figure is an extremely low estimate of the interstate movement of adjudicated juveniles.

4. Will there be more juveniles under interstate supervision as a result of the new compact?

Answer: Enacting the compact will not directly affect the number of juveniles under interstate supervision. However, several things could happen:

- The information system that will be developed will equip states with reliable data about how many of their juveniles are being supervised in other states, and how many they are

supervising for other states. Reliable data may indicate that a different number of juveniles are actually under supervision.

- A number of juveniles are currently in other states and transferred to other states unbeknownst to compact administrators and without formal authority by the interstate compact. The goal of bringing states into compliance with mutually agreed upon rules will result in an increase in the number of compact cases as the states account for these "stealth" movers and provide appropriate supervision and care.

5. Will the new compact eliminate the problems experienced under the current compact, and how will member states assure compliance?

Answer: Nobody can guarantee elimination of all problems experienced under the current compact. The proposed compact will have in place a staff and committee structure that will permit swift identification of potential problems and a manageable process for addressing concerns of member states in a timely manner. This ability to attend to compliance concerns in the early stages will identify and avert major conflicts.

With regard to authority, the revised compact clarifies that the member states will have a contractual obligation to comply with the terms of the compact as well as the by-laws and all rules promulgated by the National Commission. The new compact provides various tools (Article XI, Sections B & C), which provide for compliance and enforcement of the compact. These range from technical assistance, mediation and arbitration to suspension, termination, and legal action in federal court that will result in recovery of legal fees and costs by the prevailing party.

6. States do not have similar structures and systems to supervise juveniles. What effect will this have on interstate compact enforcement?

Answer: States are organized differently and have unique systems in place to supervise and manage their juvenile population. Some states have juvenile supervision within the department of corrections and elsewhere it is with a child protective services or welfare agency. Some states have probation within judicial districts, and in others it is a county executive function. However, an interstate compact is state law and the compact law supersedes conflicting state and local laws. It does not matter which branch or level of government provides the supervision services, the compact must be followed and enforced. Compliance requirements apply equally to any agency providing supervision in a state that has enacted the compact.

7. Why is it necessary to have State Councils?

Answer: State Councils address at least three significant problems:

- Interstate supervision is unknown outside the agency or agencies where deputy compact administrators work. Consequently, in many states there is scant awareness that interstate issues are a significant public concern until a horrific crime occurs.

- Each state has one designated compact administrator, yet interstate compact compliance is not exclusively an issue for one state agency. In many instances juvenile supervision takes place in separate agencies within the executive branch, or in different (executive and judicial) branches and levels of government (state and county). Extradition funding and decision-making may be administered elsewhere. Judges and juvenile supervision agencies are obligated to observe compact rules regardless of where compact administration is housed. An ongoing awareness of interstate supervision issues is necessary in many areas of state government.

- Interstate supervision is a significant public policy concern that it merits the working knowledge of all State Council members, including victims of crime. However, states individually determine the specific role and membership of their State Council.

The states have discretion to decide whether the State Council is to be a separately constituted body or whether it assigns the duties of the State Council to an existing state entity, provided that representation from the executive, legislative and judicial branches of government and victims groups is present as required under the compact. The requirement for a State Council does not assume creation of a new or costly bureaucracy.

8. Who will be my state's commissioner?

Answer: The commissioner will be that person appointed by the State Council or the governor under Article III (B), subject to qualifications determined by each state.

9. The National Commission will develop the by-laws and regulations after the new compact becomes operational. Isn't that expecting states to "sign-up blindly" before knowing the rules. Why is this necessary?

Answer: The most effective way to manage the movement of juveniles is through an enforceable compact between states that results from member states' ongoing participation in administrative and rule-making duties. Therein lies the "Catch 22". States, through the National Commission, cannot write the rules and regulations until the new compact exists and the initial member states are known. However, this also means that states must pass the legislation and then trust the process in place to develop appropriate rules during the compact's first twelve-months of existence. The alternative of including all the rules in the compact itself would not only sacrifice state input and participation in the development of those rules, but it would also require each compacting state the burdensome task of legislatively approving these rule changes.

States are currently obligated to a full set of rules as developed and passed by compact administrators through the Association of Juvenile Compact Administrators. These rules were passed without any "Sunshine" or open-meeting provisions or conventional administrative law constraints as outlined in the new compact. As the new compact is ratified and the 35the jurisdiction is reached, it is expected that many of the rules for the new compact will be similar, if not identical, to the old rules as they are currently written. In fact, the new compact states that the existing rules governing the operation of the Interstate Compact on Juveniles will be null and void after twelve (12) months from the first meeting of the Interstate Commission. For more information on the current rules, please visit: http://www.ajca.us.

The new compact will create a governing structure with the capacity and authority to effectively manage rule making and compliance by member states. Rule making authority is left to representatives of those states that choose to enact the compact. The compact creates a process for rules to be made and enforced and when necessary, to be modified without returning to each state legislature. However, as a safeguard of states authority, the compact drafters created a provision for a majority of state legislatures to nullify any rule passed by the National Commission.

10. Will the new compact enable states to deny transfer of juveniles into their state?

Answer: Yes, states will only be obligated to accept juveniles classified and transferred under the provisions of the compact, its by-laws, and rules. Transfer denials, which contradict the terms of the compact and its rules, will not be permitted and would subject any non-compliant state to enforcement action as determined by the National Commission.

11. What control will states have over the National Commission?

Answer: It is important to remember that the National Commission is comprised of one voting representative from each member state. All proposed rules of the National Commission are required to be published in advance. Therefore, your state will have every opportunity for input before a vote is taken, and any member state will have the opportunity to have their position heard and to vote for passage or rejection of rules, by-laws and routine business. The standard for passage is a majority of members present at a meeting, unless a greater percentage is established in the by-laws (Article V).

Three relevant provisions are also included:

- Article VI concerning individual rules: "If a majority of the legislatures of the compacting states reject a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state."

- Article X concerning amending the compact itself: "Amendments to the compact may be proposed by the Interstate Commission for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states."

- Article XI: "...a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute which enacted the compact into law."

12. What are the limitations, if any, on the ability of the commissioner to sue member states (injunctive as well as mandatory relief)? What assurances can be given to states considering adoption?

Answer: No unilateral authority is given to an individual commissioner to sue another state. The National Commission is empowered, under Article XI (b) and Article XI (c) to enforce the compact against any member state, in the exercise of its reasonable discretion, through a variety of means ranging from alternative dispute resolution to judicial enforcement. Under Article XI (c) judicial enforcement is authorized by majority vote of the National Commission members in the U.S. District Court where the National Commission headquarters is located or the District of Columbia to enforce the provisions of the Compact, its by-laws and rules. Both injunctive relief and monetary damages may be sought and the prevailing party is entitled to an award of costs including reasonable attorney's fees. However, the intent of the Drafting Committee was that disputes under the compact be resolved at the lowest level, and with the least severe action necessary to ensure compliance.

13. Can any of the language in the new compact be changed or must all states use identical language? Can my state pass only certain parts of the revised compact?

Answer: Generally, the compact language must be identical with regard to the substantive provisions of the agreement. However, the enabling legislation, which embodies that agreement, does not have to be uniform in all party states and can be utilized to fit variations into the compactual pattern. The enabling legislation can be used to condition the impact of a compact in a particular state. While these allowances may be made for format, the operative language of the agreement must be identical from state-to-state; otherwise these material differences in language in any state statute purporting to adopt the compact could render it "void" or "voidable". The compact also contains a provision in Article XIII (B) (4) which preserves the limits placed on the Legislature's obligations, duties, powers, or jurisdiction under the constitution of that state.

14. Does the compact language conform to state constitutional language?

Answer: The compact language was drafted with cognizance of state constitutional requirements common to most state constitutions such as separation of powers, delegation of

power, and debt limitations. The validity of the state authority to enter into compacts and delegate authority to an interstate agency was specifically recognized and unanimously upheld by the U.S. Supreme Court in ***West Virginia vs. Sims, 341 U.S. 22 (1951).*** This decision also approves of a provision practically identical to the provisions of Article X of the Interstate Compact for Adult Offender Supervision concerning constitutional debt limitations. Under Article XIII (B)(4), provisions of the compact exceeding the constitutional limits imposed on the legislature of any state are ineffective.

15. Aren't we creating an expensive bureaucracy without the promise of anything better than what we already have?

Answer: Key concerns with the existing compact are accountability for member states and the ability to promulgate and enforce compact rules. An interstate compact that cannot assure compliance by member states is in effect a "toothless tiger." Despite remarkable efforts by those working in compact administration to hold the system together, governance issues have evolved to the point that greater compact authority is essential for states to function effectively. This illustrates the need for a national office to oversee administrative issues. Nothing in the drafting process requires an expansive bureaucracy, although it will create an administrative structure that will hold member states accountable for compliance. Given the degree of dissatisfaction with the current compact, many feel that a realistic question is whether the existing compact will survive if it is not replaced quickly. At the state-level, nothing mandates an expansive bureaucracy.

16. The new compact establishes the need for a data-sharing/information system. What type of information system will be necessary?

Answer: With the assistance of a Management and Information Systems consultant, a working committee of compact administrators has developed a plan for a comprehensive, secure and affordable information system. Development and maintenance of the information system would be part of the National Commission funding and responsibility. The system utilizes an "open technology" design and implementation of an Internet-based system accessible by industry standard software products. In some state compact offices, the minimal technology already exists. In others, it could be achieved with minimal enhancements of existing systems and for the balance, an initial investment of $2000 - $3,000 would provide the capacity to utilize form templates and to transmit and receive the information via an Internet e-mail connection. The working committee was sensitive to privacy concerns of transferred information, potential costs, and the reality that states utilize the full range of hardware and software products. Similar Internet-based systems are used extensively in the medical field and successfully accommodate these same concerns. The system is being designed so that the state compact office must be automated, while regional or field offices may use the system if they have access to the minimal equipment. Determination of privacy policies regarding the resulting national database will be made by states through the National Commission's enactment of rules and/or by-laws.

17. Will the National Commission's rulemaking authority allow it to preempt a state's privacy laws?

Answer: Under Article VI the National Commission's rulemaking authority is subject to the provisions of the ***Model State Administrative Procedures Act, 1981 Act Uniform Laws Annotated, Vol. 15, p.1 (2000),*** or such other Administrative Procedures Act as it deems appropriate and consistent with the requirements of due process. It is anticipated that rules promulgated by the National Commission would not conflict with state privacy laws except to the extent that any particular state privacy law is in direct contravention of a compact rule pertaining to the transfer and supervision of juveniles under the compact. In that case, the provisions of the Compact would supersede the conflicting state law provision under Article XIII (A) (2). It is not possible to predict what specific rules of the Interstate Commission will possibly conflict with a particular provision of the privacy laws of a particular state until a specific rule has been promulgated and a specific state privacy law has been identified.

18. How much will the new compact cost my state?

Answer: Based on a preliminary estimate contained within the fiscal note, the start-up costs to establish the National Commission will cost approximately $1 million. Support for the National Commission will come from state dues as determined by the National Commission as contained in the compact (Article VIII, (B)). Funding support for each State Council will be determined by individual state based on their specific needs and circumstances, (e.g. some states currently have existing mechanisms and/or councils that could absorb the duties of the proposed State Councils with some minor modifications).

19. Are there any the hidden costs associated with the new compact?

Answer: There are no costs mandated aside from the annual state assessment. However, it is possible that states might encounter additional costs. Examples may include:

- The proposed commission budget would pay for the voting representative from each member state to attend National Commission meetings. If a state decided to send more than one person to the meetings, the additional travel and per diem costs would be the responsibility of that state. However, states currently pay for their voting representative to attend meetings.

- The additional costs anticipated are limited to travel and per diem for members to meet within their state. It is possible that a state could decide to create a more formal structure and additional costs could be incurred.

- It is possible after examining the current level of state commitment to their centralized interstate compact administrative function that a state may determine they need more or a different level of staff assigned to that function. No additional staff would be required by

adoption of the new compact, but in many states it has long been an under-funded activity.

- It is possible that more juveniles could be under supervision if compact requirements are faithfully followed and all juveniles going to other states are processed through the compact. It is not anticipated that numbers under supervision would increase (as a result of enacting the compact) to the point that additional community supervision staff will be required. Also, it is anticipated that automation will reduce the per-case work-effort required.

- The information system is discussed in question 16. The system is being designed so that it may be accessed from common computers and will not require specialized equipment. The state compact office will require a computer and scanner and the system is being designed so that regional and field supervision units could also use the automated information system. Necessary state compact office equipment is estimated to cost $2,000 - $3,000 and compact administrators estimate that only a few states currently lack this equipment in their compact office.

20. Can a state create a law that limits its costs to the National Commission?

Answer: To the extent costs exceed a defined limit imposed by the constitution of a state on the legislature, such a provision could be determined under state law based on Article XIII (B)(4).

21. How can we determine the current status of efforts to implement The Interstate Compact for Juveniles?

Answer: Thirty-five jurisdictions (states, the District of Columbia, Puerto Rico and territories) must pass this legislation before it may take effect. The 2003 legislative session will be the first time states have an opportunity to consider the revised compact. A current "State-by State" status page may be accessed on the Internet at: http://www.csg.org/. Also, you may contact either of the two individuals listed in the final portion of this document.

Questions may be directed to:

Chris Holloway
The Office of Juvenile Justice and Delinquency Prevention
Phone: 202/305-9838
E-mail: holloway@ojp.usdoj.gov -OR-

Chad Foster
The Council of State Governments
Phone: 859/244-8032
E-mail: cfoster@csg.org

Interstate Compact on Juveniles

State-by-State Status

State	Statute	A	B	C	D	E
Alabama	§§ AL Code 44-2-1	x		x		18
Alaska	A.S. §§ 47.15.010	x			x	18
Arizona	A.R.S. § 8-361	x		x	x	18
Arkansas	A.C.A. §§ 9-29-101	x	x	x		18
California	W.A.C.W. & I.C. § 1300	x		x	x	18
Colorado	C.R.S. §§ 24-60-701	x	x	x		18
Connecticut	C.G.S.A. § 46b-151a-q	x		x		16
Delaware	31 Del. C. §§ 5201	x		x	x	18
Florida	F.S.A. § 985.501	x	x	x	x	18
Georgia	O.C.G.A. §§ 39-3-1	x		x		17
Hawaii	HRS §§ 582-1	x		x	x	18
Idaho	I.C. §§ 16-1901	x	x	x		18
Illinois	45 ILCS 10/0.1	x	x	x	x	17
Indiana	IC 31-37-23-1	x	x	x	x	18
Iowa	I.C.A. § 232.171	x		x	x	18
Kansas	K.S.A. 38-1002	x	x	x		18
Kentucky	KRS § 615.010	x	x	x		18
Louisiana	LSA-R.S. ChC 1623	x	x	x		17
Maine	34-A M.R.S.A. § 9001	x		x		18
Maryland	MD Ann. Code, Art. 83C §§ 3-101	x	x	x	x	18
Massachusetts	ALM Spec L 97:1	x	x	x		17
Michigan	M.C.L.A. § 3.701	x		x		17
Minnesota	M.S.A. §§ 260.51	x	x	x		18
Mississippi	Code 1972, §§ 43-25-1	x	x	x		18
Missouri	V.A.M.S. § 210.570	x		x		17
Montana	MCA Title 41, Chap. 6	x	x	x	x	18
Nebraska	R.S.N. §§ 43-1001	x	x	x	x	19
Nevada	NRS 214.010	x		x		18
New Hampshire	RSA 169-A:1	x	x	x		18
New Jersey	N.J.S.A. 9:23-1	x		x		18
New Mexico	NMSA 1978 §§ 32A-10-1	x		x	x	18
New York	M.U.L. §§ 1801	x	x	x		16
North Carolina	G.S. §§ 7B-2800	x		x	x	16
North Dakota	NDCC 27-22-01	x		x		18
Ohio	RC 2151.56	x		x		18
Oklahoma	10 Okl. State Ann. § 531	x	x	x		18
Oregon	ORS 417.030	x		x		18
Pennsylvania	62 P.S. § 731	x	x	x	x	18
Rhode Island	Gen. Laws 1956, §§ 14-6-1	x		x		18
South Carolina	Code 1976, § 20-7-8705	x	x	x		18
South Dakota	SDCL §§ 26-12-1	x		x		17
Tennessee	T.C.A. §§ 37-4-101	x				18
Texas	V.T.C.A. Family Code § 60.001	x	x	x		17
Utah	U.C.A. 1953, 55-12-1	x		x		18
Vermont	V.S.A. 33 § 551	x	x	x		18
Virginia	Code 1950, §§ 16.1-323	x		x		18
Washington	RCW 13.24.010	x		x		18
West Virginia	Code, §§ 49-8-1	x		x		18
Wisconsin	W.S.A. 938.991	x		x		18
Wyoming	W.S. § 14-6-101	x		x		19
District of Columbia	DC Code §§ 32-1101	x	x	x		18
Guam	GCA § 90.82	x				18
Virgin Islands	3.39.1172	x	x	x		18
Puerto Rico	n/a					
N. Mariana Islands	n/a					
American Samoa	n/a					

KEY (X = signatory)

A - Interstate Compact on Juveniles

B - Runaway Amendment

C - Rendition Amendment

D - Out-of-State Confinement Amendment

E - Age Offenders are Classified as Adults

Case Studies

1657

THE INTERSTATE COMPACT FOR JUVENILES - CASE STUDIES

All types of juveniles may potentially be supervised under The Interstate Compact for Juveniles. The tragic problems caused by very serious juvenile offenders raise many public safety concerns for the states. The number of offender cases involving out-of-state juveniles has grown exponentially over the past few decades with the increase in the national highway system and air travel. Violent and non-violent offenders on probation and parole need to cross state lines every day and the compact is the only mechanism to insure continued supervision. Likewise, the compact insures the return of juvenile escapees and absconders to the supervising state, preventing those juveniles from committing other crimes or becoming victims themselves.

In addition to public safety, an important reason for supervision is to insure that each juvenile receives the best possible services to avoid future lawbreaking and/or to safeguard their well-being. Unfortunately, the current compact does not have an administrative process or governing structure in place with authority to hold member states accountable for compliance with their mutually agreed upon rules. There are more than 20,000 interstate compact cases processed annually. Consider the range and types of interstate supervision issues that arise and need to be governed effectively by rules agreed upon by member states:

- A 17-year-old juvenile parolee, serving a sentence for burglary and armed with a dangerous weapon, absconded from state supervision. The sending state issued a warrant for his arrest and extradition. One month later, the juvenile was picked up in another state for a minor traffic violation. The receiving state detained the youth in a detention center for juveniles and sent a notice to the youth's home state with details of his detainment and a request for transportation. Disagreements between both states over transportation payments ensued. Meanwhile, the local jurisdiction holding the juvenile ignored the interstate compact law and released the juvenile on grounds of local laws governing the detainment of out-of-state juveniles for misdemeanor charges. The juvenile walked away from the detention center unsupervised. While robbing a convenient store one year later, the juvenile shot and killed the store clerk. The juvenile remains locked-up in state prison today.

- A 15-year-old adjudicated juvenile received specialized and high-cost sex offender treatment and services in his state of residence. The terms of the juveniles' probation included weekly counseling and regular therapy by a state sanctioned non-profit organization. The father of the juvenile was fired from his employment and was forced to accept employment in another state. After hearing about the juveniles' need to move, the sending state terminated the juveniles' court order for treatment early due to the high-costs associated with the sex offender treatment and failed to notify the receiving state about the juvenile. Under the compact rules, sending states are obligated to fund necessary treatment, services and supervision for juveniles moving across state lines. As expected, the youth moved with his father unsupervised and without treatment. Not until he was adjudicated for another sex offense one year later did the receiving state find out about the youth's troubled past.

- The mother of a runaway filed a report with the National Crime Information Center. The 16-year-

old runaway was identified in a non-neighboring state three days later and was placed in temporary housing with minimal supervision. Youth workers in the receiving state discovered that the youth suffered from an extreme case of depression but could not provide needed therapy without permission by the youth's parents and payment by their home state. In the meantime, the mother was notified but lacked the funds to arrange for transportation to fly her daughter home. The youth's home state forbade the use of state funds for travel and other expenses for a runaway not in their custody. Likewise, the receiving state law required a lengthy legal process to handle custody issues for out-of-state runaways. One week later, the youth escaped from the temporary housing and supervision. Her remains were found three months later and it was determined that she committed suicide by consuming lethal amounts medicine.

- A 14-year-old juvenile was on probation for a gang related crime involving the murder of a citizen. After receiving a lenient sentence for providing fellow gang member names to local law enforcement, the juvenile began receiving threats on his life from the other gang members. To provide temporary protection for the juvenile, the sending state decided to relocate the youth to family in another state for an undetermined length of time. Before gaining approval from the receiving state, local authorities released the youth to family members in the receiving state without arranging for appropriate supervision. Two weeks later, the gang members found the 14-year-old in the receiving state, assaulted and hospitalized the youth, and made threats to the juveniles' extended family. Only after the assault and threats did local authorities realize that a juvenile probationer was located in their jurisdiction.

- A 16-year old juvenile was on probation for a shopping mall theft. She came from an abusive family and marks on her body reflected regular abuse by her parents. Local social services were ordered to provide the youth and her family with regular counseling and supervision. Midway through her probation period, the juvenile escaped to another state and was arrested for another theft one week later. The receiving state notified the youth's home state about the arrest. Under terms and rules of the current compact, the youth's home state is required to transport that youth under an appropriate level of supervision. In an attempt to save dollars, the youth's home state decided to buy a one-way bus ticket for the juvenile but decided not to provide an escort. The youth escaped while enroute home at a gas station and remains unaccounted for today.

- A 17-year-old juvenile absconded from his state of residence while on parole for drug possession and drug use. The juvenile was identified and picked-up in another state where 17-year-olds are considered adults. Under compact rules, juveniles are defined by their home state's laws, not the receiving states laws. The juvenile's home state issued a court order for the juvenile's detainment and extradition. Due to the lengthy and formal process to detain and transport juveniles, the youth's home state could not extradite the youth in a timely manner. Meanwhile, the local jurisdiction holding the juvenile released him on the grounds that he was an adult and their local law forbade them from detaining adults over a specified period of time without formal criminal charges. The juvenile was arrested three months later in the same state for cocaine possession and is now serving two new sentences for drug possession and use.

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SENATOR LESIL MCGUIRE

Co-Chair
Senate Resources Committee

Chair
Senate Special Committee on Energy
Senate Special Committee on World Trade, Technology & Innovation

Member
Senate Judiciary Committee
Joint Armed Services Committee

MEMORANDUM

To: Senator Hollis French JUDICIARY
Chair, Senate ~~Health & Social Services~~ Committee

From: Senator Lesil McGuire

Date: April 3, 2009

Re: Hearing Request: SB 156 – Compact for Juveniles; Interstate Council

I respectfully request that SB 156 – Compact for Juveniles; Interstate Council be scheduled for a hearing in the Senate Judiciary Committee at your earliest convenience.

SB 156 updates Alaskan laws regarding juveniles under court supervision by adopting a new Interstate Compact for Juveniles. It is important that, before the end of the year, Alaska joins the other 36 states that have already adopted the new compact, otherwise we will have no agreement with those 36 states.

Attached you will find the most current version of the resolution, a sponsor statement, and all backup information.

If you have any questions or concerns, please feel free to contact me personally or my staff, Trevor Fulton, at x3579. Thank you for your time and consideration.

1660

SB

158

Senator Fred Dyson
SPONSOR STATEMENT

SB 158: Return of property used as evidence to the owner

All too often victims of robbery are victimized a second time by bureaucracy. Victims of crime involving property of little value are certainly inconvenienced. However, victims of theft of property of considerable value face the added burden of having to purchase replacements for the stolen property. Small business owners who have their inventory stolen may even lose potential sales or bankruptcy if the loss of property results in the inability to consummate the sale or the inventory is uninsured or underinsured. But perhaps the most frustrating of all is when property is recovered by law enforcement agencies, only to be held as evidence and not returned to the victim for weeks, months, or years.

Victims generally understand the necessity of holding stolen items for a period of time to ensure successful prosecution of a case. However, when property is held for an extended period of time, even though it is no longer necessary to physically retain the item, it is no longer acceptable to not return the property to the rightful owner. When it is no longer necessary to retain the property to prosecute a case, law enforcement agencies must return the property to the rightful owner as soon as reasonably possible without jeopardizing their case.

Alaska Statute 12.36.020(c) directs that property in the possession of law enforcement personnel and used as evidence in a criminal proceeding or a children's court proceeding is to be returned to the owner within 60 days after the final disposition of the case. Unfortunately, final disposition of the case may, to the owner, be protracted for a seemingly unending period of time. It is not always necessary for law enforcement personnel to physically retain the property for evidence. In such cases the property should be returned to the owner when it is no longer needed as evidence by law enforcement, rather than being held until final disposition of the case.

Passage of SB 158 will provide for return of property to the owner when the property is no longer needed as evidence or within 60 days of disposition of the case, whichever first occurs.

Updated March 20, 2009

Contact: Lucky Shultz at Senator Fred Dyson's office
State Capitol, Room 121, Juneau, Alaska 99811907-465-2199

SENATOR FRED DYSON

MEMORANDUM

April 2, 2009

To: Senator Hollis French, Chair
Senate Judiciary Committee

From: Senator Fred Dyson

Subject: Request Hearing on SB 158, Return of Stolen Property

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Please schedule Committee Substitute Senate Bill 158(STA) for hearing in the Senate Judiciary Committee.

As you heard in the Senate State Affairs Committee, I am aware of Alaska businessmen and women who have had expensive items stolen from their businesses, have had the police recover the property, but then have had the property retained by the police for extended periods of time to be used as evidence. The business people, in order to meet their obligations to customers, are forced to buy replacement materials and items, often at premium prices because the items are being bought in smaller quantities or are being bought with a short lead time in order to meet promised delivery dates. This bill will allow property to be returned to owners much more quickly.

Contact Information:
Lucky Shultz (465-6580)

During Session (January-May): Alaska State Capitol • Juneau, Alaska 99801 • (800) 342-2199 • (907) 465-2199 • (907) 465-4587 FAX
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Senator.Fred.Dyson@Legis.state.ak.us • www.akrepublicans.org

SB

176

ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

ASD MEMORANDUM # 252 (2008-2009) March 23, 2009

TO: SCHOOL BOARD

FROM: OFFICE OF THE SUPERINTENDENT Carol Comeau

SUBJECT: RESOLUTION IN SUPPORT OF THE INTERSTATE MILITARY COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

RECOMMENDATION:

It is the recommendation of the administration that the School Board approve a resolution in support of the interstate military compact on educational opportunity for military children (attachment A). It is further recommended that the School Board and administration communicate the support of the Anchorage School District to the Alaska Legislature, the State Board of Education and Early Development, and the Governor.

PERTINENT FACTS:

The United States Departments of Education and Defense signed a historic agreement in June of 2008. This historic agreement set the state for a formalized working agreement to work collaboratively to ease the challenges of transitions for military dependent students. As of the beginning of the 2008-2009 school year, the following states have passed legislation in support of military compacts: Arizona, Colorado, Connecticut, Delaware, Florida, Kansas, Kentucky, Michigan, Missouri, North Carolina, and Oklahoma. Other states have legislation pending. Subsequent to that action, the State Board of Education and Early Development discussed the military compact and expressed strong support for Alaska entering into this compact. This was communicated to the Alaska Legislature and to Governor Palin.

Subsequently, Representative John Coghill, filed HB 137, "An act relating to the Interstate Compact on Educational Opportunity for Military Children..." It is moving through the legislature during this first session of the twenty-sixth

legislature. Representative Dahlstrom has attended meetings relating to this issue as part of her legislative responsibilities.

The administration has reviewed the military compact and the proposed legislation and urges the School Board to pass this resolution in support of its guiding principles. The administration supports this compact because it validates our close working relationships and current practices with our military installations and dependent families. The Mat-Su, Fairbanks, Kodiak, and Sitka school districts are in support of this compact and are in the process of supporting this action for their districts. The administration would like to work with our military representatives and members of the legislature on this important legislation.

An information packet provided to school districts provides general information to the School Board in support of this administrative recommendation and is included as Attachment B.

CC

Prepared and approved by: Carol Comeau, Superintendent

ANCHORAGE SCHOOL BOARD
ASDR 2008-2009-12

A RESOLUTION ENDORSING THE GUIDING PRINCIPLES OF THE INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

WHEREAS, military students are faced with numerous transitions during their formative years, and

WHEREAS, moves during the school years, particularly the high school years, present special challenges to learning and future achievement, and

WHEREAS, there is a large and growing military student population in the Anchorage School District, and

WHEREAS, the Anchorage School District can help ease the school transition challenges faced by its military students through awareness, flexibility and accommodations as reflected in the Interstate Compact on Educational Opportunity for Military Children,

THEREFORE, BE IT RESOLVED that the Anchorage School Board endorses the guiding principles expressed on Attachment B of this document, and urges all employees to institute these practices no later than the beginning of the 2009-2010 school year.

PASSED AND APPROVED by the Anchorage School Board this 23rd day of March, 2009.

ANCHORAGE SCHOOL BOARD

Jeff Friedman, President

Pat Higgins
Crystal Kennedy
Jeannie Mackie

Macon Roberts
Tim Steele
John Steiner

Carol Comeau, Superintendent

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Charlie Huggins
Senator

Sectional
SB 176

"An Act relating to an interstate compact on educational opportunity for military children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date."

Section 1: AS 14. Adds a new chapter:
Chapter 34. Interstate Compact on Educational Opportunity for Military Children

Article I – Purpose
This article describes the purposes of this compact which is to remove barriers to educational success for military children by facilitating enrollment, placement, and timely graduation; providing enforcement of rules, uniform collection and sharing of information; and promoting coordination, flexibility, and cooperation among member states.

Article II – Definitions
This article provides definitions for terms used throughout the compact.

Article III – Applicability
This article defines the children covered by this compact.

Article IV – Educational Records and Enrollment
This article outlines how sending and receiving states handle a military student's unofficial and official educational records. The Interstate Commission determines what information must be included in the records, and the time line for providing the records. It provides a 30-day grace period for immunizations. Kindergarten and first grade entrance is addressed for both grade level and age.

Article V – Placement and Attendance
This article describes course placement; education program placement, and special education services to address federal requirements for students with disabilities. Placement flexibility and absences related to deployment are also addressed.

Article VI – Eligibility
This article provides information on enrollment eligibility. It prohibits the student from being charged a tuition if the student lives in a different jurisdiction, and allows the student to continue to attend the school they were enrolled in while residing with the custodial parent. The military student shall have as many opportunities as possible to participate in extracurricular activities, even if they have missed the application deadlines.

Article VII – Graduation
This article facilitates on-time graduation by providing procedures for waivers, exit exams and transfers during a military student's senior year.

Article VIII – State Coordination
This article establishes requirement for creation of a State Council or other existing body to provide coordination among its government, local and military agencies. Membership requirements are also addressed.

Article IX – Interstate Commission on Ed Opportunity for Military Children
This article deals with creating the commission and its responsibilities, powers, and duties. It details membership, voting rights, meetings, executive committee, bylaws and rules, data collection, and a process for reporting alleged violations.

Article X – Powers and Duties of the Interstate Commission
This article lists the powers and duties of the Interstate Commission: Dispute resolution; promulgate rules; issue advisory opinions; enforce compliance; and other powers and duties related to establishing and running and supporting the state councils at a national level.

Article XI – Organization and Operation of the Interstate Commission
This article provides the structure for the Interstate Commission to organize, establish bylaws, set up executive and other committees, establish procedures for meetings, and providing for start-up rules for the initial administration of the compact.

Article XII – Rulemaking Functions of the Interstate Commission
This article gives the Interstate Commission rulemaking authority, and rulemaking guidelines and a provision for judicial review of a proposed rule.

Article XIII – Oversight, Enforcement, and Dispute Resolution
This article addresses oversight, enforcement and dispute resolution specifically. Oversight: Charges the executive, legislative and judicial branches of state governments regarding the purpose and intent of the Compact. It further states that the Interstate Commission shall receive all service of process and has standing to intervene. Further addresses consequences of default by a member state. Dispute Resolution: If requested the Interstate Commission will attempt to resolve disputes and provide rules for mediation and binding dispute resolution. Enforcement: The Interstate Commission shall enforce the rules and provisions of this compact and may initiate legal action to enforce compliance with the provisions of the compact.

Article XIV – Financing the Interstate Commission
This article provides a method for the Interstate Commission to pay its reasonable expenses by collecting annual assessments from each member state. There are limits on incurring obligations and the need for accurate accounting of all receipts and disbursements, and the requirement for a yearly audit by a certified or licensed CPA.

Article XV – Member States, Effective Date and Amendment
States are eligible to become members, the compact becomes effective when no less than 10 states enact the compact into law and the member state passes the law. Rules for how amendments become effective and binding.

Article XVI – Withdrawal and Dissolution
This article addresses how member states withdraw from the compact, what their responsibilities of notice, time, and responsibility for assessments. This article also addresses reinstatement, and compact dissolution.

Article XVII – Severability and Construction
Provisions of this compact are severable and any portion deemed unenforceable does not affect the remaining compact. The compact should be liberally construed, and nothing in this compact inhibits other interstate compacts.

Article XVIII – Binding Effect of Compact and Other Laws
Nothing in this compact prevents the enforcement of other laws that are not inconsistent with this compact. Conflicting laws are superseded by the compact to the extent of the conflict. All rules of the Interstate Commission are binding on the members states. Any provisions that exceed constitutional limits are ineffective to the extent of the conflict of the member state.

Sec. 14.34.020 Compact Administrator.
Establishing a compact administrator and the duties of that office.

Sec. 14.34.030 State Council.
Establishes the state council as a subcommittee of the membership.

Sec. 14.34.040 Regulations.
The board may adopt regulations to implement this chapter.

Sec. 14.34.090 Short Title.
Interstate Compact of Educational Opportunity for Military Children

Section 2: Uncodified law of the State of Alaska is amended by adding a new section:

INDIRECT COURT RULE AMENDMENTS. The changes made by Sec. 1 of this Act have the effect of changing Alaska Rules of Civil Procedure:

(1) Rule 4 – entitles the Interstate Commission to receive service of process of a judicial proceeding that pertains to a Compact provision or rule.

(2) Rule 24(b) - entitles the Interstate Commission to intervene in a judicial proceeding in which the validity of a compact provision or rule is at issue.

Section 3: Uncodified law of the State of Alaska is amended by adding a new section:

CONDITIONAL EFFECT OF CERTAIN PROVISIONS.

Provisions set out in Section 1 concerning service of process and standing to intervene, take effect only if Section 2 receives two-thirds majority vote of each house required by the State Constitution.

Section 4: Uncodified law of the State of Alaska is amended by adding a new section:

CONDITIONAL EFFECT OF ACT; COMMISSIONER'S DUTY TO NOTIFY.

When Sections 1 and 2 of this Act will take effect and notification requirements when the 10 or more states have ratified this compact.

Section 5: Setting out the effective dates of this Act to be not less than 10 states other than this state ratify the Compact or July 1, 2009, whichever is later.

(26-LS0588\R)

Case Study #1

Commissioned Personnel

Family of a Major General, United States Air Force; stationed in Virginia

Due to multiple reassignments for our family, my son attended ten different schools prior to graduating from high school. Though he was certified as academically advanced by previous school systems, he was denied advanced placement in one school system solely because he was not in that system for the required period of time. He was denied advanced placement in another system due to its different qualifying criteria as compared to previous jurisdictions. For one four year period during which we were reassigned each year, my son was required to read Romeo and Juliet for each of those four years despite having done so in each preceding state. He was denied the opportunity to participate in sports on more than one occasion because we were reassigned after team tryouts and he was told he was too late. Finally, we had to take the drastic measure of placing him in a private school after one reassignment because, in order for him to graduate on time from his assigned public school, he would have been required to stay in school for an extra year since the new school system refused to accept all of his credits that he had completed in the previous jurisdiction.

My daughter, currently a high school freshman, has attended seven different schools. She had an IEP (Special Education: Individual Education Plan) from one state that was not continued in the next state because her success out-scored their expectation of what her aptitude score indicated she could achieve. In our current state of residence, she is required to pass six course competency tests, even though she took some of those courses in a different state. Furthermore, the preparatory curriculum for these tests is different than in the last jurisdiction so her burden has been needlessly increased. What is most problematic is that, in order for her to graduate high school on time, she must pass an exit exam which is designed for students who have been in this particular state system for twelve years. For that reason, and because previously earned credits have not been accepted by the present jurisdiction, she must take summer school courses every summer for the next three years.

Case Study #2

Enlisted Personnel

Family of a Technical Sergeant, United States Air Force; stationed in Florida

My daughter is 10 years old and is in the 5th grade. Our family moved to Patrick AFB, Florida from Kirtland AFB in New Mexico last May on military orders. My husband is in the Air Force. We enrolled my daughter in elementary school in Florida during the summer and her new school requested her school records in August from her previous school in New Mexico. By the middle of October, the records had not yet been sent to the new school. After repeated written requests, phone calls and emails from Florida school officials and myself to her previous school in New Mexico, some of her records arrived in late October. However, her complete record did not arrive until November 19th.

When her records finally arrived, the school transferred her to the fifth grade QUEST class which is an advanced placement class for students who are gifted and talented. This is where she should have been placed at the beginning of the semester. However, due to the inexplicable delay in transferring her records, her new school placed her in a less challenging learning environment. Therefore, she spent almost a whole semester in an inappropriate classroom setting. The effects of this delay, which may seem to be of little consequence to adults, have been severe and profound for my 10 year old. She was miserable in school for months, forced to study material she had already mastered. She was bored and restless, and she sometimes got into trouble as a result. She is also not where she should be academically and has some catching up to do.

Despite this setback, now that she is in the proper class, she is back to being my happy, well behaved student. However, had legislation such as the proposed compact been in place in time for my daughter, we could have avoided this situation entirely.

COMMANDER, U.S. PACIFIC COMMAND
(USPACOM)
CAMP H.M. SMITH, HAWAII 96861-4028

19 March 2009

Representative John Coghill
Alaska State Capitol
Room 214
Juneau, Alaska 99801

Re: **IN SUPPORT** of **HB 137**:
Interstate Compact on Educational Opportunities for Military Children
Hearing: Friday, March 20, 2009, 1:30 PM

Dear Representative Coghill and Education Committee Members:

The US Pacific Command wishes to formally register support for the Interstate Compact on Educational Opportunities for Military Children. With over 12,000 school-age military dependents, Alaska ranks 15th in the nation for the number of military students educated within the state. Representing the Army, Navy, Air Force, Marines and Coast Guard, the children of our military families in Alaska come from and move to nearly every state in the country and numerous US Department of Defense schools around the globe. Each year, approximately one-third of our children transfer from Alaska and are replaced by incoming military-affiliated students. Because of the mobility imposed on families due to assignments and deployments, our children face significant educational challenges including enrollment, eligibility, placement, and graduation.

The passage of this bill allows Alaska to join with other states to create the Interstate Compact, a program that seeks to remove barriers to educational success due to the frequent military moves. The Interstate Compact provides a venue for states to work together which allows our military families to fulfill the mission of serving our country without penalizing the education of their children.

I wholeheartedly support and urge the passage of House Bill 137. Thank you for all you do for the children of military families who, in their own way, also serve our country.

Sincerely,

Stephen D. Tom
Major General, U.S. Army
Chief of Staff

DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

MAR 19 2009

General Carrol H. Chandler
PACAF/CC
25 E Street, Suite G-214
Hickam AB HI 96853-5420

Representative John Coghill, Chair
Members of the House Committee on Education
Alaska State Capitol
Juneau, AK 99801

Re: IN SUPPORT OF HB137
Hearing: Fri, 20 Mar 09 at 0800

Dear Representative Coghill and Committee Members

Partnership and collaboration are longstanding keystones for military and local community support to Alaska public school students. In this spirit, I provide my support to House Bill HB137 "Interstate Compact on Educational Opportunities for Military Children."

HB137 is groundbreaking legislation written specifically for the unique requirements of a transient student population. Issues such as enrollment, testing standards and graduation requirements are addressed through the interstate compact. These types of standards allow a military student to progress without fear of having to reaccomplish work to meet a new requirement after a move. Additionally, this compact provides an avenue for states to not only establish this list of standards but to collaborate on future issues as they arise.

I look forward to increased cooperation with those who set policy for and educate our children in Alaska. The changes implemented from HB137 will directly impact the social, emotional and academic experience of transitioning students who attend Hawaii public schools.

I personally appreciate the hard work and dedication of all those involved with HB137. Thank you for your submission and continued support of our military families.

Very respectfully

CARROL H. CHANDLER
General, USAF
Commander

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY, PACIFIC
FORT SHAFTER, HAWAII 96858-5100

REPLY TO
ATTENTION OF

Office of the Commanding General

18 Mar 09

State Representative John Coghill
House District 11- North Pole
State Capitol, Room 214
120 4th Street
Juneau, Alaska 99801-1182

Re: **In SUPPORT of HB# 137 "Interstate Compact on Educational Opportunities for Military Children"**

Dear Representative Coghill:

The United States Army, Pacific (USARPAC) would like to inform you of our **support** for the Interstate Compact on Educational Opportunities for Military Children (House Bill #137). When considering the number of school-age military children impacting each state, Alaska has approximately 12,000 school-age military dependents attending public, private, and homeschooling venues. As these students move from state to state, many of them encounter considerable challenges when dealing with enrollment, eligibility, placement, extra-curricular activities, and graduation requirements. Often, military students lose course credits due to multiple school transfers and are often improperly placed in courses due to the varying school requirements.

USARPAC appreciates all that Alaska public schools have done on behalf of our military children regarding transition and deployment issues. The Interstate Compact on Educational Opportunities for Military Children will only serve to compliment and augment what is already being done in the Alaska public schools. Additionally, this bill will join Alaska with other states in an effort to streamline the school transition process and create much needed uniformity between states.

For these reasons, USARPAC supports this compact and encourages the Alaska House of Representatives to pass House Bill #HB137. If you need additional information, please contact my Well Being/Education Specialist, Ruth Davis, at 808-438-4177 or E-mail nancy.ruth.davis@us.army.mil.

Sincerely,

Benjamin R. Mixon
Lieutenant General, US Army
Commanding General

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY ALASKA
724 POSTAL SERVICE LOOP #5000
FORT RICHARDSON, ALASKA 99505-5000

March 18, 2009

REPLY TO
ATTENTION OF:

Office of the Commanding General

Honorable John Coghill
Alaska House of Representatives
House District 11- North Pole
State Capitol, Room 214
120 4th Street
Juneau, Alaska 99801-1182

Subject: Support of House Bill #137, "Interstate Compact on Educational Opportunities for Military Children"

Dear Mr. Coghill:

The United States Army Alaska (USARAK) would like to inform you of our support for the Interstate Compact on Educational Opportunities for Military Children (House Bill #137). In the state of Alaska, there are approximately 12,000 school age children of active duty military personnel. As these students move from state to state, many of them encounter considerable challenges when dealing with enrollment, eligibility, placement, extra-curricular activities, and graduation requirements. Often, military students lose course credits due to multiple school transfers and are sometimes improperly placed in courses due to the varying school requirements. The Interstate Compact on Educational Opportunities for Military Children will help to ease this frustration and will aid military students in the school transition process.

USARAK appreciates all that Alaska public schools have done on behalf of our military children regarding transition and deployment issues. The Interstate Compact on Educational Opportunities for Military Children will only serve to complement and augment what is already being done in the Alaska public schools. Additionally, this bill will join Alaska with other states in an effort to streamline the school transition process and create much needed uniformity between states.

For these reasons, USARAK supports this compact and encourages the Alaska House of Representatives to pass House Bill #137.

Sincerely,

Stephen R. Layfield
Major General, U.S. Army
Commanding Officer

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY ALASKA
724 POSTAL SERVICE LOOP #5000
FORT RICHARDSON, ALASKA 99505-5000

March 18, 2009

REPLY TO
ATTENTION OF:

Office of the Commanding General

Honorable John Coghill
Alaska House of Representatives
House District 11- North Pole
State Capitol, Room 214
120 4th Street
Juneau, Alaska 99801-1182

Subject: Support of House Bill #137, "Interstate Compact on Educational Opportunities for Military Children"

Dear Mr. Coghill:

The United States Army Alaska (USARAK) would like to inform you of our support for the Interstate Compact on Educational Opportunities for Military Children (House Bill #137). In the state of Alaska, there are approximately 12,000 school age children of active duty military personnel. As these students move from state to state, many of them encounter considerable challenges when dealing with enrollment, eligibility, placement, extra-curricular activities, and graduation requirements. Often, military students lose course credits due to multiple school transfers and are sometimes improperly placed in courses due to the varying school requirements. The Interstate Compact on Educational Opportunities for Military Children will help to ease this frustration and will aid military students in the school transition process.

USARAK appreciates all that Alaska public schools have done on behalf of our military children regarding transition and deployment issues. The Interstate Compact on Educational Opportunities for Military Children will only serve to complement and augment what is already being done in the Alaska public schools. Additionally, this bill will join Alaska with other states in an effort to streamline the school transition process and create much needed uniformity between states.

For these reasons, USARAK supports this compact and encourages the Alaska House of Representatives to pass House Bill #137.

Sincerely,

Stephen R. Layfield
Major General, U.S. Army
Commanding Officer

Kodiak Island Borough School District
Office of the Superintendent
722 Mill Bay Road
Kodiak, AK 99615
(907) 481-6200

March 2, 2009

Twenty-Sixth Alaska State Legislature
House of Representatives
State Capitol
Juneau, AK 99801

Dear Representatives:

Kodiak Island Borough School District wholeheartedly endorses House Bill 137. A substantial number of Kodiak Island students come to us from the United States Coast Guard as well as the United States Navy.

We eagerly join this compact's intent to remove the barriers to educational success imposed on the children of military families due to the frequent moves and deployment of their parents. We will be committed to supporting and enforcing the rules and provisions of this compact. It is our District's goal to provide uniform collection and sharing of information; and to promote coordination, flexibility and cooperation between educational systems and families in order to achieve educational success for the student.

We thank Representative Coghill for sponsoring House Bill 137. His concern is for the best interest of the children whose parents are serving this nation with such honor. We appreciate their service and this bill represents a small token of thanks as well as removes several obstacles that are imposed upon their children during their service to our country.

Sincerely,

Stewart McDonald
Superintendent

ALASKA STATE LEGISLATURE

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Wasilla AK 99654
907-376-4866
907-373-4724 – Fax
Senator_Charlie_Huggins@legis.state.ak.us

State Capitol, Room 417
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www.akrepublicans.org/huggins/

Charlie Huggins
Senator

April 1, 2009

To: Senator Hollis French, Chair
Senate Judiciary Committee

From: Senator Charlie Huggins

Subject: Request to Schedule SB 176 for a Hearing

I respectfully request the scheduling of SB 176, "An Act relating to an interstate compact on educational opportunity for military children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date," for a hearing before the Senate Judiciary Committee at your earliest convenience.

Please contact Josh Tempel, staff person for the Joint Alaska State Legislative Veterans' Caucus, with any questions on the details of this bill. Josh's phone number is 465-4066.

Please find attached pertinent information for the committee.

Thank you.

Attachments

SB 190

26-LS0332\W
Bannister
4/7/10

CS FOR SENATE BILL NO. 190( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS WIELECHOWSKI, Ellis

A BILL

FOR AN ACT ENTITLED

"An Act relating to biometric information."

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

*** Section 1.** AS 18 is amended by adding a new chapter to read:

Chapter 14. Biometric Information.

Sec. 18.14.010. Biometric information consent. (a) A person may not retain or analyze, or disclose or distribute to another person, biometric information on an individual without first obtaining the informed and written consent of the individual.

(b) An individual may, at any time, revoke or amend the individual's consent provided under (a) of this section.

Sec. 18.14.020. Alternate identification. A person may not require an individual to provide biometric data to the person for the purpose of identifying the individual if the individual provides the person with a valid current

(1) United States passport; and

(2) identification card issued by a state in the United States or by a branch of the armed forces of the United States.

Sec. 18.14.030. Uniform consent form. The Department of Health and Social Services may by regulation adopt a uniform consent form to assist persons to meet the requirements for the consent required by AS 18.14.010. A person who retains or analyzes, or discloses or distributes to another person, biometric information, based on consent that is provided in a uniform consent form that has not been revoked, is exempt from civil liability under AS 18.14.060 and from criminal liability for the retention, analysis, disclosure, or distribution of the biometric information.

Sec. 18.14.040. General authorization. A general authorization for the release of medical records or medical information may not be construed to constitute the informed and written consent required by AS 18.14.010.

Sec. 18.14.050. Private right of action. An individual may bring a civil action against another person who violates AS 18.14.010 or 18.14.020. Except as provided by AS 18.14.030, a person who violates AS 18.14.010 is liable to the individual for actual damages and a penalty of $5,000, except that, if the violation resulted in profit or monetary gain to the person, the penalty is $100,000.

Sec. 18.14.060. Exemptions. This chapter does not apply to the retention, analysis, disclosure, or distribution of biometric information

(1) for a law enforcement purpose, including the identification of perpetrators, the investigation of crimes, the identification of missing or unidentified persons or the identification of human remains; or

(2) when authorized by state or federal law.

Sec. 18.14.090. Definitions. In this chapter,

(1) "biometric data" means fingerprints, handprints, voices, facial images, iris images, or retinal images;

(2) "biometric information" means biometric data that is used in a biometric system for fingerprint recognition, hand geometry recognition, voice recognition, facial recognition, iris scans, retinal scans, or palm vein recognition;

(3) "biometric system" means an automated system capable of

(A) capturing biometric data from an individual's biometric information;

(B) extracting and processing the biometric data captured under

(A) of this paragraph;

(C) storing the biometric data extracted under (B) of this paragraph;

(D) comparing the biometric data extracted under (B) of this paragraph with biometric data stored for the individual for use in future recognition of the individual;

(E) determining how well the extracted and stored biometric data match when compared under (D) of this paragraph, and indicating whether an identification or verification of identity has been achieved;

(4) "facial recognition" means the use of an image of the visible physical structure of an individual's face for recognition purposes;

(5) "fingerprint recognition" means the use of the physical structure of an individual's fingerprint for recognition purposes;

(6) "governmental entity" means a state agency, a municipality, and an agency of a municipality; in this paragraph, "state agency" means an agency of the executive, judicial, or legislative branch of state government;

(7) "hand geometry recognition" means the use of the physical structure of an individual's hand for recognition purposes;

(8) "iris scan" means the use of an image of the physical structure of an individual's iris for recognition purposes;

(9) "palm vein recognition" means the use of the veins in an individual's palm print for recognition purposes;

(10) "person" has the meaning given in AS 01.10.060, and includes a governmental entity;

(11) "retinal scan" means the use of the pattern of blood vessels in an individual's eye for recognition purposes.

ALASKA STATE LEGISLATURE

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Senator_Bill_Wielechowski@legis.state.ak.us

Co-chair
Joint Armed Services Committee
Resources Committee

Member
Energy Committee
Judiciary Committee
World Trade Committee

SENATOR BILL WIELECHOWSKI

Draft CS for SB 190(JUD) – Proposed Changes

The following changes are proposed for Senate Bill 190 in the Senate Judiciary Committee and can be found in the attached version 26-LS0332\W:

1. A new chapter entitled "Biometric Information" is created for this provision of the law.

Discussion: This was done at the recommendation of the Attorney General's office because SB 190 is substantially different from the chapter in which it was originally contained titled "Genetic Privacy."

Location: Page 1, lines 3 and 4.

2. The term "collect" is removed from the bill.

Discussion: Both the Attorney General's office and committee members expressed concern that the term "collect" might prevent legitimate social and economic practices from taking place.

Location: Page 1, lines 5-7; page 2, lines 3-4; page 2, lines 16-17.

3. Clarification was made that there is an exception for the retention, analysis, disclosure, or distribution of biometric information for law enforcement purposes, or when authorized by state or federal law.

Discussion: This is based on suggested language from the Attorney General's office and is intended to clarify that private investigations into such crimes as fraud or arson are legal, and that biometric information can continue to be collected for criminal background checks.

Location: Page 2, lines 16-21.

4. The word "willing" is removed from the "informed and written consent" found in the previous version.

Discussion: This language now mirrors that which is found in the current Genetic Privacy statute.

Location: Page 1, line 7; page 2, lines 9 and 10.

5. Biometric data cannot be required for personal identification if the person to be identified can provide a valid current United States Passport and valid state or military ID.

Discussion: Since biometric data, such as a fingerprint, is only as good as the initial ID with which it is presented, it would seem that there is no valid reason to collect this data identification purposes.

Location: Page 1, lines 10-15.

6. The definitions section has been greatly expanded and clarified. A distinction has been made between "biometric information," "biometric data," and a "biometric system." The "biometric information" referenced in this bill is now defined as "biometric data" that has been used in an automated system capable of capturing, extracting, and processing biometric data. Further, the system must be capable of storing the data, comparing the data with other stored data, and indicating whether an indication or verification of identity has been achieved.

   This section also provides clear definitions for the specific forms of biometric information referenced in this bill—using definitions from the National Science and Technology Council to the extent practicable.

Location: Page 2, lines 22-31; and page 3, lines 1-26.

ALASKA STATE LEGISLATURE

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Co-chair
Joint Armed Services Committee
Resources Committee

Member
Energy Committee
Judiciary Committee
World Trade Committee

SENATOR BILL WIELECHOWSKI

Senate Bill 190

"An Act Relating to the use of biometric information"

Sponsor Statement

In 2004, the Alaska Legislature unanimously passed legislation outlawing the collection, analysis, or storage of a law-abiding citizen's genetic information without their express written consent. This legislation was drafted in response to rapidly evolving technology that holds great promise for fields such as medicine and law enforcement; but also holds the potential for misuse by those who would use a person's genetic data to obtain information about them that they would normally have an express right to keep private.

Senate Bill 190 would update this legislation to protect not only Alaskans' DNA, but all similar forms of biometric information. The term "biometric information" refers to any information about an individual based on their unique behavioral or physiological characteristics. The most commonly known forms of biometric information are a person's fingerprints and their DNA; but also include such information as iris and retinal patterns, hand geometry, voice patterns, and facial characteristics.

At this time, many potential uses of biometric information are still at the rudimentary stages of development. However, new technologies will soon be available that will be able to make use of this information with chilling consequences for individual privacy and civil liberties.

Examples of the potential misuse of biometric information include the collection of an individual's DNA by potential employers or insurers to weed out applicants that may have a genetic predisposition towards certain illnesses; and the use of video surveillance enhanced by facial recognition technology to track citizens' movements without their knowledge.

Alaskans should bear in mind that one of the proposed requirements of the Federal REAL ID Act was that every Alaskan ID card contain a radio frequency identification (RFID) chip, which would allow a citizen's movements to be tracked without their knowledge.

Thankfully, the State of Alaska has joined other states in refusing to submit to the REAL ID Act. The legislature should take a similar strong stand to protect Alaskans' biometric information and their constitutional right to privacy.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 22, 2010

SUBJECT: SB 190 relating to biometric information
(Work Order No. 26-LS0332\P)

TO: Senator Bill Wielechowski
Attn: George Ascott

FROM: Theresa Bannister
Legislative Counsel

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

Section 1. Expands AS 18.13.010(a), which currently deals with DNA information, to prohibit collecting other biometric information from a person, retaining other biometric information, and disclosing the results of other biometric information without the required consent. Makes the other biometric information the exclusive property of the person who was the source of the biometric information.

Section 2. Amends AS 18.13.010(b), which lists the situations to which (a) does not apply. Expands the subsection to indicate that the listed situations cover "other biometric information collected" as well as DNA. Adds to the list an exception for background checks as required or permitted by state or federal law.

Section 3. Amends AS 18.13.020, which provides a private right of action for violations. Adds the biometric information prohibitions to the violations for which a person has a right of action.

Section 4. Amends AS 18.13.030(a), which sets a criminal penalty for violations, to include violations of the biometric information prohibitions. Removes governmental entities from the subsection.

Section 5. Amends AS 18.13.030(c), which makes the crime a class A misdemeanor. Conforms the name of the violation to the name of the crime established in (a).

Section 6. Amends AS 18.13.100, the definition section for AS 18.13. Adds definitions for "biometric information," "governmental entity," and "person."

If I may be of further assistance, please advise.

TLB:ljw
10-123.ljw

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Facial Biometrics System Capable of Creating a Facial 'DNA'

ScienceDaily (Nov. 16, 2009) — Research into techniques of facial biometrics, carried out by scientists at Universidad Carlos III de Madrid (UC3M), has resulted in a system that is able to recognize the facial "DNA" of every individual by determining his/her most noteworthy facial traits, with a of 95% rate of precision.

A new facial biometrics system that is able to recognize the facial "DNA" of every individual by determining his/her most noteworthy facial traits. (Credit: Image courtesy of Universidad Carlos III de Madrid - Oficina de Información Científica)

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Recognition techniques based on facial features, known as facial biometrics, is usually based on the search for those traits which make one face different from another. The research carried out by this team, in contrast, approaches the issue from a slightly different point of view.

"The difference between our work and the majority of the others that are found in this field is the idea of individualized models," explains one of the study's authors, mathematician David Delgado Gomez from the UC3M Statistics Department. "Our objective," he continued, "is to create a model for each person which highlights the most distinguishing features of each face, as a sort of facial 'DNA'."

The researchers had this idea when they were imagining the situation of a crowded room where someone comes in asking for one of them. "Our way to describe a person is through some traits that the others don't have, such as the tall woman with blue eyes, or the bald guy with a beard. We try to apply this idea to our algorithm," remarked Professor Delgado, who has been carrying out this research with Federico Sukno, Kaushik Pavani and Alejandro Frangi from the CISTIB Group of *Universidad Pompeu Fabra* of Barcelona, and Bjarne Ersboll and Jens Fagertun from the mathematical modelling group of Technical University of Denmark, which has recently published an article entitled "Similarity-based Fisherfaces," with some of their research results appearing in the scientific journal *Pattern Recognition Letters*.

Basic elements

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A facial biometrics system is normally made up of three components. First, a camera is necessary to record an image; secondly, a software program is needed which determines if there is a face in that image, locating among other things, the facial geometry (the placement of the eyes, nose, mouth, etc.); and thirdly, a system that is capable of classifying all those elements to differentiate between them and those of other persons. The most complicated part, according to the researchers was combining the facial geometry and facial texture.

"With only the geometric information, very low classifications are obtained, which is why we combine this information with that of facial texture to obtain a more robust model, and a statistical way of combining them occurred to us, which offered very good results.," Delgado pointed out. The researchers have shown that when this system is used in a controlled environment, it can achieve a 95% rate of precision.

The main complication occurring when using this type of systems is the lighting, which can change the color of the face. Another challenge is the passage of time, because as a person ages, his/her face undergoes changes as it becomes heavier, thinner, or more wrinkled, which can then fool the classifiers. On the other hand, the researchers add, it does have a significant advantage when compared to other biometric systems: it doesn't need direct interaction with a person as do fingerprinting or iris recognition, for example.

Adapted from materials provided by Universidad Carlos III de Madrid - Oficina de Información Científica, via AlphaGalileo.

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Special investigation: How my genome was hacked

25 March 2009 by Peter Aldhous and Michael Reilly
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Editorial: *Time for laws on genome spies*

This man's genome has hacked. That was for work purposes. You may not be so lucky (Image: Mark Richards)

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INTIMATE secrets hidden in your DNA could be stolen without you even realising. By taking a glass from which you have drunk, a "genome hacker" could obtain a comprehensive scan of your genome, revealing DNA variants that help determine your susceptibility to a wide range of diseases, from a common form of blindness to Alzheimer's disease.

That's the disturbing finding of a *New Scientist* investigation, in which one of us - Michael Reilly - "hacked" the genome of the other - Peter Aldhous - armed with only a credit card, a private email account and a home address.

You might have thought that genome hacking requires specialist skills, and personal access to sophisticated equipment. But in recent years, some companies have started to offer personal genome scans to the public over the internet. Other firms routinely analyse genomes on behalf of scientists involved in human genetics research. In theory, both types of service are vulnerable to abuse by a genome hacker determined to submit someone else's DNA for covert analysis.

Until our investigation, it was not clear whether this would be possible in practice. Could a hacker with no access to a genetics lab take an item carrying another person's DNA and obtain a sample that companies would accept for scanning? Would the sample be of high enough quality to yield accurate results? And would genome analysis companies have procedures in place to identify and refuse suspicious orders?

We decided to find out. Rather like computer security researchers who expose vulnerabilities in software code so that they can be "patched" to guard against malicious hackers, our goal was to uncover vulnerabilities in the way companies offering genome scans operate, so that they can be fixed.

Our investigation uncovered some loopholes that might be closed to help thwart genome thieves. The findings also strengthen the case for additional laws to protect the information contained in the DNA that we all shed continually and leave lying around.

"Just as we have a right to expect that relatives, neighbours, or even strangers can't poke through our medical records without our permission, we should have a right to expect that people can't snoop through our genes," says Kathy Hudson, who heads the Genetics and Public Policy Center in Washington DC.

We should have a right to expect that people can't snoop through our genes

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Our experimental genome hack began like this: Peter drank water from a glass, which he handed to Michael. Michael's first task was to get Peter's DNA off the glass and turn it into a sample that he could submit to a genome-scanning company.

Michael approached several firms that ordinarily extract DNA from items like drinking glasses and match this DNA against particular individuals, on behalf of the police, private detectives or citizens pursuing their own investigations. He said nothing about his intentions, but soon found a company that would extract the DNA without performing any DNA matches. Some weeks later a vial containing a solution of Peter's DNA turned up at Michael's home.

DNA boosters

Companies that perform genome scans use DNA "chips" that test for the presence of hundreds of thousands of DNA variants known as single nucleotide polymorphisms, or SNPs - some of which have been associated with susceptibility to various diseases. As these chips require more DNA than came from our drinking glass, Michael's next challenge was to duplicate Peter's DNA to get a large enough sample.

This procedure, called "whole genome amplification", is offered to scientists and could, for instance, be used to amplify DNA from small clinical samples in studies investigating the genetic origins of disease. Geneticists often place orders involving large numbers of samples, but Michael found a lab services firm that was willing to amplify our single sample to produce more than enough DNA to run on a SNP chip. He did not say why he wanted this done.

Next we had to choose a company to perform the genome scan itself. Lab services companies, such as the one that performed our amplification, often offer this service to scientists as well. But they do not provide an interpretation of the scans in terms of health risks and other traits - something a genome hacker is likely to want. So this wasn't our first port of call. Instead, we looked at the personal genomics services offered to members of the public by companies such as Decode Genetics of Reykjavik, Iceland, and the Californian firms 23andMe of Mountain View and Navigenics, based in Foster City.

Swab spiker

To gather the DNA provided by their customers, 23andMe and Navigenics use a collection tube into which you must spit about 2 millilitres of saliva. We decided that it would be hard to convert Peter's amplified DNA sample into a form that closely mimicked saliva. So we chose to use Decode's service, branded deCODEme, which instead collects DNA using swabs consisting of a piece of filter paper on a plastic handle that customers are supposed to rub against the inside of their cheek. We reasoned that Michael might be able to "spike" these swabs with Peter's amplified DNA without Decode noticing.

The terms and conditions for the deCODEme service state that someone submitting DNA must have the legal authority to do so, and that the sample must be taken from the cheek. We wanted to test whether deCODEme is vulnerable to abuse from someone prepared to ignore these terms, so Michael pipetted some of Peter's DNA onto deCODEme's swabs and sent them off for analysis under his own name. As far as Decode was concerned, it was a sample of Michael's DNA taken by swabbing his own cheek.

This is when we hit our only real obstacle. A few weeks later, Michael was told that the sample had not processed successfully. This is possibly because Decode uses a chip that isn't designed to work with amplified DNA.

We had two contingency plans, however. First, Michael contacted our original lab services company again and asked it to analyse the remainder of our amplified sample using a different type of chip to the one that Decode uses. This company also has terms and conditions specifying that customers must have the necessary consents and approvals to submit samples. Mimicking a hacker who would be willing to ignore these terms, Michael submitted the amplified DNA for scanning.

Second, we made use of the replacement cheek swabs sent to deCODEme customers when a sample fails to process. We wanted to test the swabs' vulnerability to being spiked with a different source of "abandoned" DNA that might be taken by a genome hacker - semen from a used condom. Peter sealed

the replacement swabs, spiked with his semen, in an envelope, which Michael sent back to Decode.

Both of these back-up plans worked. For the sample of DNA taken from the drinking glass and analysed by the lab services company we obtained a read-out of about a million of Peter's SNPs. To interpret this information, we used a computer program called Promethease, which can be downloaded for free from the genomics website SNPedia.com.

SNPedia contains information contributed by genomics enthusiasts on the diseases and traits linked to particular SNPs, mostly drawn from scientific papers. Promethease is a tool intended for legitimate customers of personal genomics companies that takes the raw data from an individual's genome scan and relates it to the information in SNPedia, highlighting those SNPs that seem to reveal the most interesting things about the person concerned.

For the semen sample submitted to Decode, we obtained the company's own interpretation of Peter's lifetime risks of developing a range of diseases, in addition to a full download of the raw data, again documenting about a million SNPs.

So what would a hacker who had taken Peter's DNA have learned about him? For the DNA taken from the drinking glass, Promethease highlighted a range of SNPs, including those conferring increased risks of baldness, the skin disease psoriasis, and a form of blindness called exfoliation glaucoma. Decode's interpretation of the semen sample was rather different. For instance, it decided from an analysis of eight different SNPs that Peter's risk of developing psoriasis is very low (see table). And while Promethease and Decode both concluded that Peter is more likely than a typical person to develop Alzheimer's disease, they disagreed on the size of his risk (see "A short-lived Alzheimer's scare").

In part, these confusing results reflect current limits to geneticists' knowledge of how individual variations in DNA sequences influence health. But the science is advancing quickly, so there is no room for complacency about the ease with which a genome can be hacked.

Motives for such hacking are not hard to find. In the wake of the US presidential election, Robert Green and George Annas of Boston University speculated that future campaigns could be blighted by the sneaky analysis of a candidate's DNA by political opponents who hope to reveal looming health problems (*The New England Journal of Medicine*, vol 359, p 2192).

For people who are not politicians or celebrities, the most obvious threat comes from unscrupulous employers or insurers - and many countries have already restricted their use of genetic information. But private citizens may also have motives to pry into one another's DNA. A newly engaged person might want to know whether their future spouse carries genes making them vulnerable to dementia, for example. Or a childless couple could simply wipe a dribbling baby's mouth to investigate the child's genetic heritage and traits before deciding whether to adopt.

> An engaged person might want to know if their future spouse is vulnerable to dementia

Cost is not a huge obstacle, as the sums we spent would not deter a wealthy snoop. Decode's analysis of Peter's semen cost $985, while the total price for extracting his DNA from a drinking glass and then getting it amplified and analysed by the lab services company was about $1700. Genomic analysis is only going to get cheaper, and more powerful. "The plummeting costs of genome profiling and sequencing make it all too tempting to snoop around in other people's genomes," says Hudson.

Still, the results of our investigation suggest steps that companies could take to help protect people's privacy, and *New Scientist* has informed firms that run SNP analyses of our findings.

For companies selling genetic analyses to the public, verifying the origin of samples will always be difficult unless sample collection is supervised by a medical professional or some other official witness. It is possible to run lab tests that distinguish saliva and swabs taken from inside the cheek from other biological samples, however.

Companies offering services to research scientists, meanwhile, might consider running some checks to try to confirm that customers are legitimate. Such checks may not be completely hacker-proof, but had Michael been asked for evidence of affiliation to a scientific institution, he would not have been able to provide it legitimately.

Following our investigation, the company that amplified and analysed the sample from the drinking glass is now considering whether it could introduce further checks without obstructing legitimate orders. "Clearly we do not want to process samples where the proper consent has not been obtained," says the firm's operations director. "It's a question of how to achieve that goal without impeding the research of legitimate scientists."

Thwarting genome hackers may also require new laws to protect privacy. One approach would be for other countries to follow the UK, which has made it a crime to have someone else's DNA with the intent of analysing it without consent. "Although we are not aware of any instances of this in personal genome analysis, there is a clear rationale for making it illegal to analyse an individual's DNA without their knowledge and consent," says Decode spokesman Edward Farmer. Such laws are difficult to enforce, however, as an earlier *New Scientist* investigation revealed (31 January, p 6).

Another approach, which could be tried in parallel, would be to make it illegal for companies to extract and analyse DNA left on everyday items, except under specific circumstances. "There's no good reason, unless you are a police officer investigating a crime, to be doing DNA analysis on a sample from a drinking glass," argues Mark Rothstein, director of the Institute for Bioethics, Health Policy and Law at the University of Louisville in Kentucky.

One thing is clear: if lawmakers fail to rise to the challenge posed by genome hacking, we all have reason to fear for the security of our DNA.

Editorial: *Time for laws on genome spies*

A short-lived alzheimer's scare

We have shown that a genome hacker could take someone's DNA and obtain scans that reveal their risks of certain diseases (see main story). But how accurate are these scans, and how meaningful are the interpretations drawn from them?

To get an idea, we compared the scan results for three samples of DNA taken from our reporter Peter Aldhous. One scan was obtained legitimately by Peter submitting a sample of his saliva to the personal genomics firm 23andMe; the other two were from simulated genome "hacks". The first of these hacked samples was semen from a condom, submitted to a rival service provided by Decode Genetics; the second consisted of DNA extracted from a drinking glass, which was then amplified and scanned by a lab services company.

The raw data from these scans, which document DNA variants known as SNPs, were reasonably consistent, according to an analysis performed for *New Scientist* by Kevin Jacobs, who runs Bioinformed Consulting Services in Gaithersburg, Maryland.

The raw data for the hacked semen sample were the same as for the legitimate saliva control for 99.996 per cent of the SNPs recorded in both cases. Meanwhile, the SNP data for the DNA taken from the drinking glass diverged a little from the results coming from the semen sample and the control, agreeing about 93 per cent of the time in each case. Why the glass sample gave slightly different results is unclear, but it might be due to degradation or contamination of the DNA, or artefacts introduced during its amplification.

Interpretations of the raw SNP data varied much more widely, however (see table). Most confusing - and initially rather scary - were the suggestions about Peter's risk of developing Alzheimer's disease.

Look again

Alzheimer's risk is determined partly by variants of a gene called *APOE*. 23andMe provides no information on these variants, and for the other two samples we received conflicting interpretations.

For the DNA sample taken from the drinking glass, the software that we used to interpret the scan, called Promethease, highlighted a rare form of one SNP, which nestles close to *APOE* and tends to be inherited along with two copies of the risky variant of the gene, known as epsilon 4. Based on this, Promethease suggested Peter's risk of developing Alzheimer's disease was between 15 and 25 times that of an average person.

It all seemed very worrying, until we looked at Decode's analysis. The raw data confirmed that Peter does carry this rare SNP, but Decode does not assess *APOE* in the indirect way that Promethease does. Instead, it analyses two SNPs in the *APOE* gene itself that define how many copies of the risky variant are actually present. This revealed that Peter has just one copy of epsilon 4, and one of the common variant, epsilon 3. On this basis, Decode concluded that he is only twice as likely to develop Alzheimer's as a typical person - a moderate risk that Peter shares with about 1 in 5 people of European descent.

So while the raw data from genome scans - legitimately obtained or not - are reasonably accurate, determining what they mean is another matter entirely.

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Fingerprinting program threatens privacy for CPAs, accountants

By Jason Giaimo
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Accountants and certified public accountants are in an uproar over a new program instituted by the American Institute of Certified Public Accountants that forces those seeking certification to be fingerprinted.

Worse still, fingerprints will be stored by a soon-to-be foreign corporation.

For the first time in its 121-year history, the venerable American Institute of Certified Public Accountants (AICPA) is forcing examinees across the country to either submit to being fingerprinted or be barred from the exam process, regardless of other identification presented.

Accountants should think twice before taking the CPA exam until this program is rescinded. I am challenging the national accounting board over its new forced fingerprint collection program, and I am far from alone.

We have surrendered enough of our privacy. This illogical, un-American and Orwellian obsession with collecting innocent people's fingerprints must end now.

It's hard to understand the business case for this type of application. I offered to show my U.S. passport, driver's license, social security card, even my original birth certificate, but was still barred from completing my remaining CPA exams due to "insufficient identification." I was two days away from completion when the new program went into effect.

How can a passport be sufficient identification to travel the world and enter the USA, but not to sit for the CPA exam? This is clearly not about identification, but about data collection. It's shameful and it needs to stop.

CPAs across the nation, including the Alaska State Board of Accountancy, staunchly oppose the new national forced fingerprinting program. The AICPA has agreed to put the program on the agenda for review at its May 19 national meeting, according to national accounting board official Pat Hartman.

The Institute of Management Accountants (IMA), another group that offers certifications, said it does not plan to require fingerprinting for their exams.

Some believe fingerprints are necessary for identity validation. Others say it's too risky. Risky indeed.

According to the National Association of State Boards of Accountancy executives, the new CPA fingerprint database will be stored by ChoicePoint Corp., the same data broker that was recently fined a whopping $15 million

by the Federal Trade Commission - the largest civil penalty in FTC history - for "making false and misleading statements about its privacy policies, violating consumer's privacy rights, and for violating numerous federal laws," according to the FTC Web site.

ChoicePoint was also accused of selling highly confidential financial information to Nigerians involved in crime operation.

Currently, the company maintains more than 17 billion records of individuals and businesses, which it sells to an estimated 100,000 clients, including the Department of Homeland Security, law enforcement agencies and the FBI. Worse still, ChoicePoint recently announced that it is being acquired by foreign corporation ReedElsevier, which privacy advocates maintain will make it even less subject to U.S. regulatory and legal control.

Why should innocent Americans object to having their fingerprints taken?

When you submit to being fingerprinted for "routine" background checks, your prints are compared against the FBI's database of more than 55 million sets of fingerprints, and then (supposedly) purged.

However, according to a Dec. 23, 2007, article in the Washington Post, the FBI is initiating a new program called "rap-back," which will allow the FBI to retain and add the fingerprints from "routine" background checks on innocent Americans to their massive tracking database.

Your fingerprints will then be subject to "electronic line-ups" whenever the law enforcement database is queried for terrorism, murder or other criminal activities.

Mistakes do happen. People have been falsely imprisoned by errors in fingerprint matching. Just Google U.S. attorney Brandon Mayfield for one such example. His prints initially came back a "100 percent perfect match" to a terrorist bombing, according to FBI fingerprint experts.

I remain an optimist. The AICPA is responsive to public comment and has top-notch leadership. While this unfortunate misstep puts CPAs at risk and hurts the profession, I'm confident the organization will rectify the situation by shutting down this program at its May 19 meeting. My hope is that the public and CPAs will e-mail the AICPA to share their views about this program.

The e-mail addresses of key AICPA/NASBA executives can be found on my Web site at www.NetGainConsultants.com or on the AICPA's site at www.aicpa.org.

Jason Giaimo is a privacy rights advocate and the owner of Net Gain Business Consultants, a professional business and accounting consulting firm, that operates in Alaska, California and New York.
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Biometrics: Who's Watching You?

Introduction

Among the many reactions to the September 11 tragedy has been a renewed attention to biometrics. The federal government has led the way with its new concern about border control. Other proposals include the use of biometrics with ID cards and in airports, e.g. video surveillance enhanced by facial-recognition technology.

The purpose of this document is to sketch out EFF's concerns about biometrics. In today's public arena, biometric technologies are being marketed as a "silver bullet" for terrorism; however, very little independent, objective scientific testing of biometrics has been done. Deploying biometric systems without sufficient attention to their dangers makes them likely to be used in a way dangerous to civil liberties. This document is very much a work in progress and we welcome comments.

What Are Biometrics?

Biometrics refers to the automatic identification or identity verification of living persons using their enduring physical or behavioral characteristics. Many body parts, personal characteristics and imaging methods have been suggested and used for biometric systems: fingers, hands, feet, faces, eyes, ears, teeth, veins, voices, signatures, typing styles, gaits and odors.

Our Major Concerns

- **Biometric technology is inherently individuating and interfaces easily to database technology, making privacy violations easier and more damaging.** If we are to deploy such systems, privacy must be designed into them from the beginning, as it is hard to retrofit complex systems for privacy.
- **Biometric systems are useless without a well-considered threat model.** Before deploying any such system on the national stage, we must have a realistic threat model, specifying the categories of people such systems are supposed to target, and the threat they pose in light of their abilities, resources, motivations and goals. Any such system will also need to map out clearly in advance how the system is to work, in both in its successes and in its failures.
- **Biometrics are no substitute for quality data about potential risks**. No matter how accurately a person is identified, identification alone reveals nothing about whether a person is a terrorist. Such information is completely external to any biometric ID system.
- **Biometric identification is only as good as the initial ID.** The quality of the initial "enrollment" or "registration" is crucial. Biometric systems are only as good as the initial identification, which in any foreseeable system will be based on exactly the document-based methods of identification upon which biometrics are supposed to be an improvement. A terrorist with a fake passport would be issued a US visa with his own biometric attached to the name on the phony passport. Unless the terrorist A) has already entered his biometrics into the database, and B) has garnered enough suspicion at the border to merit a full database search, biometrics won't stop him at the border.
- **Biometric identification is often overkill for the task at hand.** It is not necessary to identify a person (and to create a record of their presence at a certain place and time) if all you really want to know is whether they're entitled to do something or be somewhere. When in a bar, customers use IDs to prove they're old enough to drink, not to prove who they are, or to create a record of their presence.
- **Some biometric technologies are discriminatory.**A nontrivial percentage of the population cannot present suitable features to participate in certain biometric systems. Many people have fingers that

simply do not "print well." Even if people with "bad prints" represent 1% of the population, this would mean massive inconvenience and suspicion for that minority. And scale matters. The INS, for example, handles about 1 billion distinct entries and exits every year. Even a seemingly low error rate of 0.1% means 1 million errors, each of which translates to INS resources lost following a false lead.

- **Biometric systems' accuracy is impossible to assess before deployment** Accuracy and error rates published by biometric technology vendors are not trustworthy, as biometric error rates are intrinsically manipulable. Biometric systems fail in two ways: false match (incorrectly matching a subject with someone else's reference sample) and false non-match (failing to match a subject with her own reference sample). There's a trade-off between these two types of error, and biometric systems may be "tuned" to favor one error type over another. When subjected to real-world testing in the proposed operating environment, biometric systems frequently fall short of the performance promised by vendors.
- **The cost of failure is high.** If you lose a credit card, you can cancel it and get a new one. If you lose a biometric, you've lost it for life. Any biometric system must be built to the highest levels of data security, including transmission that prevents interception, storage that prevents theft, and system-wide architecture to prevent both intrusion and compromise by corrupt or deceitful agents within the organization.

Despite these concerns, political pressure for increasing use of biometrics appears to be informed and driven more by marketing from the biometrics industry than by scientists. Much federal attention is devoted to deploying biometrics for border security. This is an easy sell, because immigrants and foreigners are, politically speaking, easy targets. But once a system is created, new uses are usually found for it, and those uses will not likely stop at the border.

With biometric ID systems, as with national ID systems, we must be wary of getting the worst of both worlds: a system that enables greater social surveillance of the population in general, but does not provide increased protection against terrorists.

Some Current Biometric Initiatives

Sec. 403(c) of the **USA-PATRIOT Act** specifically requires the federal government to "develop and certify a technology standard that can be used to verify the identity of persons" applying for or seeking entry into the United States on a U.S. visa "for the purposes of conducting background checks, confirming identity, and ensuring that a person has not received a visa under a different name."

The recently enacted **Enhanced Border Security and Visa Entry Reform Act of 2002**, Sec. 303(b)(1), requires that only "machine-readable, tamper-resistant visas and other travel and entry documents that use biometric identifiers" shall be issued to aliens by October 26, 2004. The Immigration and Naturalization Service (INS) and the State Department currently are evaluating biometrics for use in U.S. border control pursuant to EBSVERA.

Even prior to September 11, however, large-scale civilian biometric identification systems were being pushed. Both the **Personal Responsibility and Work Opportunity Act of 1995** (PRWOA), a welfare reform law, and the **Immigration Control and Financial Responsibility Act of 1996** (ICFRA), an immigration reform law, called for the use of "technology" for identification purposes.

The PRWOA requires the states to implement an electronic benefits transfer program "using the most recent technology available . . . which may include personal identification numbers, photographic identification . . . and other measures to protect against fraud and abuse." This law covers, for example, the Food Stamps program.

The ICFRA requires the President to "develop and recommend . . . a plan for the establishment of a data system or alternative system . . . to verify eligibility for employment in the United States, and immigration status in the United States for purposes of eligibility for benefits under public assistance programs . . . or government benefits." This system "must be capable of reliably determining with respect to an individual whether . . . the individual is claiming the identity of another person."

The **Illegal Immigration Reform and Immigrant Responsibility Act of 1996** (IIRAIRA) requires the INS to include on alien border crossing cards "a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable." The State Department collects fingerprints and photographs of aliens for these cards.

The **Truck and Bus Safety and Regulatory Reform Act of 1988** (TBSRRA) requires "minimum uniform standards for the biometric identification of commercial drivers."

EFF's concerns about biometrics

Why be concerned about biometrics? Proponents argue that: A) biometrics themselves aren't dangerous because all the real dangers are associated with the database behind the biometric information, which is little different from problems of person-identifying information (PII) databases generally; B) biometrics actually promote privacy, e.g., by enabling more reliable identification and thus frustrating identity fraud.

But biometric systems have many components. Only by analyzing a system as a whole can one understand its costs and benefits. Moreover, we must understand the unspoken commitments any such system imposes.

Surveillance

The chronic, longitudinal capture of biometric data is useful for surveillance purposes. Our Surveillance Monitor page highlights some of these issues. Biometric systems entail repeat surveillance, requiring an initial capture and then later captures.

Another major issue relates to the "voluntariness" of capture. Some biometrics, like faces, voices, and fingerprints, are easily "grabbed." Other biometrics, at least under present technology, must be consciously "given." It is difficult, for instance, to capture a scan of a person's retina or to gather a hand geometry image without the subject's cooperation. Easily grabbed biometrics are a problem because people can't control when they're being put into the system or when they're being tracked. But even hard-to-grab biometrics involve a trust issue in the biometric capture device and the overall system architecture.

Databases

To be effective, a biometric system must compare captured biometric data to a biometric database. Our National ID System page highlights issues surrounding database abuse, which has both static and dynamic dimensions.

The static issues surrounding databases are mainly about safeguarding large and valuable collections of personally identifying information. If these databases are part of an important security system, then they (and the channels used to share PII) are natural targets for attack, theft, compromise, and malicious or fraudulent use.

The dynamic issues surrounding databases mainly concern the need to maintain reliable, up-to-date information. Databases that seek to maintain accurate residence information must be updated whenever one moves. Databases that are used to establish eligibility for benefits must be updated so as to exclude persons no longer eligible. The broader the function of the system, the more and broader the updating that is required, increasing the role of general social surveillance in the system.

It may seem that one of the issues that plagues token-based ID systems (like ID cards) -- the security or integrity of the token itself -- does not apply for biometric systems, because "you are your ID." But the question of the reliability of the token is really a question about trust. In an ID card system, the question is whether the system can trust the card. In biometric systems, the question is whether the individual can trust the system. If someone else captures your signature, fingerprint, or voice, for instance, what prevents it from being used by others? Any use of biometrics with a scanner run by someone else involves trusting someone's claim about

what the scanner does and how the captured information will be used.

Vendors and scanner operators may say that they protect privacy in some way, perhaps by hashing the biometric data or designing the database to enforce a privacy policy. But the end user typically has no way to verify whether such technical protections are effective or implemented properly. End-users should be able to verify any such claims, and to leave the system completely if they are not satisfied. Exiting the system, of course, should at least include the expungement of the end-user's biometric data and records.

Linking

An oft-noted risk of biometric systems is the use of biometrics as a linking identifier. This risk, of course, depends to some extent on standardization. Consider, for instance, the use of the Social Security number as a linker across disparate databases. While the private sector would not have been able to develop anything like the SSN on its own, once the government created this identifier, it became a standard way of identifying individuals. Standardization therefore creates new privacy risks because information gathered for one purpose can be used for completely unrelated, unconsented-to purposes.

Currently, Automated Fingerprint ID Systems (AFIS) are heavily used by the government in connection with law enforcement, but there is at present little standardization within the AFIS industry. If law enforcement and private industry were to unify their fingerprint databases under one common standard, such as under a national ID system, this would potentially put one's entire life history in interoperating databases that are only a fingerprint away.

Tracking

By far the most significant negative aspect of biometric ID systems is their potential to locate and track people physically. While many surveillance systems seek to locate and track, biometric systems present the greatest danger precisely because they promise extremely high accuracy. Whether a specific biometric system actually poses a risk of such tracking depends on how it is designed.

Why should we care about perfect tracking? EFF believes that perfect tracking is inimical to a free society. A society in which everyone's actions are tracked is not, in principle, free. It may be a livable society, but would not be our society.

EFF believes that perfect surveillance, even without any deliberate abuse, would have an extraordinary chilling effect on artistic and scientific inventiveness and on political expression. This concern underlies constitutional protection for anonymity, both as an aspect of First Amendment freedoms of speech and association, and as an aspect of Fourth Amendment privacy.

Implemented improperly, biometric systems could:

- increase the visibility of individual behavior. This makes it easier for measures to be taken against individuals by agents of the government, by corporations, and by our peers.
- result in politically damaging and personally embarrassing disclosures, blackmail and extortion. This hurts democracy, because it reduces the willingness of competent people to participate in public life.
- increase the 'circumstantial evidence' available for criminal prosecution. This might dramatically affect the existing balance of plausible-sounding evidence available to prosecutors, and hence increase the incidence of wrongful conviction. Many criminal cases are decided by plea bargaining, a process that is sensitive to the perceived quality of evidence. Even ambiguous or spurious evidence generated by complex technical systems may be difficult for overburdened public defenders to challenge.
- enable the matching of people's behavior against pre-determined patterns. This could be used by the government to generate suspicion, or by the private sector to classify individuals into micro-markets, the better to manipulate consumer behavior.
- aid in repressing readily locatable and trackable individuals. While the public's concern is usually focused

on the exercise of state power, these technologies may also greatly empower corporations. If proper privacy safeguards are not constructed into such systems, they would prove useful in dealing with such troublesome opponents as competitors, regulators, union organizers, whistleblowers, and lobbyists, as well as employees, consumer activists, customers and suppliers.

The Attributes of Biometric Systems

How Do Biometrics Compare to Other Types of ID?

Currently other than personally recognizing someone, or having a trusted third party personally swear to their identity, the only other technique for identifying a person is through the use of a "token." These tokens, which are in essence representations of the oath of a trusted third party, come in two basic forms:

- **Knowledge tokens**, such as passwords, secret PINs (Personal Identification Numbers), or knowledge of personal data (knowing one's mother's maiden name, e.g.), or
- **Physical tokens** such as ID cards, passports, chip cards, or plain old keys.

Token IDs offer certain advantages over biometric identification. Security against "false acceptance" of impostors can be raised by increasing the complexity of the token used for identification. Also, in the event of loss or compromise, the token, be it a password, PIN, key, or ID card, can be revoked, changed or reissued, a biometric measurement cannot.

The advantage of biometrics is that unlike tokens, biometrics cannot be lost, loaned, or forgotten. Token-based systems must verify that the presenter is the authorized user, not an unauthorized person who has come to possess the token.

Used carefully, biometrics may be combined with token-based systems to mitigate the vulnerability of ID tokens to unauthorized use.

Functions of Biometric Systems

One useful way of thinking about biometrics is that they are used for one of two purposes: A) To prove that you are who you say you are (positive ID), or B) To prove that you are not who you say you are not (negative ID).

In a positive ID situation, the subject asserts that she is Jane Doe and submits a "live" sample (a fingerprint, for example) to the system. The system then checks its database of previously enrolled or registered samples to see if the live sample matches the reference sample. A positive ID system is designed to prevent more than one person from using a single identity.

In a negative ID situation, John Roe claims *not* to be someone already known to the system. Here, the system checks its database to see that Roe is not on the watchlist of suspected criminals and terrorists, whose biometrics are already in the system. A negative ID system is designed to prevent one person from using more than one identity.

When biometrics are employed to effect negative identification, one need not be enrolled. The only persons who must be "in" the database are those whom the operator is trying to keep out or catch.

Biometrics alone cannot establish "true identity." A biometric system cannot prevent someone from furnishing fake credentials when they first enter the system. They can only prevent them from using another identity once enrolled.

Common Aspects of All Biometric Systems:

All biometric technology systems have certain aspects in common. All are dependent upon an accurate reference or "registration" sample. If a biometric system is to identify a person, it first must have this sample,

positively linked to the subject, to compare against. Modern biometric identification systems, based on digital technology, analyze personal physical attributes at the time of registration and distill them into a series of numbers. Once this reference sample is in the system, future attempts to identify a person are based on a comparison of a "live" sample and the reference sample or samples.

A perfect system would recognize a person 100% of the time, and reject an impostor 100% of the time. However, biometric samples are gathered from people in environmental conditions that are uncontrollable, over equipment that may slowly be wearing out, and using technologies and methods that vary in their level of precision. Consequently, the accuracy of biometric systems is assessed in light of these confounding variables via its tendency to experience either a "false match" (also called a "false accept") or a "false non-match" ("false reject"). The point at which these two rates intersect is called the equal error rate or crossover point.

Biometric systems may be "tuned" to diverge from the equal error rate to provide a match threshhold that satisfies the designer's requirements. If a system compares a large number of persons against a small number of samples, and the consequence of a false match is low, (for example, at a border crossing or airport that is looking for a short list of criminals) a system biased towards a higher "false accept" or "false match" rate may be desirable. The advantage to biasing a system in this manner is that it is likely to err on the side of safety, and less likely to let a criminal slip through undetected. The disadvantage is that the system will falsely associate innocent people with criminals. If other safeguards are in place and the system operators understand the system's bias towards false match, the result can be a relatively trivial loss of convenience due to increased scrutiny (extra inspection of luggage, questioning, etc.) Biasing such a system towards a high "false non-match" or "false reject" rate will result in fewer passengers slowed down at the gate, but at the cost of possibly losing the sought-after criminals.

When assessing the utility or the cost of a biometric system, it's important to bear the common features of all such systems in mind. How is the reference sample to be gathered and catalogued? How it the live sample going to be gathered? Can a live sample be captured without the subject's knowledge and cooperation? What are the implications of all four possible outcomes (true match, true non-match, false match, false non-match)? What is the value of a successful system, and what is the cost, to all parties, should it fail?

Further, we should not assess failure simply from the perspective of the core biometric technology itself. Even an ideal system can be defeated easily if it is incorporated into an insecure or poorly-designed overall system architecture. Any biometric system, especially one that involves a component of telecommunication, **must** be very carefully designed to prevent the loss or interception of user biometrics. Any deployed system must incorporate safeguards to prevent the interception of biometric data while it is being communicated. If a user's biometric is intercepted, criminals may be able to replicate either the sample itself or the string of binary data produced by a successfully-matched sample. Armed with such intercepted biometric data, a criminal would be able to effect a potentially very damaging identity theft.

Types of Biometrics

A proper assessment is built not only on a general understanding of biometrics, but also on an understanding of specific technologies. An understanding of both biometrics in general and specific biometric technologies is a necessary condition for a solid understanding of the larger social implications of biometrics.

Signature

The biometric most familiar to us is the signature. Our ability to judge by sight if one signature matches another has made this a time-proven and legally-binding biometric. However, by sight alone, most of us cannot recognize the pressure of the pen on the paper or the speed and rhythms of its traverse of the page. Computers can do all these things, and quantify, analyze and compare each of these properties to make signature recognition a viable biometric technology. Being based on things that are not visible (pen pressure and velocity, for example), signature-based biometric technology, offers a distinct advantage over regular signature verification -- in addition to mimicking the letter forms, any potential forger has to fabricate a signature at the

same speed, and with the same pen weight, as his victim.

Signature biometrics pose a couple of unique problems. The first is the comfort with which people are already willing to use their signature as a form of identification. While this high level of consumer acceptance is viewed as a strength by vendors of such systems, this bears with it a strong downside. Without proper notification, a person may sign an electronic signature pad and unwittingly also be surrendering a reference or live biometric sample. Since the custom of leaving a signature as one's "official mark" is based on the presumption of irreproducibility (i.e., that a forger would be hard-pressed to imitate a signature just by looking at it), people are willing to provide a signature without giving its potential for reproduction a second thought. However, electronic data is easy to copy and transmit. And so, a forger posing as a delivery man might fraudulently secure a signature biometric by presenting a victim with a "gift" box, requesting a signature to confirm delivery, and making off with the victim's biometric data.

The second unique property of signature biometrics is that unlike all other biometrics, which either establish an identity (identification) or confirm an identity (authentication), a signature can convey *intent* (authorization). In other words, a traditional signature on paper is taken both to authenticate the signator, and to convey the signator's legal authority. An electronic system that solicits a user's non-signature biometric must provide a separate step to convey the user's legal authorization for any binding transaction. A signature-based biometric system could mimic our current legally customary acceptance of a signature to simultaneously convey both identity and authority.

Keystroke Dynamics

The rhythms with which one types at a keyboard are sufficiently distinctive to form the basis of the biometric technology known as keystroke dynamics. While distinct, keystroke dynamics are not sufficiently unique to provide identification, but can be used to confirm a user's identity.

Keystroke dynamics, unlike other biometric technologies, is 100% software-based, requiring no sensor more sophisticated than a home computer. Because of this, deployment is occurring in fairly low-stakes, computer-centric applications, such as content filtering (Net Nanny owns BioPassword, the leading keystroke dynamics vendor) and digital rights management, in which passwords to download music are bolstered with by keystroke dynamic verification, to prevent password-sharing. As a general rule, any method involving home or office computers is inherently insecure, as these devices leave a lot more room for experimentation than devices like ATMs or entry systems, and the information they use tends to travel over unsecured communication lines.

Hand Geometry

Perhaps the most ubiquitous electronic biometric systems are hand geometry based. Hand-geometry-based systems require the subject to place his or her hand (usually the right hand) on a plate where it is photographically captured and measured. Made of 27 bones and a complex web of interconnected joints, muscles, and tendons, the human hand presents a sufficiently peculiar conformation of anatomical features to enable authentication, but is not considered sufficiently unique to provide full identification. Further, the geometry of the hand is variable over time, as hand shape may be altered due to injury, disease, aging, or dramatic weight swings. A simple hand-geometry system will measure length and thickness of digits, width of the palm at various points, and the radius of the palm. This results in a relatively simple identification that can be expressed in a very simple, compact string of data. Efforts have been made to improve the accuracy of hand geometry, including three-dimensional sampling (i.e., a second camera measuring the thickness of the hand from the side), and a patented system (owned by the British concern, Neusciences) that measures the pattern of the veins of the hand. Neusciences claims that their system provides a high degree of accuracy and that the hand vein feature is unique and relatively invariable, changing little over a person's lifespan.

In deployment, traditional hand geometry systems have found acceptance in applications requiring verification of an identity, rather than a full proof or establishment of an identity. Airports, prisons, and factories have successfully employed hand-geometry-based systems to restrict access to runways, to prevent walk-out escapes during visits, and to ensure that time cards are being punched only by the worker, and not by that

worker's pal on his or her behalf. In all these instances, the subject is attempting to prove or disprove his or her membership in a relatively small group of people (authorized runway personnel, prisoners/visiting family, factory workers). When stakes are high, these systems are not relied on exclusively to confirm identity; rather, they are used to provide an additional layer of security above and beyond that provided by existing security systems.

Since they must accommodate the largest of hands, any hand geometry or hand vein system must be somewhat bulky, and requires the user to perform an obtrusive task (placing his or her hand on the platen for sampling). Because of this obtrusiveness, hand-based biometrics represent less of a privacy threat than some other systems: subjects cannot have their biometric features sampled without their knowledge, and the sampling method is unambiguous in its intent.

Fingerprint

Fingerprinting is a highly familiar and well-established biometric science. The traditional use of fingerprinting, of course, has been as a forensic criminological technique, used to identify perpetrators by the fingerprints they leave behind them at crime scenes. Scientists compare a latent sample left at a crime scene against a known sample taken from a suspect. This comparison uses the unique features of any given fingerprint, including its overall shape, and the pattern of ridges, valleys, and their bifurcations and terminations, to establish the identity of the perpetrator.

In the context of modern biometrics, these features, called fingerprint minutiae, can be captured, analyzed, and compared electronically, with correlations drawn between a live sample and a reference sample, as with other biometric technologies. Fingerprints offer tremendous invariability, changing only in size with age, are highly resistant to modification or injury, and very difficult to "forge" in any useful way. Although the development of some sort of surreptitious sensor is not inconceivable, the reality is that sensors remain obtrusive, requiring a willful finger pressure to gather a useful sample. Unlike other systems, based on cameras and high-tech sensors, fingerprint sampling units are compact, rugged, and inexpensive, with commercially available systems from multiple vendors offering very good accuracy. Next-generation scanners can analyze below the surface of the skin, and can add pore pattern recognition in addition to the more obvious minutia of the fingerprint.

Facial Recognition

Facial recognition sprung into the national spotlight during the 2001 Super Bowl, when Tampa police scanned the faces of game fans without their knowledge for the purpose of spotting terrorists in the crowd. While this proved a public relations nightmare in January 2001, the use of this technology in New Orleans at the post-9/11 Super Bowl of 2002 generated little controversy. Facial recognition remains one of the more controversial biometric technologies because of its very *un*obtrusiveness. With good cameras and good lighting, a facial recognition system can sample faces from tremendous distances without the subject's knowledge or consent.

Most facial recognition technology works by one of two methods: facial geometry or eigenface comparison. Facial geometry analysis works by taking a known reference point (for example, the distance from eye to eye), and measuring the various features of the face in their distance and angles from this reference point. Eigenface comparison uses a palette of about 150 facial abstractions, and compares the captured face with these archetypal abstract faces. In laboratory settings, facial recognition results are excellent, but critics have questioned the effectiveness of the technology in real-world circumstances. Nevertheless, the accuracy of facial recognition has been good enough for casinos to have put the the technology to use since the late 1990s as a means to spot banned players. Facial recognition technology proponents claim good performance even against disguises, weight changes, aging, or changes in hairstyle or facial hair.

Eye biometrics: Iris/Retina

The human eye offers two features with excellent properties for identification. Both the iris (the colored part visible at the front of the eye) and the veins of the retina (the thin film of nerve endings inside the eyeball that capture light and send it back to your brain) provide patterns that can uniquely identify an individual. Retinal scanning is the older technology, and requires the subject to look into a reticle and focus on a visible target

while the scan is completed. It's definitely one of the more intrusive biometric technologies, with some subjects reporting discomfort at the scanning method. Iris recognition has an advantage in ease of use, in that it merely requires the subject to look at a camera from a distance of three to ten inches. The iris scanner illuminates the iris with invisible infra-red light, which shows details on darker-colored eyes that are not visible to the naked eye. The pattern of lines and colors on the eye are, as with other biometrics, analyzed, digitized, and compared against a reference sample for verification.

Iridian Technologies, who hold the patents on iris recognition, claim that the iris is the most accurate and invariable of biometrics, and that their system is the most accurate form of biometric technology. Iridian's system also has the benefit of extremely swift comparisons. The compay claims that it can match an iris against a database of 100,000 reference samples in 2-3 seconds, whereas a fingerprint search against a comparable database might take 15 minutes.

Voice Verification

None of us finds it remarkable when a friend recognizes our voice on the telephone. However, what we find easy to do is still a very hard problem for computers, especially when their job is to identify someone positively. The prospect of accurate voice verification offers one great advantage, which is that it would allow a remote identification using the phone system, an infrastructure that's already been built and thus has zero client-side cost: no special reader needs to be installed in your home. Even without the phone system, the sampling apparatus, a microphone, remains far cheaper than competing, largely optically-based biometric technologies.

But voice recognition technology is still not good enough to be used as a front-line biometric technology. Simply put, voice verification systems have to account for a lot more variables than do other systems, starting with the inevitable compression of a voice captured by cheap microphones (especially those found on phone handsets), discriminating a voice from background noise and other sonic artifacts, and the human voice's tremendous variability, due to colds, aging, and simple tiredness. Also, just as a voice can be surreptitiously recorded over the telephone or face-to-face, a person's voice can be captured surreptitiously by a third party (either by tapping or bugging) and replayed, or a person's voice might be biometrically sampled remotely without consent during a fake door-to-door or telephone sales call. Because of these difficulties, commercial deployments of voice verification have been limited to "backup" status, systems in which there are other token-based methods of identification, with voice verification providing an added layer of protection.

Characterizing Different Biometrics

Different biometric features have characteristics that make them more or less useful for particular applications. Dr. James Wayman, director of the National Biometric Test Center at San Jose State University, categorizes biometric features in terms of five qualities:

- **Robustness**: repeatable, not subject to large changes.
- **Distinctiveness**: there are wide differences in the pattern among the population.
- **Accessibility**: easily presented to an imaging sensor.
- **Acceptability**: perceived as non-intrusive by the user.
- **Availability**: a user may present a number of independent measurable features.

Dr. Wayman explains these qualities by comparing fingerprinting to hand geometry.

> *"Fingerprints are extremely distinctive, but not very robust, sitting at the very end of the major appendages you use to explore the world. Damaging your fingerprints requires less than a minute of exposure to household cleaning chemicals. Many people have chronically dry skin and cannot present clear prints. Hands are very robust, but not very distinctive. To change your hand geometry, you'd have to hit your hand very hard with a hammer. However, many people (somewhat less than 1 in 100) have hands much like yours, so hand geometry is not very distinctive. Hands are easily presented without much training required, but most people initially misjudge the location of their fingerprints,*

assuming them to be on the tips of the fingers. Both methods require some "real-time" feedback to the user regarding proper presentation. Both fingerprints and the hand are accessible, being easily presented. In the 1990 Orkand study, only 8% of customers at Department of Motor Vehicle offices who had just used a biometric device agreed that electronic fingerprinting "invades your privacy." Summarizing the results of a lengthy survey, the study rated the public acceptance of electronic fingerprinting at 96%. To our knowledge, there is no comparable polling of users regarding hand geometry, but we hypothesize that the figures would not be too different. With regard to availability, our studies have shown that a person can present at least 6 nearly-independent fingerprints, but only one hand geometry (your left hand may be a near mirror image of your right)."*

**Orkand Corporation, "Personal Identifier Project: Final Report", April 1990, State of California Department of Motor Vehicles report DMV88-89, reprinted by the U.S. National Biometric Test Center.*

Characterizing Biometric Applications

Dr. Wayman suggests characterizing biometric applications in terms of seven variables:

- **Cooperative vs. Non-Cooperative** This refers to the behavior of the "threat" or would-be deceptive user. Is the "threat" trying to cooperate with the system? If the threat is trying to enter a restricted area, she either cooperates with the positive ID system to try to fool it into thinking she's allowed in, or deceptively tries not to cooperate with a negative ID system so as not to trigger the alarm. One implication of this variable is the scope of database search. In cooperative applications, users may first identify themselves with a card or PIN, so that the system need only match against the claimed identity's template. In non-cooperative applications, users can't be trusted to identify themselves correctly, so the entire database may need to be searched.
- **Overt vs. Covert** Is the user aware that the biometric sampling and identification is occurring?
- **Habituated vs. Non-Habituated** Is the intended user expected to be experienced in the use of the system?
- **Attended vs. Non-Attended** Will the intended user be supervised when using the system?
- **Standard vs. Non-Standard Environment** How controlled are the environmental conditions for operation?
- **Public vs. Private** Will users be customers (public) or employees (private)?
- **Open vs. Closed** Will the application be required to exchange biometric data with other systems or not?

Dr. Wayman explains that the positive biometric identification (hand geometry) of users of the Immigration and Naturalization Service's Passenger Accelerated Service System (INSPASS) for rapidly admitting frequent travelers into the United States:

"can be classified as a cooperative, overt, non-attended, non-habituated, standard environment, public, closed application. The system is cooperative because those wishing to defeat the system will attempt to be identified as someone already holding a pass. It will be overt because all will be aware that they are required to give a biometric measure as a condition of enrollment into this system. It will be non-attended and in a standard environment because collection of the biometric will occur near the passport inspection counter inside the airports, but not under the direct observation of an INS employee. It will be non-habituated because most international travelers use the system less than once per month. The system is public because enrollment is open to any frequent traveler into the United States. It is closed because INSPASS does not exchange biometric information with any other system." (emphases added)

Characterizing Biometric ID Systems

Dr. Wayman suggests that biometric ID systems should be viewed in terms of a generic biometric system made up of five basic components or subsystems, depending on the application: data collection, transmission, signal processing (which comprises feature extraction, quality control, pattern matching), storage, and decision.

- **Data collection** Biometric systems involve at least two discrete data collection steps. First, any biometric system must contain a biometric characteristic deemed "true" or canonical from the system's viewpoint. The term "enrollment" or "registration" refers to the first entry of biometric data into the database. Second, the system must compare a later-submitted "sample" (often called a "live sample") to the sample in the database. (Scale is crucial to the enrollment step, sometimes for quite mundane reasons. In the context of biometric visa issuance by the State Department, for instance, the government has been looking at whether or not U.S. consulates around the world have room to handle the additional equipment and physical traffic needed for data collection.)
- **Transmission** Many biometric systems collect data at one location but store and/or process it at another. Such systems require data transmission.
- **Signal processing** Once a biometric is acquired, it must be prepared for comparison. There are three basic tasks here: feature extraction, quality control, and pattern matching. A fourth task in large-scale systems is pattern classification.
    - *Feature extraction* involves finding the true biometric pattern amid noise and signal degradation, preserving the critical information, and discarding redundant or unnecessary data. Dr. Wayman gives the example of a text-independent speaker-recognition system. A properly implemented system isolates "features that depend only on the speaker and not on the words being spoken." At the same time, the system focuses on features that do not change "even if the speaker has a cold or is not speaking directly into the microphone."
    - *Quality control* involves checking to see if the signal is of good quality. Ideally, it should be possible to make a quick determination so that another measure can be taken if the signal is inadequate.
    - *Pattern matching* involves comparing the live sample to the reference sample in the database. If the user claims to be Jane Doe, the pattern-matching process may only need to compare the sample to Jane Doe's stored template. In other situations, the sample must be compared to multiple templates. The pattern-matching process generates a quantitative "distance" measure of the comparison -- how close are they? Even for the same person, the distance is rarely if ever zero.
    - *Pattern classification* is a technique aimed at reducing the computational overhead of pattern matching. In large-scale systems, it can be computationally taxing to match each sample against all stored templates in the database. If biometric patterns can be categorized, then it may be possible to perform the match against only the stored templates in that category. This is sometimes referred to as "binning." A different technique with the same goal is "filtering," which involves partitioning the database based on information not contained in the biometric itself. If you know the person is a man, you don't need to check against women's biometrics. Both of these techniques introduce additional error possibilities; if binning or filtering is erroneous, then the true template is not used and a false non-match results.
- **Decision** This subsystem implements the biometric ID system's actual policy with regard to matching. In general, lowering the number of false non-matches raises the number of false matches, and vice versa. The signal processing subsystem yields a quantitative "distance" measure, but "how close or far is enough?" is a matter of policy. In a high-security application where the cost of a false acceptance could be high, system policy might prefer very few false acceptances and many more false rejections. In a commercial setting where the cost of a false acceptance could be small and treated as a cost of doing business, system policy might favor false acceptances in order not to falsely reject and thereby inconvenience large numbers of legitimate customers. The inevitable existence of these errors means that any biometric ID system must also have well-designed policies for exception handling.
- **Storage** Biometric reference samples must be stored somewhere for matching purposes. For systems only performing "one-to-one" matching, the database may be distributed on cards carried by each enrolled user. The user simply presents his or her biometric and the system checks to see if it matches

the template stored on the card. Depending upon system policy, no central database need exist, although in this application a centralized database can be used to detect counterfeit cards or to reissue lost cards without re-collecting the biometric pattern.

In other cases, centralized storage is necessary because the system must match the live sample to multiple templates. As the number of templates grows, speed becomes an increasingly significant issue. One technique is to partition the database (i.e., binning or filtering) so that any sample need only be matched to the templates in one partition. This increases system speed and decreases false matches at the expense of increasing the false non-match rate owing to partitioning errors. System error rates thus change with increasing database size and ID systems do not linearly scale.

Full biometric patterns cannot be reconstructed from the stored reference samples if these are stored as templates, which reduce data richness dramatically. Templates themselves are often created using the system vendor's proprietary feature extraction algorithms. Whether stored templates themselves can be used to "spoof" the system internally is entirely dependent on the security of the system architecture.

Biometric ID systems may store not only the templates but also raw data. One reason to do so would be to allow changes to the system or to change system vendors without having to re-collect data from all enrolled users. Full raw data storage is a riskier practice in that new templates may be extracted from the data or the raw data itself may be used against the system.

The State of Scientific Testing of Biometric ID Systems

According to Dr. Wayman,

> *"Testing of biometric devices requires repeat visits with multiple human subjects. Further, the generally low error rates mean that many human subjects are required for statistical confidence. Consequently, biometric testing is extremely expensive, generally affordable only by government agencies. Few biometric technologies have undergone rigorous, developer/vendor-independent testing to establish robustness, distinctiveness, accessibility, acceptability and availability in 'real-world' (non-laboratory) applications."*

An in-depth discussion of the statistical methodology in testing biometric ID systems is beyond the scope of this discussion. We recommend Dr. Wayman's website to interested persons. Note, however, that it is very difficult to generalize from test results. At this time, scientists have no way of accurately estimating how large a test is needed to adequately characterize any biometric device in any application, even with advance knowledge of theoretical error rates.

Media Coverage/Resources

Check out this page for helpful resources including lots of media coverage and links related to the topic.

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World Trade Committee

SENATOR BILL WIELECHOWSKI

TO: Senator Hollis French, Chair
Senate Judicary Committee

FROM: Senator Bill Wielechowski

RE: Hearing Request for SB 190

Dear Senator French:

I respectfully ask that you schedule a hearing for **SB 190 – "An Act relating to biometric information"** in the Senate Judiciary Committee.

I intend to request that representatives from the appropriate state agencies and from legislative legal services be present to respond to any questions that may arise. Further, I would like to allow public testimony to be taken statewide by electronic means.

Please feel free to contact my aide George Ascott at 465-2435 with any questions or concerns.

Thank you for your consideration of this request.

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Illinois Compiled Statutes

Information maintained by the Legislative Reference Bureau
Updating the database of the Illinois Compiled Statutes (ILCS) is an ongoing process. Recent laws may not yet be included in the ILCS database, but they are found on this site as Public Acts soon after they become law. For information concerning the relationship between statutes and Public Acts, refer to the Guide.

Because the statute database is maintained primarily for legislative drafting purposes, statutory changes are sometimes included in the statute database before they take effect. If the source note at the end of a Section of the statutes includes a Public Act that has not yet taken effect, the version of the law that is currently in effect may have already been removed from the database and you should refer to that Public Act to see the changes made to the current law.

CIVIL LIABILITIES
(740 ILCS 14/) Biometric Information Privacy Act.

(740 ILCS 14/1)
Sec. 1. Short title. This Act may be cited as the Biometric Information Privacy Act.
(Source: P.A. 95-994, eff. 10-3-08.)

(740 ILCS 14/5)
Sec. 5. Legislative findings; intent. The General Assembly finds all of the following:
(a) The use of biometrics is growing in the business and security screening sectors and appears to promise streamlined financial transactions and security screenings.
(b) Major national corporations have selected the City of Chicago and other locations in this State as pilot testing sites for new applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias.
(c) Biometrics are unlike other unique identifiers that are used to access finances or other sensitive information. For example, social security numbers, when compromised, can be changed. Biometrics, however, are biologically unique to the individual; therefore, once compromised, the individual has no recourse, is at heightened risk for identity theft, and is likely to withdraw from biometric-facilitated transactions.
(d) An overwhelming majority of members of the public are weary of the use of biometrics when such information is tied to finances and other personal information.
(e) Despite limited State law regulating the collection, use, safeguarding, and storage of biometrics, many members of the public are deterred from partaking in biometric identifier-facilitated transactions.
(f) The full ramifications of biometric technology are not fully known.
(g) The public welfare, security, and safety will be served by regulating the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information.
(Source: P.A. 95-994, eff. 10-3-08.)

(740 ILCS 14/10)

Sec. 10. Definitions. In this Act:

"Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry. Biometric identifiers do not include writing samples, written signatures, photographs, human biological samples used for valid scientific testing or screening, demographic data, tattoo descriptions, or physical descriptions such as height, weight, hair color, or eye color. Biometric identifiers do not include donated organs, tissues, or parts as defined in the Illinois Anatomical Gift Act or blood or serum stored on behalf of recipients or potential recipients of living or cadaveric transplants and obtained or stored by a federally designated organ procurement agency. Biometric identifiers do not include biological materials regulated under the Genetic Information Privacy Act. Biometric identifiers do not include information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment, or operations under the federal Health Insurance Portability and Accountability Act of 1996. Biometric identifiers do not include an X-ray, roentgen process, computed tomography, MRI, PET scan, mammography, or other image or film of the human anatomy used to diagnose, prognose, or treat an illness or other medical condition or to further validate scientific testing or screening.

"Biometric information" means any information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual. Biometric information does not include information derived from items or procedures excluded under the definition of biometric identifiers.

"Confidential and sensitive information" means personal information that can be used to uniquely identify an individual or an individual's account or property. Examples of confidential and sensitive information include, but are not limited to, a genetic marker, genetic testing information, a unique identifier number to locate an account or property, an account number, a PIN number, a pass code, a driver's license number, or a social security number.

"Private entity" means any individual, partnership, corporation, limited liability company, association, or other group, however organized. A private entity does not include a State or local government agency. A private entity does not include any court of Illinois, a clerk of the court, or a judge or justice thereof.

"Written release" means informed written consent or, in the context of employment, a release executed by an employee as a condition of employment.

(Source: P.A. 95-994, eff. 10-3-08.)

(740 ILCS 14/15)

Sec. 15. Retention; collection; disclosure; destruction.

(a) A private entity in possession of biometric identifiers or biometric information must develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information

has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever occurs first. Absent a valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in possession of biometric identifiers or biometric information must comply with its established retention schedule and destruction guidelines.

(b) No private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric information, unless it first:

(1) informs the subject or the subject's legally authorized representative in writing that a biometric identifier or biometric information is being collected or stored;

(2) informs the subject or the subject's legally authorized representative in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and

(3) receives a written release executed by the subject of the biometric identifier or biometric information or the subject's legally authorized representative.

(c) No private entity in possession of a biometric identifier or biometric information may sell, lease, trade, or otherwise profit from a person's or a customer's biometric identifier or biometric information.

(d) No private entity in possession of a biometric identifier or biometric information may disclose, redisclose, or otherwise disseminate a person's or a customer's biometric identifier or biometric information unless:

(1) the subject of the biometric identifier or biometric information or the subject's legally authorized representative consents to the disclosure or redisclosure;

(2) the disclosure or redisclosure completes a financial transaction requested or authorized by the subject of the biometric identifier or the biometric information or the subject's legally authorized representative;

(3) the disclosure or redisclosure is required by State or federal law or municipal ordinance; or

(4) the disclosure is required pursuant to a valid warrant or subpoena issued by a court of competent jurisdiction.

(e) A private entity in possession of a biometric identifier or biometric information shall:

(1) store, transmit, and protect from disclosure all biometric identifiers and biometric information using the reasonable standard of care within the private entity's industry; and

(2) store, transmit, and protect from disclosure all biometric identifiers and biometric information in a manner that is the same as or more protective than the manner in which the private entity stores, transmits, and protects other confidential and sensitive information.

(Source: P.A. 95-994, eff. 10-3-08.)

(740 ILCS 14/20)

Sec. 20. Right of action. Any person aggrieved by a violation of this Act shall have a right of action in a State circuit court or as a supplemental claim in federal district court against an offending party. A prevailing party may recover for each violation:

(1) against a private entity that negligently violates a provision of this Act, liquidated damages of $1,000 or actual damages, whichever is greater;

(2) against a private entity that intentionally or recklessly violates a provision of this Act, liquidated damages of $5,000 or actual damages, whichever is greater;

(3) reasonable attorneys' fees and costs, including expert witness fees and other litigation expenses; and

(4) other relief, including an injunction, as the State or federal court may deem appropriate.

(Source: P.A. 95-994, eff. 10-3-08.)

(740 ILCS 14/25)

Sec. 25. Construction.

(a) Nothing in this Act shall be construed to impact the admission or discovery of biometric identifiers and biometric information in any action of any kind in any court, or before any tribunal, board, agency, or person.

(b) Nothing in this Act shall be construed to conflict with the X-Ray Retention Act, the federal Health Insurance Portability and Accountability Act of 1996 and the rules promulgated under either Act.

(c) Nothing in this Act shall be deemed to apply in any manner to a financial institution or an affiliate of a financial institution that is subject to Title V of the federal Gramm-Leach-Bliley Act of 1999 and the rules promulgated thereunder.

(d) Nothing in this Act shall be construed to conflict with the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 and the rules promulgated thereunder.

(e) Nothing in this Act shall be construed to apply to a contractor, subcontractor, or agent of a State agency or local unit of government when working for that State agency or local unit of government.

(Source: P.A. 95-994, eff. 10-3-08.)

(740 ILCS 14/30)

Sec. 30. (Repealed).

(Source: P.A. 95-994, eff. 10-3-08. Repealed internally, eff. 1-1-09.)

(740 ILCS 14/99)

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 95-994, eff. 10-3-08.)

Top

SB 194

AMENDMENT

OFFERED IN THE SENATE BY SENATOR WIELECHOWSKI

TO: CSSB 194( ), Draft Version "S"

Page 1, following line 2:

Insert a new bill section to read:

"* **Section 1.** AS 04.16.047(b) is amended to read:

(b) A licensee may bring a civil action against a person who violates this section if the violation occurs on the premises of that licensee. If judgment is entered in favor of the licensee, the court shall award civil damages in the amount of **$1,500** [$1,000] and award reasonable costs and reasonable attorney fees allowed under the Alaska Rules of Civil Procedure.

Page 1, line 3:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

26-LS0895\S
Luckhaupt
2/10/10

CS FOR SENATE BILL NO. 194( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR MEYER

A BILL

FOR AN ACT ENTITLED

"An Act relating to penalties and civil damages for certain alcohol violations."

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

*** Section 1.** AS 04.16.049(e) is amended to read:

(e) A licensee may bring a civil action against a person who violates this section if the violation occurs on the premises of that licensee. If judgment is entered in favor of the licensee, the court shall award civil damages in the amount of **$1,500** [$1,000] and award reasonable costs and reasonable attorney fees allowed under the Alaska Rules of Civil Procedure.

*** Sec. 2.** AS 04.16.065(a) is amended to read:

(a) A person who has attained 18 years of age, or an emancipated minor, who violates AS 04.16.060 is, in addition to any criminal penalty provided by law, liable in a civil action to the licensee for a penalty of **$1,500** [$1,000] plus costs and reasonable attorney fees.

*** Sec. 3.** AS 04.16.180 is amended by adding a new subsection to read:

(e) In addition to other penalties provided in this chapter, the court may

require a person convicted of an offense under this chapter who was less than 21 years of age at the time the person committed the offense to pay for and enroll in a juvenile alcohol safety action program if one is available.

*** Sec. 4.** AS 04.21.080 is amended by adding a new paragraph to read:

(18) "juvenile alcohol safety action program" means

(A) a juvenile alcohol safety action program developed and implemented or approved by the Department of Health and Social Services under AS 47.37;

(B) any other alcohol education or treatment program approved by the Department of Health and Social Services under AS 47.37 if a program described in (A) of this paragraph is not available in the community in which the person resides; or

(C) a program or counseling approved by the court if a program or treatment described in (A) of this paragraph is not available in the community where the person resides.

*** Sec. 5.** AS 28.15.183(g) is amended to read:

(g) Except as provided under (h) of this section, the department may not issue a new license or reissue a license to a person whose driver's license, permit, or privilege to drive has been revoked under this section unless the person, if required to participate in a juvenile alcohol safety action program, as defined in **AS 04.21.080** [AS 04.16.050], has successfully completed any education or treatment recommended.

*** Sec. 6.** AS 28.15.211(g) is amended to read:

(g) Except as provided under AS 28.15.183(h), the department may not issue a new license or reissue a license to a person whose driver's license has been revoked under AS 04.16.050, AS 28.15.183, or 28.15.185 unless the person, if required to participate in a juvenile alcohol safety action program, has successfully completed any education or treatment recommended. In this subsection, "juvenile alcohol safety action program" has the meaning given in **AS 04.21.080** [AS 04.16.050].

*** Sec. 7.** AS 04.16.050(*l*)(2) is repealed.

Alaska State Legislature

Please enter into the record my testimony to the SENATE JUDICIARY committee name

committee on SB 194 bill/subject, dated 2-15-10

CSSB194 is toothless piece legislation which will not clean up the sale of Alcohol to minors or those who Prohibited from consuming or buying Alcohol or being on the premises where Alcohol is consumed. CSSB 194 is a ruse for those legislators to say they acted to protect the public when fact they did not.

As House Judiciary Chairman Jay Ramras, a beverage dispensary license holder ably pointed out that HB 283 the house version CSSB194 is nothing more than special legislation for Alaska's largest liquor dealer BROWN JUG.

The other Alcohol dealers are small enterprises which neither have the time nor the resources to take advantage of this legislation. Chairman Ramras used himself as an example. Chairman Ramras used his business at an example of one, though larger than most, could not take advantage this special legislation.

Brown Jug did not appear before Chairman Ramras' committee however a woman who had been convicted of DWI did appear and begged the committee to help her say sober by putting teeth in the legislation and demand carding.

She had voluntarily gone to DMV and had red line placed on her driver's license should she ever fall off the wagon.

Jerry McCutcheon susitnahydronow@yahoo.com

Representing (Optional)

Address

Phone No.

Alaska Cabaret, Hotel,
Restaurant & Retailers Association

1503 W. 31st Ave., Suite 202 • Anchorage, Alaska 99503
(907) 274-8133 • Fax: (907) 274-8640
Toll Free In Alaska (800) 478-2427

The Honorable Kevin Meyer
State Senate
Alaska State Capitol
Juneau, AK 99801-1182

February 12, 2010

Dear Senator Meyer,

I am writing to you regarding Senate Bill 194, an act relating to civil damages for certain alcohol violations.

As you may know, one of Alaska CHARR's top legislative priorities is fighting underage drinking. We appreciate your efforts to increase the civil penalty for underage persons attempting to purchase alcohol to $1,500.00. We believe this will encourage licensees to pursue the civil liability penalty making the penalty a stronger deterrent and sending a stronger message to underage persons that their criminal actions will not be taken lightly.

Alaska CHARR fully supports SB194, and would like to thank you for helping the hospitality industry send a stronger message to kids that attempting to buy alcohol is a serious offense.

Please let me know if I can be of additional assistance.

Dale G. Fox, CAE
President & CEO, Alaska CHARR

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM January 28, 2010

SUBJECT: Cross-References to Repealed Subsection (CSSB 194(STA))
(Work Order No. 26-LS0895\E)

TO: Senator Linda Menard
Chair of the State Affairs Committee
Attn: Sarah Munson

FROM: Gerald P. Luckhaupt
Legislative Counsel

Enclosed is the final CS(STA) version you requested. Please be advised that two cross-references to AS 04.16.050(l)(2), which is repealed in sec. 5 of the bill and is replaced by AS 04.21.080(18), added by sec. 4 of the bill, will need to be corrected at some point. The cross-references are:

AS 28.15.183(g) - reference to AS 04.16.050(l)(2) needs to be replaced with AS 04.21.080;

AS 28.15.211(g) - reference to AS 04.16.050(l)(2) needs to be replaced with AS 04.21.080.

GPL:ljw
10-049.ljw

Enclosure

ALASKA STATE LEGISLATURE

Interim:
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Anchorage, Alaska 99501-2133
Phone: (907) 269-0199
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Senator_Kevin_Meyer@legis.state.ak.us

Session:
Alaska State Capitol
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SENATOR KEVIN MEYER
SENATE DISTRICT O

SPONSOR STATEMENT FOR CSSB 194

"An Act relating to penalties and civil damages for certain alcohol violations."

SB 194 increases civil damages to licensees from minors who knowingly enter or remain in premises licensed to sell alcohol. This increase in damages would also apply to those purchasing or delivering alcohol to persons under the age of 21. The bill would increase the amount awarded in civil damages from $1,000 to $1,500 under AS 04.16.049 and AS 04.16.065.

Additionally, SB 194 may also require a person convicted of the aforementioned offenses to pay for and enroll in a juvenile alcohol safety action program or similar alcohol education or treatment program if one is available.

Underage drinking is a problem in Alaska. According to the State of Alaska's Plan to Reduce & Prevent Underage Drinking (October 2009), 11 percent of all treatment admissions for alcohol abuse in the state were youth aged 12-20. An increase in civil damages would reinforce the message to those youth that underage drinking will not be tolerated.

Passing SB 194 will reinforce the penalty on youths who knowingly enter or remain on premises where alcohol is sold or consumed. The bill will also encourage licensees to continue their enforcement of underage drinking laws.

ANCHORAGE CHARR
CABARET, HOTEL, RESTAURANT & RETAILERS ASSOCIATION

January 26, 2010

Senator Kevin Meyer
Alaska State Capitol
Juneau, AK 99801

Re: SB 194

Dear Senator Meyer:

Underage drinking in Alaska has long been a concern in our communities and for this reason we support legislation to increase penalties for underage drinking through the civil penalties process.

As responsible owners and operators, we do not want to contribute to the problem of underage drinking. When a licensee is caught serving or selling alcoholic beverages to a minor the consequences and penalties are severe. We believe the minor should be held primarily responsible for his/her actions; the current $1,000 civil penalty is not enough. There should be steps for offenses to include increasing the $1,000 to $1,500, required or mandatory education and prevention and delaying access to the driver license at the age of 21.

In 2006, the Alaska Federation of Natives (AFN) with funding from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) report highlights the current status of underage drinking throughout rural and urban Alaska from a youth's perspective. The problem of underage drinking is statewide and impacts families, communities, social, health, medical, justice, law enforcement, education and economic bodies.

Anchorage CHARR assists members by processing civil penalty cases against minors on behalf of the licensee and providing information about minor civil penalty law. We compile information from our member about the civil case against the minor, prepare all required legal documents and coordinate third party notification for court appearance.

Currently our office has processed 42 minor cases with 15 pending court filing.

We urge you to please consider supporting SB 194.

Sincerely,

Silvia Villamides,
Executive Director

ABL Drink Responsibly. Drive Responsibly.

P.O. Box 242023
Anchorage, AK 99524
907.646.4628
anchoragecharr@gci.net

STATE OF ALASKA
Plan to Reduce & Prevent Underage Drinking
October 2009, pages 5-7 (28 pages total)
http://www.hss.state.ak.us/DBH/prevention/docs/2009_underagedrinkplan.pdf

Executive Summary

Childhood and underage drinking has been shown to be a causal factor in homicide, suicide, traumatic injury, traffic fatalities, drowning, burns, violent and property crime, high risk sex, fetal alcohol syndrome, alcohol poisoning and the need for treatment for alcohol abuse and dependence.[iii] The research shows that early onset alcohol use is strongly associated with adult alcohol dependence.[iii] While there are no significant differences between national and Alaskan trends for heavy drinking[a], the prevalence of binge drinking[b] among Alaska's adults is consistently higher than the national average.[c iv]

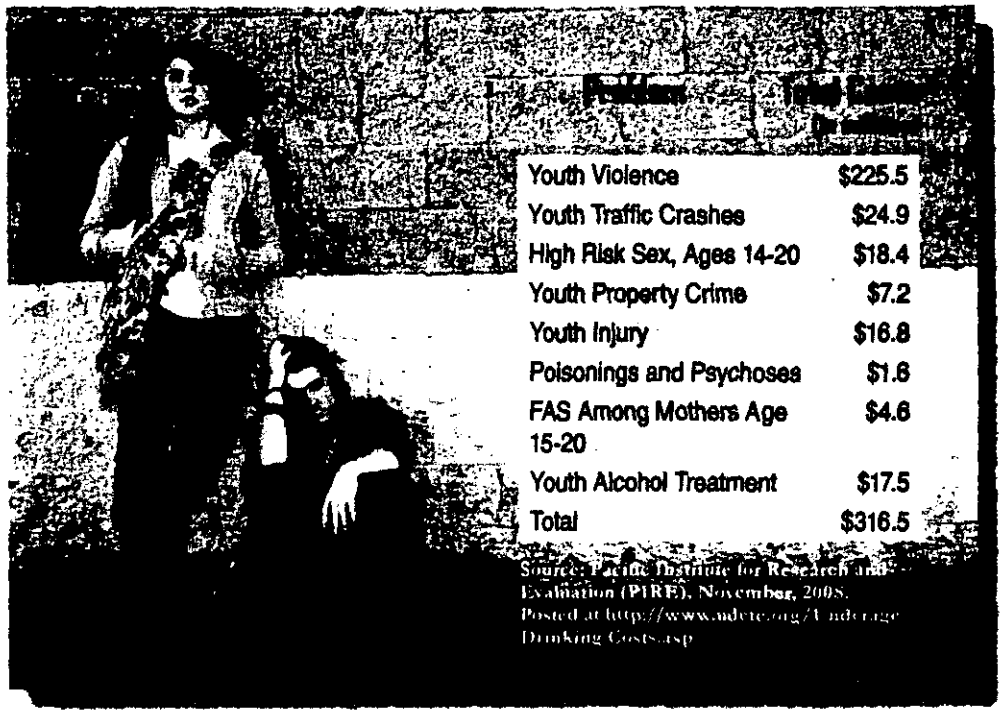
Further, excessive alcohol use by youth causes damage to the developing brain.[v] There exists a perception that adolescents can easily recover from drinking because their bodies are more resilient; however, the opposite is true. According to the American Medical Association, alcohol can seriously damage long and short term growth processes of the brain during adolescence. Frontal lobe development and the refinement of pathways and connections continue until the age of 16, and a high rate of energy is used as the brain matures until the age of 23. Damage from alcohol prior to age 23 can be long-term and irreversible. Furthermore, even moderate drinking impairs learning and memory in youth.[vi]

A myriad of catastrophic health, social and economic problems resultant from underage drinking has impacted Alaska's youth. In 2000, the Alaska Department of Health and Social Services, Division of Juvenile Justice sponsored an assessment of underage drinking in Alaska. Investigators examined statewide efforts and data and conducted more detailed inquiries by interviewing 203 key informants from 17 rural and urban sample communities. The consequences of underage drinking in Alaska are reflected in an increase in the number of alcohol-related accidents among youth requiring hospitalization of 66.3 percent between 1991 and 1998. Over this period, Alaska averaged 30 suicide attempts annually among youth where alcohol was a factor.[vii]

The cost of underage drinking to the citizens of Alaska was $317 million in 2005, inclusive of medical care, work loss, and pain and suffering.[viii] This is equivalent to $3,944 per year for each youth in the State. Based on these figures, per capita, Alaska is second among the fifty states for the cost of underage drinking.

As demonstrated in the table below, the largest costs to the State of Alaska can be attributed to youth violence and traffic crashes by underage youth under the influence of alcohol. Furthermore, a multitude of other problems contribute significantly to the overall cost. For example, among teen mothers, fetal alcohol syndrome (FAS) costs Alaska $4.6 million. Young people who begin drinking before age 15 are four times more likely to develop alcohol dependence and are two and a half times more likely to become abusers of alcohol

Costs of Underage Drinking by Problem, Alaska 2005



Youth Violence	$225.5
Youth Traffic Crashes	$24.9
High Risk Sex, Ages 14-20	$18.4
Youth Property Crime	$7.2
Youth Injury	$16.8
Poisonings and Psychoses	$1.6
FAS Among Mothers Age 15-20	$4.6
Youth Alcohol Treatment	$17.5
Total	$316.5

Source: Pacific Institute for Research and Evaluation (PIRE), November, 2008. Posted at http://www.udetc.org/Underage Drinking Costs.asp

than those who begin drinking at age 21.[ix] In 2003, 366 youth 12-20 years old were admitted for alcohol treatment in Alaska, accounting for 11 percent of all treatment admissions for alcohol abuse in the State.[x]

The Alaska Departments of Education and Early Development and Health and Social Services conduct a biannual statewide student survey on health behavior. Alaska uses the Alaska Youth Risk Behavior Survey (YRBS), based upon the U.S. Centers for Disease Control and Prevention's (CDC) epidemiological surveillance system.[xi] This survey was established to monitor the prevalence of behaviors that not only influence adolescent health, but also put youth at risk for the most significant health and social problems. Participating school

[a] Defined as 2 drinks per day for men and 1 drink for women.
[b] Defined as 5 or more drinks on one occasion.
[c] Thirty-nine percent higher for women and 14 percent higher for men.

Executive Summary

districts may receive a full report of their local data, which can be the centerpiece of their own local needs assessments, adding other data such as the Alaska School Boards' School Climate and Connectedness survey and local law enforcement data.

In 2007, 43 high schools were scientifically selected to be included in the survey. Thirty-eight (88 percent) schools participated and 1,318 (68 percent) students (from a total of 1, 952 selected) completed the survey resulting in an overall response rate of 60 percent (P. Owen, personal communication, October 27, 2008).

According to self-reports by Alaskan students in grades 9-12:[xiii]

- 74% had at least one drink of alcohol on one or more days during their life.
- 20% had their first drink of alcohol, other than a few sips, before age 13.
- 40% had at least one drink of alcohol on one or more occasion in the past 30 days.
- 26% had five or more drinks of alcohol in a row (i.e. binge drinking) in the past 30 days.

The 2007 YRBS also shows that 10 percent of Alaska youth self-reported drinking and driving within the past 30 days. According to the Alaska Highway Safety Office 2006 Annual Report, a third of alcohol impaired drivers and 47 percent of speeding drivers were under the age of 26.[xiii] Additionally, in 2006 there were 102 traffic accidents with alcohol impaired youth drivers ages 11-20.[xiv]

The state-wide YRBS demonstrates that underage drinking is widespread in Alaska, but it does not include all age appropriate youth. There are more youth at risk than are represented. Alaska state law requires that students have active consent[d] from parents to participate in school surveys, which excludes students who do not return a signed permission slip. In addition, alternative high school students were excluded from the state-wide YRBS report and students who have dropped out of school were not represented. Studies have shown that alternative high school students are at significantly higher risk for engaging in risky behaviors[xv] and substance use is correlated with school dropout.[xvi] As such, the risk behaviors of youth are likely underrepresented with the Alaska state-wide YRBS.

However, in 2007, with support from community partners, the Anchorage School District was able to administer the YRBS in alternative schools.[xvii] While they were not able to obtain the 60 percent response rate needed to generalize the findings to all alternative high school students,[e] the findings are important to consider as we plan prevention measures. The table below compares the responses from the Anchorage traditional high schools that were included with the state-wide YRBS and those Anchorage students who participated in the alternative school YRBS.[f]

Comparison of Traditional vs Alternative High Schools in Anchorage 2007

	Traditional High Schools	Alternative High Schools	McLaughlin High School
Percentage of students who had their first drink of alcohol other than a few sips before age 13	20.6%	30.8%	41.3%
Percentage of students who had at least one drink of alcohol on one or more of the past 30 days	40.8%	54%	76.4%
Percentage of students who had 5 or more drinks of alcohol in a row within a couple hours on one or more of the past 30 days	26.2%	37.3%	63.8%

Executive Summary

The alternative high schools participating in the 2007 Anchorage Youth Risk Behavior Survey included the following:

- *McLaughlin Secondary School* serves students who have been incarcerated at the McLaughlin Youth Center, a state detention center for juveniles.
- *AVAIL* (Anchorage Vocational Academic Institute of Learning) is an alternative high school program devoted to students who have dropped out of traditional schools.
- *Benson/Search* is an alternative school serving the educational needs of students who have been deemed "at risk."
- *COHO* (Creating Optimal High School Opportunities) offers students in the Chugiak and Eagle River area an alternative to the traditional high school classroom.
- *Continuation Program* is a self-directed alternative education program for students who are expelled, on a long-term suspension, or are in need of a transitional education placement.
- *Crossroads* is the Anchorage School District's school for pregnant and parenting teens.
- *SAVE* is an accredited comprehensive alternative high school that provides the opportunity for credit recovery, and is designed to meet the requirements for high school graduation.

These findings both highlight the need for further evaluation of alternative school students' risk behaviors in an effort to better plan prevention measures for these students and illustrate the strong likelihood that current reports of underage drinking in Alaska are under representative of the actual trend.

Despite the toll that underage drinking brings to bear on all citizens of Alaska — be it physical, mental, social, or economic — social norms remain static leaving the overall impression that underage drinking in Alaska "isn't a problem". Alaska has made great strides in the prevention of underage tobacco use and the parallels between the two drugs, alcohol and tobacco, are remarkable. That being said, enforcement efforts within the Departments of Health and Social Services and Public Safety have been coordinated for both tobacco and alcohol. As a result, an interesting pattern has emerged, which clearly demonstrates exactly where social attitudes lie. For example, in FY 2007, 9.2 percent of all retailers investigated sold tobacco to underage buyers whereas 22 percent of all retailers investigated sold alcohol to underage buyers.

Holding youth solely responsible for underage drinking is unreasonable. As the national report concluded, "Youth drink within the context of a society in which alcohol use is normative behavior and images about alcohol are pervasive." Efforts to reduce and prevent underage drinking, therefore, need to focus on a variety of environmental strategies that engage adults, youth, and the society at large. Alaska's plan employs a variety of strategies, including, but not limited to: public awareness; alcohol advertising; education; limiting access; collaboration; governmental assistance; and research and evaluation.

The problem of underage drinking in Alaska is significant but not insurmountable. It will, however, require determination and commitment to a long-term effort on the part of our citizens, state and community leaders to get involved and to take the action necessary to make a difference.

The national and Alaska-specific information and recommendations contained herein provide a blueprint for a range of science-based state and community actions that are necessary in order to successfully reduce underage drinking in Alaska. These recommendations are based on the IOM/NAS Report: *Reducing Underage Drinking: A Collective Responsibility.* **Each recommendation is categorized as national (N), state (S), or local (L).** The national recommendations are numbered based on the location within the IOM/NAS report. The numbering of the state and local recommendations is specific to this plan.

[d] Parents must sign a permission slip (versus passive consent in which the parent can exclude the student from participating with a written request).

[e] There were 230 respondents from Anchorage alternative schools and 75 respondents from McLaughlin High School.

[f] The Anchorage alternative school YRBS is only representative of those students who participated in the survey as the response rate was not high enough to generalize it to all alternative school students.

LEGAL SERVICES

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STATE OF ALASKA

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Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

October 20, 2009

SUBJECT: Requiring Alcohol Education and Assessment for Minors in Civil Actions Brought by Licensees (Work Order No. 26-LS0895\R)

TO: Senator Kevin Meyer
Attn: Christine Marasigan

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have requested that mandatory alcohol education be required for persons subject to civil suits by licensees under AS 04.16.049(e) and 04.16.065(a). These civil suits are brought by licensees against persons under the age of 21 who attempt to use fake ids or otherwise access premises or purchase alcohol when they are underage. These civil suits are lawsuits between two private parties and do not involve the state or other prosecuting authority and criminal and other penalties may not be imposed. Imposition of criminal sanctions including attendance at alcohol education[1] is inappropriate and unavailable to civil litigants. I do not see how one civil litigant can be authorized to impose a potential criminal sanction on the other civil litigant.

What I did do is provide that a court may require a person under the age of 21 to participate in a juvenile alcohol action safety program whenever the person is convicted of an offense under AS 04.16. Currently we only require this for minor in possession under AS 04.16.050. While this does not directly satisfy your request it does allow alcohol education programs to be required of minors when they are prosecuted and convicted of offenses under AS 04.16.049 and 04.16.065 and other offenses under AS 04.16.

GPL:ljw
09-354.ljw

Enclosure

[1] I assume by this you mean a juvenile alcohol safety action program as is currently required for minor in possession convictions under AS 04.16.050.

Alaska State Legislature

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Anchorage, Alaska 99501
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Session:
State Capitol Building
Juneau, Alaska 99801-1182
(907) 465-4945

Senator Kevin Meyer
Senate District O

TO: Senator Hollis French
Senate Judiciary Committee

FROM: Senator Kevin Meyer

DATE: January 29, 2010

RE: Senate Judiciary Committee Hearing Request for CSSB 194

This is a request for a Senate Judiciary Committee hearing for CSSB 194, "An act relating to penalties and civil damages for certain alcohol violations."

The following documents are attached and will be sent electronically:

- Current version of the bill
- Sponsor Statement
- Changes the bill has gone through since introduction
- Letters of support
- Back up information
- Fiscal Notes
- Witness/Testimony:
  - OC Madden, Brown Jug
- Staff member assigned to the bill: Christine R. Marasigan, 465-6876

This bill would increase the civil damages under 4.16.049 and 4.16.065 from $1,000 to $1,500 and would make it possible for a person convicted to pay for and attend a juvenile alcohol safety action program if available.

Please contact Christine if you have any questions regarding this legislation.

SB 202

26-LS1097\E
Luckhaupt
3/17/10

CS FOR SENATE BILL NO. 202(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR DAVIS

A BILL

FOR AN ACT ENTITLED

"An Act relating to the commission of a crime when the defendant directed the conduct constituting the crime at the victim based on the victim's race, sex, color, creed, physical or mental disability, sexual orientation, gender identity, ancestry, or national origin."

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

*** Section 1.** AS 11.76 is amended by adding a new section to read:

Sec. 11.76.150. Motivation by prejudice, bias, or hatred. (a) A person commits the crime of motivation by prejudice, bias, or hatred if the person commits a crime in this title and the person knowingly directed the conduct constituting the crime at the victim of the crime because of the victim's race, sex, color, creed, physical or mental disability, sexual orientation, gender identity, ancestry, or national origin.

(b) In this section, "gender identity" means actual or perceived gender-related characteristics.

(c) Motivation by prejudice, bias, or hatred is a

(1) class A misdemeanor if the crime committed is a class B

misdemeanor;

(2) class C felony if the crime committed is a class A misdemeanor;

(3) class B felony if the crime committed is a class C felony;

(4) class A felony if the crime committed is a class B felony;

(5) unclassified felony and the defendant shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years if the crime committed is a class A felony.

*** Sec. 2.** AS 12.55.155(c)(22) is amended to read:

(22) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, **sexual orientation, gender identity,** ancestry, or national origin; **in this paragraph, "gender identity" means actual or perceived gender-related characteristics;**

March 4, 2010

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STUDENT ADVISORS

The Honorable Hollis French
Chair, Senate Judiciary Committee
Alaska State Senate
State Capitol, Room 417
Juneau, AK 99801-1182

Re: Senate Bill 202
Constitutional Issues

Chair French:

Thank you for the opportunity to submit written testimony regarding Senate Bill 202.

As you know, the American Civil Liberties Union of Alaska represents thousands of members and activists throughout the state who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. The ACLU supports legislation designed to protect the civil rights of individuals who may be targeted for violence or harassment based on membership in a historically disfavored class.

However, we are also concerned that the important First Amendment rights of all Alaskans are carefully protected. Whether under the US or Alaska Constitutions, the rights of freedom of speech and of association are crucial to our democratic society. The ACLU must oppose any legislation which would lead to governmental restrictions on, or chilling of, any speech or associational rights, even if those rights represent unpopular or repugnant views.

We applaud the Bill's sponsor for introduction of this legislation and trust that – through working with her office and the Judiciary Committee – we can address the following concerns:

1. Inclusion of necessary protections of speech and associational rights;
2. Addition of language regarding "gender identity;" and
3. Alternatives to mandatory minimum sentencing clauses.

Amendment to Protect Speech and Associational Rights

As currently drafted, SB 202 would allow prosecution of a defendant and introduction at trial of constitutionally protected speech or association as substantive evidence of the defendant's motivation, whether or not that evidence directly related to the alleged crime.

For example, if a defendant were alleged to have targeted a victim who was Jewish, the defendant's membership in the Klu Klux Klan, or internet postings he wrote attacking Zionism could be introduced at trial. Such introduction would not only be unconstitutional, but also the basis for challenging and overturning a conviction.

Contrast with the above example, a defendant who – while attacking the same Jewish victim – states: "Jews have no place in America." Introduction of such evidence would not be based on the defendant's associations or beliefs, but rather relate to the attack and specifically relevant to his motivation to commit the alleged crime.

In order to differentiate between these two situations, we recommend the inclusion in SB 202 of language such as:

> *In a prosecution for an offense under this section, evidence of expression or associations of the defendant may not be introduced as substantive evidence at trial, unless the evidence specifically relates to that offense.*
>
> *However, nothing in this section affects the rules of evidence governing the impeachment of a witness.*

It is instructive to note that similar language was included in the Federal MATTHEW SHEPARD AND JAMES BYRD, JR. HATE CRIMES PREVENTION ACT, HR 2647; Public Law No. 111-084:

> **SEC. 4710. RULE OF CONSTRUCTION.**
>
> For purposes of construing this division and the amendments made by this division the following shall apply:

> (1) IN GENERAL.—Nothing in this division shall be construed to allow a court, in any criminal trial for an offense described under this division or an amendment made by this division, in the absence of a stipulation by the parties, to admit evidence of speech, beliefs, association, group membership, or expressive conduct unless that evidence is relevant and admissible under the Federal Rules of Evidence. Nothing in this division is intended to affect the existing rules of evidence.

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ084.111.pdf (pg. 653 of 656).

Inclusion of Gender Identity

As currently drafted, SB 202 leaves unprotected a minority group which has been shown to suffer violence at a far greater rate than their representation in the population: transgender individuals. It is essential that "gender identity" be included in this Bill.

Some information and statistics that may be of interest to the Committee are available at http://www.avp.org/documents/2008HVReportDraft3smallerfile.pdf, *Hate Violence against Lesbian, Gay, Bisexual, and Transgender People in the United States, a Report by THE NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS.* Additional information regarding "Trans Murder Statistics 1970 to 2004" is at http://www.gender.org/resources/dge/gea02002.pdf.

Again, it is instructive to note that protections for transgender individuals were, in fact, included in the Hate Crimes Prevention Act passed by Congress:

> SEC. 4707. PROHIBITION OF CERTAIN HATE CRIME ACTS.
>
> . . . '(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY.—
>
> ''(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) or paragraph (3), willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person . . .

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ084.111.pdf (pg. 651 of 656), Public Law 111-084.

Elimination of Mandatory Minimums

As a general rule, the ACLU does not support mandatory minimum sentencing, and recommends that sentencing be determined by the Courts based on the particularized facts of each incident prosecuted.

Presuming the amendments outlined above, the ACLU will support SB 202, and would welcome the opportunity to work with the Bill's Sponsor and the Committee in addressing these issues.

Thank you again permitting us to share our concerns. Please feel free to contact the undersigned should you require any additional information.

Sincerely,

Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Senator Wielechowski, Vice Chair
Senator Davis, Sponsor
Senator Egan
Senator McGuire
Senator Coghill

ALASKA WOMEN'S LOBBY

AWL Mission: To defend and advance the rights and needs of Women, Children and Families in Alaska

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Letter of Support

SB 202: Hate Crimes
March 2010

The Alaska Women's Lobby, a statewide group with steering committees in Fairbanks, Anchorage and Juneau organized to protect and advance the rights of women, children and families supports SB 202.

According to the Anti-Defamation League 43 states and the District of Columbia have enacted hate crime laws using a "penalty-enhancement" concept similar to that proposed in SB 202. Alaska should join these states in emphasizing that people who choose to intimidate not only an individual victim but the victim's community have committed a more serious offense and should be held accountable as such.

All Alaskans have an interest in an effective response to violent bigotry. Hate crimes deserve increased penalties because the perpetrator has damaged more than one individual or institution. The offender tries to intimidate other members of the minority group by his or her actions against one person. Members of the targeted group may feel isolated, vulnerable and unprotected by the law. We need to be weaving communities together not allowing a few, bound by their ignorance, to try and keep us fragmented.

Thank you to Senator Davis for introducing this important piece of legislation. We agree with the message of her sponsor statement that while this measure alone cannot eliminate prejudice or hatred, it can send a message that Alaskans will not tolerate hate crimes in any form. Please join her in working this bill through the legislative process.

Testimony for Senate Judiciary Committee

SB 202 Hate Crimes

By Marsha Buck for Alaskans Together for Equality, Inc.

My name is Marsha Buck and I live in Juneau. I am here as past president of the Board of Directors of Alaskans Together for Equality, Inc., Alaska's statewide advocacy organization formed to advance civil equality for Alaska's gay, lesbian, bisexual, and transgender citizens. I serve on the Alaskans Together for Equality Board because my daughter is in a lifelong committed relationship with a woman and I am a proud grandmother because of that relationship. I call my daughter's partner my daughter-in-law. I am testifying today because I care deeply about the personal safety of my daughter, my daughter-in-law, and my two grandchildren.

Alaskans Together for Equality would like to thank Senator Davis for proposing SB 202 and thank you for scheduling the bill for hearing. We support the bill in its coverage of crimes motivated by prejudice, bias, or hatred based on several inherent characteristics, characteristics with which people are born, including sexual orientation. We recognize that hate crimes are not limited to our gay and lesbian neighbors or family members, but occur throughout the minority community and are designed to create fear among all Alaskans. This bill emphasizes that Alaska has no tolerance for such acts.

Our support for this bill, however, comes with conditions of an amendment. Section 11.76.150 (a) of the bill needs to be amended to include "gender identity and expression." As I'm certain you are aware, some people in our society perceive others as "different," as too feminine or too masculine, and that perception may evoke a violent emotional response leading to harm. It does not matter if the person perceived as different is heterosexual, i.e. straight, or gay to be the recipient of that response. The way in which we all identify and express our gender may be different than the societal norm, and that identity and expression needs protection under this bill. We strongly contend that many Alaskans are in jeopardy of gender expression hate crimes, particularly our youth who are often subject to bullying based on expression that is different from the fluctuating norm.

The term "gender identity" also includes Alaskans who are transgender. I was horrified to learn recently about a transgender woman whose nose was broken during an assault while she was traveling on a People Mover Bus in Anchorage – an assault that occurred because she is transgender. We ask you, representing the Alaska Legislature, to stand up firmly and amend this bill to make it clear that you have no tolerance for such acts.

In closing, Alaskans Together for Equality would ask that you pass SB 202 out of committee with an amendment that adds "gender identity" to paragraph (a) of Sec. 11.76.150. Thank you for your attention.

Marsha Buck

3/8/2010

1738

Cindy Smith

From: Steiner, Quinlan G (DOA) [quinlan.steiner@alaska.gov]
Sent: Tuesday, March 09, 2010 1:15 PM
To: Cindy Smith
Subject: SB202

Dear Ms. Smith:

In response to Senator French's question regarding SB202, either one of the following two changes to the bill would address the question of what mens rea applies to motive:

1) Page 1, Line 8: delete "knowingly"

2) Page 1, Line 8: delete "knowingly directed the conduct constituting the crime at the victim of the crime." Replace with "intentionally selected the victim as the object of the conduct constituting the crime."

The first suggestion would eliminate the inconsistency with respect to the appropriate mens rea. The second suggestion specifically defines motive and the mens rea that applies. Please let me know if you have any questions.

Quinlan Steiner
Public Defender

Cindy Smith

From: Jeffrey A. Mittman [jmittman@akclu.org]
Sent: Wednesday, February 17, 2010 9:10 AM
To: Sen. Hollis French
Cc: Cindy Smith
Subject: SB 202

Follow Up Flag: Follow up
Flag Status: Flagged

Senator French:

We have heard that SB 202, proposed hate crimes legislation may be forwarded to the Senate Judiciary Committee.

The ACLU of Alaska generally supports protections for individuals targeted for acts of violence, and are very pleased that Senator Davis has introduced this legislation.

We hope to work with you and the Senate Judiciary Committee on passage of a Bill that protects all of Alaska's citizens, while guaranteeing that Constitutional rights are protected. To achieve that balance we would ask that the Committee consider potential revisions:

1. **First Amendment Protections**

In order to ensure that free speech or associational rights are not infringed, we would recommend inclusion of language in the Bill such as:

> **"In a prosecution for an offense under this section, evidence of expression or associations of the defendant may not be introduced as substantive evidence at trial, unless the evidence specifically relates to that offense.**
>
> **However, nothing in this section affects the rules of evidence governing impeachment of a witness."**

2. **Gender Identity**

We are pleased that SB 202 includes "sexual orientation" as a covered class.

We would request that "gender identity" be included as well. We are happy to provide your office with information or statistics regarding acts of violence against transgender individuals.

3. **Mandatory Minimums**

We hope to discuss with you alternatives to inclusion of mandatory minimum sentences.

Again, thank you for all that you and the Committee do to protect the rights of Alaskans. We look forward to discussing these points further at your convenience, or to providing any additional information you may wish to review.

Best,

Jeffrey Mittman

Jeffrey A. Mittman
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http://www.akdemocrats.org

Senator Bettye Davis

SB 202 - "An Act relating to the commission of a crime when the defendant directed the conduct constituting the crime at the victim based on the victim's race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin."

SPONSOR STATEMENT

Senate Bill 202 makes any crime against a person a more serious or aggravated crime if it is motivated by race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin. Such crimes are referred to as "Hate Crimes." Hate crimes are inchoate offenses which are crimes of preparing for or seeking to commit another crime. Absent a specific law, an inchoate offense requires that the defendant have the specific intent to commit the underlying crime. For example, for a defendant to be guilty of the crime of assault in the third degree in Alaska, the defendant knowingly must place another person in fear of imminent serious physical injury or intentionally or recklessly cause serious injury to another person by means of a dangerous instrument. If this crime was motivated by hatred, bias, or prejudice, under SB 202 it merges into a more serious hate crime and is punished at a higher level than normally would be accorded the underlying offense.

Without creating a new list of "hate crimes" under AS 11.76, new Sec. 11.76.150 simply reclassifies the level of any crime up one notch if motivated by prejudice, bias, or hatred. For example, a class B misdemeanor becomes a class A misdemeanor; a class A misdemeanor becomes a C felony; a class C felony becomes a B felony, etc. Such reclassification, of course, increases the penalties appropriate to the classification in sentencing under AS 12.55.

The need for Senate Bill 202 is demonstrated by increasing reports of violence against homeless persons, minorities, religious groups, and others motivated by prejudice, bias, and hatred in Alaska and across the country in our highly diverse and multicultural society. When crimes are committed because of people's differences, the effects reverberate beyond a single victim or group into an entire community, city, state, and society as a whole. While Senate Bill 202 alone cannot eliminate prejudice/bias, or hatred, it will send a message that Alaskans will not tolerate hate crimes in any form, the consequences and punishment of which are very severe.

The New York Times
The Caucus
The Politics and Government Blog of The Times

OCTOBER 28, 2009, 7:43 PM

Obama Signs Hate Crimes Bill

By JEFF ZELENY

Doug Mills/The New York Times The hate crimes measure was included in the national defense authorization act that President Obama signed into law on Wednesday.

President Obama signed a hate crimes bill into law on Wednesday, telling an audience at the White House that the provision would "strengthen the protections against crimes based on the color of your skin, the faith in your heart, or the place of your birth."

The law expands the definition of violent federal hate crimes to those committed because of a victim's sexual orientation. Under existing federal law, hate crimes are defined as those motivated by the victim's race, color, religion or national origin.

"Prosecutors will have new tools to work with states in order to prosecute to the fullest those who would perpetrate such crimes," Mr. Obama said, speaking in the East Room of the White House at an evening reception, "Because no one in America should ever be afraid to walk down the street holding the hands of the person they love."

The hate crimes measure was included in a defense spending bill, which Democratic leaders in Congress intentionally did in an effort to keep Republicans from blocking the legislation. The legislation had been under consideration in Congress for years. It was named in memory of Matthew Shepard, the gay Wyoming college student who was murdered 11 years ago.

"You understood that we must stand against crimes that are meant not only to break bones, but to break spirits — not only to inflict harm, but to instill fear," Mr. Obama said. "You understand that the rights afforded every citizen under our Constitution mean nothing if we do not protect those rights — both from unjust laws and violent acts."

The audience at the White House included Denis and Judy Shepard, the parents of Matthew, and the family of the late Senator Edward M. Kennedy, who championed the legislation for years, but died before the bill was ultimately passed.

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Congress > Legislation

S. 909: Matthew Shepard Hate Crimes Prevention Act

111th Congress
2009-2010

Summaries

Congressional Research Service Summary

The following summary was written by the Congressional Research Service, a well-respected nonpartisan arm of the Library of Congress. GovTrack did not write and has no control over these summaries.

4/28/2009--Introduced.

Matthew Shepard Hate Crimes Prevention Act - Adopts the definition of "hate crime" as set forth in the Violent Crime Control and Law Enforcement Act of 1994 (i.e., a crime in which the defendant intentionally selects a victim or, in the case of a property crime, the property that is the object of the crime because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person). Authorizes the Attorney General to: (1) provide state, local, or tribal law enforcement agencies with technical, forensic, prosecutorial, or other assistance in the investigation or prosecution of violent crimes and hate crimes; and (2) award grants to assist such agencies with the extraordinary expenses associated with the investigation and prosecution of hate crimes. Authorizes the Office of Justice Programs to award grants to state, local, or tribal programs designed to combat hate crimes committed by juveniles. Authorizes appropriations to the Department of Justice (DOJ), including the Community Relations Service, for FY2010-FY2012 to prevent and respond to hate crime acts. Amends the federal criminal code to prohibit willfully causing bodily injury to any person because of the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of such person. Amends the Hate Crimes Statistics Act to expand data collection and reporting requirements under such Act to include: (1) crimes manifesting prejudice based on gender and gender identity; and (2) hate crimes committed by and against juveniles. Declares that nothing in this Act shall be construed to prohibit the exercise of constitutionally-protected free speech.

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GO

Issues & Research » Civil and Criminal Justice » HR 1913: Local Law Enforcement Hate Crimes Prevent

Go 17258

HR 1913: Local Law Enforcement Hate Crimes Prevention Act of 2009

April 29, 2009

Background:

Representative John Conyers of Michigan introduced the Local Law Enforcement Hate Crimes Prevention Act of 2009 on April 2, 2009 and the bill was promptly referred to the House Committee on the Judiciary. Senator Edward Kennedy of Massachusetts is sponsoring the companion bill (S. 909). The Judiciary marked up the bill on April 22, 2009 and April 23, 2009 and moved to the House floor. The committee amendments removed the "findings" portion contained in the original bill and also removed language concerning the Hate Crimes Statistics Act (28 U.S.C. 534). An amendment offered by Rep. John Conyers on the House floor was adopted on April 29, 2009. This amendment 1) clarifies the coverage of tribal lands, 2) extends the period for the Attorney General to approve applications for grants 3) clarifies that offenses committed with weapons can be considered hate crimes 4) clarifies jurisdictions of the bill and 5) limits prosecutions, trials, and punishment for offenses not resulting in death. The bill passed the house on April 29, 2009 by a vote of 249 to175. The Local Law Enforcement Hate Crimes Prevention Act of 2009 (H.R. 1913) currently carries one hundred twenty cosponsors and is under consideration in the Senate Judiciary Committee.

DEFINITION OF HATE CRIME:

"crime of violence" – defined in section 16, title 18, United States Code

"hate crime" – defined in section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. 994 note)

"local" - means a county, city, town, township, parish, village, or other general purpose political subdivision of a State.

SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS:

At the request of a state, local, or tribal law enforcement agency, the Attorney General (AG) may provide assistance in the criminal investigation of any crime that:

- Constitutes an act of violence;
- Constitutes a felony under the state, local, or tribal laws
- Is motivated by prejudice based on race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim, or
- Is a violation of state, local, or tribal hate crime laws.

The AG will give priority to crimes and offenders in multiple state jurisdictions and to rural jurisdictions, particularly those having difficulty covering "extraordinary expenses" relating to the investigation or prosecution of the crime. The AG may award grants to state, local, and Tribal law enforcement agencies for those expenses. The Office of Justice Programs (OJP) will implement the grant program and address the concerns and needs of all affected parties. Each state, local, and Tribal law enforcement agency that desires a grant must submit an application to the AG. Applications must be a 60-day period prescribed by the AG. A state, local, or Tribal law enforcement agency applying for a grant must:

- Describe the "extraordinary purposes" for which the grant is needed
- Certify that the state, local, or Indian tribe lacks the resources to investigation or prosecute the hate crime
- Demonstrate that the state, local, or Tribal law enforcement agency has consulted with non-profit, nongovernmental service programs that provide services to victims of hate crimes
- Certify that any federal funds granted will be used to supplement, not supplant, non-federal funds for specified activities

An application for a grant must be approved or denied by the AG not later than 180 business days after the date received. A grant must not exceed $100,000 for any single jurisdiction in any 1-year period. By December 31, 2011,

the AG must submit a report to congress describing the applications, awarded grants, and purposes for which the grants were expended.

$5 million for each FY 2010 and FY 2011 is authorized to be appropriated for this program.

GRANT PROGRAM:
OJP may award grants with the regulations prescribed by the AG to state, local, or tribal programs designed to combat hate crimes committed by juveniles. This includes programs to train local law enforcement in identifying, investigating, prosecuting, and preventing hate crimes.

There are authorized to be appropriated such sums as may be necessary to carry out this program.

AUTHORIZATION FOR ADDITIONAL PERSONNEL
There are authorized to be appropriated to the Department of Justice, including the Community Relations Service, for fiscal years 2010, 2011, and 2012, such sums as are necessary to increase the number of personnel to prevent and respond to alleged hate crimes.

PROHIBITION OF CERTAIN HATE CRIME ACTS
This language adds a section entitled "Hate crime acts" to Chapter 13 of title 18, USC.
This section establishes that any person who attempts or commits a hate crime (as defined in the statute):

Shall be imprisoned not more than 10 years, fined, or both AND
Shall be imprisoned for any term of years or for life if:

Death results from the offense
The offense includes kidnapping or an attempt to kidnap,
The offense includes aggravated sexual abuse, or an attempt to commit aggravated sexual abuse
Or an attempt to kill

For more information, please contact:

Susan Parnas Frederick	(202) 624-5400	susan.frederick@ncsl.org
Emily Taylor		emily.taylor@ncsl.org

Prepared by Emily Taylor, Policy Associate, NCSL Updated April 29, 2009

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Congress > Legislation > 2009-2010 (111th Congress) > S. 909

Text of S. 909: Matthew Shepard Hate Crimes Prevention Act

Apr 28, 2009 - Introduced in Senate. This is the original text of the bill as it was written by its sponsor and submitted to the Senate for consideration. This is the latest version of the bill currently available on GovTrack.

S 909 IS

111th CONGRESS

1st Session

S. 909

To provide Federal assistance to States, local jurisdictions, and Indian tribes to prosecute hate crimes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

April 28, 2009

Mr. REID (for Mr. KENNEDY (for himself, Mr. LEAHY, Ms. SNOWE, Ms. COLLINS, Mr. SPECTER, Mr. SCHUMER, Mr. DURBIN, Mrs. FEINSTEIN, Mr. LEVIN, Ms. MIKULSKI, Mr. WHITEHOUSE, Mr. CARDIN, Ms. KLOBUCHAR, Mr. LIEBERMAN, Mrs. GILLIBRAND, Mr. MERKLEY, Mr. REED, Mr. NELSON of Florida, Mr. KERRY, Mr. BINGAMAN, Mr. DODD, Mr. BAYH, Mr. UDALL of Colorado, Mrs. SHAHEEN, Mr. HARKIN, Mr. BROWN, Mrs. MURRAY, Mr. CASEY, Mr. JOHNSON, Mr. LAUTENBERG, Mr. NELSON of Nebraska, Ms. LANDRIEU, Ms. CANTWELL, and Mr. AKAKA)) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To provide Federal assistance to States, local jurisdictions, and Indian tribes to prosecute hate crimes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Matthew Shepard Hate Crimes Prevention Act'.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim poses a serious national problem.

(2) Such violence disrupts the tranquility and safety of communities and is deeply divisive.

(3) State and local authorities are now and will continue to be responsible for prosecuting the overwhelming majority of violent crimes in the United States, including violent crimes motivated by bias. These authorities can carry out their responsibilities more effectively with greater Federal assistance.

(4) Existing Federal law is inadequate to address this problem.

(5) A prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected.

(6) Such violence substantially affects interstate commerce in many ways, including the following:

(A) The movement of members of targeted groups is impeded, and members of such groups are forced to move across State lines to escape the incidence or risk of such violence.

(B) Members of targeted groups are prevented from purchasing goods and services, obtaining or sustaining employment, or participating in other commercial activity.

(C) Perpetrators cross State lines to commit such violence.

(D) Channels, facilities, and instrumentalities of interstate commerce are used to facilitate the commission of such violence.

(E) Such violence is committed using articles that have traveled in interstate commerce.

(7) For generations, the institutions of slavery and involuntary servitude were defined by the race, color, and ancestry of those held in bondage. Slavery and involuntary servitude were enforced, both prior to and after the adoption of the 13th amendment to the Constitution of the United States, through widespread public and private violence directed at persons because of their race, color, or ancestry, or perceived race, color, or ancestry. Accordingly, eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude.

(8) Both at the time when the 13th, 14th, and 15th amendments to the Constitution of the United States were adopted, and continuing to date, members of certain religious and national origin groups were and are perceived to be distinct 'races'. Thus, in order to eliminate, to the extent possible, the badges, incidents, and relics of slavery, it is necessary to prohibit assaults on the basis of real or perceived religions or national origins, at least to the extent such religions or national origins were regarded as races at the time of the adoption of the 13th, 14th, and 15th amendments to the Constitution of the United States.

(9) Federal jurisdiction over certain violent crimes motivated by bias enables Federal, State, and local authorities to work together as partners in the investigation and prosecution of such crimes.

(10) The problem of crimes motivated by bias is sufficiently serious, widespread, and interstate in nature as to warrant Federal assistance to States, local jurisdictions, and Indian tribes.

SEC. 3. DEFINITION OF HATE CRIME.

In this Act--

(1) the term 'crime of violence' has the meaning given that term in section 16, title 18, United States Code;

(2) the term 'hate crime' has the meaning given such term in section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. 994 note); and

(3) the term 'local' means a county, city, town, township, parish, village, or other general purpose political subdivision of a State.

SEC. 4. SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS BY STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT OFFICIALS.

(a) Assistance Other Than Financial Assistance-

(1) IN GENERAL- At the request of State, local, or tribal law enforcement agency, the Attorney General may provide technical, forensic, prosecutorial, or any other form of assistance in the criminal investigation or prosecution of any crime that--

(A) constitutes a crime of violence;

(B) constitutes a felony under the State, local, or tribal laws; and

(C) is motivated by prejudice based on the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim, or is a violation of the State, local, or tribal hate crime laws.

(2) PRIORITY- In providing assistance under paragraph (1), the Attorney General shall give priority to crimes committed by offenders who have committed crimes in more than one State and to rural jurisdictions that have difficulty covering the extraordinary expenses relating to the investigation or prosecution of the crime.

(b) Grants-

(1) IN GENERAL- The Attorney General may award grants to State, local, and tribal law enforcement agencies for extraordinary expenses associated with the investigation and prosecution of hate crimes.

(2) OFFICE OF JUSTICE PROGRAMS- In implementing the grant program under this subsection, the Office of Justice Programs shall work closely with grantees to ensure that the concerns and needs of all affected parties, including community groups and schools, colleges, and universities, are addressed through the local infrastructure developed under the grants.

(3) APPLICATION-

(A) IN GENERAL- Each State, local, and tribal law enforcement agency that desires a grant under this subsection shall submit an application to the Attorney General at such time, in such manner, and accompanied by or containing such information as the Attorney General shall reasonably require.

(B) DATE FOR SUBMISSION - Applications submitted pursuant to subparagraph (A) shall be submitted during the 60-day period beginning on a date that the Attorney General shall prescribe.

(C) REQUIREMENTS- A State, local, and tribal law enforcement agency applying for a grant under this subsection shall--

(i) describe the extraordinary purposes for which the grant is needed;

(ii) certify that the State, local government, or Indian tribe lacks the resources necessary to investigate or prosecute the hate crime;

(iii) demonstrate that, in developing a plan to implement the grant, the State, local, and tribal law enforcement agency has consulted and coordinated with nonprofit, nongovernmental victim services programs that have experience in providing services to victims of hate crimes; and

(iv) certify that any Federal funds received under this subsection will be used to

supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subsection.

(4) DEADLINE- An application for a grant under this subsection shall be approved or denied by the Attorney General not later than 180 business days after the date on which the Attorney General receives the application.

(5) GRANT AMOUNT- A grant under this subsection shall not exceed $100,000 for any single jurisdiction in any 1-year period.

(6) REPORT- Not later than December 31, 2010, the Attorney General shall submit to Congress a report describing the applications submitted for grants under this subsection, the award of such grants, and the purposes for which the grant amounts were expended.

(7) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to carry out this subsection $5,000,000 for each of fiscal years 2010 and 2011.

SEC. 5. GRANT PROGRAM.

(a) Authority To Award Grants- The Office of Justice Programs of the Department of Justice may award grants, in accordance with such regulations as the Attorney General may prescribe, to State, local, or tribal programs designed to combat hate crimes committed by juveniles, including programs to train local law enforcement officers in identifying, investigating, prosecuting, and preventing hate crimes.

(b) Authorization of Appropriations- There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 6. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO ASSIST STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT.

There are authorized to be appropriated to the Department of Justice, including the Community Relations Service, for fiscal years 2010, 2011, and 2012 such sums as are necessary to increase the number of personnel to prevent and respond to alleged violations of section 249 of

title 18, United States Code, as added by section 7 of this Act.

SEC. 7. PROHIBITION OF CERTAIN HATE CRIME ACTS.

(a) In General- Chapter 13 of title 18, United States Code, is amended by adding at the end the following:

'Sec. 249. Hate crime acts

'(a) In General-

'(1) OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN- Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person--

'(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

'(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if--

'(i) death results from the offense; or

'(ii) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

'(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY-

'(A) IN GENERAL- Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) or paragraph (3), willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous

weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity or disability of any person--

'(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

'(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if--

'(I) death results from the offense; or

'(II) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

'(B) CIRCUMSTANCES DESCRIBED- For purposes of subparagraph (A), the circumstances described in this subparagraph are that--

'(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim--

'(I) across a State line or national border; or

'(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

'(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

'(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, dangerous weapon, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

'(iv) the conduct described in subparagraph (A)--

'(I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

'(II) otherwise affects interstate or foreign commerce.

'(3) OFFENSES OCCURRING IN THE SPECIAL MARITIME OR TERRITORIAL JURISDICTION OF THE UNITED STATES- Whoever, within the special maritime or territorial jurisdiction of the United States, commits an offense described in paragraph (1) or (2) shall be subject to the same penalties as prescribed in those paragraphs.

'(b) Certification Requirement-

'(1) IN GENERAL- No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, or his designee, that--

'(A) the State does not have jurisdiction;

'(B) the State has requested that the Federal Government assume jurisdiction;

'(C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or

'(D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

'(2) RULE OF CONSTRUCTION- Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

'(c) Definitions- In this section--

'(1) the term 'bodily injury' has the meaning given such term in section 1365(h)(4) of this title, but does not include solely emotional or psychological harm to the victim;

'(2) the term 'explosive or incendiary device' has the meaning given such term in section 232 of this title;

'(3) the term 'firearm' has the meaning given such term in section 921(a) of this title; and

'(4) the term 'gender identity' for the purposes of this chapter means actual or perceived gender-related characteristics.'.

(b) Technical and Conforming Amendment- The analysis for chapter 13 of title 18, United States Code, is amended by adding at the end the following:

'249. Hate crime acts.'.

SEC. 8. STATISTICS.

(a) In General- Subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note) is amended by inserting 'gender and gender identity,' after 'race,'.

(b) Data- Subsection (b)(5) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note) is amended by inserting ',

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SB 209

Senator Linda Menard

Session
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Interim
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Alaska State Legislature

SB 209 Sponsor Statement

Senate Bill 209 will provide the Alaska State Council on the Arts the authority to adopt regulations relating to its statutory powers and duties.

The bill has been introduced at the request of the Alaska State Council on the Arts (ASCA), which is the Last Frontier's state arts agency, created over 40 years ago. The council works in partnership with the National Endowment for the Arts (NEA) to foster the development of the arts for all Alaskans through education, partnerships, grants and services.

Several of ASCA's programs are governed by regulations, which ASCA has promulgated and updated over the years. Recently ASCA has sought to improve and streamline its grant-making policies, procedures, and regulations. In the course of this effort, ASCA was informed by the Department of Law that ASCA technically does not have statutory authority to adopt regulations under the Administrative Procedures Act (APA). While this legal opinion is at odds with long-standing practice, ASCA considered the advice from the Attorney General's office, and determined that the best way to rectify the current anomalous situation is to amend its enabling statute to allow ASCA the explicit statutory authority to adopt regulations.

This legislation will in essence codify existing practice and will enable ASCA to continue to administer and oversee its existing programs. Any and all regulations adopted in future will have to comply with the review and public-notice provisions of the APA. This bill has a zero fiscal note and will help ASCA continue performing its long-standing mission of helping more Alaskans appreciate, create, and enjoy the arts and having regulatory authority will directly contribute to ASCA's ability to do so.

Senator_Linda_Menard@legis.state.ak.us

26-LS1236\A
Bailey/Bullard
12/2/09

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY SENATOR MENARD

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

"An Act providing the Alaska State Council on the Arts the authority to adopt regulations relating to its statutory powers and duties; and providing for an effective date."

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

*** Section 1.** AS 44.27.052(a) is amended to read:

(a) The council may

(1) hold public and private hearings;

(2) enter into contracts, within the limit of funds available, with individuals, organizations, and institutions for services furthering the educational objectives of the council's programs;

(3) enter into contracts, within the limit of funds available, with local and regional associations for cooperative endeavors furthering the educational objectives of the council's programs;

(4) accept gifts, contributions, and bequests of unrestricted funds from

individuals, foundations, corporations, and other organizations or institutions for the purpose of furthering the educational objectives of the council's programs; [AND]

(5) make and sign agreements and do and perform any acts necessary to carry out the purposes of AS 44.27.040 - 44.27.060**; and**

(6) adopt regulations under AS 44.62 (Administrative Procedure Act) to carry out the provisions of AS 44.27.040 - 44.27.060.

*** Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

The Hon. Kevin Meyer and Joe Thomas
Co-Chairmen, Senate Education Committee
State Capitol, Rooms 101 & 504
Juneau, Alaska 99811

Dear Senators Meyer and Thomas:

I am writing on behalf of the Alaska State Council on the Arts (ASCA) to express our support for Senate Bill 209. I hope to ensure that all members of the Senate Education Committee and, indeed, the full Senate, will support this simple yet important piece of legislation.

SB 209 was necessitated by a determination of the Alaska Department of Law that ASCA does not possess statutory authority to adopt regulations, although ASCA had been so doing for many years. When this technical lack of authority came to our attention, the members of the State Council weighed our options, and decided that simply adding the missing language from the statute would be the best way to remedy the situation.

ASCA's work is vitally important to the cultural well-being of Alaskans, and we could not operate our regrant program in accordance with federal standards without the state regulations that implement our enabling statutes. Giving ASCA the explicit power to adopt simple regulations subject to the same scrutiny that applies to all other regulations adopted in Alaska will allow Alaska's state arts agency to continue to do its job to the benefit of all Alaskans.

Please don't hesitate to let me know if I can answer any questions about this legislation or ASCA, and thank you for you consideration of this bill.

Yours sincerely,

Benjamin Brown, Chairman
Alaska State Council on the Arts

LEGAL SERVICES

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 8, 2010

SUBJECT: Sectional summary; regulatory authority for the Alaska Council on the Arts (SB 209; Work Order No. 26-LS1236\A)

TO: Senator Linda Menard
Attn: Mike Rovito

FROM: Dennis C. Bailey
Legislative Counsel

You have requested a sectional summary of the above-described bill.

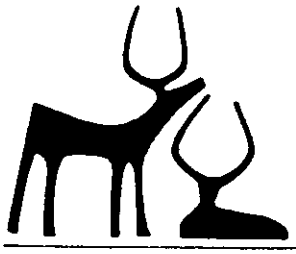
As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Gives the Alaska State Council on the Arts the authority to adopt regulations relating to its statutory powers and duties.

Section 2. Provides an immediate effective date for the measure.

If I may be of further assistance, please advise.

DCB:plm
10-057.plm



Senator Linda Menard
Alaska State Legislature
State Capitol Building
Juneau, Alaska
Sent via email

January 24, 2010

Dear Senator Menard:

I would like to lend the support of myself and the Alaska State Council on the Arts, a division of the Department of Education, to Senate Bill 209, which will at long last provide our agency the authority to adopt regulations.

While, in many respects, this legislation is a housekeeping matter, it is a critical bill for our agency. We need the ability to update and amend our regulations over time, and without the statutory authority to do so, the Alaska State Council on the Arts will remain static and unable to respond to changes in the field.

Thank you, Senator Menard, for carrying this legislation. I look forward to working with you and your office.

Sincerely,

Charlotte A. Fox
Executive Director

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Senator Linda Menard

Session
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Alaska State Legislature

February 12, 2010

To: Senator Hollis French

From: Sen. Linda Menard

Re: Hearing Request for Senate Bill 209

Honorable Senator French

This letter is to request a hearing for Senate Bill 209, an act providing the Alaska State Council on the Arts the authority to adopt regulations relating to its statutory powers and duties.

Along with this request is the pertinent material requested.

Thank you for your consideration,

Linda Menard

Sen. Linda Menard

Senator_Linda_Menard@legis.state.ak.us

SB 210

SENATE COMMITTEE REPORT

DATE: 2/3/10

FURTHER: Rules

DATE TURNED IN TO OFFICE: 2/12/10

Judiciary Committee considered HOUSE BILL NO. 307

HB 307 SEXUAL ASSAULT PROTECTIVE ORDERS

"An Act relating to sexual assault protective orders."

and recommends:

[ ] be **replaced** with [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt _____ Letter of Intent

[ ] further referral to _____ Committee

SENATE BILL:
[ ] Same Title
[ ] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Law	1/25/10			✓	1

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Wielechowski	✓			
	[illegible]	≠			
	[illegible]	✓			
CHAIR:	French	✓			

26-LS1243\N.2
Mischel
2/10/10

AMENDMENT

OFFERED IN THE SENATE BY SENATOR FRENCH

TO: CSSB 210( ), Draft Version "N"

Page 4, line 4, following "court":

Insert "; if a valid court order issued under AS 12.61.120 or AS 25.20.060 or an equivalent provision in another jurisdiction is in effect that requires that the address or contact information of the parent who is not deployed be kept confidential, the notification shall be made to the court only, and a copy of the order shall be included in the notification"

1768

AMENDMENT

OFFERED IN THE SENATE BY SENATOR FRENCH

TO: CSSB 210( ), Draft Version "N"

Page 2, line 25, following "section.":

Insert "In addition, there is a rebuttable presumption that a deployed parent's visitation rights may not be delegated to a family member who has a history of perpetrating domestic violence against a spouse, a child, or a domestic living partner, or to a family member with an individual in the family member's household who has a history of perpetrating domestic violence against a spouse, a child, or a domestic living partner."

Page 4, line 10, following "section.":

Insert "In addition, there is a rebuttable presumption that a deployed parent's visitation rights may not be delegated to a family member who has a history of perpetrating domestic violence against a spouse, a child, or a domestic living partner, or to a family member with an individual in the family member's household who has a history of perpetrating domestic violence against a spouse, a child, or a domestic living partner."

26-LS1243\N
Mischel
2/4/10

CS FOR SENATE BILL NO. 210( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR HUGGINS

A BILL

FOR AN ACT ENTITLED

"An Act establishing child custody, modification, and visitation standards for a military parent; and amending Rule 99, Alaska Rules of Civil Procedure."

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

*** Section 1.** AS 25.20 is amended by adding a new section to read:

Sec. 25.20.095. Custody and visitation proceedings involving a military parent. (a) Except as provided in this section, a parent's temporary duty, mobilization, or deployment to military service and the resultant temporary disruption to the schedule of a child of the parent may not be a factor in a court's decision to grant or deny a petition for custody or visitation.

(b) A parent who is deployed may petition a court of competent jurisdiction for custody or visitation. The petition shall be construed to be an application for affirmative relief, consistent with the protections afforded under 50 U.S.C. App. 501 - 596 (Servicemembers Civil Relief Act) and may include a request to delegate the deployed parent's visitation rights to a family member.

(c) A court shall order a delegation of visitation rights based on a petition filed under (b) of this section if the court finds that

(1) the family member receiving the delegation has an existing close relationship to the child; and

(2) the delegation is in the child's best interest.

(d) A hearing on a petition filed under this section shall be expedited by the court on a motion filed by the deployed parent and subject to an additional 10 days' notice.

(e) A parent who is deployed may not be construed to have waived any rights or protections with regard to custody or visitation of the deployed parent's child unless the deployed parent expressly waives the right or protection in writing.

(f) A court order entered under this section must require that

(1) the nondeployed parent make the child reasonably available for visitation to the deployed parent when the deployed parent is on leave if the visits are in the child's best interest;

(2) the nondeployed parent facilitate contact, including telephonic and electronic contract, between the deployed parent's child and the deployed parent if the contact is in the child's best interest; electronic contact with a video image must be facilitated whenever feasible; and

(3) the deployed parent provide timely information to the nondeployed parent regarding the deployed parent's leave schedule.

(g) In making a determination of the best interests of the child, the court shall consider the factors under AS 25.24.150(c) and apply the rebuttable presumption under AS 25.24.150(g) to visitation, delegation, and custody orders issued under this section.

(h) In this section,

(1) "deployment" or "deployed" means military services performed in compliance with a valid order received by an active duty or reserve member of the armed services of the United States, National Guard, or United States Coast Guard to report for combat operations, contingency operations, peacekeeping operations, temporary duty, a remote tour of duty, or other active service for which the deploying

parent reports unaccompanied by any family member;

(2) "family member" means a person who is an adult sibling, aunt, uncle, first cousin, or grandparent related by blood, adoption, or marriage or a stepparent to the child who is the subject of a custody order issued under this section;

(3) "military service" includes the period from which the deployed parent receives and is subject to deployment orders and the period in which the parent is awaiting travel or remains deployed because of sickness, wounds, leave, or other lawful cause.

* **Sec. 2.** AS 25.20.110 is amended by adding new subsections to read:

(d) Except as provided in (e) - (h) of this section, a parent's temporary duty, mobilization, or deployment to military service and the resultant temporary disruption to the schedule of a child of the parent may not be a factor in finding a change of circumstances on a motion to modify child custody or visitation.

(e) A court may provide for a temporary modification of a custody or visitation order during the period of a parent's deployment to military service to make reasonable accommodation for the deployment. The temporary order must specify that deployment is the basis of the order and include provisions for

(1) custody or reasonable visitation during a period of leave granted to the deployed parent if the custody or visitation is in the child's best interest;

(2) termination of the temporary order and resumption of the permanent order within 10 days after notification of the deployed parent's ability to resume custody or visitation unless the court finds that resumption of the custody or visitation order in effect before deployment is no longer in the child's best interest; the nondeployed parent shall bear the burden of proving that resumption of the order is no longer in the child's best interest;

(3) a hearing if a child of a deployed parent has been moved out of state and the nondeployed parent has filed a motion that alleges that resumption of the permanent custody order will result in immediate danger of irreparable harm to the child or that the presumption under AS 25.24.150(g) exists;

(4) delegation, on request of the deployed parent, of the deployed parent's visitation rights under an existing order, if any, to another family member who

has an existing close relationship to the child if the delegation is in the child's best interest; and

(5) immediate notification by the parent who is not deployed of a change of address or contact information to the deployed parent and to the court.

(f) A court shall expedite a hearing to modify custody or visitation on a motion made by a parent who is subject to deployment.

(g) In making a determination of the best interests of the child, the court shall consider the factors under AS 25.24.150(c) and apply the rebuttable presumption under AS 25.24.150(g) to visitation, delegation, and custody orders issued under this section.

(h) In this section, "deployment," "family member," and "military service" have the meanings given in AS 25.20.095.

*** Sec. 3.** AS 25.24.150 is amended by adding a new subsection to read:

(*l*) Except as provided in AS 25.20.095 and 25.20.110, a court may not consider a parent's activation to military service and deployment in determining the best interest of the child under (c) of this section. In this subsection, "deployment" has the meaning given in AS 25.20.095.

*** Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 99(a), Alaska Rules of Civil Procedure, is amended to read:

(a) **Authorization for Telephonic, Video, or Internet Participation.** The court may allow one or more parties, counsel, witnesses or the judge to participate telephonically in any hearing or deposition for good cause and in the absence of substantial prejudice to opposing parties. **The court shall allow video or Internet testimony if the hearing or deposition involves the custody or visitation of a child of a parent who is deployed, as that term is defined in AS 25.20.095, at the request of the deployed parent**. Authorization for a witness to telephonically participate in a deposition does not bar the witnesses' testimony from being videotaped under Civil Rule 30.1; nor does it bar a party or attorney from being present at the site at which the witness is physically present.

* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. The amendment to Rule 99(a), Alaska Rules of Civil Procedure, made by sec. 4 of this Act, takes effect only if sec. 4 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

ALASKA STATE LEGISLATURE

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Charlie Huggins
Senator

Sponsor Statement SB 210

"An Act establishing child custody, modification, and visitation standards for a military parent who is deployed; and amending Rule 99, Alaska Rules of Civil Procedure."

For nearly a decade, the War on Terror has required Alaska to frequently deploy our active military, reserve, and National Guard troops. This high deployment tempo is putting even more pressure on our already strained military families. Children who are already in unusual circumstances due to their parents' military careers are being put in the situation of having to deal with a deployed parent. It is no wonder that the divorce rate for members in the military has been steadily rising for the past decade.

However, while the travesty of divorce is hard enough on all members of a family, the court system is also finding it difficult to balance the issues of deployment with child custody issues. A deploying family member now must fight a battle on two fronts, the one overseas, and the one at home. SB 210 ensures that the court system has clear directive as to how it should deal with a deploying military member if they should find themselves in the midst of a child custody battle. It affords them the right to an expedited hearing so that matters can be taken care of before deployment, if necessary, and it also allows the member to delegate their visitation rights to another family member in order for the child to maintain all familial connections. Most importantly, SB 210 requires that a court ***not*** use deployment as the sole reason for a change in a child custody order. Our men and women are sacrificing enough for our country, their military service should not be a reason in itself for them to lose custody of their children.

In 2009, because of the potential for conflict with current states child custody laws, congress deemed military child custody to be the responsibility of individual states.

SB 210 includes the following items and restrictions:

- A definition of a military absence.
- Assurance that military duties cannot be the sole reason for a permanent change of custody.
- Allowance of expedited hearings with restrictions.
- The right to delegate visitation to another family member.
- Allowance of electronic testimony.
- Limitations on temporary custody orders.

In recognizing that the federal government should not legislate a Military Child Custody statute, that Alaska has many service-members, that the United States military currently has a high rate of deployment, and that military divorce rates continue to rise, now is a good time for the Alaska Legislature to address military child custody.

ALASKA STATE LEGISLATURE

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Senator

Sectional
SB 210
"An Act establishing child custody, modification, and visitation standards for a military parent; and amending Rule 99, Alaska Rules of Civil Procedure."

Section 1: AS 25.20 adds a new section:

Sec. 25.20.095. Custody and visitation proceedings involving a military parent.
(a) Military service cannot be a factor in granting or denying a petition for custody or visitation.

(b) – (e) Upon receiving deployment orders a military parent shall receive an expedited hearing and the parent can delegate visitation rights to a family member if doing so is within a child's best interests. Any petition for custody or visitation will be given the same protections as afforded under the SCRA. Additionally, rights or protections regarding custody or visitation can only be waived writing

(f) A court order entered under this section must require
(1) a child be made reasonably available during periods of leave
(2) the facilitation of written and electronic contact between the deployed parent and the child, preferably electronic contact with a video image
(3) the deployed parent provide timely leave information

(g) Factors in determining a child's best interests. Cross reference to AS 25.24.150(c) and AS 25.24.150(g)

(h) Definition of "deployment," "family member," and "military service"

Section 2: AS 25.20.110 is amended by adding new subsection to read:

(d) Except as provided in (e) – (h) military service cannot be a factor in finding a change of circumstances on a motion to modify child custody or visitation

(e) A court may provide for a temporary modification of a custody or visitation order to make reasonable accommodation for a deployment. The temporary order must include provisions for

(1) custody or visitation during periods of leave if doing so is within the child's best interests.

(2) termination of the temporary order within 10 days of notification of the deployed parent's ability to resume custody if doing so is within the child's best interests. The non-deployed parent shall bear the burden of proof.

(3) a hearing if a child of a deployed parent moved out of state and the non-deployed parent files a motion that alleges that resumption of the permanent custody order will result in immediate danger of irreparable harm to the child or that the presumption under AS 25.24.150(g) exists

(4) delegation of the deployed parent's visitation rights to a family member if doing so is within the child's best interests.

(5) immediate notification from the non-deployed parent of a change of address or contact information.

(f) A court shall expedite a hearing to modify custody or visitation on a motion made by a parent who is subject to deployment.

(g) Factors in determining a child's best interests. Cross reference to AS 25.24.250(c) and AS 25.24.250(g)

(h) Definition of "deployment," "family member," and "military service." Cross reference to AS 25.20.095

Section 3: AS 25.24.150 is amended by adding new subsection to read:

(l) Except as provided in AS 25.20.095 and 25.20.110 military service cannot be a factor in determining the best interest of the child under (c) of this section.

Section 4: The uncodified law of the State of Alaska is amended by adding a new section to read:

(a) Authorization for Telephonic, Video, or Internet Participation.
The court shall allow video or Internet testimony if the hearing or deposition involves the custody or visitation of a child of a parent who is deployed, as that term is defined in AS 25.20.095, at the request of the deployed parent.

National Association for Uniformed Services

Military Divorce Rate Continues to Climb
The divorce rate in the armed forces continues to grow, despite efforts by the military to help struggling couples.

The Pentagon recently reported there were an estimated 27,312 divorces among roughly 765,000 married members of the active-duty Army, Air Force, Navy and Marine Corps in fiscal year 2009.

That's a divorce rate of about 3.6 percent, compared with 3.4 percent a year earlier, according to figures from the Defense Manpower Data Center. Marriages among reservists failed at a rate of 2.8 percent compared to 2.7 the previous year.

The reported 3.6 percent rate is a full percentage point above the 2.6 percent reported in late 2001, when the U.S. began sending troops to Afghanistan in response to the Sept 11 terrorist attacks.

As in previous years, women in uniform suffered much higher divorce rates than their male counterparts: 7.7 percent compared to 3 percent for men in 2009.

The only comparable measure for civilian divorce rates is what the Centers for Disease Control said in 2005 that 43 percent of all first marriages end in divorce within 10 years.

Critics believe that the divorce rate reported by the Pentagon comes nowhere close to depicting the damage done to marriages and families by the two ongoing wars.

The Pentagon number doesn't count veterans, who divorce after leaving the services, let alone reflect other possible wartime consequences on families, such as increases in alcoholism or the toll on orphaned or emotionally stressed children of troops.

In an Army battlefield survey taken in Iraq in the spring, nearly 22 percent of young combat soldiers questioned said they planned to get a divorce or separation, compared to 12.4 percent in a survey conducted in 2003.

NO RESOLUTION PRESENTED HEREIN REPRESENTS THE POLICY OF THE ASSOCIATION UNTIL IT SHALL HAVE BEEN APPROVED BY THE HOUSE OF DELEGATES. INFORMATIONAL REPORTS, COMMENTS AND SUPPORTING DATA ARE NOT APPROVED BY THE HOUSE IN ITS VOTING AND REPRESENT ONLY THE VIEWS OF THE SECTION OR COMMITTEE SUBMITTING THEM.

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AMERICAN BAR ASSOCIATION

SECTION OF FAMILY LAW
STANDING COMMITTEE ON LEGAL ASSISTANCE FOR MILITARY PERSONNEL
STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association opposes the enactment of federal legislation that would:

(a) create federal-question jurisdiction in child custody cases, including cases involving servicemember-parents;

(b) dictate case outcomes or impose evidentiary burdens in state child-custody matters involving servicemember-parents;

(c) co-opt the discretionary authority of state courts, in cases involving servicemember-parents, to determine the best interests of the child and award custody accordingly; and

(d) pre-empt the growing body of state laws that comprehensively address servicemember domestic relations matters, including child custody.

FURTHER RESOLVED, That the American Bar Association urges states to enact legislation prohibiting denial of child custody to a servicemember based solely on absence due to military deployment.

REPORT

We Americans owe many things to those who disproportionately bear the burden of national sacrifice, but bad law is not one of them. Today as always, the American Bar Association is as resolutely committed to the legal rights of American military members as it is to those of America's children. Yet there can be no Solomon-like splitting of interests when it comes to legislation that, in the name of deployed servicemembers' parental rights, would create a federal child custody law that usurps the historic primacy of the states in domestic relations law and relegates the best interests of the child to a secondary consideration in custody disputes.

Such legislation was kept out of the Fiscal Year 2009 National Defense Authorization Act at the eleventh hour. Similar measures had been introduced in prior sessions of Congress, and there is every reason to believe that this measure will keep resurfacing until either passed, or finally dispatched after a full vetting. Should such a measure re-surface, the ABA urges Congress to reject in its entirety this unsound incursion into the realm of the states, however well-intentioned its proponents, with the understanding that the rights of servicemembers and their children are best served within the existing framework of state laws and court-integrated social services, and the formidable procedural protections already built into the federal Servicemembers Civil Relief Act (SCRA).

The Recent Legislation

The latest iteration of the opposed legislation, section 4510 of H.R. 5658, 110th Congress, would have amended 50 U.S.C. App. § 521, the SCRA, by adding language dictating outcomes in child custody cases, where a servicemember parent had legal custody of the child at the time the parent was deployed to a contingency operation such as Iraq or Afghanistan. The bill would have compelled courts to restore custody of the child to the servicemember parent upon his or her return home post-deployment, unless it could be demonstrated by "clear and convincing evidence" that it was not in the child's best interest to have custody restored to the returning servicemember parent. The bill also would have prohibited a court, in deciding the child's interests, from considering how a servicemember's extended absence due to deployment may have affected those interests. The bill further would have prohibited change in child custody while a servicemember was deployed, through modification of a child custody arrangement that existed at the time of deployment, absent clear and convincing evidence that the change was in the child's best interests.

The Threat to Existing, Effective Legal Mechanisms

On its face, the proposition that an American servicemember must not lose custody of his or her child by virtue of service to our country in distant danger zones seems unassailable. On the other hand, is it ever reasonable to suggest that a court, in deciding a child's best interest, be prohibited from even considering how a parent's prolonged military deployment, *among other factors*, might affect the child's-best-interests analysis? The reality is that conflicting interests within separated families do not lend themselves to inflexible legal prescriptions. Such matters must be

decided on a case-by-case basis, always focusing on the best interest of the child as the primary factor.

Wielding the club of a federal child-custody law that pre-ordains pro-servicemember outcomes in these cases would compromise the generally-accepted "best interests of the child" standard governing custody decisions.

A. Creating a Federal Law of Child Custody for These Servicemember-Parent Cases Would Invade the Province of State Courts and Disrupt Existing, Effective Legal Frameworks for Resolving Child Custody Disputes.

Child Custody Is Not a Federal Question.

The opposed legislation would create a new substantive legal interest in restored child-custody rights, under the SCRA. It would thus create federal-question jurisdiction over covered child custody cases, forcing federal judges to venture into the *terra incognita* of child custody jurisprudence when a covered case is originally filed in federal court pursuant to 28 U.S.C. §1331 or removed to federal court pursuant to 28 U.S.C. §1446.

Such an outcome would run counter to a long and unbroken history of federal deference to state courts on subject matters not expressly reserved to federal judicial authority. In particular, federal courts have not entertained claims addressing child custody or visitation, or other "adjustments to family status." *See Ankenbrandt v. Richards and Kessler*, 504 U.S. 689 (1992); *Thompson v. Thompson*, 798 F.2d 1547 (9th Cir. 1986), aff'd 484 U.S. 174 (1988); Cole *v. Cole*, 693 F.2d 1083 (4th Cir. 1980); *Doe v. Doe*, 660 F.2d 101 (4th Cir. 1981). In *Ankenbrandt*, the Supreme Court observed:

> Issuance of [custody] decrees . . . not infrequently involves retention of jurisdiction by the court and deployment of social workers to monitor compliance. As a matter of judicial economy, state courts are more eminently suited to work of this type than are federal courts, which lack the close association with state and local government organizations dedicated to handling that arise out of conflicts over divorce, alimony, and child custody decrees. Moreover, as a matter of judicial expertise, it makes far more sense to retain the rule that federal courts lack power to issue these types of decrees because of the special proficiency developed by state tribunals of the past century and a half. 504 U.S. at 703-04.

The same reasoning must guide Congress in consideration of the next bill purporting to create a federal law of child custody.

Such Legislation Would Tie the Hands of Judges.

Whether these matters are decided in federal or state court, the opposed legislation would tie the hands of judges by mandating a particular result in favor of the servicemember parent returning from deployment. It would mandate automatic restoration of custody to the returning parent, provided that he or she had custody of the child at the time of deployment. In forcing that decision, the opposed rule would bar a court from even considering the effect of prolonged parental absence, due to deployment, on the child's best interests. The court would have no discretion in these custody decisions, absent a showing by "clear and convincing" evidence that the child should not resume residence with that parent.

Even where it could be proven by a preponderance of the evidence that the child's best interests lay with a grant of custody to the other parent, the court would be forced to restore the child to the custody of the returning servicemember, unless the more stringent "clear and convincing" threshold could be met.

The States Are Making Rapid Progress in Addressing These Matters.

The states have moved rapidly and responsibly to address the extraordinarily complex set of family law and other legal issues confronting this generation of servicemembers and their families, of whom so much has been demanded. Nine states have enacted legislation squarely addressing the child custody circumstances at issue in the opposed legislation: Arizona, California, Kansas, Kentucky, Louisiana, Michigan, Mississippi, North Carolina and Virginia. More than 20 states have adopted legislation acknowledging the potentially competing interests of the child and custodial servicemember and seeking to balance those interests within the framework of the individual states family service systems. These recent state statutes provide, or will provide, broad protections of family member interests, addressing not only restoration of custody but representation of the servicemember's interests in state proceedings and incorporation of mental health and other state support services.

The typical emergent state statute goes much further than the opposed federal bill in protecting servicemembers' interests. For example, it provides for electronic testimony by deployed servicemembers and expedited dockets for those wishing to organize their affairs in advance of deployment.

Importantly, many of the new comprehensive state laws, unlike the proposed federal legislation, also address child-visitation for servicemembers who do *not* have custody. Most active-duty servicemembers who have minor children are not custodial parents. Department of Defense regulations generally prohibit first-term single parents from having legal custody of a minor child. Moreover, the military lifestyle often compels the servicemember parent to relinquish custody to the non-servicemember parent.

These state-law solutions, tailored to and consonant with particular state social service systems and the broad array of servicemember parental interests, represent by far the better and more effective remedy.

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The U.S. Department of Defense strongly opposes the type of legislation at issue – the department has urged in its position statement on point:

> The progress with which the states have embraced the military-specific issues has been phenomenal and shows no indication of waning. Five military custody bills became law in just the first six months of 2008. It would be a mistake to intrude on the significant protections and creativity demonstrated by the states.

The opposed bill would do substantial damage to this significant new line of state-based protections, as federal law would be pre-emptive on the burden of proof question and, in a radical and unprecedented departure from the long history of state dominion over family relations disputes, would mandate custody-dispute outcomes from afar without due consideration of the child's best interests. It must be recognized that, at the end of the day, the creative servicemember-parent protections offered by the new and growing array of state statutes are significantly stronger than those contained in this misguided proposal.

B. This Legislation Would Undermine and Misuse The Servicemembers Civil Relief Act.

The opposed bill would compromise the purpose and effect of the SCRA by converting it into a results-driven hammer for forcing particular outcomes in child custody cases. Such a misuse of this far-reaching legal shield for American servicemembers and their families would destroy its procedural focus, as it applies to courts and litigation, with its provisions for issuing automatic stays, vacating default judgments and appointing counsel for servicemembers.

As the Department of Defense noted in its opposition:

> The SCRA . . . currently provides powerful rights to mobilized custodial caregivers. A number of high-visibility custody cases have resulted in custody decisions adverse to deployed servicemembers; however, in many of these cases the basic and generally easily met prerequisites for automatic 90-day stays under the SCRA were not followed. In other cases, judges simply ignored the SCRA. This indicates a problem of a lack of education about the effect and use of the SCRA rather than a problem with its substantive limitations.

The opposed initiative would also introduce a real risk of dilution of important protections already found in the SCRA, by creating the possibility of a legal inference that those protections *only* apply to the particular child custody circumstances addressed by the bill, (i.e., the custody rights of servicemembers who had custody pre-deployment and are returning from deployment.)

The Department of Defense also points out that passage of the proposal could leave "other types of domestic cases vulnerable to arguments that the failure to explicitly address them indicates a legislative intent to exclude them" from SCRA procedural protections."

The SCRA, as it is written, provides clear protections for civil litigants in uniform, including deployed servicemembers in child custody matters, and it means what it says. Doubt as to the scope and reach of this seminal statute's array of servicemember protections must not be legislatively introduced, where no such doubt currently exists.

Damage to the purpose and function of this pre-eminent servicemember-protection statute was a primary consideration of an original sponsoring entity of the instant resolution, the Standing Committee on Legal Assistance for Military Personnel (LAMP), in its decision to strongly oppose the legislative proposal at issue here. LAMP exists to serve and support American servicemembers and their families. While on its face the offending legislation purports to support servicemember parents, the LAMP Committee has concluded that this support is largely illusory, as the bill would do irreparable harm to state-law-based servicemember protections, which are rapidly improving, and upset the well-established legal-social framework for managing child custody cases affecting military and civilian families alike.

C. The Best Interests of the Child Standard Must be Preserved in Custody Cases.

The opposed bill would compromise the best interest of the child standard in custody decisions. To be sure, in fairness to those who leave home to answer their country's call to arms, the mere fact of deployment of a custodial caregiver, standing alone, cannot constitute legal grounds for depriving a servicemember parent of custody. But the proposal in question veers off to the opposite extreme, making restoration of pre-deployment custody *automatic* and relegating the child's interests to a secondary consideration, unless it can be shown by "clear and convincing" evidence that restoring custody to that servicemember-parent would be against the child's best interests. In the murky world of most family relationships, proving anything to a "clear and convincing" certainty is a tall order indeed. The proposed standard thus would turn on its head the generally-accepted "best interests" standard, a deviation that would represent a dangerous precedent that ultimately serves no one's interests, including those of servicemembers or their families.

Additional Considerations

The proposal is also unworkable to the extent that it would only create custody rights in cases involving the actual deployment of a servicemember to a "contingency operation," which means a designated conflict zone such as Iraq or Afghanistan. As the Department of Defense noted, this introduces

> another arbitrarily created distinction between those involved in a contingency operation and those who must be absent from their child for other military-directed reasons. Why should the deployment of a servicemember in support of a humanitarian operation, as opposed to a peacekeeping operation, be forced to operate under different laws and perhaps different courts? Few other provisions of the SCRA turn on such arbitrarily imposed distinctions.

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Likewise, no protections would be afforded servicemembers who are called up to replace those mobilized and who take their places, yet are not on a humanitarian mission, and those who face military absence due to the nature of the mission – an "unaccompanied tour." There is no reason why these members of the military should face disparate treatment.

On a separate point, all of the service branches (Army, Navy, Air Force, Coast Guard and Marine Corps) have been developing new Family Care Plan instructions designed to encourage servicemembers to create explicit plans for the handling of child custody issues and other family matters in the event of deployment. Going forward, the revised Family Care Plan instructions, once completed by all the services, should prevent a number of these custody disputes from arising, further obviating a statutory fix that would be far worse than the problem.

Respectfully submitted by:

Anita M. Ventrelli, Chair, Section of Family Law
Donald J. Guter, Chair, Standing Committee on Legal Assistance for Military Personnel

February 2009

GENERAL INFORMATION FORM

Submitting Entities: ABA Section of Family Law
ABA Standing Committee on Legal Assistance for Military Personnel

Submitted By: Anita M. Ventrelli, Chair, Section of Family Law
Donald J. Guter, Chair, Standing Committee on Legal Assistance for Military Personnel

1. Summary of Recommendation(s).

The Section of Family Law and the Standing Committee on Legal Assistance for Military Personnel (LAMP) of the American Bar Association recommend to the ABA House of Delegates that the ABA urge Congress to oppose any federal legislation that would create a new federal law of child custody controlling resolution of child-custody disputes involving the custodial rights of servicemember-parents. They recommend opposition to such legislation to the extent that it would: create federal-question jurisdiction over these child custody cases; threaten existing procedural protections for American servicemembers found in the Servicemembers Civil Relief Act; co-opt the growing body of state laws that comprehensively address the domestic relations interests of servicemembers; and legislatively dictate outcomes and evidentiary burdens in child-custody cases, while compromising the best-interests-of-the-child standard.

2. Approval by Submitting Entity.

This Recommendation was approved by the Council of the Section of Family Law on October 2, 2008 and by the LAMP Committee on November 14, 2008.

3. Has this or a similar recommendation been submitted to the ABA House of Delegates or Board of Governors previously?

No

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

This Recommendation is consistent with the American Bar Association's 1984 policy urging the legal profession to direct attention to issues affecting children, including the preservation of children's legal rights; the 1995 policy urging respect of the rights of all children in the United States; and the 1993 policy urging amendment of the former Soldiers' and Sailors' Civil Relief Act to clarify and modernize the Act's protections of American servicemembers.

5. What urgency exists which requires action at this meeting of the House?
The latest iteration of the opposed legislation was introduced as part of the Fiscal Year 2009 National Defense Authorization Act. Only at the eleventh hour was this bill, along with other bills amending the Servicemembers Civil Relief Act, purged from the Defense Authorization Act. Congressional staff and observers who closely follow this subject expect the bill to be reintroduced in 2009. Action by the House at this time is necessary to have an influence on Senate and Congressional action.

6. Status of Legislation. (If applicable.)

The opposed bill, section 4510 of H.R. 5658, would have amended 50 U.S.C. App. § 521, the Servicemembers Civil Relief Act. It was introduced in the 110th Congress in 2008. It was not adopted as part of the final FY 2009 National Defense Authorization Act. It is not a currently pending bill, but is expected to be reintroduced.

7. Cost to the Association. (Both direct and indirect costs.)

None.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals. (List entities to which the recommendation has been referred, the date of referral and the response of each entity if known.)
The Resolution and Report were distributed to the following ABA entities on Nov. 13, 2008, with the request for their co-sponsorship:
Standing Committee on Armed Forces Law,
Standing Committee on Legal Aid and Indigent Defense (SLCAID),
Section of Litigation,
Center for Children and the Law,
General Practice, Solo, and Small Firm Division (Military Committee),
Government and Public Sector Lawyers Division,
Judicial Division,
Section of Individual Rights and Responsibilities, and
Young Lawyers Division.

Government and Public Sector Lawyers Division is reviewing the recommendation; SLCAID will vote on co-sponsorship on Nov. 22, 2008.

10. Contact Persons. (Prior to the meeting. Please include name, address, telephone number and email address.)

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11. Contact Persons. (Who will present the report to the House. Please include email address and cell phone number.)

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EXECUTIVE SUMMARY

1. Summary of the Recommendation

The Recommendation calls for the American Bar Association to urge Congress to oppose legislation that would create a federal law of child custody controlling state custody cases involving servicemember-parents. The Recommendation urges that the legislation be stopped because it would dictate court outcomes in child custody cases, even where the child's best interests do not support that outcome; create federal-question jurisdiction over child custody cases, long the province of state courts; impose federally-mandated evidentiary burdens on state courts; co-opt the growing body of state laws that comprehensively and appropriately address domestic relations matters affecting servicemembers; and cast doubt on existing servicemember protections found in the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. §§ 501-596.

2. Summary of the Issue that the Resolution Addresses

The issue arises from strong concern among child advocates, military legal assistance experts and others that the opposed legislation would inappropriately employ federal fiat to invade the province of the states by dictating court outcomes in child custody cases affecting deployed servicemembers. The opposed legislation provides that deployed servicemembers who had child custody at the time of their deployment would automatically have that custody restored upon their return, irrespective of other considerations affecting the best interests of the child. The opposed legislation would provide that custody could be denied to the returning servicemember in such a case only by a showing of "clear and convincing" evidence that it was not in the child's best interests. The opposed legislation improperly creates federal substantive law and evidentiary rules for custody determinations historically left to state courts. The opposed legislation would misuse the Servicemembers Civil Relief Act, the source of important procedural protections for servicemembers in litigation, to dictate substantive outcomes in custody cases. The legislation would cast doubt of the ample and adequate servicemember protections already found in the SCRA. The opposed legislation would create federal-question jurisdiction over these child custody cases, a role federal courts are ill-equipped to fulfill. The opposed legislation would pre-empt the emerging body of state laws that comprehensively and organically address servicemember domestic relations interests. The essence of the issue is that the opposed legislation is not in the interest of children or servicemembers.

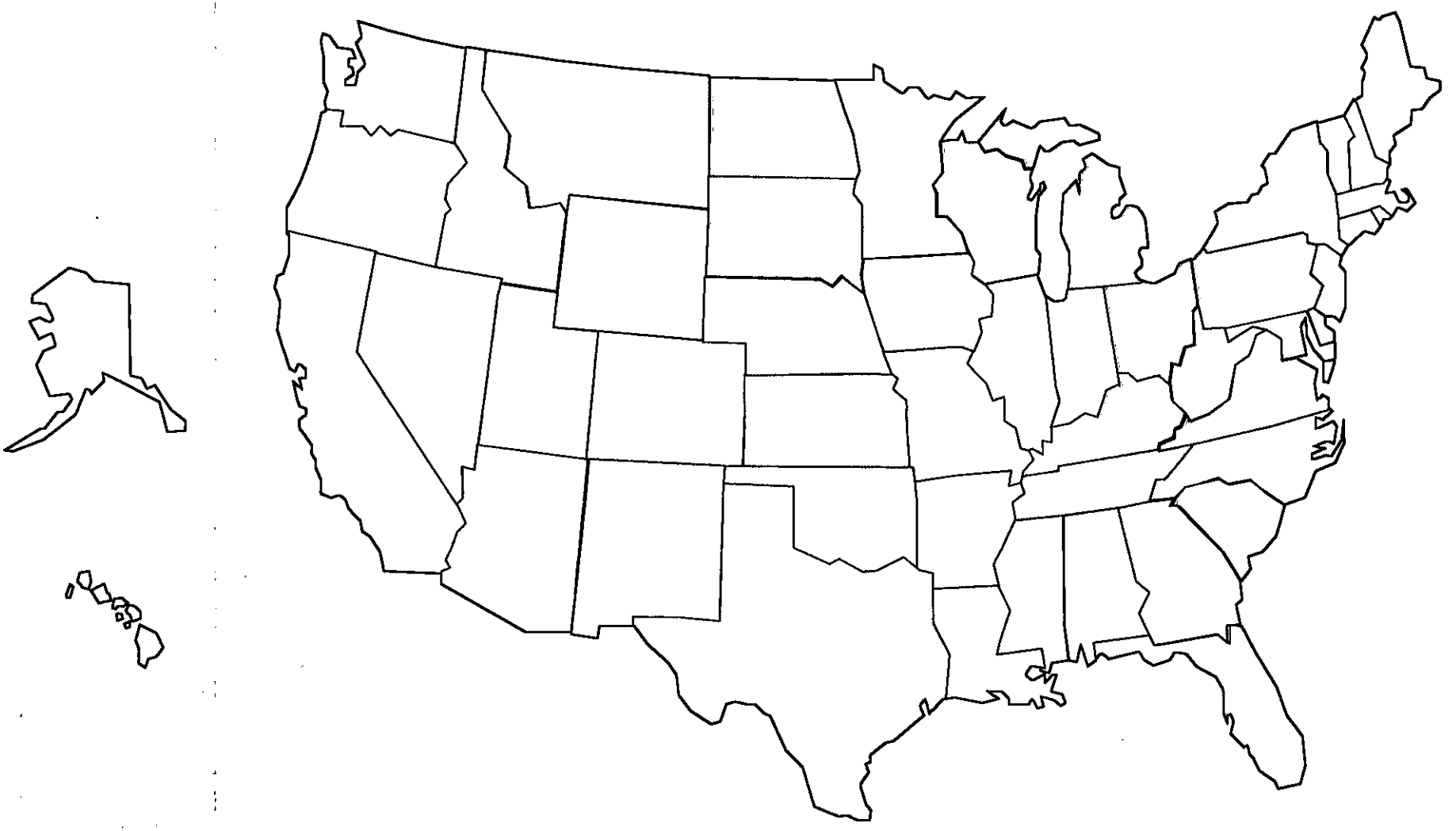
3. Please Explain How the Proposed Policy Position will Address the Issue

The Proposed Policy would influence the United States Senate and the House of Representatives to oppose the legislation and thereby remove the threat to the interests of children and servicemembers posed thereby.

4. Summary of Minority Views

We are aware of no minority views within the ABA.

Child Custody



ALASKA STATE LEGISLATURE

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Charlie Huggins
Senator

February 4, 2010

To: Senator Hollis French, Chair
Senate Judiciary Committee

From: Senator Charlie Huggins

Subject: Request to Schedule SB 210 for a Hearing

I respectfully request the scheduling of SB 210, "An Act establishing child custody, modification, and visitation standards for a military parent; and amending Rule 99, Alaska Rules of Civil Procedure," for a hearing before the Senate Judiciary Committee at your earliest convenience.

Please contact Josh Tempel, staff person for the Joint Alaska State Legislative Veterans' Caucus, with any questions on the details of this bill. Josh's phone number is 465-4066.

Please find attached pertinent information for the committee.

Thank you.

Attachments

SB 214

AMENDMENT

OFFERED IN THE HOUSE

TO:

Page ___, line ___:

Insert "**relating to aggravating factors at sentencing involving assaultive behavior and cruelty to animals;**"

Page ___, line ___:

Insert a new bill section to read:

"*** Sec. ___.** AS 12.55.155(c)(8) is amended to read:

(8) the defendant's prior criminal history includes conduct involving aggravated assaultive behavior, [OR] repeated instances of assaultive behavior, **repeated instances of cruelty to animals proscribed under AS 11.61.140(a)(1) and (3) - (5), or a combination of assaultive behavior and cruelty to animals proscribed under AS 11.61.140(a)(1) and (3) - (5)**; in this paragraph, "aggravated assaultive behavior" means assault that is a felony under AS 11.41, or a similar provision in another jurisdiction;"

Renumber the following bill sections accordingly.

ALASKA STATE LEGISLATURE

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Joint Armed Services Committee
Resources Committee

Member
Energy Committee
Judiciary Committee
World Trade Committee

SENATOR BILL WIELECHOWSKI

Sponsor Statement: SB 214
Animal Cruelty

The intent of SB 214 is to ensure the most heinous crimes of animal cruelty are treated as felony offenses.

Since the 1970's there has been a documented link between those who abuse animals and offenders of domestic violence and other violent crimes. FBI reports going back to the 1970's show that most serial killers had a history of killing or torturing animals as children. Most victims of domestic violence also report animal abuse in their homes by their batterer.

Felony level penalties for the worst crimes of animal cruelty exist in 46 states. Alaska currently allows perpetrators three chances to commit these horrific crimes before charging them with a felony offence. As the links between animal abuse and domestic violence and other crimes against people become more clear, this bill can help prevent additional violent attacks on members of our communities.

SB 214 will amend the current statute to ensure that the most malicious acts of animal cruelty are treated as felony offenses.

Please join me in supporting this legislation to bring the animal cruelty code in Alaska up to the same standards as 46 other states.

THE HUMANE SOCIETY OF THE UNITED STATES

FactSheet

The Connection between Animal Cruelty and Human Violence

Research indicates that without strict intervention, people who abuse and kill animals are more likely to similarly abuse humans. Many of society's most infamous mass murderers, serial killers, and a significant percentage of spousal abusers initially target animals with their violent conduct. It is critical to interrupt the cycle of violence before it escalates. Passage of a felony-level animal cruelty law is a critical initial step in halting the progression of violent crime.

Animal cruelty is a predictor and indicator of other violent crimes.

- Acts of animal cruelty are linked to a variety of other crimes, including crimes of violence against humans, property crimes, and the commission of drug or disorderly conduct offenses (Arluke & Luke, 1997)

Animal abuse is associated with both domestic violence and child abuse.

- Pet abuse is a significant predictor of partners who will become batterers (Campbell, 2006).
- State and national surveys of domestic violence victims consistently find that as many as 71% of battered women report their partners threatened, or killed, the family pet (Ascione, 1995).
- The threat of animal abuse to silence child sex abuse victims has been a factor in a number of criminal convictions (Davidson, 1998).
- An early study found that there was animal abuse in 88% of families who were under State supervision due to the physical abuse of their children (DeViney, Dickert & Lockwood, 1983).

Animal cruelty often is an indicator that a child poses a risk to himself and or others.

- A U.S. Department of Justice supported longitudinal study beginning in 1987 found that animal abuse predicted which children would exhibit anti-social and aggressive behavior later childhood, adolescence, and then adulthood (Broidy, 2003).
- Animal cruelty is a warning sign for at-risk youth, according to the National School Safety Council, U. S. Department of Education, the American Psychological Association, and the National Crime Prevention Council.

Serial killers and school shooters have histories of abusing animals.

- Ted Bundy, Jeffrey Dahmer, Albert DeSalvo (the "Boston Strangler") and many others committed heinous acts of animal cruelty before brutally maiming and killing their human victims.
- Of 36 convicted multiple murderers questioned in an often-cited study, 46% admitted committing acts of animal torture as adolescents (Congressional Register, 1996).
- Over half of the school shooters were known to persistently abuse animals (Miner, 1999).

People want animal cruelty to be prosecuted.

- In a survey of over 1,000 representative U.S. households, 85% of those responding thought it was either "very important" or "important" to protect animals from cruelty (2006).

Forty-three states and the District of Columbia have enacted felony level penalties for egregious acts of animal cruelty. ***Please help strengthen the animal cruelty laws in your state.***

2100 L STREET, NW, WASHINGTON, DC 20037 • 202-452-1100 • www.hsus.org

NATIONAL COALITION AGAINST DOMESTIC VIOLENCE

NCADV

Every Home A Safe Home

PETS AND DOMESTIC VIOLENCE

WHY IT MATTERS

Pets are not immune to domestic violence. Batterers frequently threaten, injure, maim, or kill their partners' or children's pets in conjunction with domestic abuse. Because victims understand the extent of the harm that their abusers will likely inflict upon their pets, many hesitate to leave violent relationships out of concern for the safety of their pets. When batterers abused victims, victims see the animal cruelty as part of a long history of violence aimed at them and their families.[1] Recognizing this, an increasing number of shelters have added kennels or instituted "safe haven" animal foster care programs in an effort to protect victims, their children, and their pets.

DID YOU KNOW?

- 71% of pet owners entering domestic violence shelters report that their batterer had threatened, injured, or killed family pets.[2]
- One study found that 87% of batterer-perpetrated incidents of pet abuse are committed in the presence of their partners for the purpose of revenge or control.[3]
- Studies show that up to 76% of batterer-perpetrated pet abuse incidents occur in the presence of children.[4]
- 13% of intentional animal abuse cases involve domestic violence.[5]
- Women in domestic violence shelters are 11 times more likely to report animal abuse by their partner than women not experiencing violence. [6]
- 85% of domestic violence shelters report that they commonly encounter women who speak about pet abuse incidents.[6]
- 52% of victims in shelters left their pets with their batterers.[6]
- Criminals and troubled youth have high rates of animal cruelty during their childhood, perpetrators often were victims of child abuse themselves.[7]
- Investigation of animal abuse is often the first point of social services intervention for a family experiencing domestic violence.[8]

THE LINK BETWEEN PET ABUSE AND DV

- Similar to domestic abuse, abusers demonstrate power and control over the family by threatening, harming, or killing animals.[8]
- Domestic violence victims whose batterers abuse their pets report more than twice as many incidents of child abuse as compared to domestic violence victims whose batterers have not abused their pets.[10]
- Batterers threaten, harm, or kill their children's pets in order to coerce them into sexual abuse or to force them to remain silent about abuse.[11]
- Abusers harm pets to punish the victim for leaving, or in attempts to coerce her/him to return.[17]
- Abusers may harm pets to retaliate for acts of self-determination or independence.[9]
- Animal abusers are more likely to be domestic violence abusers, to have been arrested for other violent crimes and drug-related offenses, and engage in other delinquent behavior.[6]
- Many abusers have a history of animal abuse that precedes domestic violence toward their partner.[12]
- Animals may sometimes be used as weapons against domestic violence victims.[6]

THE ROLE OF PETS

- Family pets are commonly viewed as family members and companions.
- 55% of domestic violence victims and their children report that their pets are very important sources of emotional support, thus violence toward pets may be especially devastating and viewed as another form of family violence.[13]
- A large majority of women residing in domestic violence shelters report being emotionally close to their pets and experience distress when their animals are abused.[6]
- Studies show that a vast majority of children who witness pet abuse become distressed and emotionally distraught.[6]
- Women without children are more likely to postpone seeking shelter out of concern for their pets' safety as compared to women with children, 33.3% versus 19.5%.[6]

NCADV Public Policy Office · 1633 Q St NW # 210 · Washington, DC 20009 · (202) 745-1211 · Fax: (202) 745-0088 publicpolicy@ncadv.org

BARRIERS TO SEEKING SERVICES

- 65% of women who report prior pet abuse continue to worry for their pets' welfare after entry into a shelter.[6]
- Up to 40% of domestic violence victims are unable to escape their abusers because they are concerned about what will happen to their pets when they leave.[14]
- Only 12% of domestic violence programs can provide shelter for pets and 24% provide referral services to local animal welfare organizations.[15]
- Victims of domestic violence have been known to live in their cars for as long as four months until an opening was available at a pet-friendly safe house or shelter.[16]

TIPS FOR VICTIMS WITH PETS[9]

- Some shelters allow pets and many others have established "safe haven" foster care programs for the animal victims of domestic violence.
- If it is not possible to take the animals when the victim leaves the home, try to arrange temporary shelter for the pets with a veterinarian, trusted friend or family member, or local animal shelter.
- When vaccinating pets against rabies and licensing them with the town or county, it is important that registrations are in the victim's name. This will serve as proof that the victim owns the pets.
- Prepare the pets for a quick departure: collect vaccination records, pet license, medical records, and other documents.
- Ask for help from animal care and control officers or law enforcement if pets need to be retrieved from the abuser. Never reclaim animals alone.

IF YOU NEED HELP

For more information or if you need help, please contact the
American Humane Association at 303-792-9900.
National Domestic Violence Hotline at 1-800-799-SAFE.
National Child Abuse Hotline at 1-800-4-A-CHILD.
National Sexual Assault Hotline at 1-800-656-HOPE.

SOURCES

[1] Luke, C., Arluke, A., & Levin, J. (1998). *Cruelty to Animals and Other Crimes: A Study by the MSPCA and Northeastern University.* Boston: MSPCA.
[2] Ascione, F.R., Weber, C. V. & Wood, D. S. (1997). The abuse of animals and domestic violence: A national survey of shelters for women who are battered. *Society & Animals 5*(3), 205-218.
[3] Quinlisk, J.A. (1999). Animal Abuse and Family Violence. In, Ascione, F.R. Arkow, P., eds.: *Child Abuse, Domestic Violence, and Aniaml Abuse: Linking the Circles of Compassion for Prevention and Intervention.* West Lafayette, IN: Purdue University Pres, pp. 168-175.
[4] Faver & Strand. (2003).
[5] Humane Society of the U.S. (2001). 2000 Report of Animal Cruelty Cases. Washington, DC.
[6] Ascione, F.R., Weber, C.V., Thompson, T.M., Heath, J., Maruyama, M., Hayashi, K. (2007). Battered Pets and Domestic Violence: Animal Abuse Reported by Women Experiencing Intimate Violence and by Nonabused Women. *Violence Against Women, 13*(4), 354-373.
[7] Flynn, C.P. (2000). Woman's Best Friend: Pet Abuse and the Role of Companion Animals in the Lives of Battered Women. *Violence Against Women, 6*(2), 162-177.
[8] Arkow, P. (2003). *Breaking the cycles of violence: A guide to multi-disciplinary interventions. A handbook for child protection, domestic violence and animal protection agencies.* Alameda, CA: Latham Foundation.
[9] *Animal Cruelty/Domestic Violence Fact Sheet* (2007). Humane Society of the United States. http://www.hsus.org/hsus field/.
[10] Ascione, F.R. (2001). Animal Abuse and Youth Violence. *Juvenile Justice Bulletin.* U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention, Washington, DC.
[11] Loar, L. (1999). "I'll only help you if you have two legs," or, Why human services professionals should pay attention to cases involving cruelty to animals. In, Ascione, F.R. & Arkow, P., eds.: *Child Abuse, Domestic Violence, and Animal Abuse: Linking the Circles of Compassion for Prevention and Intervention.* West Lafayette, IN: Purdue University Press, 1999, pp. 120-136.
[12] Weber, C.V. (1999). A Descriptive Study of the Relationship Between Domestic Violence and Pet Abuse. ProQuest Information and Learning. *Dissertation Abstracts International: Section B: The Sciences and Engineering, 59(80-B).*
[13] Faver, C.A. & Strand, E.B. (2003). Domestic Violence and Animal Cruelty: Untangling the Web of Abuse. *Journal of Social Work Education. 39*(2), 237-253.
[14] Arkow, P. (1994). Animal abuse and domestic violence: Intake statistics tell a sad story. *Latham Letter 15*(2), 17.
[15] NCADV *National Directory of Domestic Violence Programs*, 2004
[16] Kogan, L.R., McConnell, S., Schoenfeld-Tacher, R., & Jansen-Lock, P. (2004). Crosstrails: A unique foster program to provide safety for pets of women in safehouses. *Violence Against Women 10*, 418-434.

NATIONAL COALITION AGAINST DOMESTIC VIOLENCE

NCADV

Every Home A Safe Home

The Public Policy Office of the National Coalition Against Domestic Violence (NCADV) is a national leader in the effort to create and influence Federal legislation that positively affects the lives of domestic violence victims and children. We work closely with advocates at the local, state and national level to identify the issues facing domestic violence victims, their children and the people who serve them and to develop a legislative agenda to address these issues. NCADV welcomes you to join us in our effort to end domestic violence.

Animal Legal Defense Fund

JURISDICTIONS WITH FELONY ANIMAL ABUSE PROVISIONS

(YEAR FIRST ENACTED)

1. **Alabama** (2000)
2. **Alaska** (2008) — Only on 3rd offense
3. **Arizona** (1999)
4. **Arkansas** (2009)
5. **California** (1988)
6. **Colorado** (2002)
7. **Connecticut** (1996)
8. **Delaware** (1994)
9. **Florida** (1989)
10. **Georgia** (2000)
11. **Hawaii** (2007)
12. **Illinois** (1999)
13. **Indiana** (1998)
14. **Iowa** (2000)
15. **Kansas** (2006)
16. **Kentucky** (2003)
17. **Louisiana** (1995)
18. **Maine** (1999)
19. **Maryland** (2001)
20. **Massachusetts** (1804)
21. **Michigan** (1994)
22. **Minnesota** (2001)
23. **Missouri** (1994)
24. **Montana** (1993)
25. **Nebraska** (2002)
26. **Nevada** (1999)
27. **New Hampshire** (1994)
28. **New Jersey** (2001)
29. **New Mexico** (1999)
30. **New York** (1999)
31. **North Carolina** (1998)
32. **Ohio** (2003)
33. **Oklahoma** (1887)
34. **Oregon** (1995)
35. **Pennsylvania** (1995)
36. **Rhode Island** (1896)
37. **South Carolina** (2000)
38. **Tennessee** (2002)
39. **Texas** (1997)
40. **Utah** (2008)
41. **Vermont** (1998)
42. **Virginia** (1999)
43. **Washington** (1994)
44. **West Virginia** (2003)
45. **Wisconsin** (1986)
46. **Wyoming** (2003)

Territories, Districts & Possessions:

District of Columbia (2001)
Puerto Rico (2004)
Virgin Islands (2005)

JURISDICTIONS WITHOUT FELONY ANIMAL ABUSE PROVISIONS

1. **Idaho**
2. **Mississippi**
3. **North Dakota**
4. **South Dakota**

Territories, Districts & Possessions:

American Samoa
Northern Marianas
Guam

Stephan K. Otto (Version 2.10)

adn.com
Anchorage Daily News

Pet hoarder hit with animal cruelty charges

CAT-RESCUE OWNER: Police say critters lived in squalid conditions.

By JAMES HALPIN
jhalpin@adn.com

(10/12/09 22:03:21)

The owner of a local cat-rescue nonprofit has been charged with 33 counts of animal cruelty after Anchorage police say they found dozens of cats, dogs and birds sick and wallowing in their own waste at her home and shelter.

Police say Deborah Ann Allen, 54, has for years hoarded cats and dogs, turtles, birds, lizards and a rabbit, cramming the critters in her cluttered Sand Lake home that reeked of feces and urine and had swarms of flies inside.

When police searched her home at 7101 Kitlisa Drive last Tuesday, they found 23 cats, eight dogs and one bird, many of them malnourished, dirty and with untreated injuries, according to an affidavit filed in court by Detective Jackie Conn. At the Chateau Pampered Purr shelter in Midtown, a nonprofit run by Allen, authorities found 50 or more cats in similar straits.

"It's not unusual for (animal hoarders) to present themselves as rescuers," Conn said Monday. "Typically, I'd have to say most, if not all, of them have good intentions. But when you get so many animals in a small space, it's almost impossible to keep above the illnesses and that kind of thing. It's a difficult situation."

According to Conn's affidavit, city Animal Care and Control began citing Allen for neglecting her animals in October 2004. Since then, Animal Control has received at least eight complaints about unclean living conditions and five more for loose dogs and cats at the Allen properties.

"In multiple complaints animal control officers and sometimes APD officers have described a foul urine and feces smell that can be detected from outside of the house on Kitlisa. The house is described as having feces outside and inside on the ground," Conn wrote. "At least twice officers commented on swarms of flies in the house."

INSIDE THE HOUSE

Conn got a search warrant for the home Sept. 30 and served it last week. Officers entering the 3,500-square-foot home found it cluttered and dirty, some rooms so full of personal property they "could not be entered," according to the affidavit. Everything was covered in animal hair and kennels were strewn about the home.

Police say all the animals were found in a dimly lit two-car garage. There was no air circulation and a small animal door leading to an enclosure outside, the flooring of which was spattered in feces.

Many cats had respiratory problems, including eye and nose discharges, sneezing, coughing and labored breathing, according to police. Some appeared undernourished and one had a bad infection around its left ear, Conn wrote.

Dogs had matted, dirty fur and eye problems, and a cockatoo was missing all the feathers from its

chest, police said. There was a large amount of food left in a communal feeder for the animals and the water was filthy.

One dog, a bull terrier, appeared in very poor health, with hair missing from his chest and belly, pus coming from his eye and red skin on his face. The affidavit said, "this dog matches the description of a dog that had skin issues in 2006 that Allen was not treating properly."

The animals were seized and brought to animal control. Lab tests were still pending on some of the animals from the home, so whether some or all will be euthanized was not known Monday.

50 MORE CATS, 2 LIZARDS

Police then went to search Chateau Pampered Purr at 611 Tudor Road on Tuesday. Allen's license to operate the nonprofit Chateau Pampered Purr expired in December 2007 but its operation continues, according to police.

"In contacts with Allen, she has told officer that she takes in strays," police Lt. Dave Parker said. "Apparently she operates a cat adoption clinic at Petco."

At the chateau, police found 50 or more cats and two lizards in filthy conditions and with similar health problems. The animals remain there because animal control, besieged by the influx of animals from the first round, had nowhere to put them, animal control spokeswoman Brooke Taylor said.

"We don't have facilities here for that many animals, so we're trying to decide what's the best course of action," Taylor said. "There's an issue with, if there is sickness, we can't have these animals in a location where our healthy population here at the center could be exposed to something, so that's a concern of ours. (Also) just basic space."

In the meantime, Conn hopes Allen is feeding them.

THE OLDER SISTER

Conn has dealt with a similar situation before.

Allen's sister, Krystal Renea Allen, 55, was convicted in an animal hoarding case from 2004 in which police found 165 cats covered in filth, many of them sickly. In that house there were also at least a dozen exotic birds in cages and a couple of dogs, and, out in the yard, chickens.

Krystal Allen told officers she meant well by taking in strays but it had gotten out of hand. She later pleaded no contest to two animal cruelty charges, was sentenced to 30 days in jail and ordered to pay a $1,000 fine.

Since her arrest Thursday, Deborah Allen has been freed on $750 bail. Allen did not return messages seeking comment. There was no answer at her home at the end of a dead-end, wooded street Monday night. Several cat-themed pieces of art decorated the cluttered porch. The smell of animal urine was noticeable.

Each misdemeanor animal-cruelty count carries a maximum penalty of one year in prison and a fine of up to $10,000. Allen, if convicted, could also be ordered to reimburse animal control for the cost of housing, feeding and veterinary care.

Find James Halpin online at adn.com/contact/jhalpin or call him at 257-4589.

Animal Abuse and Domestic Violence

Concern that acts of animal abuse are connected with or are predictors of domestic violence prompted a number of specific research studies in the 1990s. This early work focused on describing interviews with women in battered women's shelters and highlighted the frequency with which women reported abuse of pets by their partners. The interviews documented a high rate of pet abuse and appeared to indicate that animal abuse in the home and concern for pets affected *if* and *when* a woman sought assistance at a shelter—particularly because shelters did not normally accept pets.

As more attention was given to animal abuse and its impact in the context of domestic violence assaults, additional studies were undertaken. Frank Ascione discussed the limitations of some of these past studies in his article, "Emerging Research on Animal Abuse as a Risk Factor for Intimate Partner Violence" in the Civic Research Institute's 2007 publication, *Intimate Partner Violence*. He noted that although twelve different studies found (1) a high rate of pet ownership by domestic violence victims in shelters, (2) a substantial rate of children's exposure to pet abuse, and (3) clear indications that domestic violence victims' concern for pets affected their decision to stay in or leave a relationship with a batterer, more research is needed that includes women in domestic violence situations who have not chosen to go to a shelter, in addition to women in shelters. In response to the concern expressed by battered women for their pets, many areas developed "safe haven" programs for free fostering of pets of victims of domestic violence. Anchorage is currently the only area in Alaska with a "safe haven" program. It is administered by Friends of Pets, a local nonprofit animal welfare group, in collaboration with the Abused Women's Aid in Crisis (AWAIC) shelter. Another local nonprofit, the Eva Foundation Pet's Program, provides post-shelter transition services to domestic violence victims and their pets.

In addition, since 2006 ten states have enacted domestic violence protective orders covering pets: California, Colorado, Connecticut, Illinois, Louisiana, Maine, Nevada, New York, Tennessee, and Vermont.

Research involving a larger sample population of women was reported by Ascione, et al. in 2007 in *Violence Against Women*, "Battered Pets and Domestic Violence: Animal Abuse Reported by Women Experiencing Intimate Partner Violence and Nonabused Women." The findings of this study agreed with earlier research about the high rate of pet abuse reported by victims of intimate partner violence (IPV). Responses showed that women in domestic violence shelters were nearly 11 times more likely to report that their partner had engaged in pet abuse than women who said they had not experienced intimate partner violence. This study again stressed the need for further research on co-occurring pet abuse and IPV with larger and more diverse populations, i.e., urban, suburban, and rural victims of intimate partner violence, as well as non-victims of IPV.

Catherine Simmons and Peter Lehman addressed some of these issues in a 2007 *Journal of Interpersonal Violence* article, "Exploring the Link Between Pet Abuse and Controlling Behaviors in Violent Relationships." In their study of 1,283 women who owned pets and were sheltered at an urban domestic violence center in Texas between 1998 and 2002, they concluded that "[m]en who abuse the family pet appear to be more dangerous than men who do not." The authors did not find that pet abuse was always a form of controlling behavior in incidents of domestic violence assault. However, they did conclude:

> Despite the limitations of this study, it is clear that animal cruelty is an important factor for domestic violence workers to address in assessment and treatment of both victim and perpetrator populations. Batterers who also abuse their pets are both more controlling and use more dangerous forms of violence than batterers who do not. Therefore, addressing whether pet abuse has occurred in the home can help workers in the domestic violence field better understand the behavior of the batterer and the overall risk they present to their partner.

Animal abuse is one factor in the complex dynamic of intimate partner violence, and can be used by law enforcement and domestic violence advocates in assessing risk. In 2008, the Anchorage Police Department (APD) began a program to target animal abuse and to look at its connection to domestic violence. Detective Jackie Conn was assigned as the liaison to the Anchorage Animal Care and Control Center and received training from the Law Enforcement Training Institute National Cruelty Investigations School and from the First Strike program developed by the Humane Society of the United States to raise awareness about the connection between animal cruelty and other violent crime. Detective Conn now trains APD personnel in recognizing animal abuse, and relating it to the possible presence of other types of abuse in the home. She works closely with Alaska Department of Law Assistant District Attorney Joan Wilson who is regularly assigned the prosecution of animal abuse

Further Reading about Animal Abuse and Domestic Violence

Arkow, Phil. (Summer 2007). "Expanding Domestic Violence Protective Orders to Include Companion Animals." *American Bar Association Commission on Domestic Violence ENewsletter* 8. (http://www.abanet.org/domviol/enewsletter/vol8/expertArkow.html).

Ascione, Frank R. (2007). "Emerging Research on Animal Abuse As a Risk Factor for Intimate Partner Violence." In Kathleen A. Kendall-Tackett and Sarah M. Giacomoni, editors, *Intimate Partner Violence*, pp. 3-1 – 3-17. Kingston, NJ: Civil Research Institute. (http://amrric.org/sites/default/files/docs/resources/Chapter%203%20Intimate%20Partner%20Violence%20Ascione.pdf)

Ascione, Frank R.; Weber, Claudia V.; Thompson, Teresa M.; Heath, John; Maruyama, Mika; and Hayashi, Kentaro. (Apr 2007). "Battered Pets and Domestic Violence: Animal Abuse Reported by Women Experiencing Intimate Violence and by Nonabused Women." *Violence Against Women* 13(4): 354–373. (http://vaw.sagepub.com/cgi/content/abstract/13/4/354).

Ascione, Frank R.; Weber, Claudia V.; and Wood, David S. (1997). "The Abuse of Animals and Domestic Violence: A National Survey of Shelters for Women Who Are Battered." *Society & Animals: Journal of Human-Animals Studies* 5(3). (http://www.psyeta.org/sa/sa5.3/Ascione.html).

Faver, Catherine A. and Strand, Elizabeth B. (Dec 2003). "To Leave or to Stay: Battered Women's Concern for Vulnerable Pets." *Journal of Interpersonal Violence* 18(12): 1367–1377. (http://jiv.sagepub.com/cgi/content/abstract/18/12/1367).

Lockwood, Randall. (2006). *Animal Cruelty Prosecution: Opportunities for Early Response to Crime and Interpersonal Violence*. Alexandria, VA: American Prosecutors Research Institute. (http://www.ndaa.org/pdf/animal_cruelty_06.pdf).

Simmons, Catherine A. and Lehman, Peter. (Sep 2007). "Exploring the Link Between Pet Abuse and Controlling Behaviors in Violent Relationships." *Journal of Interpersonal Violence* 22(9): 1211–1222. (http://jiv.sagepub.com/cgi/content/abstract/22/9/1211).

cases. For the period 2002–2009, 121 misdemeanor animal cruelty cases under Alaska Statute 11.61.140 and 11.61.145 were referred and 94 prosecuted. During the same period, one felony case was referred and prosecuted. Case statistics are also being compiled to better understand the relationship between domestic violence and animal abuse.

Leading Causes of Death

A look at recent data on leading causes of death in Alaska and the U.S. shows that malignant neoplasms (cancer) and heart disease rank as the top two causes. Although intentional self-harm (suicide) and assault (homicide) do not rank in the U.S. top ten leading causes of death, they have ranked as leading causes of death in Alaska for many years. A comparison of rankings of suicide and homicide as causes of death for specific age groups in Alaska and the U.S. reveals some similarities in trends.

In 2008 in Alaska, suicide was ranked number 6 among the top ten causes of death for the entire population. Suicide has been ranked number 5 or 6 consistently for the past decade. Homicide has been reported as the number 8 cause of death in 1999, number 10 in 2001, and number 10 again in 2007. The rankings for the leading causes of death by specific age group in Alaska show that suicide and homicide are in the top five for each age group up to the age of 44. In Alaska, and the nation as a whole, people aged 15–34 are more likely to die in an accident, at the hands of another, or by suicide, than by cancer or heart disease. For the period 2005–2007, suicide and homicide were the second and third leading causes of death for both 15–24 and 25–34 year olds. Suicide was the second leading cause of death for 35–44 year olds, and homicide was fifth. Among 45–54 year olds, suicide was the fourth leading cause of death.

Nationally, suicide and homicide are not among the ten leading causes of death according to the most current final data available: 2006. However, suicide ranked number 11 in causes of death for the overall population for 2006; homicide ranked 15.

In the U.S. in 2006, homicide and suicide were the second and third leading causes of death, respectively, for 15–24 year olds, while for 25–34 year olds, suicide ranked second and homicide third. Suicide was the fourth leading cause of death for 35–44 year olds, and the fifth leading cause for 45–54 year olds. These rankings mirror those of Alaska for those aged 15–44, where both suicide and assault were in the top five leading causes of death. Suicide was one of the top five causes of death for 45–54 year olds.

This high ranking of suicide as a cause of death for 15–44 year olds is also seen globally. According to the World Health Organization, suicide is among the top three leading causes of death in 15-44 year olds. For the worldwide population, the top two leading causes of death are coronary heart disease, and stroke and other cerebrovascular diseases.

The leading causes of death for the overall population continue to be related to diseases of the body; however, the growing rate of suicide among young people and the suicide rate among other age groups, as well as the rate of homicide, are the focus of national and international study and prevention programs.

Table 1. Five Leading Causes of Death by Age Group, U.S. (2006) and Alaska (2005–2007)

	U.S. (2006)		Alaska (2005–2007)		
Rank	Cause	Deaths	Rank	Cause	Deaths
0–4 years					
1	Congenital anomalies	6,334	1	Conditions originating in the perinatal period	68
2	Short gestation	4,841	2	Unintentional injury	49
3	Unintentional injury	2,757	3	Congenital malformations	43
4	SIDS	2,323	4	SIDS	18
5	Maternal pregnancy complications	1,683	5	Assault (homicide)	7
5–14 years					
1	Unintentional injury	2,258	1	Unintentional injury	48
2	Malignant neoplasms	907	2	Congenital malformations	6
3	Homicide	390	3	Malignant neoplasms	5
4	Congenital anomalies	344	4	Intentional self-harm (suicide)	4
5	Heart disease	253	5	Assault (homicide)	3
			5	Diseases of the heart	3
15–24 years					
1	Unintentional injury	16,299		Unintentional injury	150
2	Homicide	5,717		Intentional self-harm (suicide)	101
3	Suicide	4,189		Assault (homicide)	34
4	Malignant neoplasms	1,664		Malignant neoplasms	14
5	Heart disease	1,076		Diseases of the heart	10
25–34 years					
1	Unintentional injury	14,954		Unintentional injury	162
2	Suicide	4,985		Intentional self-harm (suicide)	72
3	Homicide	4,725		Assault (homicide)	29
4	Malignant neoplasms	3,656		Malignant neoplasms	19
5	Heart disease	3,307		Diseases of the heart	17
35–44 years					
1	Unintentional injury	17,534	1	Unintentional injury	161
2	Malignant neoplasms	13,917	2	Intentional self-harm (suicide)	85
3	Heart disease	12,339	3	Malignant neoplasms	82
4	Suicide	6,591	4	Diseases of the heart	68
5	HIV	4,010	5	Assault (homicide)	26
			5	Chronic liver disease and cirrhosis	26
45–54 years					
1	Malignant neoplasms	50,334	1	Malignant neoplasms	328
2	Heart disease	38,095	2	Diseases of the heart	204
3	Unintentional injury	19,675	3	Unintentional injury	184
4	Liver disease	7,712	4	Intentional self-harm (suicide)	78
5	Suicide	7,426	5	Chronic liver disease and cirrhosis	59
55–64 years					
1	Malignant neoplasms	101,454	1	Malignant neoplasms	546
2	Heart disease	65,477	2	Diseases of the heart	309
3	Chronic lower respiratory disease	12,375	3	Unintentional injury	93
4	Unintentional injury	11,446	4	Chronic lower respiratory diseases	73
5	Diabetes mellitus	11,432	5	Diabetes	69
65+ years					
1	Heart disease	510,542	1	Malignant neoplasms	1,347
2	Malignant neoplasms	387,515	2	Diseases of the heart	1,249
3	Cerebrovascular	117,010	3	Cerebrovascular diseases	390
4	Chronic lower respiratory disease	106,845	4	Chronic lower respiratory diseases	358
5	Alzheimer's disease	71,660	5	Alzheimer's disease	179
Total population					
1	Heart disease	631,636	1	Malignant neoplasms	2,341
2	Malignant neoplasms	559,888	2	Diseases of the heart	2,055
3	Cerebrovascular	137,119	3	Unintentional injury	979
4	Chronic lower respiratory disease	124,583	4	Cerebrovascular diseases	506
5	Unintentional injury	121,599	5	Chronic lower respiratory diseases	467

Homicide Suicide

Source of data: National Vital Statistics System, National Center for Health Statistics, Centers for Disease Control (2006); Alaska Bureau of Vital Statistics (2005–2007)

CDVSA
Council on Domestic Violence & Sexual Assault

State of Alaska
Department of Public Safety
Council on Domestic Violence & Sexual Assault

Sean Parnell, Governor
Joseph A. Masters, Commissioner

February 11, 2010

The Honorable Bill Wielechowski
Alaska State Senate
State Capitol, Room 115
Juneau, Alaska 99811-1182

Dear Senator Wielechowski:

We are writing in support of SB214, an Act relating to penalties for cruelty to animals which acknowledges the strong correlation between animal abuse and family violence by holding perpetrators accountable who hurt or kill animals in order to intimidate, threaten, or terrorize another person.

Animals are often used as a tool of control in family violence situations where the threat of harm or killing the pets is used to coerce or terrorize victims. A 1997 national Survey or Shelters for Women Who are Battered (Utah State University, Ascione, et.al.) included these findings:

- 85.4% of women coming to shelter talked about incidents of pet abuse.
- 63% of children coming to shelter talked about incidents of pet abuse.
- 83% of advocates working in the shelter say they have observed the coexistence of domestic violence and pet abuse.

Alaska shelter directors and advocates tell us that these high correlations apply to Alaska. Often victims will try to bring animals with them to the shelter or board them at a humane society (if there is one in their community) in order to protect them. However, many also refuse to leave their home for the safety of a shelter due to the fear of harm or death of their pets while they are gone.

It is time to make it a crime in Alaska when someone uses or hurts and animal in order to control the actions of another person, especially when that person is a spouse, household member or child. Thank you again for recognizing and addressing this important issue.

Sincerely,

Sandy Samaniego
Executive Director

Council on Domestic Violence & Sexual Assault
P.O. Box 111200 - Juneau, Alaska 99811 - Phone (907) 465-4356 - Fax (907) 465-3627

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OF THE UNITED STATES

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February 1, 2010

Dear Legislator:

On behalf of The Humane Society of the United States (The HSUS), the nation's largest animal protection organization with more than 18,000 members and constituents in Alaska, I am writing to urge you to support S.B. 214, to make the worst types of animal cruelty a felony on the first offense.

Numerous studies over the last 25 years have demonstrated that violent offenders frequently have childhood and adolescent histories of serious and repeated animal cruelty. The FBI has recognized the connection since the 1970s, when its analysis of the lives of serial killers suggested that most had killed or tortured animals as children. These crimes are so serious that allowing offenders a second and third chance to commit their atrocities is irresponsible and dangerous to society.

Just last month, "machete murderer" Christopher Erin Rogers, Jr., was sentenced to 498 years in prison for his horrific crimes. Charges against Rogers included misdemeanor animal cruelty charges for brutally slashing the dog that intervened, saving Elann Moren's life. While there can be no comparison between crimes against animals and such horrific murders, Rogers' acts have been described as "one psychotic episode." The same tendencies that motivated Rogers' murders also drove him to attack the dog. Accordingly, when other individuals brutally torture or maim animals, that same tendency should not be allowed to go essentially unchecked until it happens, is witnessed, and is successfully prosecuted three separate times.

Forty-six states have enacted felony level penalties for the most malicious acts of animal cruelty. Alaska is alone in requiring a third offense to trigger the felony clause.

Passage of a first offense felony animal cruelty law is an essential initial step in halting the progression of violent crime—against humans as well as animals. Enactment of S.B. 214 would bring Alaska's cruelty code in line with the rest of the country, and would protect Alaskan communities from the very worst animal abusers.

Sincerely,

Tami Santelli

Tami Santelli
Director of State Legislation
(202) 955-3661
tsantelli@humanesociety.org

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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

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Wrangell

February 2, 2010

Senator Bill Wielechowski
Alaska State Senate
State Capitol
Juneau AK 99801-1182

Dear Senator Wielechowski:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing Senate Bill 214, an act relating to penalties for cruelty to animals.

The APOA State Board of Directors recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

John Lucking, Jr.
State President

1805

LETTER IN SUPPORT OF SENATE BILL 214

Animal Legal Defense Fund

February 10, 2010

Senate Judiciary Committee
State Capitol
Juneau, AK 99801

Dear Chairman French and Members of the Committee:

I am the Director of Legislative Affairs and an attorney for the Animal Legal Defense Fund (ALDF).[1] ALDF was established as a national non-profit law organization in 1979, and is committed to protecting the lives and advancing the interests of animals through the legal system. We have over 100,000 supporters nationwide – many of whom call Alaska home.

I am writing to you today to express our strong support for Senate Bill 214, a bill to increase the penalties for the most serious forms of animal cruelty to the felony level. Currently, 46 states have enacted laws that include felony penalties for the very worst types of animal cruelty. Of these states, only 5, including Alaska, do not have felony penalties for first offenses – no matter how extreme the crime. SB 214 will ensure that the penalty fits the horrendous nature of these crimes. Not only are strong anti-cruelty laws important for the safety of our animals, they can also help to reduce other forms of violence in our communities. There is a strong correlation between those who engage in animal cruelty, and those who commit violence against humans. A seminal study by Northeastern University found that when compared to their neighbors, animal abusers were five times more likely to commit violent crimes against people, four times more likely to commit property crimes, and three times more likely to have a record for drug or disorderly-conduct offenses.[2]

Alaskans support laws to ensure that animals are treated humanely. SB 214 is an important, yet measured, step forward in this regard. It increases the penalties where appropriate and needed, yet preserves all existing exemptions for lawful activities.[3]

In addition, for the past four years, ALDF has published an annual ranking of all states and territories on the strength and comprehensiveness of their animal protection laws – and Alaska has consistently scored in the bottom tier of this report.[4] Passage of SB 214 will help improve Alaska's position, yet more importantly, its passage will send a strong message that Alaska is not a safe harbor for those who choose to torture and maliciously abuse animals. Please support this important bill.

Sincerely,

Stephan K. Otto, Esq.
Director of Legislative Affairs

Portland Office
919 SW Taylor Street
4th Floor
Portland, OR 97205

T 503.231.1602
F 503.231.1578

National Headquarters
170 East Cotati Avenue
Cotati, California 94931

T 707.795.2533
F 707.795.7280

info@aldf.org
aldf.org

[1] http://aldf.org
[2] Arluke, A., Levin, J., & Luke, C. "Cruelty to Animals and Other Crimes" Massachusetts Society of the Prevention of Cruelty to Animals & Northeastern University (1997).
[3] Current exemptions to Alaska's animal cruelty laws include scientific research, humane animal destruction, animal husbandry practices, training, veterinary practices, hunting, fishing, trapping, dog mushing or pulling contests rodeos and other exhibitions. Alaska Stat. § 11.61.140(c)
[4] 2009 State Animal Protection Laws Rankings (http://aldf.org/article.php?id=1142)

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PO Box 90534
Anchorage, Alaska 99509-0534

Home telephone: 365-1210
Work telephone: 349-7302

February 10, 2010

Office of Senator Wielechowski
State Capitol, Room 413
Juneau, Alaska 99801

Subject: Support passage of SB 214

I heartily support passage of Senator Wielechowski's SB 214, "An Act relating to penalties for cruelty to animals".

The values of a society are reflected in many ways, not least of which, by its laws. The more highly we have evolved as a society, the more we have sought to protect the most vulnerable and the disenfranchised. It is a mark of our progress as a culture and as a species. No longer is it permissible to own slaves, for wives to be beaten, for children to spend their childhood laboring in factories. These laws have not just protected the most vulnerable; they have strengthened the society as a whole, by recognizing and disallowing exploitation and cruelty. With laws outlawing certain despicable acts, society's bar for an acceptable standard of behavior is raised.

But here in Alaska, we have not set the bar adequately high with regard to treatment of helpless animals. The Animal Legal Defense Fund ranks Alaska in the bottom tier in the nation in terms of laws that protect animals. Is it just a coincidence that we also have among the highest rates of domestic violence, rape, and child abuse?

Treating a helpless animal cruelly is not a small crime, a petty offense, akin to a parking violation or a speeding ticket. It is a crime against another sentient animal that feels fear and pain. And some of these crimes against animals are so heinous they truly make you sick. It is wrong to consider these heinous crimes trivial, small, petty; misdemeanors.

Animals cannot speak out on their own behalf, lobby their representatives, cast a vote, or donate to a political campaign. But we need to protect them anyway. It is the right thing to do. Doing the right thing shows our strength and, in turn, makes us stronger as individuals and as a society. Please do the right thing and pass SB214.

Sincerely,

Andrea Veach

Shelly Morgan

From: Sally Clampitt [sclampitt.spca@alaska.net]
Sent: Wednesday, February 10, 2010 10:45 AM
To: Shelly Morgan
Subject: Alaska SPCA Endorses SB 214

Importance: High

Dear Senator Wielechowski:

Please accept this letter of strong support for Senate Bill No. 214, "An Act relating to penalties for cruelty to animals." The Alaska Society for the Prevention of Cruelty to Animals (Alaska SPCA) is a statewide animal welfare organization dedicated to the humane treatment of animals. In addition to the ongoing spay-neuter, rescue, and education-outreach programs that we and other animal welfare groups conduct, is the need for stronger anti-cruelty laws at the state level. We believe that the proposed felony provisions of SB214 are much needed and would be a significant deterrent to animal cruelty and abuse. They would also bring Alaska's state law more in line with many other states who have successfully made animal cruelty a felony. It is well-known that there is a strong link between domestic violence and animal cruelty. If passed, the provisions of SB214 have the potential to benefit domestic violence victims as well as animal victims.

Thank you very much for your commitment to this proposed legislation. We urge the Alaska Legislature as a whole to enthusiastically endorse and pass SB214.

Respectfully,

Sally Clampitt
Executive Director
Alaska SPCA
549 W. International Airport Rd. #B2
Anchorage, AK 99518
Office Tel: 907-562-2999
Cell: 907-350-0945
http://www.alaskaspca.org/

Shelly Morgan

From: mail4jj@aol.com
Sent: Sunday, February 07, 2010 6:04 PM
To: Shelly Morgan
Subject: SB 214

Hello Shelly,

Please forward my written comments in support of SB214.

I am an Animal Shelter Assistant, and a resident of the state of Alaska , and I am in support of Alaska following suit with those states that consider cruelty against animals an unforgivable offense. Many people live with both physical abuse, and mental abuse when these offenders strike. Even if the abuse is not physical toward a human, it becomes a controlling measure in a household when the violence is directed toward a beloved animal of the victim. These acts are a definite link to the violence in our society, and can no longer be ignored.
Sincerely,
Julie Johnson
8151 N Palmer Fishhook Rd
Palmer AK 99645

(907) 351-1385

Shelly Morgan

From: Bridget Coombs [snidge@clearwire.net]
Sent: Wednesday, February 10, 2010 11:31 AM
To: Shelly Morgan
Subject: Support for SB214

I am writing in order to voice my strong support of the anti Animal Cruelty act in SB 214. It is a testimony to society's decency that its citizen's be held accountable for cruel and tortuous treatment of helpless animals. The disregard for animal welfare is strongly correlated to more deep seated psychological maladjustment and a true menace to the surrounding society at large. I vehemently urge your Office to approve the Bill under consideration which would increase the cruelty to animals penalty from the current misdemeanor status to the more serious rung of felony. Misdemeanors penalty does little to dissuade negative behavior, whereas a felony count would provide greater deterrent. Please do the right thing and see that this bill proceeds towards law.

Thank you very much
Colleen B Coombs
Anchorage, AK

Shelly Morgan

From: Sen. Bill Wielechowski
Sent: Wednesday, February 10, 2010 12:38 PM
To: Athena Ennenga
Cc: Shelly Morgan
Subject: RE: Support of Bill SB214

Thank you Athena. I am the sponsor of this bill, and will continue to push for its passage.

Warmly,
Bill

Senator Bill Wielechowski
State Capitol
Juneau, Alaska 99801
(800) 550-2435

-----Original Message-----
From: Athena Ennenga [mailto:athena.ennenga@gmail.com]
Sent: Wednesday, February 10, 2010 12:26 PM
To: Sen. Bill Wielechowski
Subject: Support of Bill SB214

Hello there!

I just wanted to send a quick note before Friday's Senate judiciary meeting to pledge my wholehearted support of bill SB214 that would make it a felony to abuse animals.

Please feel free to call me at 907-301-3577 if you have any questions or concerns.

Best regards,

Athena Ennenga
341 Fireoved Dr, Unit 1
Anchorage, AK, 99508

Shelly Morgan

From: fpromick@gci.net on behalf of Francis Romick [fpromick@gci.net]
Sent: Sunday, February 07, 2010 2:45 PM
To: Shelly Morgan
Subject: re-SB 214 (animal cruelty penalty bill)

Please pass the Animal Cruelty penalty bill, SB 214. Those who are cruel to animals are usually, also, cruel to humans and need federal penalties.
Thank you so much, Frances Romick (Anchorage)

Shelly Morgan

From: Sen. Bill Wielechowski
Sent: Tuesday, February 09, 2010 11:17 AM
To: lafleur@ascalaska.net
Cc: Shelly Morgan
Subject: RE: Senate Bill 214

Thank you Ed and Nickel. The bill has a hearing on Friday, and I will continue to push for its passage.

Warmly,
Bill

Senator Bill Wielechowski
State Capitol
Juneau, Alaska 99801
(800) 550-2435

From: lafleur@ascalaska.net [mailto:lafleur@acsalaska.net]
Sent: Tuesday, February 09, 2010 10:54 AM
To: Sen. Bill Wielechowski
Subject: Senate Bill 214

Thanks you Senator Wielechowski for sponsoring
Senate Bill 214..... Making it a felony to abuse animals!
This is a very worthy bill and we send our support to make this bill happen.
We have lived in Alaska for over 30 years and are aware of the
Domestic violence cycle as well as animal abuse cycle and BELIEVE
something needs to be done... Your bill is a step in the right
direction.
Please go forth with this bill knowing you have our FULL support.
Ed & Nickel LaFleur 2420 Tagalak Drive, Anchorage, AK 99504

Shelly Morgan

From: Sen. Bill Wielechowski
Sent: Tuesday, February 09, 2010 11:19 AM
To: dianadanna@alaska.com
Cc: Shelly Morgan
Subject: RE: SB 214

Thank you Diana. I am the sponsor of SB 214.

Warmly,
Bill

Senator Bill Wielechowski
State Capitol
Juneau, Alaska 99801
(800) 550-2435

From: dianadanna@alaska.com [mailto:dianadanna@alaska.com]
Sent: Tuesday, February 09, 2010 6:46 AM
To: Sen. Bill Wielechowski
Subject: SB 214

Dear Sen. Wielechowski:

I strongly support SB 214. The people who commit acts of cruelty against animals should be more severely punished to deter them and others from committing the same acts against not only other animals, but against their fellow human beings. Acts of violence and cruelty against another living being should never be tolerated. Please pass SB 214.

Diana L. Cramer
4331 Constellation Ave. #40
Anchorage, AK 99517
(907) 245-7663

(907) 744-5518
DianaDanna@alaska.com

Shelly Morgan

From: Sen. Bill Wielechowski
Sent: Tuesday, February 09, 2010 11:22 AM
To: Kacie Jossart
Cc: Shelly Morgan
Subject: RE: Support for SB214

Thank you Kacie. I am the sponsor of SB 214.

Warmly,
Bill

Senator Bill Wielechowski
State Capitol
Juneau, Alaska 99801
(800) 550-2435

From: Kacie Jossart [mailto:k.jossart@mtaonline.net]
Sent: Monday, February 08, 2010 10:40 PM
To: Sen. Bill Wielechowski
Subject: Support for SB214

Mr. Wielechowski,
SB 214 is a bill that's long overdue. Thank you for introducing this legislation and working hard to move Alaska's laws on animal cruelty into the 21st century. Please let me know if there is anything I can do to help support this bill and its passage.

Best,
Kacie Jossart
Eagle River, Alaska

Shelly Morgan

From: April Warwick [awarwick@ak.net]
Sent: Monday, February 08, 2010 1:57 PM
To: Shelly Morgan
Subject: I support SB 214

Hello:

I'm writing to show you my support of SB 214 to make animal cruelty a felony. The link between abuse of pets and humans is real. SB 214 is good because in protecting people's pets you'll also be able to investigate the safety of humans. Animal abuse is not pretty and it should be addressed. Please vote for SB 214. Please forward my comments to those voting on this issue.

Thank you,

April Warwick
Animal Daycare & Boarding
5716 Kennyhill Drive
Anchorage, AK 99504
907 338-7777

Dear Ms. Morgan-

I understand that SB 214 is up for public hearing tomorrow afternoon. I won't be able to testify on the bill as I have a doctor's appointment at that time but I would like to convey our position in support of the bill. The Municipal Animal Control Advisory Board formally supported passage of this bill last year and, as the bill hasn't changed, our position hasn't either. We continue to support this proposal. The one reservation we had at the time is one I still have. There should be a specific exemption for licensed veterinarians performing euthanazia procedures. As currently written, a veterinarian can raise medical necessity as an affirmative defense against a cruelty charge arising from euthanizing an animal but could still be charged for having performed the procedure. While the likelihood of that occurring is pretty remote, we don't think Alaska's veterinarians should have that hanging over their heads. As such, we would recommend adding a protective exemption for veterinarians who are licensed and practicing in Alaska. We hope this input in helpful in considering the merits of the bill. If durther information is desired, please feel free to contact me.

Neil Koeniger, Chair
Animal Control Advisory Board
Municipality of Anchorage

February 10, 2010

Dear Senator Wielechowski,

I wanted to take this opportunity to tell you thank you for sponsoring this much needed bill...SB 214. It is a long time coming and I wanted to send my support to make this bill happen. I have lived in Alaska for over 50 years and am well aware of the domestic violence cycle and animal abuse link. Your bill is a step in the right direction.

Thank you

Cynthia Liggett
8339 Spruce Street
Anchorage, AK 99507

February 9, 2010

Senator Bill Wielechowski
State Capitol, Room 115
Juneau, AK 99801-1182

SENATE BILL 214

Dear Senator Wielechowski,

As Alaska residents and members of the Alaska State Veterinary Medical Association Executive Board we lend unanimous support to Senate Bill 214.

We know the association between animal abuse and other forms of societal violence are nationally recognized. Threats or actions against companion animals are strong indicators that violence against human family members will follow. This bill will help guarantee such actions will be properly reported, investigated and prosecuted as a crime with serious consequences.

Innocent animals need strong voices like yours to speak for them. Thank you for your efforts and work on this legislation.

Respectfully,

Katy Versteeg, DVM
President
Alaska State Veterinary Medical Association

Nelson Priddy, DVM
Past President
Alaska State Veterinary Medical Association

Linda Chang, DVM
Treasurer
Alaska State Veterinary Medical Association

Honorable Senator Bill Wielechowski,

Thank you for your time and assistance in defending the rights of the State to make our laws pertaining to animal care resemble our society's current mood of treating animals with respect.

An act of animal cruelty law is a slap to mankind. The State of Alaska shouldn't bare the costs, if the perpetrator is found guilty. So my wife (Amanda Jensen) and I would appreciate the guilty abuser(s) pay all costs attributed to the care of the animal abused and in need of rescue.

Obviously those who are found to be guilty, ironically shouldn't be allowed to legally be able to repeat the pattern. So the State should impose a cooling off period of separation and instate counciling for those who cant understand the correlation of their actions. Perhaps obtain a psychological evaluation to present to a judge for future involvement with animals [other then hunting or subsistence].

I question euthanasia by mean of slow [lethal] painful means to also be considered abusive on a case by case basis. When the animals health is worse then the outcome of death and could be confirmed under autopsy.

My wife and I appreciate the opportunity to speak and would hope that this bill could have been more heavily advertised so as to respond more candid and also share with our other acquaintances to join in the discussion of this particular bill.

So in close we support any endeavors to give law enforcement every opportunity to thwart animal cruelty. How we interact with animals is vital to the sanity of our way.

Sincerly
Brian Jensen
331-B Fischer Ave
Anchorage Alaska 99518
907-244-0721

Dear Senator French:

I strongly support SB 214 - Animal Cruelty sponsored by Senator Bill Wielechowski.

It is appalling to learn that the State of Alaska lags behind 46 other states that have felony penalties for first time animal cruelty offenders. It's hard to believe that in our state a perpetrator of malicious animal abuse is allowed to repeat animal cruelty three times before being convicted of a felony.

It is a well known fact as shown in case after case, animal abuse can escalate to domestic violence. The bully
takes it out on those who are vulnerable. We need to break the abuse cycle before the perpetrator becomes a repeat offender.

Please support SB 214 which will amend the current statute to ensure that malicious acts of animal cruelty be treated as felony offenses.

Thank you.

Sincerely,

Penelope Wells
Tel: 907 743-1960

Senator Ellis,

I support SB214 and would like you support it also. It is my understanding 42 other states have stronger legislation than AK when it comes to cruelty against animals. Please support SB214. Thank you,

Laura Baldwin

Anchorage 99507

SB 214 –Animal Cruelty

Fact Sheet

PROBLEM:

- Currently, animal cruelty is a misdemeanor offense and only a Class C felony on the 3rd offense within 10 years. Alaska is the only state requiring a 3rd offense prior to triggering the felony clause and one of 5 states without felony on the first offense.

- 46 other states have felony level animal cruelty penalties.

- For the period 2002-2009, 121 misdemeanor animal cruelty cases under the Alaska Statute 11.61.140 and 11.61.145 were referred and 94 prosecuted- an average of 72 cases per year.

- SB 214 will amend the current statute to ensure that the most heinous acts of animal cruelty are a felony on the first offense.

STATUTORY SOLUTION:

- SB 214 creates a felony animal cruelty provision for:
  - Knowingly inflicting severe and prolonged physical pain or suffering on an animal, and
  - Killing or injuring an animal by the use of a decompression chamber or poison.

- In comparison, the punishment for serious injury of a person is typically a Class A or Class B felony and that for poisoning a person to death is an unclassified felony.

- SB 214 creates a Class A misdemeanor for first offense & Class C felony for second offense within 10 years for:

- Failing to care for an animal with criminal negligence resulting in death, severe pain or suffering, and
- Knowingly killing or injuring an animal with the intent to intimidate, threaten, or terrorize another person.

- Negligent child endangerment is a Class C felony and stalking is a Class A misdemeanor on the 1st offense and a Class C felony on the 2nd offense.

LINKING DOMESTIC VIOLENCE & ANIMAL CRUELTY:

- The link between animal cruelty and domestic violence and other violent crimes has been well documented since the FBI made a strong correlation in the 1970's.

- Over 70% of pet owners entering domestic violence shelters report that their batterer had threatened, injured, or killed family pets.

- Nearly 90% of violent attacks on animals are committed in the presence of a partner or family member to seek revenge or control.

- During 2008, over 8,000 Alaskans sought help in victim service programs due to domestic violence in their homes.

- Animal cruelty often is an indicator that an individual poses a risk to oneself and or others. Studies show that animal abuse often predicts which children will exhibit anti-social and aggressive behavior later in childhood, adolescence, and adulthood. Serial killers and school shooters often have histories of abusing animals.

- Acts of animal cruelty are linked to a variety of other crimes, including crimes of violence against humans, property crimes, drug dealing or other disorderly conduct offenses.

- Women in domestic violence shelters are 11 times more likely to report animal abuse by their partner than women not experiencing violence.

- SB 214 provides an opportunity to prevent further violent acts in our community by identifying these individuals before they can do more harm to humans.

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Alaska Network on Domestic Violence & Sexual Assault

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February 10, 2010

Senator Bill Wielechowski
State Capitol, Room 413
Juneau, AK 99801

Re: Letter of Support
SB 214 – An Act Relating to Animal Cruelty

Dear Senator Wielechowski:

On behalf of the eighteen domestic violence and sexual assault member organizations throughout the state that comprise the Alaska Network on Domestic Violence & Sexual Assault, we submit this letter of support for SB 214 - An Act Relating to Cruelty.

SB 214 changes the current Class A misdemeanor animal cruelty provision relating to a perpetrator who "knowingly kills or injures an animal . . . with the intent to intimidate, threaten, or terrorize another person" to a Class C felony, if the person has been previously convicted within the last 10 years.

The link between pet abuse and domestic violence is well-documented and has been a subject studied in increasing detail over the past ten years. Scholarly studies cited by the National Coalition to End Domestic Violence provide evidence of this:

- 71% of pet owners entering domestic violence shelters report that their batterer had threatened, injured, or killed family pets.
- 87% of batterer-perpetrated incidents of pet abuse are committed in the presence of their partners for the purpose of revenge or control.
- Similar to domestic violence, abusers often threaten, harm, or kill animals as a means of demonstrating power and control over the family.[1]

In order to understand how a perpetrator of domestic violence may abuse animals as a means of intimidating, threatening, or terrorizing another person, it may help to briefly consider the elements of domestic violence. Domestic violence is most commonly defined as a pattern of coercive behaviors by which one person tries to control another person. Perpetrators who wish to control their victims' behavior may use animals to demonstrate and confirm dominance over the family. For instance, a perpetrator might beat a dog, or even kill it, and then say to a victim:

"Don't make me do this to you." Perpetrators may even use animals to degrade the victim through involvement in the abuse; in fact, a March 2008 incident in Indiana illustrates this sobering dynamic all too vividly: in this case, a father was jailed after forcing his seven-year-old young daughter to stab the family cat. [ii]

Although Alaska-specific studies have not been conducted, anecdotal evidence from shelter advocates suggests a similar prevalence of these issues in our state. In addition, we know from our work that when family pets are used as a weapon of control and dominance, the situation has reached a high lethality level. In response to this reality, many shelter programs have cooperative agreements with their local humane society chapters. In Juneau, for example, representatives from Gastineau Humane Society serve on the local Domestic Violence Task Force, and the AWARE shelter has a cooperative agreement with GHS allowing shelter residents to board their animals free of charge.

Thank you for sponsoring SB 214. Making this specific provision of the animal cruelty statutes a Class C felony will hold perpetrators who use pets as weapons accountable, keeping victims safe by reducing the lethality in these serious domestic violence situations.

Sincerely,

Peggy Brown, Executive Director

cc: Lisa Mariotti, Policy Director

[i] "Pets and Domestic Violence" Fact Sheet. National Coalition Against Domestic Violence: http://www.ncadv.org/files/petsanddv.pdf

[ii] "Cops: Dad Forced Daughter to Kill Pet Cat." Associated Press: March 14, 2008. http://www.cbsnews.com/stories/2008/03/14/national/main3937815.shtml?source=mostpop_story.

CURRENT STATUTE

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Alaska Statutes.
Title 11. Criminal Law
Chapter 61. Offenses Against Public Order
Section 140. Cruelty to Animals.

previous: Section 130. Misconduct Involving a Corpse.
next: Section 145. Promoting An Exhibition of Fighting Animals.

AS 11.61.140. Cruelty to Animals.

(a) A person commits cruelty to animals if the person

(1) knowingly inflicts severe and prolonged physical pain or suffering on an animal;

(2) with criminal negligence, fails to care for an animal and, as a result, causes the death of the animal or causes severe physical pain or prolonged suffering to the animal;

(3) kills or injures an animal by the use of a decompression chamber; or

(4) intentionally kills or injures a pet or livestock by the use of poison.

(b) Each animal that is subject to cruelty to animals under (a)(1) - (4) of this section shall constitute a separate offense.

(c) It is a defense to a prosecution under this section that the conduct of the defendant

(1) was part of scientific research governed by accepted standards;

(2) constituted the humane destruction of an animal;

(3) conformed to accepted veterinary or animal husbandry practices;

(4) was necessarily incidental to lawful fishing, hunting or trapping activities;

(5) conformed to professionally accepted training and discipline standards.

(d) In (a)(2) of this section, failure to provide the minimum standards of care for an animal under AS 03.55.100 is prima facie evidence of failure to care for an animal.

(e) This section does not apply to generally accepted dog mushing or pulling contests or practices or rodeos or stock contests.

(f) Cruelty to animals is a class A misdemeanor. The court may also

(1) require forfeiture of any animal affected to the state or to a custodian that supplies shelter, care, or medical treatment for the animal;

(2) require the defendant to reimburse the state or a custodian for all reasonable costs incurred in providing necessary shelter, care, veterinary attention, or medical treatment for any animal affected;

(3) prohibit or limit the defendant's ownership, possession, or custody of animals for up to 10 years.

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Note to HTML Version:

This version of the Alaska Statutes is current through December, 2007. The Alaska Statutes were automatically converted to HTML from a plain text format. Every effort has been made to ensure their accuracy, but this can not be guaranteed. *If it is critical that the precise terms of the Alaska Statutes be known, it is recommended that more formal sources be consulted.* For statutes adopted after the effective date of these statutes, see, Alaska State Legislature If any errors are found, please e-mail Touch N' Go systems at E-mail. We hope you find this information useful.

This page has been updated: 01/05/2009 15:53:51

SB

222

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/19/10

FURTHER: (Finance)

Date of 5-Day Notice: 1/25/10
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 4/7/10

Judiciary Committee considered SENATE BILL NO. 222

SB 222 SEX OFFENSES; OFFENDER REGIS.; SENTENCING

"An Act relating to the crimes of harassment, possession of child pornography, and distribution of indecent material to a minor; relating to suspending imposition of sentence and conditions of probation or parole for certain sex offenses; relating to aggravating factors in sentencing; relating to registration as a sex offender or child kidnapper; amending Rule 16, Alaska Rules of Criminal Procedure; and providing for an effective date."

and recommends:

[ ] be **replaced** with [ ] **SCS** or [✓] **CS** SB222 (JUD)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** SCS/CS- Forthcoming

[ ] attached amendment(s)

[ ] adopt _____ Letter of Intent

[ ] further referral to _____ Committee

SENATE BILL:
[ ] Same Title
[ ] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Corr	1/22/10			V	5
DPS/Records	1/22/10	✓			6

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
AOM/OPA	12/31			✓	1
COR	1/7	✓			2
AOM/PD	12/31			✓	3
LAW	12/30			✓	4

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Coghill			✓	
	Wielechowski			✓	
	McGuire	✓			
CHAIR:	Fred	✓			

26-GS2859\E.1
Luckhaupt
4/6/10

AMENDMENT #1 Senator French

OFFERED IN THE SENATE

TO: CSSB 222(JUD), Draft Version "E"

Page 8, line 11:

Delete "associated with the account;"

Insert "and physical location associated with the account; and"

Page 8, lines 12 - 13:

Delete all material.

Renumber the following paragraphs accordingly.

Page 8, line 15:

Delete ";"

Insert "."

Page 8, lines 16 - 19:

Delete all material.

Sec. 44.23.080. Subpoena power of attorney general in cases involving use of an Internet service account in the exploitation of children. (a) In an investigation of an offense under AS 11.41.452, 11.41.455, or AS 11.61.125 - 11.61.128 and on reasonable cause to believe that an Internet service account has been used in the exploitation or attempted exploitation of children, the attorney general may issue in writing and cause to be served a subpoena requiring the production and testimony described in (b) of this section.

(b) A person receiving a subpoena under (a) of this section shall disclose, for the account that is the subject of the subpoena,

(1) the name of the person holding the account;

(2) the address ~~associated~~ and physical location associated with the account; and

~~(3) local and long distance telephone connection records, including records of session times and durations for the account;~~

(4) length of service, including service start date, and types of service used by the account;

~~(5) the telephone or instrument number or other subscriber number or identifier, including any temporarily assigned network address for the account; and~~

~~(6) the means and source of payment for the service, including a credit card or bank account number associated with the account.~~

(c) At any time before the return date specified on the subpoena, the subpoenaed person may petition a court of competent jurisdiction for the judicial district in which the person resides or does business for an order modifying or setting aside the subpoena or for an order sealing the court record.

(d) A subpoena under this section must describe the objects required to be produced and must prescribe a return date with a reasonable period of time within which the objects must be assembled and produced.

(e) If no case or proceeding arises from the production of records or other documents under this section within a reasonable time after those records or documents are produced, the attorney general shall either destroy the records and documents or return them to the person who produced them.

(f) A subpoena issued under this section may be served as provided for service of subpoenas under Rule 45, Alaska Rules of Civil Procedure, or for service of process under

26-GS2859\E.2
Luckhaupt
4/6/10

#2

AMENDMENT French

OFFERED IN THE SENATE

TO: CSSB 222(JUD), Draft Version "E"

Page 6, following line 30:

Insert a new bill section to read:

"* **Sec. 16.** AS 12.62.130 is amended to read:

Sec. 12.62.130. Reporting of uniform crime information. A criminal justice agency shall submit to the department, at the time, in the manner, and in the form specified by the department, data regarding crimes committed within that agency's jurisdiction. **At a minimum, the department shall require a criminal justice agency to report each felony sex offense committed in the agency's jurisdiction. The department may withhold grant funding to a criminal justice agency that fails to report data as required by this section.** The department shall compile, and provide to the governor and the attorney general, an annual report concerning the number and nature of criminal offenses committed, the disposition of the offenses, and any other data the commissioner finds appropriate relating to the method, frequency, cause, and prevention of crime. **In this section, "sex offense" has the meaning given in AS 12.63.100.**"

Renumber the following bill sections accordingly.

Page 9, lines 6 - 11:

Delete all material.

Renumber the following bill sections accordingly.

Page 9, line 31:

Delete "Sections 17 and 19"

Insert "Sections 18 and 19"

26-GS2859\E.3
Luckhaupt
4/6/10

AMENDMENT #3 French

OFFERED IN THE SENATE

TO: CSSB 222(JUD), Draft Version "E"

Page 1, line 2, following "**pornography,**":

Insert "**failure to register as a sex offender,**"

Page 2, following line 11:

Insert a new bill section to read:

"* **Sec. 3.** AS 11.56.840 is repealed and reenacted to read:

Sec. 11.56.840. Failure to register as a sex offender or child kidnapper in the second degree. (a) A person commits the crime of failure to register as a sex offender or child kidnapper in the second degree if the person

(1) is required to register under AS 12.63.010;

(2) knows that the person is required to register under AS 12.63.010; and

(3) with criminal negligence fails to

(A) register;

(B) file written notice of

(i) change of residence;

(ii) change of mailing address;

(iii) establishment of an electronic or messaging address or any change to an electronic or messaging address; or

(iv) establishment of an Internet communication identifier or any change to an Internet communication identifier;

(C) file the annual or quarterly written verification; or

(D) supply accurate and complete information required to be

1836

submitted under this paragraph.

(b) In a prosecution for failure to register as a sex offender in the second degree under (a) of this section, it is an affirmative defense that

(1) unforeseeable circumstances, outside the control of the person, prevented the person from registering under (a)(3)(A) of this section or filing or supplying the written notices, verification, and other information required under (a)(3)(B) - (D) of this section; and

(2) the person contacted the Department of Public Safety orally and in writing immediately upon being able to perform the requirements described in this section.

(c) Failure to register as a sex offender or child kidnapper in the second degree is a class A misdemeanor."

Renumber the following bill sections accordingly.

Page 9, line 29:

Delete "Sections 1 - 16"

Insert "Sections 1 - 17"

Page 9, line 31:

Delete "Sections 17 and 19"

Insert "Sections 18 and 20"

26-GS2859\E
Luckhaupt
4/2/10

CS FOR SENATE BILL NO. 222(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to the crimes of harassment, distribution and possession of child pornography, and distribution of indecent material to a minor; relating to suspending imposition of sentence and conditions of probation or parole for human trafficking or for certain sex offenses; relating to aggravating factors in sentencing; relating to reporting of crimes; relating to administrative subpoenas for certain records involving exploitation of children; amending Rule 16, Alaska Rules of Criminal Procedure; and providing for an effective date."

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

*** Section 1.** AS 11.56.759(a) is amended to read:

(a) A person commits the crime of violation by sex offender of condition of probation [OR PAROLE] if the person

(1) is on probation [OR PAROLE] for conviction of a sex offense;

(2) has served the entire term of incarceration imposed for conviction

of the sex offense; and

(3) [EITHER

(A)] violates a condition of probation imposed under AS 12.55.100(a)(5), (a)(6), or (e), 12.55.101(a)(1), or any other condition imposed by the court that the court finds to be specifically related to the defendant's offense [; OR

(B) VIOLATES A CONDITION OF PAROLE IMPOSED UNDER AS 33.16.150(a)(3), (a)(4), (a)(6), (a)(13), (b)(4), (b)(11), OR (f)].

*** Sec. 2.** AS 11.56.759(c) is amended to read:

(c) Violation by sex offender of condition of probation [OR PAROLE] is a class A misdemeanor.

*** Sec. 3.** AS 11.61.118(a) is amended to read:

(a) A person commits the crime of harassment in the first degree if

(1) the person violates AS 11.61.120(a)(5) and the offensive physical contact is contact with human or animal blood, mucus, saliva, semen, urine, vomitus, or feces**; or**

(2) under circumstances not proscribed under AS 11.41.434 - 11.41.440, the person violates AS 11.61.120(a)(5) and the offensive physical contact is contact by the person touching through clothing another person's genitals, buttocks, or female breast.

*** Sec. 4.** AS 11.61.125(a) is amended to read:

(a) A person commits the crime of distribution of child pornography if the person **distributes in this state or advertises, promotes, solicits, or offers to distribute in this state** [BRINGS OR CAUSES TO BE BROUGHT INTO THE STATE FOR DISTRIBUTION, OR IN THE STATE DISTRIBUTES, OR IN THE STATE POSSESSES, PREPARES, PUBLISHES, OR PRINTS WITH INTENT TO DISTRIBUTE,] any material that **is proscribed under AS 11.61.127** [VISUALLY OR AURALLY DEPICTS CONDUCT DESCRIBED IN AS 11.41.455(a), KNOWING THAT THE PRODUCTION OF THE MATERIAL INVOLVED THE USE OF A CHILD UNDER 18 YEARS OF AGE WHO ENGAGED IN THE CONDUCT].

*** Sec. 5.** AS 11.61.127(a) is amended to read:

(a) A person commits the crime of possession of child pornography if the person knowingly possesses **or knowingly accesses on a computer with intent to view** any material that visually [OR AURALLY] depicts conduct described in AS 11.41.455(a) knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct **or a depiction of a part of an actual child under 18 years of age who, by manipulation, creation, or modification, appears to be engaged in the conduct**.

*** Sec. 6.** AS 11.61.127(c) is amended to read:

(c) Each film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts conduct described in AS 11.41.455(a) that is possessed **or accessed in violation of (a) of this section** [BY A PERSON KNOWING THAT THE PRODUCTION OF THE MATERIAL INVOLVED THE USE OF A CHILD UNDER 18 YEARS OF AGE THAT ENGAGED IN THE CONDUCT] is a separate violation of this section.

*** Sec. 7.** AS 11.61.127 is amended by adding new subsections to read:

(e) In a prosecution under (a) of this section, it is an affirmative defense that the person

(1) possessed or accessed fewer than three depictions described in (a) of this section; and

(2) without allowing any person other than a law enforcement agency to view the depictions, either took reasonable steps to destroy the depictions, or reported the matter to a law enforcement agency and allowed the agency access to the depictions.

(f) In this section, "computer" has the meaning given in AS 11.46.990.

(g) In a prosecution under (a) of this section, the prosecution is not required to prove the identity of a minor depicted or that the defendant knew the identity of a minor depicted.

*** Sec. 8.** AS 11.61.128(a) is amended to read:

(a) A person commits the crime of [ELECTRONIC] distribution of indecent

material to minors if

(1) the person, being 18 years of age or older, knowingly distributes to another person [BY COMPUTER] any material that depicts the following actual or simulated conduct:

(A) sexual penetration;

(B) the lewd touching of a person's genitals, anus, or female breast;

(C) masturbation;

(D) bestiality;

(E) the lewd exhibition of a person's genitals, anus, or female breast; or

(F) sexual masochism or sadism; [AND]

(2) **the material is harmful to minors; and**

(3) either

(A) the other person is a child under 16 years of age; or

(B) the person believes that the other person is a child under 16 years of age.

* **Sec. 9.** AS 11.61.128(c) is amended to read:

(c) Except as provided in (d) of this section, [ELECTRONIC] distribution of indecent material to minors is a class C felony.

* **Sec. 10.** AS 11.61.128(d) is amended to read:

(d) **Distribution** [ELECTRONIC DISTRIBUTION] of indecent material to minors is a class B felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.

* **Sec. 11.** AS 11.61.128 is amended by adding a new subsection to read:

(e) In this section, "harmful to minors" means

(1) the average individual, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest in sex for persons under 16 years of age;

(2) a reasonable person would find that the material, taken as a whole,

lacks serious literary, artistic, educational, political, or scientific value for persons under 16 years of age; and

(3) the material depicts actual or simulated conduct in a way that is patently offensive to the prevailing standards in the adult community as a whole with respect to what is suitable for persons under 16 years of age.

*** Sec. 12.** AS 12.55.085(f) is amended to read:

(f) The court may not suspend the imposition of sentence of a person who

(1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320, **11.41.360 - 11.41.370,** 11.41.410 - 11.41.530, [OR] AS 11.46.400**, or AS 11.61.125 - 11.61.128**;

(2) uses a firearm in the commission of the offense for which the person is convicted; or

(3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having [SUBSTANTIALLY] similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if that conviction has been set aside under (e) of this section or under the equivalent provision of the laws of another jurisdiction.

*** Sec. 13.** AS 12.55.100(e) is repealed and reenacted to read:

(e) In addition to other conditions imposed on the defendant, while on probation and as a condition of probation

(1) for a sex offense, as described in AS 12.63.100, the defendant

(A) shall be required to submit to regular periodic polygraph examinations;

(B) may be required to provide each electronic mail address, instant messaging address, and other Internet communication identifier that the defendant uses to the defendant's probation officer; the probation officer shall forward those addresses and identifiers to the Alaska state troopers and to the local law enforcement agency;

(2) if the defendant was convicted of a violation of AS 11.41.434 - 11.41.455, AS 11.61.125 - 11.61.128, or a similar offense in another jurisdiction, the defendant may be required to refrain from

(A) using or creating an Internet site;

(B) communicating with children under 16 years of age; or

(C) possessing or using a computer.

*** Sec. 14.** AS 12.55.155(c)(5) is amended to read:

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, homelessness, **consumption of alcohol or drugs,** or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

*** Sec. 15.** AS 12.55.155(c)(18) is amended to read:

(18) the offense was a felony

(A) specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit made up of those living together in the same dwelling as the defendant;

(B) specified in AS 11.41.410 - 11.41.458 and the defendant has engaged in the same or other conduct prohibited by a provision of AS 11.41.410 - 11.41.460 involving the same or another victim; [OR]

(C) specified in AS 11.41 that is a crime involving domestic violence and was committed in the physical presence or hearing of a child under 16 years of age who was, at the time of the offense, living within the residence of the victim, the residence of the perpetrator, or the residence where the crime involving domestic violence occurred;

(D) specified in AS 11.41 and was committed against a person with whom the defendant has a dating relationship or with whom the defendant has engaged in a sexual relationship; or

(E) specified in AS 11.41.434 - 11.41.458 or AS 11.61.128 and the defendant was 10 or more years older than the victim;

*** Sec. 16.** AS 12.63.100(6) is amended to read:

(6) "sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, "sexual offense" has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first degree; or

(iv) sexual abuse of a minor in the second degree; **or**

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

(i) AS 11.41.410 - 11.41.438;

(ii) AS 11.41.440(a)(2);

(iii) AS 11.41.450 - 11.41.458;

(iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;

(v) AS 11.61.125 - 11.61.128;

(vi) AS 11.66.110 or 11.66.130(a)(2) if the person who was induced or caused to engage in prostitution was 16 or 17 years of age at the time of the offense; [OR]

(vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160, former AS 11.40.110, or former 11.40.200; **or**

(viii) AS 11.61.118(a)(2) if the offender has a previous conviction for that offense;

* **Sec. 17.** AS 44.23 is amended by adding a new section to read:

Sec. 44.23.080. Subpoena power of attorney general in cases involving use of an Internet service account in the exploitation of children. (a) In an investigation of an offense under AS 11.41.452, 11.41.455, or AS 11.61.125 - 11.61.128 and on reasonable cause to believe that an Internet service account has been used in the exploitation or attempted exploitation of children, the attorney general may issue in writing and cause to be served a subpoena requiring the production and testimony described in (b) of this section.

(b) A person receiving a subpoena under (a) of this section shall disclose, for the account that is the subject of the subpoena,

(1) the name of the person holding the account;

(2) the address associated with the account;

(3) local and long distance telephone connection records, including records of session times and durations for the account;

(4) length of service, including service start date, and types of service used by the account;

(5) the telephone or instrument number or other subscriber number or identifier, including any temporarily assigned network address for the account; and

(6) the means and source of payment for the service, including a credit card or bank account number associated with the account.

(c) At any time before the return date specified on the subpoena, the subpoenaed person may petition a court of competent jurisdiction for the judicial district in which the person resides or does business for an order modifying or setting aside the subpoena or for an order sealing the court record.

(d) A subpoena under this section must describe the objects required to be produced and must prescribe a return date with a reasonable period of time within which the objects must be assembled and produced.

(e) If no case or proceeding arises from the production of records or other documents under this section within a reasonable time after those records or documents are produced, the attorney general shall either destroy the records and documents or return them to the person who produced them.

(f) A subpoena issued under this section may be served as provided for service of subpoenas under Rule 45, Alaska Rules of Civil Procedure, or for service of process under

Rule 4, Alaska Rules of Civil Procedure.

(g) Except as provided in this section, any information, records, or data reported or obtained under a subpoena under this section shall remain confidential and may not be disclosed unless the disclosure occurs in connection with a criminal case related to the subpoenaed materials.

*** Sec. 18.** AS 44.41.020(c) is amended to read:

(c) The department shall establish, and may require state and local law enforcement agencies to use, standardized methods of collecting and recording law enforcement and crime statistics. **At a minimum, the department shall require reporting from law enforcement agencies of each type of felony sexual offense proscribed in the state.**

*** Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 16(b), Alaska Rules of Criminal Procedure, is amended by adding a new paragraph to read:

(9) Restriction on Availability of Certain Material or Property. Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that may be illegal or prohibited under AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, provided the prosecution makes the property or material reasonably available to the defendant. Property or material shall be deemed to be made reasonably available to the defendant if the prosecution provides, at a prosecution or law enforcement facility, ample opportunity for inspection, viewing, and examination of the property or material by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

*** Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 1 - 16 of this Act apply to offenses committed on or after the effective date of this Act.

(b) Sections 17 and 19 of this Act apply to offenses committed before, on, or after the effective date of this Act.

* **Sec. 21.** This Act takes effect July 1, 2010.

26-GS2859\R
Luckhaupt
3/30/10

CS FOR SENATE BILL NO. 222(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to the crimes of harassment, distribution and possession of child pornography, and distribution of indecent material to a minor; relating to suspending imposition of sentence and conditions of probation or parole for human trafficking or for certain sex offenses; relating to aggravating factors in sentencing; relating to registration as a sex offender or child kidnapper; relating to reporting of crimes; relating to administrative subpoenas for certain records involving exploitation of children; amending Rule 16, Alaska Rules of Criminal Procedure; and providing for an effective date."

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

*** Section 1.** AS 11.56.759(a) is amended to read:

(a) A person commits the crime of violation by sex offender of condition of probation [OR PAROLE] if the person

(1) is on probation [OR PAROLE] for conviction of a sex offense;

(2) has served the entire term of incarceration imposed for conviction of the sex offense; and

(3) [EITHER

(A)] violates a condition of probation imposed under AS 12.55.100(a)(5), (a)(6), or (e), 12.55.101(a)(1), or any other condition imposed by the court that the court finds to be specifically related to the defendant's offense [; OR

(B) VIOLATES A CONDITION OF PAROLE IMPOSED UNDER AS 33.16.150(a)(3), (a)(4), (a)(6), (a)(13), (b)(4), (b)(11), OR (f)].

*** Sec. 2.** AS 11.56.759(c) is amended to read:

(c) Violation by sex offender of condition of probation [OR PAROLE] is a class A misdemeanor.

*** Sec. 3.** AS 11.56.840 is repealed and reenacted to read:

Sec. 11.56.840. Failure to register as a sex offender or child kidnapper in the second degree. (a) A person commits the crime of failure to register as a sex offender or child kidnapper in the second degree if the person

(1) is required to register under AS 12.63.010;

(2) knows that the person is required to register under AS 12.63.010; and

(3) fails to

(A) register;

(B) file written notice of

(i) change of residence;

(ii) change of mailing address;

(iii) establishment of an electronic or messaging address or any change to an electronic or messaging address; or

(iv) establishment of an Internet communication identifier or any change to an Internet communication identifier;

(C) file the annual or quarterly written verification; or

(D) supply accurate and complete information required to be

submitted under this paragraph.

(b) In a prosecution for failure to register as a sex offender in the second degree under (a) of this section, it is an affirmative defense that

(1) unforeseeable circumstances, outside the control of the person, prevented the person from registering under (a)(3)(A) of this section or filing or supplying the written notices, verification, and other information required under (a)(3)(B) - (D) of this section; and

(2) the person contacted the Department of Public Safety orally and in writing immediately upon being able to perform the requirements described in this section.

(c) Failure to register as a sex offender or child kidnapper in the second degree is a class A misdemeanor.

*** Sec. 4.** AS 11.61.118(a) is amended to read:

(a) A person commits the crime of harassment in the first degree if

(1) the person violates AS 11.61.120(a)(5) and the offensive physical contact is contact with human or animal blood, mucus, saliva, semen, urine, vomitus, or feces**; or**

(2) under circumstances not proscribed under AS 11.41.434 - 11.41.440, the person violates AS 11.61.120(a)(5) and the offensive physical contact is contact by the person touching through clothing another person's genitals, buttocks, or female breast.

*** Sec. 5.** AS 11.61.125(a) is amended to read:

(a) A person commits the crime of distribution of child pornography if the person **distributes in this state or advertises, promotes, solicits, or offers to distribute in this state** [BRINGS OR CAUSES TO BE BROUGHT INTO THE STATE FOR DISTRIBUTION, OR IN THE STATE DISTRIBUTES, OR IN THE STATE POSSESSES, PREPARES, PUBLISHES, OR PRINTS WITH INTENT TO DISTRIBUTE,] any material that **is proscribed under AS 11.61.127** [VISUALLY OR AURALLY DEPICTS CONDUCT DESCRIBED IN AS 11.41.455(a), KNOWING THAT THE PRODUCTION OF THE MATERIAL INVOLVED THE USE OF A CHILD UNDER 18 YEARS OF AGE WHO ENGAGED IN THE

CONDUCT].

*** Sec. 6.** AS 11.61.127(a) is amended to read:

(a) A person commits the crime of possession of child pornography if the person knowingly possesses **or knowingly accesses on a computer with intent to view** any material that visually [OR AURALLY] depicts conduct described in AS 11.41.455(a) knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct **or a depiction of a part of an actual child under 18 years of age who, by manipulation, creation, or modification, appears to be engaged in the conduct**.

*** Sec. 7.** AS 11.61.127(c) is amended to read:

(c) Each film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts conduct described in AS 11.41.455(a) that is possessed **or accessed in violation of (a) of this section** [BY A PERSON KNOWING THAT THE PRODUCTION OF THE MATERIAL INVOLVED THE USE OF A CHILD UNDER 18 YEARS OF AGE THAT ENGAGED IN THE CONDUCT] is a separate violation of this section.

*** Sec. 8.** AS 11.61.127 is amended by adding new subsections to read:

(e) In a prosecution under (a) of this section, it is an affirmative defense that the person

(1) possessed or accessed fewer than three depictions described in (a) of this section; and

(2) without allowing any person other than a law enforcement agency to view the depictions, either took reasonable steps to destroy the depictions, or reported the matter to a law enforcement agency and allowed the agency access to the depictions.

(f) In this section, "computer" has the meaning given in AS 11.46.990.

(g) In a prosecution under (a) of this section, the prosecution is not required to prove the identity of a minor depicted or that the defendant knew the identity of a minor depicted.

*** Sec. 9.** AS 11.61.128(a) is amended to read:

(a) A person commits the crime of [ELECTRONIC] distribution of indecent material to minors if

(1) the person, being 18 years of age or older, knowingly distributes to another person [BY COMPUTER] any material that depicts the following actual or simulated conduct:

(A) sexual penetration;

(B) the lewd touching of a person's genitals, anus, or female breast;

(C) masturbation;

(D) bestiality;

(E) the lewd exhibition of a person's genitals, anus, or female breast; or

(F) sexual masochism or sadism; [AND]

(2) **the material is harmful to minors; and**

(3) either

(A) the other person is a child under 16 years of age; or

(B) the person believes that the other person is a child under 16 years of age.

* **Sec. 10.** AS 11.61.128(c) is amended to read:

(c) Except as provided in (d) of this section, [ELECTRONIC] distribution of indecent material to minors is a class C felony.

* **Sec. 11.** AS 11.61.128(d) is amended to read:

(d) **Distribution** [ELECTRONIC DISTRIBUTION] of indecent material to minors is a class B felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.

* **Sec. 12.** AS 11.61.128 is amended by adding a new subsection to read:

(e) In this section, "harmful to minors" means

(1) the average individual, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest in sex for persons under 16 years of age;

(2) a reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, educational, political, or scientific value for persons under 16 years of age; and

(3) the material depicts actual or simulated conduct in a way that is patently offensive to the prevailing standards in the adult community as a whole with respect to what is suitable for persons under 16 years of age.

*** Sec. 13.** AS 12.55.085(f) is amended to read:

(f) The court may not suspend the imposition of sentence of a person who

(1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320, **11.41.360 - 11.41.370,** 11.41.410 - 11.41.530, [OR] AS 11.46.400**, or AS 11.61.125 - 11.61.128**;

(2) uses a firearm in the commission of the offense for which the person is convicted; or

(3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having [SUBSTANTIALLY] similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if that conviction has been set aside under (e) of this section or under the equivalent provision of the laws of another jurisdiction.

*** Sec. 14.** AS 12.55.100(e) is repealed and reenacted to read:

(e) In addition to other conditions imposed on the defendant, while on probation and as a condition of probation

(1) for a sex offense, as described in AS 12.63.100, the defendant

(A) shall be required to submit to regular periodic polygraph examinations;

(B) may be required to provide each electronic mail address, instant messaging address, and other Internet communication identifier that the defendant uses to the defendant's probation officer; the probation officer shall forward those addresses and identifiers to the Alaska state troopers and to the

local law enforcement agency;

(2) if the defendant was convicted of a violation of AS 11.41.434 - 11.41.455, AS 11.61.125 - 11.61.128, or a similar offense in another jurisdiction, the defendant may be required to refrain from

(A) using or creating an Internet site;

(B) communicating with children under 16 years of age; or

(C) possessing or using a computer.

*** Sec. 15.** AS 12.55.155(c)(5) is amended to read:

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, homelessness, **consumption of alcohol or drugs,** or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

*** Sec. 16.** AS 12.55.155(c)(18) is amended to read:

(18) the offense was a felony

(A) specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit made up of those living together in the same dwelling as the defendant;

(B) specified in AS 11.41.410 - 11.41.458 and the defendant has engaged in the same or other conduct prohibited by a provision of AS 11.41.410 - 11.41.460 involving the same or another victim; [OR]

(C) specified in AS 11.41 that is a crime involving domestic violence and was committed in the physical presence or hearing of a child under 16 years of age who was, at the time of the offense, living within the residence of the victim, the residence of the perpetrator, or the residence where the crime involving domestic violence occurred;

(D) specified in AS 11.41 and was committed against a person with whom the defendant has a dating relationship or with whom the defendant has engaged in a sexual relationship; or

(E) specified in AS 11.41.434 - 11.41.458 or AS 11.61.128 and the defendant was 10 or more years older than the victim;

*** Sec. 17.** AS 12.63.100(6) is amended to read:

(6) "sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, "sexual offense" has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first degree; or

(iv) sexual abuse of a minor in the second degree; **or**

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

(i) AS 11.41.410 - 11.41.438;

(ii) AS 11.41.440(a)(2);

(iii) AS 11.41.450 - 11.41.458;

(iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;

(v) AS 11.61.125 - 11.61.128;

(vi) AS 11.66.110 or 11.66.130(a)(2) if the person who was induced or caused to engage in prostitution was 16 or 17 years of age at the time of the offense; [OR]

(vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160, former AS 11.40.110, or former 11.40.200; **or**

(viii) AS 11.61.118(a)(2) if the offender has a previous conviction for that offense;

* **Sec. 18.** AS 44.23 is amended by adding a new section to read:

Sec. 44.23.080. Subpoena power of attorney general in cases involving use of an Internet service account in the exploitation of children. (a) In an investigation of an offense under AS 11.41.452, 11.41.455, or AS 11.61.125 - 11.61.128 and on reasonable cause to believe that an Internet service account has been used in the exploitation or attempted exploitation of children, the attorney general may issue in writing and cause to be served a subpoena requiring the production and testimony described in (b) of this section.

(b) A person receiving a subpoena under (a) of this section shall disclose, for the account that is the subject of the subpoena,

(1) the name of the person holding the account;

(2) the address associated with the account;

(3) local and long distance telephone connection records, including records of session times and durations for the account;

(4) length of service, including service start date, and types of service used by the account;

(5) the telephone or instrument number or other subscriber number or identifier, including any temporarily assigned network address for the account; and

(6) the means and source of payment for the service, including a credit card or bank account number associated with the account.

(c) At any time before the return date specified on the subpoena, the subpoenaed person may petition a court of competent jurisdiction for the judicial district in which the person resides or does business for an order modifying or setting aside the subpoena or for an order sealing the court record.

(d) A subpoena under this section must describe the objects required to be produced and must prescribe a return date with a reasonable period of time within which the objects must be assembled and produced.

(e) If no case or proceeding arises from the production of records or other documents under this section within a reasonable time after those records or documents are produced, the attorney general shall either destroy the records and documents or return them to the person who produced them.

(f) A subpoena issued under this section may be served as provided for service of

subpoenas under Rule 45, Alaska Rules of Civil Procedure, or for service of process under Rule 4, Alaska Rules of Civil Procedure.

(g) Except as provided in this section, any information, records, or data reported or obtained under a subpoena under this section shall remain confidential and may not be disclosed unless the disclosure occurs in connection with a criminal case related to the subpoenaed materials.

*** Sec. 19.** AS 44.41.020(c) is amended to read:

(c) The department shall establish, and may require state and local law enforcement agencies to use, standardized methods of collecting and recording law enforcement and crime statistics. **At a minimum, the department shall require reporting from law enforcement agencies of each type of felony sexual offense proscribed in the state.**

*** Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 16(b), Alaska Rules of Criminal Procedure, is amended by adding a new paragraph to read:

(9) Restriction on Availability of Certain Material or Property. Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that may be illegal or prohibited under AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, provided the prosecution makes the property or material reasonably available to the defendant. Property or material shall be deemed to be made reasonably available to the defendant if the prosecution provides, at a prosecution or law enforcement facility, ample opportunity for inspection, viewing, and examination of the property or material by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

*** Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE STATEMENT CONCERNING CULPABLE MENTAL STATE. In AS 11.56.840(a), as repealed and reenacted by sec. 3 of this Act, the only culpable mental state required to be proven by the prosecution is the "knowing" requirement in paragraph (2)

of that subsection. No other culpable mental state needs to be proven for the other elements of that offense.

*** Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 1 - 17 and 21 of this Act apply to offenses committed on or after the effective date of this Act.

(b) Sections 18 and 20 of this Act apply to offenses committed before, on, or after the effective date of this Act.

*** Sec. 23.** This Act takes effect July 1, 2010.

AMENDMENT

OFFERED IN THE SENATE BY SENATOR FRENCH

TO: SB 222

Page 1, line 5, following "**kidnapper;**":

Insert "**relating to reporting of crimes;**"

Page 7, following line 31:

Insert a new bill section to read:

"* **Sec. 16.** AS 44.41.020(c) is amended to read:

(c) The department shall establish, and may require state and local law enforcement agencies to use, standardized methods of collecting and recording law enforcement and crime statistics. **At a minimum, the department shall require reporting from law enforcement agencies of each type of felony sexual offense proscribed in the state.**"

Renumber the following bill sections accordingly.

Page 9, line 5:

Delete "Section 16"

Insert "Section 17"

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
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Committee Members:
Senator Bill Wielechowski
Senator Dennis Egan
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

MEMORANDUM

Report and Recommendations: Reducing Sexual Assault in Alaska

Introduction:

Alaska has the highest reported rate of sexual assault in the United States. Between 2003 and 2007, Alaska's reported rate of forcible rape was over two and a half times the national average, with Anchorage reports at almost three times the national rate and Fairbanks reports at over five times the national rate. This does not include all sexual assaults in Alaska, since the definition used in the federal reporting system (the Uniform Crime Report) excludes child victims, male victims, and many other forms of sexual assault. Nevertheless, forcible rape is a greater percentage of all violent crimes reported in Alaska than it is nationally, at 12% of all violent crime in Alaska as opposed to 6% of violent crime in the United States on average.

Between 2003 and 2004, the Troopers received 1,184 reports of contact sexual violence cases involving forcible rape, sexual assault, or sexual abuse of a minor. Of those, some 884 were deemed to have occurred and to have an identifiable suspect. The troopers then turned over 449 cases, or about half, to the Department of Law for their screening. Of these, 271 were accepted for prosecution, and some 217 convictions resulted.

During hearings of the Senate Judiciary Committee conducted during 2009, committee members heard testimony as to what Alaska can do to reduce sexual assault and improve rates of prosecution and conviction.

The following issues were discussed:

A. Inadequate and inaccurate data:

1. The current system for tracking reports of sexual assault is inadequate at best. The Uniform Crime Report (UCR) excludes many kinds of sexual assault, making it

unreliable, even for reported crimes. Not all police departments in Alaska provide information to the UCR, though they are statutorily required to do so. According to the Department of Public Safety, 41 local police departments failed to file the data needed for the Uniform Crime Report in 2007.

2. Alaska has never done a victimization study (a survey that includes both reported and unreported cases). Because of this, we do not know if Alaska's rates of sexual assault are higher, or the rate at which reports are made are higher, or both. So, for example, Fairbanks may have a very high rate of sexual violence, or it may be that citizens are simply more likely to report that violence, or it may be that both these things are true. Nationwide, it is estimated that 52% of sexual assaults are not reported to law enforcement. Without a victimization study, there is no way to know if this is also the case in Alaska.

3. Finally, the statistics that are available, largely collected through studies done by the Justice Center of the University of Alaska, show differences in the groups that are most likely to be victimized in various regions. For instance, a review of Alaska State Trooper cases showed that 94% reports are of victims who were 15 years of age or younger, while 73% of reports coming to the Anchorage Police Department are from victims aged 18 and older.

Recommendations:

- *The legislature should fund a victimization survey to determine the actual rate of both reported and unreported sexual assaults in Alaska. This survey should be large enough to look at the state by region, so that programs and policies can be tailored to be most effective.*

- *Legislation should be enacted requiring the Department of Public Safety to collect annual statistics on reported sexual assault in Alaska as defined in state law. This legislation should require local police department participation.*

- *A data system should be developed to track sexual assaults from report to conviction. This will require interagency cooperation and so should be addressed by a group such as MAJIC or the Criminal Justice Working Group.*

B. Certain resources have a disproportionate and positive impact on cases being accepted for prosecution, yet for the most part no consistent state policy has been implemented to ensure that these best practices are followed.

1. UAA Justice Center studies show that certain factors increase the likelihood of prosecution and conviction. These include the presence of a Village Pubic Safety Officer (VPSO), a Village Police Officer or Tribal Police Officer for crimes in villages. In State Trooper cases where a VPSO was available, rates of serious assault went down by 40% and the likelihood of the case being accepted for prosecution went up by three and a half times.

2. When victims received a medical-forensic exam, it more than doubled the likelihood that their case was accepted for prosecution. Documentation of non-genital injury was particularly important in the eventual decision to prosecute a case. However, of the 15 Sexual Assault Nurse Examiner programs that have been instituted in Alaska, only 4 are currently active.

3. In cases where witnesses were located and interviewed, and where appropriate investigative follow-up and victim support was done, the likelihood of prosecution increased by more than three times.

4. Finally, DNA evidence is becoming increasingly critical to sexual assault prosecutions and testimony indicated that there are significant delays and backlogs in getting this evidence processed in a timely way.

Recommendations:

- *The legislature should continue to increase the number of villages with local law enforcement through the VPSO program.*

- *The legislature should consider grant funding for local hospitals to provide qualified Sexual Assault Nurse Examiners and to support the cost of existing programs. In addition, a pilot project which looks at the use of telemedicine in extending SANE services to rural communities without SANE nurses should be explored.*

- *Law enforcement agencies should prioritize sexual assault investigations so that investigators have the time to contact potential witnesses, work with victims, and collect any other evidence that may be available in these cases.*

- *The legislature and the Department of Public Safety must address the needs of the State Crime lab and look at methods to process DNA evidence in a timely way.*

C. Alcohol use is significantly associated with sexual assault.

1. In a study of Anchorage Police Department cases, over 60% of victims and 70% of suspects had used alcohol just prior to or at the time of the assault. Similar statistics were also found in a study of cases in Alaska's Sexual Assault Nurse Examiner (SANE) program. In Trooper cases, where the victims tended overwhelmingly to be children, the victim use was 27% and suspect use was 42%. In addition, significant numbers of victims report having consumed alcohol to the point of incapacitation (e.g., Anchorage 23%; Fairbanks 31%). This both increases the vulnerability of the victim to an assault and can make cases more difficult to prosecute.

2. The UAA Justice Center reports that rates of serious injury from assault are 36% lower in dry villages and, further, that cases involving alcohol use are less likely to be referred for prosecution and are less likely to be accepted for prosecution when they are referred.

Recommendations:

- *Alaska should continue to support programs and policies that reduce alcohol consumption*

- *Education efforts in sexual assault awareness and prevention should specifically address alcohol use and its potential adverse effects on personal safety.*

D. Ongoing efforts to reduce recidivism by known sex offenders is critically important.

1. In a 1988 study (Abel, et al), of offenders who participated and who admitted to child molestations and rapes, 97% were never arrested for these crimes. The lag time for detection of sex offenders ranges from between 6 years to 16 years according to various national studies.

2. Nationally, almost 45% of prisoners serving time for rape or sexual assault committed their crime while on probation or parole.

Recommendations:

- *Alaska should continue to fund and expand its sex offender management programs, particularly the current Containment Model, which utilizes offender polygraphs but in prison and on probation.*
- *Alaska's Internet Crimes Against Children Task Force, which locates offenders who are looking for victims using the internet, should be expanded. This program has resulted in arrests and convictions of adults who would otherwise have offended against children.*

The Senate Judiciary Committee would like to thank the many experts who provided their time and knowledge to the committee during these hearings. The committee particularly acknowledges the work done by the UAA Justice Center, which has provided vital leadership in its research regarding violence against women in Alaska.

Justice Center, University of Alaska, Anchorage:
Andre Rosay, Phd., Interim Director

Alaska Department of Public Safety:

Commissioner Joe Masters
Deputy Commissioner Audie Holloway
Katie Tepas, Acting Director, Council on Domestic Violence & Sexual Assault
Sgt. Derek DeGraaf, Computer & Financial Crimes

Anchorage Police Department:

Sgt. Kevin McCoy, Sexual Assault Unit
Sgt. Ron Tidler, Cyber Crimes Unit

Alaska Sexual Assault Nurse Examiners (SANE) Program:

Tara Henry, RN, MSN, SANE-A, SANE-P

Alaska Department of Law:

Rick Svobodny, Deputy Attorney General
Sue McLean, Chief Assistant Attorney General

Aleutian Pribilof Island Association:

Richard Krause, VPSO Program Director

Alaska Department of Corrections:

Dwayne Peeples, Deputy Commissioner
Dr. Anthony Mander, Clinical Consultant
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April 6, 2010

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STUDENT ADVISORS

The Honorable Hollis French
Chair, Senate Judiciary Committee
Alaska State Senate
State Capitol, Room 417
Juneau, AK 99801-1182

Re: CS (JUD) for Senate Bill 222
Constitutional Issues

Chair French:

Thank you for the opportunity to submit written testimony regarding CS (JUD) for Senate Bill 222. These comments reflect analysis in addition to our prior correspondence of February 15, with respect to provisions amended in the CS.

Section Seventeen – Unjustified Invitation to Abuse

Section 17, proposes that the Attorney General may issue administrative subpoenas to obtain an internet user's name, address, telephone records, bank or credit card information, service history, and any telephone number or IP address used in accessing the internet through the service provider.

The general rule in criminal investigations has been that a warrant issues from a judge or other judicial authority. In some contexts, administrative warrants have been issued by various administrative agencies – to assist the IRS, for instance, in recovering owed taxes, or the SEC in identifying violations of securities regulations.

Permitting a criminal enforcement agency to issue its own subpoenas for the purpose of prosecution has been rarely tried and leads to abuse when it has occurred. In the wake of 9/11, the FBI seized on the authority of

"exigent letters" and "national security letters" to demand phone records and other information from businesses. Investigation of this authority found that the letters were issued where no exigent circumstances or national security issue existed, that the secrecy surrounding the procedure allowed agents to misrepresent where the information had come from, and allowed the FBI to obtain phone records of some individuals, including journalists, in ways which raise serious civil liberties concerns.

Testimony to the effect that such sweeping authority should be removed from the hands of a judge – who traditionally affords constitutional protections as a neutral party – has indicated that the judicial process is too cumbersome or takes too much time. However, the submission of a warrant to a judge is the same procedure by which the phones of those accused of drug dealing are tapped, by which the homes of those accused of murder are searched, and by which those accused of rape are arrested. While the "affidavit" portion of a warrant request can be lengthy, much of it is boilerplate. The ACLU can provide the Committee with an exemplar affidavit showing that the original language necessary to complete the affidavit is rather minimal.

Testimony that it would be easier for the head of the state's law enforcement and litigation agency to read an application for an administrative subpoena than for any of the many state court judges to do so is similarly unpersuasive. Regardless of who will finally sign a warrant or subpoena, the same steps must be completed. The statement of probable cause must be drafted, the statement of what materials are to be seized must be prepared, and the application must be submitted for signature. Whether the application is faxed to a judge's chambers or carried upstairs does not add significantly to the time needed to complete the application. One could imagine that the Attorney General would have less time to fully review the application than judges around the state. If the intention of the bill is that the Attorney General will designate representatives to sign these warrants in his name, such a practice invites different concerns. Devolving subpoena power to numerous subordinates whose actions would be difficult to track even within the Department of Law, opens even more avenues for abuse.

Some of the material sought by these subpoenas should be considered private and outside the scope of an administrative subpoena. *State v. Miles*, 160 Wash.2d 236, 252 (Wash. 2007) (holding that bank records were private and not subject to administrative subpoena). The context of the subpoena – internet usage – should prompt more scrutiny from the courts, since access to the internet is part of the freedom of speech. Allowing the government to discover who makes negative comments about political figures on websites, to find out whether a state employee is visiting a website about whistleblower law, and who is supporting rival political campaigns threatens the privacy and the free speech rights of citizens. *Doe v. Alaska Superior Court*, 721 P.2d 617, 629 (Alaska 1986) (privacy clause protects "sensitive personal information"). It is no answer to say that the statute is supposedly about child exploitation when the subpoenas are not subject to independent scrutiny. The only entity able to challenge the subpoena would be the internet service provider, which has no particular interest in the freedom of speech or privacy of citizens.

Allowing a law enforcement agency to issue its own subpoenas without review by a neutral party has led in the past and will lead again to serious abuse by government officials.

Sections Five and Six: First Amendment Issues

As noted in Committee colloquy during the Monday, April 5 hearing, Sections 5 and 6 as currently drafted, present First Amendment issues. By inclusion of non-obscene material, these proposed amendments run afoul of the U.S. Supreme Court's ruling in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002), (child pornography cannot be banned if it is both (1) not constitutionally obscene and (2) not a depiction of real children).

As currently drafted, one could imagine a work of art, for instance, placing a photo of the head of a minor Britney Spears, on drawing intended as commentary on media depictions of youth and sexuality unconstitutionally qualifying as "criminal material." Absent, for example, language tracking the *Miller* standard (*Miller v. California*, (1973) 413 U.S. 15) these provisions are subject to facial challenge.

Conclusion

As previously noted, the ACLU takes seriously the need to address sexual assault in Alaska. But the sections cited invite constitutional challenge and will likely entangle the state in lengthy and costly litigation, and lead to unnecessary uncertainty in criminal verdicts, should the CS (JUD) for S.B. 222 pass as currently written.

Sincerely,

Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Senator Wielechowski, Vice Chair
Senator Egan
Senator McGuire
Senator Coghill

February 15, 2010

AMERICAN CIVIL LIBERTIES UNION OF ALASKA
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NADINE WINTERS, Fairbanks

ZACH FICK, Anchorage
NOELANI KAMAHELE, Anchorage
STUDENT ADVISORS

The Honorable Hollis French
Chair, Senate Judiciary Committee
Alaska State Senate
State Capitol, Room 417
Juneau, AK 99801-1182

Re: Senate Bill 222
Constitutional Issues

Chair French:

Thank you for the opportunity to submit written testimony regarding Senate Bill 222. As you know, the American Civil Liberties Union of Alaska ("ACLU) represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. From that perspective, we have several concerns with the proposed legislation.

Section 16 Proposed Amendments to
Rule 16 of the Rules of Criminal Procedure

Section Sixteen of the Bill proposes changes to the rules of criminal procedure that violate the state and federal constitutional rights to a fair trial and to effective representation, and would result in lengthy and costly litigation. The Section proposes that relevant evidence should be revealed to defendants, defense attorneys, and defense experts only at a state facility, under the control of a law enforcement agency. While protecting the privacy of the victims of certain crimes is an important interest, the proposed changes to the Rules of Criminal Procedure unnecessarily restrict the rights of the accused.

In some cases, the use of a technological expert is invaluable. Defendants are entitled to establish, for example, that images at issue in a trial are not illegal material, were placed on the drive by another party, or were altered in some way. The computer source files would require review at length by an expert witness. Being forced to conduct the review at a local police department or District Attorney's office would make the work of these experts essentially impossible. Moreover, the analysis of hard drives and other media would likely require unique analysis programs which would necessitate examining the images on the expert's own computers. The proposed Rule Amendment would effectively deprive defendants of the effective use of expert testimony, which would be a key defense resource in these cases.

Even where the use of an expert is unnecessary, the defense attorney may need to review the files at length, to establish the exact nature of images or files, or to determine whether some of them are duplicates. Requiring defense attorneys to do their work at times and places convenient to the state is unnecessarily and unconstitutionally restrictive.

A case from Washington State perfectly illustrates why the proposed rule would result in lengthy and expensive litigation which would ultimately result in the overturning of the statute. In *State v. Boyd*, for example, the prosecution in a child pornography case sought and obtained a protective order from the court which only permitted the defense to view the evidence at a state facility. 158 P.3d 54 (Wash. 2007). The Supreme Court of Washington ruled that the Rules of Evidence, the Fifth Amendment right to a fair trial, and the Sixth Amendment right to effective representation by counsel all required that the protective order be struck down and the defendant be granted a new trial, because the defendant could not be adequately represented nor fairly tried under the order.

The important privacy of needs of victims can be protected without the measures laid out in Section 16. For example, the *Boyd* court upheld an order requiring the defense to keep "mirror image" hard drives of evidence under lock and key, to use firewall software on any computer viewing images that was connected to the internet, making the attorney personally and professionally responsible for any unauthorized release of the images, and allowing state experts to verify the complete eradication of the images after the conclusion of the case.

The power of a court to issue a protective order in a particular case already exists and needs no augmentation by the legislature. An order issued after consideration of the unique facts of an individual case is far more likely to survive appellate review than a blanket rule set down by the legislature.

Section 16 of S.B. 222 violates the state and federal constitutional rights to a fair trial and to effective representation. We recommend the Bill be revised so that the courts would be permitted to manage the disclosure of evidence on a case-by-case basis, rather than by instituting a blanket rule that would invite litigation.

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Section 15 Requirement for Registration of Sex Offenders from Other Jurisdictions

Section 15 proposes to expand the list of those required to register as sex offenders to include anyone required to register in another jurisdiction. The ACLU of Alaska has numerous objections to this amendment.

The Alaska Supreme Court ruled in *Doe v. State* that those convicted of sex offenses in Alaska before the enactment of the sex offender registry statutes in 1994 could not be required to register, as the statute would otherwise violate the *ex post facto* provision of the State Constitution. 189 P.3d 999 (Alaska 2008). In many other jurisdictions, the state courts have not declared their state sex offender statutes to offend their own *ex post facto* rules. The Alaska *ex post facto* provision may prohibit mandatory registration for those convicted of offenses in another state prior to 1994. A final determination would need to be made by the Alaska Supreme Court, likely after lengthy litigation, and potentially overturning many convictions.

The proposed amendment in Section 15 also usurps the State's own policy making decisions. In Alaska, for instance, the legislature has set the age of consent at sixteen. This amendment would nullify the legislature's judgment and require someone convicted of having sex with a 17-year-old in another state to report to the Department of Public Safety and face incarceration should he fail to report on time. Should he end up incarcerated, the people of the state of Alaska will be paying $44,000 a year to incarcerate someone as a consequence for committing an underlying act which would not even be a crime in Alaska.

The current state of the law in Alaska is that anyone convicted under appropriate Alaska statutes or similar statutes in another state, such as rape, sexual assault, etc., must register in Alaska. Section 15 would therefore expand the registry not to the most culpable and the most dangerous, but to those convicted of designated sex offenses that lie outside the most dangerous sex offenses: particularly, those convicted of having sex with 16 or 17 year olds; those convicted of prostitution offenses; and those convicted of some other minor offenses, like indecent exposure. These offenders are not particularly more likely to commit the rapes and molestations that the registry is designed to protect Alaskans from.

Generally, registries have been ineffective in preventing crime. A Rutgers University study showed that the New Jersey sex offender registry had "no demonstrable effect in reducing sexual re-offenses." The study also showed the enactment of the law had no effect on the number of victims of sex offenses, no effect on how long those convicted of sex offenses remained arrest-free, and no effect on the type of sex offenses committed. The legislature should look for proven, effective methods of preventing sex offenses. The proposed expansion of the sex offender registry in S.B. 222 is not a means to do this.

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Section Three – Eliminating the Mental State Requirement of the Failure to Register Statute

Subsection (b) of Section Three of the Bill eliminates any mental state requirement, or *mens rea*, for the offense of failure to register, which means that a person who accidentally or in good faith neglects to complete the registration requirement every three months could still be found guilty of the offense. Subsection (c) creates an affirmative defense that registration became impossible because of an unforeseen circumstance and that the individual orally registered with the Department of Public Safety as soon as possible.

Generally, the criminal law requires "not only the doing of some act by the person to be held liable, but also the existence of a guilty mind during the commission of the act." *Speidel v. State*, 460 P.2d 77, 80 (Alaska 1969). The Alaska courts have held that, for major felonies, a mental state requirement is mandatory, while some minor offenses, such as hunting or public health related offenses, may be strict liability offenses without a mental state requirement. *Speidel*, 460 P.2d 77 (holding that the statute declaring the failure to return a car to be a crime, regardless of mental state, violated due process); *see also* State v. Guest, 583 P.2d 836 (Alaska 1978); *State v. Fremgen*, 914 P.2d 1244 (Alaska 1996).

In some cases, the courts have avoided declaring a statute unconstitutional by creating a mental state requirement where a statute has no provision for mental state but no language stating that no mental state requirement exists. *Kimoktoak v. State*, 584 P.2d 25 (Alaska 1978); *Alex v. State,* 484 P.2d 677 (Alaska 1971). With an explicit statement that no mental state is required in Section Three, the courts will not be able to avoid the constitutional conflict and may rule the statute unconstitutional.

Of note, as well, are the unique conditions here in Alaska. Many registered sex offenders live off the road system and in remote villages in which mail service gets interrupted, travel and telecommunications are irregular, and weather could keep an offender from being able to comply. Placing the burden on the defendant to prove his innocence reverses our legal tradition and the traditional balance of powers between the defense and the prosecution. The elimination of the mental state requirement and the substitution of a restrictive affirmative defense make Section Three subject to attack under the Alaska constitution.

Conclusion

We hope that the Judiciary Committee will note these constitutional infirmities in Sections Three, Fifteen, and Sixteen of Senate Bill 222 and consider amending them or eliminating them from the Bill to avoid these concerns.

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While the ACLU of Alaska takes very seriously the need to address the epidemic of sexual assault in Alaska, these sections are not well-crafted to vindicate the state's purposes. The sections we have identified present substantial Constitutional problems and will likely entangle the state in litigation, should S.B. 222 pass as currently written.

Thank you again for the opportunity to share our concerns. And please feel free to contact the undersigned should you require any additional information.

Sincerely,

Jeffrey Mittman
Executive Director
ACLU of Alaska

THE MEDIA COALITION INC

275 SEVENTH AVENUE • 15TH FLOOR • NEW YORK, NEW YORK 10001
PHONE: 212-587-4025 • FAX: 212-587-2436 • WWW.MEDIACOALITION.ORG

DAVID HOROWITZ
Executive Director

American Booksellers Foundation for Free Expression

Association of American Publishers, Inc.

Comic Book Legal Defense Fund

Entertainment Consumers Association

Entertainment Merchants Association

Entertainment Software Association

Freedom to Read Foundation

Independent Book Publishers Association

Magazine Publishers of America, Inc.

Motion Picture Association of America, Inc.

National Association of Recording Merchandisers

Recording Industry Association of America, Inc.

Chair
Chris Finan
American Booksellers Foundation for Free Expression

Immediate Past Chair
Sean Devlin Bersell
Entertainment Merchants Association

Treasurer
Sally Jefferson
Entertainment Software Association

General Counsel
Michael A. Bamberger
Sonnenschein Nath & Rosenthal LLP

Memorandum in Opposition to Alaska Senate Bill 222

The members of Media Coalition believe that both Section 8 of Senate Bill 222 and existing Alaska statute 11.61.128(a) violates the First Amendment rights of producers and retailers and their customers. The trade associations and other organizations who comprise Media Coalition have many members throughout the country including Alaska: book and magazine publishers, booksellers and librarians as well as manufacturers and retailers of recordings, films, videos and video games and their consumers.

AS 11.61.128(a) bars the distribution by a computer of any "indecent material" by an adult to anyone under 16 years old or someone the adult believes is under 16 years old. "Indecent material" is defined to include any depiction of actual or simulated sexual penetration, lewd touching or exhibition of the genitals, anus, or female breast, masturbation, sexual masochism or sadism. S.B. 222 would expand the existing law would broaden it to apply to any type of distribution rather than merely by computer.

Speech is protected unless the Supreme Court tells us otherwise. As the Court said in *Free Speech Coalition v. Ashcroft*, "As a general principle, the First Amendment bars the government from dictating what we see or read or speak or hear. The freedom of speech has its limits; it does not embrace certain categories of speech, including defamation, incitement, obscenity and pornography produced with children." 535 U.S.234, 241 (2002). Unless speech falls into one of these limited categories or is otherwise tied to an illegal act such as luring or enticing a minor, there is no basis for the government to bar access to make such material illegal.

The restriction on "indecent materials" in the present law and in this bill, without a connection to an otherwise illegal act such as luring or enticing a minor, is almost certainly unconstitutionally overbroad. While minors do not enjoy the protection of the First Amendment to the same extent as adults, the U.S. Supreme Court has ruled that "minors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected material to them." *Erznoznick v. City of Jacksonville*, 422 U.S. 212-13 (1975). Governments may restrict minors' access to some sexually explicit speech but it is a narrow range of material determined by a specific test. Merely containing sexual content is not enough to make a book, movie, magazine or sound recording illegal. In the case of *Ginsberg v. New York*, 390 U.S. 629 (1968), the U.S. Supreme Court established a three-part test for determining whether material is "harmful to

The Media Coalition is a trade association that defends the First Amendment rights of publishers, booksellers, librarians, recording, motion picture and video games producers, and recording, video, and video game retailers and consumers in the United States.

minors" and may therefore be banned for sale to minors. The material deemed illegal for minors by AS 11.61.128(a) and S.B. 222 does not include any of the three prong test from *Ginsberg* and would criminalize a far broader range of material than is allowed under the First Amendment. A recent law enacted in Illinois barred the sale of video games with sexual content but without the third prong of the *Ginsberg* test. The law was permanently enjoined by the U.S. District Court and the ruling was heartily affirmed by the Seventh Circuit Court of Appeals. *Entertainment Software Ass'n v. Blagojevich*, 469 F.3d 642 (7th Cir. 2006) *aff'g* 404 F. Supp. 2d 1051 (N.D. Ill. 2005).

The existing law's application of these restrictions to Internet communication is almost certainly unconstitutional even if it was limited to material that could be restricted as "harmful to minors" under the three-prong test in *Ginsberg*. This treats material on the Internet as if there were no difference between a computer transmission and a book or magazine. But cyberspace is not like a bookstore. There is no way to know whether the person receiving the "harmful" material is a minor or an adult. As a result, the effect of banning the computer dissemination of material "harmful to minors" is to force a provider, whether a publisher or an on-line carrier, to deny access to both minors and adults, depriving adults of their First Amendment rights. The U.S. Supreme Court has already declared unconstitutional two federal laws that restrict the availability of matter inappropriate for minors on the Internet. *Reno v. ACLU*, 117 S.Ct. 2329 (1997); *Ashcroft v. ACLU*, 534 F.2d 181 (3d Cir 2008), cert. den. 129 Sup. Ct. 1032 (2009). Similar state laws banning sexual speech for minors on the Internet have been ruled unconstitutional. *See, PSINet v. Chapman*, 63 F.3d 227 (4th Cir. 2004); *ABFFE v. Dean*, 342 F.3d 96 (2nd Cir 2003); *Cyberspace Communications, Inc. v. Engler*, 238 F.3d 420 (6th Cir. 2000); *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999); *Southeast Booksellers v. McMasters* 282 F. Supp 2d 1180 (D.S.C. 2003); *American Libraries Ass'n v. Pataki* 969 F. Supp. 160 (S.D. 1997); *ACLU v. Goddard*, Civ No. 00-0505 TUC AM (D. Ariz. 2002). The only exceptions to these decisions have been laws that were limited to speech illegal for minors that were intended to be communicated to a person the speaker has specific, rather than general, knowledge is a minor. However, such laws might still be unconstitutional as a violation of the Commerce Clause of the U.S. Constitution. In addition to First Amendment deficiencies, the courts have also ruled that these state laws violate the Commerce Clause, which reserves to Congress the regulation of interstate commerce and prevents a state from imposing laws extraterritorially.

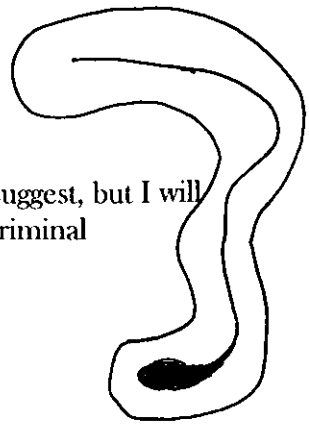
Passage of this bill could prove costly. If a court declares it unconstitutional, there is a good possibility that the state will be ordered to pay the plaintiffs' attorneys' fees. In the successful challenge to the Illinois legislation, the state agreed to pay to the plaintiffs more than $500,000.

If you would like to discuss further our position on this bill, please contact David Horowitz at 212-587-4025 #11 or at horowitz@mediacoalition.org.

Again, we ask you to please protect the First Amendment rights of all the people of Alaska and reconsider the existing law and S.B. 222.

Cindy Smith

From: Sen. Hollis French
Sent: Tuesday, February 02, 2010 8:44 AM
To: David Cheezem
Subject: RE: Senate Bill 222



David,
Thanks for writing. I'm a big supporter of independent bookstores.
I think you have raised a valid concern with the bill. I can't promise to adopt the language you suggest, but I will work to make sure that the bill does not expose you and other booksellers to the possibility of criminal prosecution.
Best,
Hollis French

—Original Message—
From: David Cheezem [mailto:dcheezem@mtaonline.net]
Sent: Tuesday, February 02, 2010 8:21 AM
To: Sen. Hollis French
Subject: Senate Bill 222

Dear Senator French,

As a member of the community, I understand the need to protect children from child pornography, and I appreciate the impetus behind Senate Bill 222. However, as a bookstore owner, I am deeply concerned about the unintended dampening effects this bill as written will have on the legitimate sharing of information.

At our bookstore, we take pride in knowing our books well – but we can't read or review every book we sell, and we cannot, and should not be expected to verify which books might depict, for example, the lewd groping of a woman's breast. The bill as written makes no allowances for broad community standards. Ultimately, a parent has to decide if his or her 16 year old is ready to read "The Piano" or even George Orwell's "Animal House." Farm

I have some of the best, most caring people in the world working for me.
They are in the early stages of their careers as artists, writers, managers. I don't want my staff or myself wondering when we are going to be accused of a Class C felony when we sell a book that has serious literary or scientific value, but which offends some – but not all – people in the community.

I would urge you to insert the Miller test into the bill – at the very least, the qualifying language about lacking "serious literary, artistic, political or scientific value."

Section 11.61.128(a) (3) should read (with my insertion delineated by *
...*):

...the person, being 18 years of age or older, knowingly distributes
to
another person [BY COMPUTER] any material *lacking serious literary, artistic, political or scientific value and
*that depicts the following
actual or
simulated conduct:
...

Thank you,

David Cheezem
Fireside Books
720 S. Alaska St.
Palmer, AK 99645

(907) 745-2665

1876

JOHN SUTER
P.O. Box 670144
Chugiak, AK 99567
(907) 688-3103
suter@gci.net

January 18, 2010

Dear Senator Hollis French

Enclosed is a news article showing that your opponent two weeks before your reelection can have a computer hacker put in a viruses of child porn in your computer and you will be prosecuted for files that you didn't know that you had. It is fast and easy to do. You will lose your reelection immediately and you will be paying your attorney $250,000 for your defense.

There must be a way that a law can be put in that would hold the information about the charges you are facing until the police finish a complete full scale investigation on the matter. This would give the police time to track down the perpetrator and prosecute the correct person who did this crime. As you can see, the door is wide open here for injustice with the laws that are on the books at this time. You can't un ring the bell once it has been rung. By putting in a law to deal with this matter, you will be giving a chance for one (or you) and all to have a shot at justice.

Thank you for your prompt and courteous attention.

John Suter

SEATTLE SLAYING: Suspect once lived in Bethel, **Alaska A-3** | **HOCKEY:** Aces stumble as road trip ends, **Sports B-1**

75 cents

Final Edition

Anchorage Daily News

Monday, November 9, 2009 BREAKING NEWS AT ADN.COM Alaska's Newspaper

Viruses can put child porn on anyone's computer

Innocent people prosecuted for files they didn't know they had

By JORDAN ROBERTSON
The Associated Press

Of all the sinister things that Internet viruses do, this might be the worst: They can make you an unsuspecting collector of child pornography.

Heinous pictures and videos can be deposited on computers by viruses — the malicious programs better known for swiping your credit card numbers. In this twist, it's your reputation that's stolen.

Pedophiles can exploit virus-infected PCs to remotely store and view their stash without fear they'll get caught. Pranksters or someone trying to frame you can tap viruses to make it appear that you surf illegal Web sites.

Whatever the motivation, you get child porn on your computer — and might not realize it until police knock at your door.

An Associated Press investigation found cases in which innocent people have been branded as pedophiles after their co-workers or loved ones stumbled upon child pornography placed on a PC through a virus. It can cost victims hundreds of thousands of dollars to prove their innocence.

Their situations are complicated by the fact that actual pedophiles often blame viruses — a defense rightfully viewed with skepticism by law enforcement.

"It's an example of the old 'dog ate my homework' excuse," said Phil Malone, director of the Cyberlaw Clinic at

See Back Page, **COMPUTERS**

MATTHEW HEALEY / Boston Herald archive 2008

Michael and Robin Fiola display a forensics report that cleared Michael. The Fiolas say they have health problems from stress.

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
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Alaska State Legislature

House of Representatives

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House District 10

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover:

From: Jane W. Pierson

Date: February 9, 2010

Re: Amendments to HB298

Jerry,

Today, we passed HB298 out of HJUD. Please make the following amendments and go final.

Amendment #1 – A.7
Amendment #2 – A.8
Amendment #4 – A.15
Amendment #7 - A.14
Amendment #19 - A.20
Conceptual Amendment Page 8, Line 24 Change "expert" to "experts"
Amendment #12 - A.3 as amended P.1, L.12 after prosecution insert "or law enforcement
Amendment #15 - A.24 as amended P. 2, L.6 after "petition" delete "the district" and insert "any court of competent jurisdiction"
Amendment #16 - A.26

If you need any more info, please call.

Thank you!

Representative_Jay_Ramras@legis.state.ak.us

26-GH2859\A.7
Luckhaupt
1/27/10

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 298

Page 1, line 1, following "**harassment,**":

Insert "**distribution and**"

Page 3, following line 19:

Insert a new bill section to read:

"*** Sec. 5** AS 11.61.125(a) is amended to read:

(a) A person commits the crime of distribution of child pornography if the person **distributes in this state or advertises, promotes, solicits, or offers to distribute in this state** [BRINGS OR CAUSES TO BE BROUGHT INTO THE STATE FOR DISTRIBUTION, OR IN THE STATE DISTRIBUTES, OR IN THE STATE POSSESSES, PREPARES, PUBLISHES, OR PRINTS WITH INTENT TO DISTRIBUTE,] any material that **is proscribed under AS 11.61.127** [VISUALLY OR AURALLY DEPICTS CONDUCT DESCRIBED IN AS 11.41.455(a), KNOWING THAT THE PRODUCTION OF THE MATERIAL INVOLVED THE USE OF A CHILD UNDER 18 YEARS OF AGE WHO ENGAGED IN THE CONDUCT]."

Renumber the following bill sections accordingly.

Page 3, lines 21 - 26:

Delete all material and insert:

"(a) A person commits the crime of possession of child pornography if the person knowingly possesses **or knowingly accesses on a computer with intent to**

view any material that visually [OR AURALLY] depicts conduct described in AS 11.41.455(a) knowing that the

(1) production of the material involved the use of a child under 18 years of age who engaged in the conduct **or a depiction of a part of an actual child under 18 years of age who, by manipulation, creation, or modification, appears to be engaged in the conduct; or**

(2) material appears to include a child under 18 years of age engaging in the conduct."

Page 4, line 4:

Delete "a new subsection"

Insert "new subsections"

Page 4, line 5:

Delete "for possession of child pornography"

Page 4, following line 11:

Insert new subsections to read:

"(f) In this section,

(1) "appears to include a child" means that the material appears to include, or conveys the impression that it includes, a person who is under 18 years of age and the material was not created using a depiction of any part of an actual child under 18 years of age, and

(A) the average individual, applying contemporary community standards, would find that the depiction, taken as a whole, appeals to the prurient interest; and

(B) a reasonable person would find that the depiction, taken as a whole, lacks serious literary, artistic, political, or scientific value;

(2) "computer" has the meaning given in AS 11.46.990.

(g) In a prosecution under (a) of this section, the prosecution is not required to prove the identity of a minor depicted or that the defendant knew the identity of a

minor depicted."

Page 9, line 3:

Delete "Sections 1-15"

Insert "Sections 1-16"

Page 9, line 5:

Delete "Section 16"

Insert "Section 17"

The Christian Science Monitor

Ban upheld on offering child porn

The Supreme Court allows a 2003 law dealing with 'virtual' child porn that some thought was too broad.

By Warren Richey Staff writer of The Christian Science Monitor
posted May 20, 2008 at 12:00 am EDT

Washington —
The US Supreme Court has upheld an effort by Congress to make it illegal to offer or promote child pornography – even when the photographs being offered or promoted don't really exist or involve real children.

In a 7-to-2 decision announced on Monday, the high court said the law was a constitutional effort by Congress to protect innocent children from a thriving form of abuse.

The majority justices upheld the law even though it restricted certain kinds of speech that critics said must be protected by the First Amendment.

Instead, the high court said Congress had struck the correct balance in passing the anti-child-pornography law.

"We hold that offers to provide or requests to obtain child pornography are categorically excluded from the First Amendment," writes Justice Antonin Scalia for the majority.

The PROTECT Act of 2003 is an attempt to shut down a flourishing trade in child pornography over the Internet. It seeks to do it not only by barring the exchange of pictures depicting children in sexually explicit poses, but also by outlawing any attempt to convince another person that offered pictures are of real child pornography involving real children.

In effect, the law makes it illegal to try to dupe other would-be consumers of child pornography into thinking that they are about to receive actual child pornography. The activity is illegal even if the photographs do not involve actual child pornography. In addition, such pandering is illegal even if the photographs don't exist.

The majority justices said the statute was not too broad or too vague to pass constitutional muster.

The law "punishes speech seeking to conclude illegal transactions," Justice Scalia said in a statement from the bench. "Such speech does not get First Amendment protection."

He adds, in the opinion: "Offers to give or receive what it is unlawful to possess have no social value and thus, like obscenity, enjoy no First Amendment protection."

His opinion was joined by Chief Justice John Roberts and Justices John Paul Stevens, Anthony Kennedy, Clarence Thomas, Stephen Breyer, and Samuel Alito.

Justices David Souter and Ruth Bader Ginsburg dissented. Justice Souter writes that prior Supreme Court rulings established that only pornographic photographs of actual children may be prohibited and that virtual child pornography retains First Amendment protections

Justices Souter and Ginsburg said the 2003 PROTECT Act violates free-speech protections by allowing a new pandering prohibition aimed at suppressing otherwise protected speech. In other words, if virtual child pornography is protected by the First Amendment, how could an attempt to pander virtual child pornography be illegal?

"Just six years ago the court struck down a statute outlawing particular material merely represented to be child pornography, but not necessarily depicting actual children," Souter writes. "The court is going against the grain of pervasive First Amendment doctrine that tolerates speech restriction not on mere general tendencies of expression, or the private understandings of speakers or listeners, but only after a critical assessment of practical consequences."

The decision comes in the case of Michael Williams of Key Largo, Fla. Mr. Williams was arrested in May 2004 after an encounter with an undercover agent in an adult chat room on the Internet.

He logged into the chat room and posted a message that he had "good" photographs of his 2-year-old daughter that he wished to swap for similar photos. An undercover federal agent responded and engaged Williams in a private Web chat. The agent identified himself as a 30-year-old mother with a 10-year-old daughter.

Williams and the undercover agent swapped photos. The children depicted in the photos were clothed and were not engaged in sexually explicit activities.

According to court documents, Williams tried to get the undercover agent to provide a more sexually explicit photograph. When it did not arrive, Williams posted a warning message in the chat room that the undercover agent was a cop. The undercover agent responded in a chat room message accusing Williams of being a cop.

In response to the accusation that he was an undercover cop, Williams posted a hyperlink to seven sexually explicit photographs of children ages 5 to 15.

Four days later, federal agents executed a search warrant for Williams's trailer in Key Largo. They discovered 22 computer images of children engaged in various forms of sexual activity. They also discovered that Williams lived alone and did not have a 2-year-old daughter.

Williams was charged with possession of child pornography. But federal prosecutors also charged him with violating the federal child-pornography pandering law for his Internet encounter with the undercover agent.

Williams agreed to plead guilty to both charges, but he reserved the right to appeal the pandering conviction. His lawyers said he shouldn't be held criminally liable for false claims made in an adult chat room.

The 11th US Circuit Court of Appeals in Atlanta agreed with Williams and reversed the pandering conviction.

In overturning the appeals court, the high court said, "The Eleventh Circuit believed it a constitutional difficulty that no child pornography need exist to trigger the statute. In its view, the fact that the statute could punish a 'braggart, exaggerator, or outright liar' rendered it unconstitutional."

The decision continues: "That seems to us a strange constitutional calculus."

Scalia said the 11 Circuit's reading of the law would forbid the government from punishing fraudulent offers to provide illegal products. "We see no logic in that position; if anything, such statements are doubly excluded from the First Amendment," he writes.

Responding to Souter's dissent, Scalia says the high court's holding does not overrule a 2002 decision in a case called Ashcroft v. Free Speech Coalition.

In that case, the court ruled that Congress could not ban virtual child pornography in an attempt to stamp out actual child pornography. "According to the dissent, Congress has made an end-run around the First Amendment's protection of virtual child pornography by prohibiting proposals to transact in such images rather than prohibiting the images themselves," Scalia writes.

He says an offer to provide or a request to receive virtual child pornography is not prohibited by the PROTECT Act and continues to have First Amendment protection. "A crime is committed only when the speaker believes or intends the listener to believe that the subject of the proposed transaction depicts real children," Scalia writes.

Souter and Ginsburg say the statute must be based on more than mere belief by a speaker or the speaker's desire to foster a belief in another.

"First Amendment freedoms are most in danger when the government seeks to control thought or to justify its laws for that impermissible end," Souter writes, quoting from the court's 2002 Free Speech Coalition decision. "The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought."

In contrast, the majority said Congress struck the correct balance in the statute. "Child pornography harms and debases the most defenseless of our citizens," Scalia writes. "Both the state and federal governments have sought to suppress it for many years, only to find it proliferating through the new medium of the Internet."

He adds, "This court held unconstitutional Congress's previous attempt to meet this new threat, and Congress responded with a carefully crafted attempt to eliminate the First Amendment problems we identified. As far as the provision at issue in this case is concerned, that effort was successful."

In other action, the high court upheld a Kentucky program that provided tax exemptions for Kentucky-based municipal bonds.

Voting 7 to 2, the justices ruled that a state may decline to charge taxes on interest earned on its own bonds while taxing residents for interest earned on bonds from other states. Forty-two states offer some form of tax exemption for their bonds, while taxing out-of-state bonds.

In another case, the high court upheld a portion of the conviction of the so-called Millennium Bomber who was allegedly plotting to blow up Los Angeles International Airport. He was arrested attempting to drive into the United States from Canada. Officials found explosives in his car.

The Supreme Court ruled 8 to 1 that Ahmed Ressam was properly charged and convicted under a law prohibiting carrying explosives while committing a felony.

In Mr. Ressam's case, the underlying felony was making false statements on his US Customs form while attempting to enter the US by car in December 1999. At issue was whether the underlying felony must involve committing a crime linked to the explosives not simply possessing the explosives while committing a felony.

A federal appeals court had thrown out a single count of Ressam's nine-count conviction.

On Monday, the Supreme Court reversed that decision. The ruling will make it easier for federal prosecutors to return lengthy prison sentences against suspected terrorists caught in possession of explosives. Oral argument was presented in the case by Attorney General Michael Mukasey, who is now batting 1 000 as an advocate before Supreme Court.

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26-GH2859\A.8
Luckhaupt
1 26 10

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 298

BY REPRESENTATIVE GRUENBERG

Page 2, line 30, through page 3, line 1:
Delete all material.

Reletter the following subsections accordingly.

Page 8, following line 31:
Insert a new bill section to read:
"*** Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE STATEMENT CONCERNING CULPABLE MENTAL STATE. In AS 11.56.840(a), as repealed and reenacted by sec. 3 of this Act, the only culpable mental state required to be proven by the prosecution is the "knowing" requirement in paragraph (2) of that subsection. No other culpable mental state needs to be proven for the other elements of that offense."

Renumber the following bill sections accordingly.

Page 9, line 3:
Delete "Sections 1 - 15"
Insert "Sections 1 - 15 and 17"

1886

26-GH2859\A.15
Luckhaupt
1/27/10

AMENDMENT

By Rep. Ramras

OFFERED IN THE HOUSE

TO: HB 298

Page 3, lines 14 - 19:

Delete all material and insert:

"(a) A person commits the crime of harassment in the first degree if

(1) the person violates AS 11.61.120(a)(5) and the offensive physical contact is contact with human or animal blood, mucus, saliva, semen, urine, vomitus, or feces; or

(2) under circumstances not proscribed under AS 11.41.434 - 11.41.440, the person violates AS 11.61.120(a)(5) and the offensive physical contact is contact by the person touching another person's genitals, anus, or female breast, either directly or through clothing."

1887

26-GH2859\A.14
Luckhaupt
1/27/10

AMENDMENT

By: Rep. Ritter

OFFERED IN THE HOUSE

TO: HB 298

Page 6, lines 30 - 31:

Delete all material and insert:

"**(E) specified in AS 11.41.434 - 11.41.458 or AS 11.61.128 and the defendant was 10 or more years older than the victim;**"

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1/28/10

AMENDMENT

By: Rep. Ramras

OFFERED IN THE HOUSE

TO: HB 298

Page 6, following line 31:

Insert a new bill section to read:

"* **Sec. 15.** AS 12.63.020 is amended by adding a new subsection to read:

(c) A person required to register under AS 12.63.010 for a conviction in another jurisdiction that is not similar to an offense in this state shall register for a period described in

(1) (a)(2) of this section if the person has been convicted of only one offense;

(2) (a)(1) of this section if the person has been convicted of two or more offenses for which the person is required to register in another jurisdiction."

Renumber the following bill sections accordingly.

Page 9, line 3:

Delete "Sections 1 - 15"

Insert "Sections 1 - 16"

Page 9, line 5:

Delete "Section 16"

Insert "Section 17"

1889

26-GH2859\A.3
Luckhaupt
1/26/10

AMENDMENT PASSED AS AMENDED

OFFERED IN THE HOUSE

TO: HB 298

BY REPRESENTATIVE HOLMES

Page 8, lines 3 - 31:

Delete all material and insert:

"DIRECT COURT RULE AMENDMENT. Rule 16(b), Alaska Rules of Criminal Procedure, is amended by adding a new paragraph to read:

(9) Restriction on Availability of Certain Material or Property. Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that may be illegal or prohibited under AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, provided the prosecution makes the property or material reasonably available to the defendant. Property or material shall be deemed to be made reasonably available to the defendant if the prosecution provides, at a prosecution facility, ample opportunity for inspection, viewing, and examination of the property or material by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial."

26-GH2859\A.24
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2/3/10

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 298

Page 1, line 5, following "**kidnapper;**":

Insert "**relating to administrative subpoenas for certain records involving exploitation of children;**"

Page 7, following line 31:

Insert a new bill section to read:

"*** Sec. 16.** AS 44.23 is amended by adding a new section to read:

Sec. 44.23.080. Subpoena power of attorney general in cases involving use of an Internet service account in the exploitation of children. (a) In an investigation of an offense under AS 11.41.452, 11.41.455, or AS 11.61.125 - 11.61.128 and on reasonable cause to believe that an Internet service account has been used in the exploitation or attempted exploitation of children, the attorney general may issue in writing and cause to be served a subpoena requiring the production and testimony described in (b) of this section.

(b) A person receiving a subpoena under (a) of this section shall disclose, for the account that is the subject of the subpoena,

(1) the name of the person holding the account;

(2) the address associated with the account;

(3) local and long distance telephone connection records, including records of session times and durations for the account;

(4) length of service, including service start date, and types of service used by the account;

(5) the telephone or instrument number or other subscriber

number or identifier, including any temporarily assigned network address for the account; and

(6) the means and source of payment for the service, including a credit card or bank account number associated with the account.

(c) At any time before the return date specified on the subpoena, the subpoenaed person may petition ~~the district~~ ANY COURT OF COMPETENT JURISDICTION court for the judicial district in which the person resides or does business for an order modifying or setting aside the subpoena or for an order sealing the court record.

(d) A subpoena under this section must describe the objects required to be produced and must prescribe a return date with a reasonable period of time within which the objects must be assembled and produced.

(e) If no case or proceeding arises from the production of records or other documents under this section within a reasonable time after those records or documents are produced, the attorney general shall either destroy the records and documents or return them to the person who produced them.

(f) A subpoena issued under this section may be served as provided for service of subpoenas under Rule 45, Alaska Rules of Civil Procedure, or for service of process under Rule 4, Alaska Rules of Civil Procedure.

(g) Except as provided in this section, any information, records, or data reported or obtained under a subpoena under this section shall remain confidential and may not be disclosed unless the disclosure occurs in connection with a criminal case related to the subpoenaed materials."

Renumber the following bill sections accordingly.

Page 9, line 5:

Delete "Section 16 of this Act applies"

Insert "Sections 16 and 17 of this Act apply"

26-GH2859\A.26
Luckhaupt
2/5/10

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 298

BY REPRESENTATIVE HOLMES

Page 4, line 25:

Delete "and"

Insert "[AND]"

Page 4, line 26, following "(2)":

Insert "**the material is harmful to minors; and**

(3)"

Page 5, following line 6:

Insert a new bill section to read:

"*** Sec. 11.** AS 11.61.128 is amended by adding a new subsection to read:

(e) In this section, "harmful to minors" means

(1) the average individual, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest in sex for persons under 16 years of age;

(2) a reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, educational, political, or scientific value for persons under 16 years of age; and

(3) the material depicts actual or simulated conduct in a way that is patently offensive to the prevailing standards in the adult community as a whole with respect to what is suitable for persons under 16 years of age."

Renumber the following bill sections accordingly.

Page 9, line 3:

Delete "Sections 1 - 15"

Insert "Sections 1 - 16"

Page 9, line 5:

Delete "Section 16"

Insert "Section 17"

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, v. RANDY D. WINSLOW, Defendant.	3:07-CR-00072-TMB-DMS **ORDER REGARDING DEFENDANT'S MOTION FOR ORDER COMPELLING DISCOVERY OF COMPUTER-RELATED EVIDENCE SEIZED FROM RANDY D. WINSLOW** **[Doc. 31]**

I. INTRODUCTION

A computer was seized from Defendant Randy D. Winslow during the investigation of this matter. The defendant requests that a copy of the HP Pavillion hard drive seized from 109 East 5th Street, Tilton, Illinois, his home, be provided to defense counsel for review by a computer forensic expert. The Government contends that the hard drive contains images that constitute child pornography. The hard drive also allegedly contains evidence of on-line chats and emails between Winslow and an undercover officer, which are relied upon by the Government to prove a charge of attempted aggravated sexual abuse of a minor.

The defense requests that this discovery material be made available as it was in the past, pursuant to a detailed protective order that specified how the copied hard drive would be handled while in the possession of defense counsel for the purpose of discovery. (See U.S. v. Danny Michael Harvey, 3:07-CR-00103-RRB-DMS, Doc. 73-2, Affidavit of Bruce Johnson, Federal Public Defender Investigator, District of Alaska. The parties in this matter stipulated that the evidentiary record in Harvey on the issue of discovery could be incorporated into the record in

this matter. U.S. v. Winslow, Doc. 88, 90, 91). The precautions contained in the prior protective orders were taken to insure there was no further copying, viewing or distribution of the images, beyond that necessary to prepare the legal defense. The defense relies upon Fed. R. Crim. P. 16 and United States v. Hill, 322 F. Supp. 2d 1081 (C.D. Cal. 2004), in which the Court approved such a protective order.

The Government refuses to deliver the copy, arguing that the 2006 Adam Walsh Child Protection and Safety Act (hereafter the Walsh Act)—specifically 18 U.S.C. § 3509(m)—directs prosecutors and investigators in criminal cases to retain all child pornography in the Government's care, custody and control. The Government argues that it will provide ample opportunity for the defense examination of the hard drive while in Government custody and, as a result, the Walsh Act prohibits the Court from ordering the Government to produce a copy of the hard drive for delivery to the office of defense counsel.

Winslow responds that 18 U.S.C. § 3509(m) is unconstitutional both facially and as applied in this case. He contends that he is entitled to copies of the hard drive under the Fifth Amendment's Due Process clause and the Sixth Amendment's Compulsory Process and Effective Assistance of Counsel clauses.

Other district courts around the country have considered whether this section of the Walsh Act is constitutional when applied to child pornography on a hard drive. No circuit courts have addressed the issue to date. Also, this Court has been unable to locate any precedent which addresses the constitutionality of Section 3509(m) of the Walsh Act when applied to a hard drive that contains not only child pornography but written emails and on-line chats from the defendant, which are relevant to a charge other than possession or distribution of child pornography.

II. STATEMENT OF FACTS

In a superceding indictment August 24, 2007, Winslow was charged with attempted aggravated sexual abuse in violation of 18 U.S.C. § 2241(c) and distribution of child pornography in violation of 18 U.S.C. § 2252(a)(2) and (b)(1). Federal law enforcement agents arrested Winslow on May 4, 2007 in his Illinois home two weeks before he planned to travel to Alaska. Later that day, federal agents seized a computer and HP Pavillion hard drive from Winslow's Illinois home.

Prior to passage of the Walsh Act, in federal child pornography prosecutions in Alaska, the Government often provided the defense team with a copy of any computer hard drive which contained evidence considered to be child pornography, as long as an appropriate protective order was in place (Harvey Tr. 17, 76, Doc. 73-2, Johnson Affidavit). Since the passage of 18 U.S.C. § 3509(m), the Government no longer abides by this practice.

A. Discovery Procedures Prior to Enactment of the Walsh Act

In Alaska prior to the Walsh Act, the Government provided mirrored hard drives to the defense attorney or expert (Harvey Tr. 107). The attorney and analyst signed an agreement in which the defense team agreed not to publish or distribute the material and to return the hard drive to the Government after the proceedings (Harvey Tr. 107). Agent Laws testified there was never a situation in Alaska when a defense attorney or computer analyst lost or distributed child pornography contained on a mirrored hard drive (Harvey Tr. 106). He was unaware of this ever happening nationwide. The single instance he knew of when a computer hard drive containing child pornography was lost, occurred when it was in the custody of the Government (Harvey Tr. 110-111).

The Federal Public Defender's criminal defense investigator, Mr. Bruce Johnson, stated that prior to the Walsh Act, the Government routinely provided copies of computer evidence to the Public Defender's Office, subject to appropriate protective orders and non-disclosure agreements (Harvey Doc. 73-2, Affidavit of Johnson at 2). Mr. Johnson maintained exclusive control of all computer evidence received and he placed such materials in a secure safe. He and the office administrator were the only two people with the key and security code to the safe, and he was the only person to ever access the safe (Harvey Doc. 73-2, Affidavit of Bruce Johnson at 3). Whenever he had to remove computer evidence from the safe, he documented the chain-of-custody and the date and time of its removal. He was the only person in the office who conducted analyses of the computer evidence, which ran in his secured office (Harvey Doc. 73-2, Affidavit of Bruce Johnson at 4). Upon completion of an analysis, he returned all computer evidence to the Government; permanently removed and deleted files and remnants of the hard drive from his office computer; and certified no copies had been made and all copies were returned (Harvey Doc. 73-2, Affidavit of Bruce Johnson at 5).

B. Problems Presented when Defense Forensic Analysis is Required to Take Place at a Government Facility

At the evidentiary hearing, Marcus Kenneth Lawson from Spokane, Washington testified as the defense computer forensics expert.[1] Mr. Lawson is the President of Global CompuSearch, LLC, which provides forensic computer investigations. Earlier in his career, Mr. Lawson worked for U.S. Customs as an agent specializing in child pornography computer forensic investigations

[1]As noted supra, the parties stipulated that the evidentiary hearing in U.S. v. Harvey on the issue of discovery of a hard drive in a prosecution for aggravated sexual abuse and possession of child pornography could be incorporated by reference in the record of this case. U.S. v. Winslow, Doc. 91. Lawson, who testified, is the defense forensic computer expert in both cases.

(Harvey Tr. 13). Mr. Lawson testified about the steps required for an effective analysis, including the need for specific equipment; access to the tools in his laboratory; access to his experienced colleagues; access to the Internet and access to defense counsel during the analysis.

The defense also relied upon the affidavits of Government agents filed in support of two search warrants in U.S. v. Harvey. The affidavits established the surroundings and circumstances necessary for an effective computer forensics exam (Harvey Doc. 42-3, Affidavit of Special Agent Skinner, Defendant's Exhibit C at the evidentiary hearing) and (Harvey Doc. 40-3, Affidavit of Special Agent Laws, Defendant's Exhibit B at the evidentiary hearing).

In his search warrant application and affidavit, Special Agent Kevin Laws of Immigration and Customs Enforcement (ICE) stated that reviewing data on a computer hard drive can take weeks or months; that it is impossible to attempt a computer review at the residence or office being searched; that searching computer systems for criminal evidence is very technical and requires a controlled environment. He added that it is difficult to know before a search what types of hardware and software are located on a computer, and therefore it is hard to know what type of experts and equipment are needed to analyze the computer and its data.

Special Agent Skinner of ICE stated in his affidavit that it is impossible to bring all of the technical manuals and specialized equipment necessary to conduct a thorough search to a search site; that a substantial amount of time is necessary to complete an analysis of a computer and a controlled environment is necessary. During the evidentiary hearing, Mr. Lawson agreed with the statements of both Agents Laws and Skinner (Harvey Tr. 19-22). Mr. Lawson stated that an on-site analysis, away from his laboratory, is difficult because running the required programs can take a long time and extend into the night (Harvey Tr. 22-23).

Mr. Lawson and his staff at CompuSearch, LLC have encountered the following problems when conducting computer analyses away from their office, at a Government facility (Harvey Tr. 19-43; Harvey Doc. 46-2, Affidavit of Lawson, incorporated by reference in evidentiary hearing Tr. 57):

1) Limited hours. Many times the Government will only provide limited hours to conduct an analysis. Government buildings have restricted hours–usually 9:00 a.m. to 5:00 p.m.–that prevent his team of experts from running a search or test after hours. Because various diagnostic programs frequently run into the night, if access is cut off at 5 p.m., the analysis can take much longer and may not be as effective.

2) Limited privacy. Frequently the Government will place an agent inside the room with defense experts. In these situations, defense experts are not able to have the requisite privacy and confidentiality needed to talk about the results with other experts and to talk with defense counsel about their findings. Also, the Government agents inside the room are often distracting and noisy, according to Mr. Lawson.

3) Limited contact. Often the Government will not provide phone access to the defense team. The rooms provided are often in the basement where there is no cell service and no telephone land lines (also referred to as fixed phone lines). This deficiency makes it difficult for the experts to consult with their colleagues and the attorneys.

4) No Internet access. Often an expert will need access to the Internet to conduct research to solve problems that occur during an analysis. The Government facilities provided to the defense team usually do not provide Internet access.

5) Inadequate preparation time. Because of the access limitations, both before and during

trial, the defense experts cannot be as prepared for trial as they would like to be and this deficiency is often exploited by the prosecution, who then make the defense experts appear unprepared or less knowledgeable about the evidence than the prosecution's experts, according to Mr. Lawson.

6) Damage to equipment. Transporting the expert's machines and tools often damage them and crucial time is spent fixing equipment instead of conducting the required analyses.

Mr. Lawson also testified that forensic computer analysis is crucial for the defense in any case involving child pornography or attempted aggravated assault on a child. Such analyses can reveal evidence of multiple users (Harvey Tr. 25); verify that any Internet chats reported by the Government are correct and presented in the proper context (Harvey Tr. 26, 28); profile the types of users in any chat rooms that may be at issue in the case (Harvey Tr. 28); determine the age of the people in any images involved in the case and whether or not the people in the images are real or virtual (Harvey Tr. 28, 30). It can also find evidence that reflects on whether or not the defendant intended to possess such child pornography (Harvey Tr. 53).

Mr. Lawson and defense counsel stressed that the biggest concern about 18 U.S.C. § 3905(m) is the effect it has on the defense at trial. Mr. Lawson testified that his team will often run tests and check data during a trial and after the trial has ended for the day (Harvey Tr. 33-38, 39). He said he often has associates stay late after a day of trial testimony to conduct tests and look up data (Harvey Tr. 75). According to Mr. Lawson, restrictive access to the copied hard drives during trial is an extreme handicap for the defense team (Harvey Tr. 36-38).

Mr. Lawson testified that since the passage of the Walsh Act, many forensic computer analysts will not work for a defense team because it is too difficult to conduct analyses in a

Government office, transporting their diagnostic equipment (Harvey Tr. 83-40). Despite the difficulties, Lawson's company still performs defense computer analyses (Tr. 40). His company has conducted forty to forty-five cases on the road since the passage of the Walsh Act (Harvey Tr. 72). According to Mr. Lawson, he believes that he and his staff did not do an adequate job when testifying in court because of the access limitations (Harvey Tr. 77).

Agent Laws testified as the Government's expert witness on computer forensics. He stated that, in his view, it is possible to do an effective defense forensic computer analysis at a Government office, notwithstanding his comments in his search warrant application about the difficulties of conducting a government forensic examination off-site. He testified that once the initial processing of a computer hard drive is complete, an expert then knows what tools and software will be necessary to complete the forensic analysis (Harvey Tr. 89). He said he did not believe it would give his adversaries insight into his work if the experts knew how often and how long he looked at the computer evidence (Harvey Tr. 103-104).

C. Discovery Procedures to Date in Winslow Case

While the Defendant's Motion for Order Compelling Discovery of All Computer-Related Evidence was pending, to expedite matters, the parties entered into a Stipulation Regarding Forensic Review Procedures Involving HP Pavillion Hard Drive Seized from Defendant (Winslow Doc. 85). The Government agreed to make two copies of a "true forensic, bit by bit E01 image of the HP Pavillion hard drive" available to the defense team to examine at the office of the Spokane Federal Bureau of Investigation (FBI). This was because expert Lawson's firm, Global CompuSearch, LLC, is located in Spokane. The stipulation stated:

> The Spokane FBI Office will allow the defense team to install a stand-alone

> defense forensics review workstation in an interview room monitored by Closed Circuit (CC) TV. The defense team lodges a standing objection to the camera while the forensic review is being conducted. While the non-audio feed will insure the integrity of FBI space and security of its occupants, the Plaintiff represents that the video feed will not be of sufficient detail or at an angle that would reveal defense strategy. The Plaintiff and its agents expressly agree that no attempt will be made to record any audio from the workstation and that no attempt will be made to observe the defense team's work product or computer monitor screen at any time. The defense expert may review the feed to ensure that their strategy is not being compromised at any time while conducting the forensic review.

(Winslow, Doc. 85 at 3).

In addition, the stipulation specifies that:

- The government will make a copy of the seized hard drive "reasonably available to the defendant and provide ample opportunity for the defense team to examine it . . . ."
- The defense team can review the evidence from 8 a.m. to 5 p.m. Monday through Friday. "The parties may approach the Court if there is a need for after hours access during the course of litigation in the event trial or motion hearings require additional forensic review."
- The defense team will not make any copies of "alleged child pornography contraband." The defense team is defined as the defense attorneys, defense investigator and defense forensic examiner. The word "contraband" is not defined.
- The defense team will not remove any contraband images from the government facility.

- The defense expert will be allowed to copy any file that is not contraband and compile a report without contraband images/videos on removable media at the discretion of the expert.
- The defense reserved all rights to object to the procedure and maintained a standing objection to the constitutionality of the Walsh Act.

U.S. District Court Judge Timothy M. Burgess entered a protective order, which adopted the stipulation (Doc. 87) on November 15, 2007.

On January 14, 2008, defense expert Lawson filed an affidavit with the Court, describing problems encountered during this discovery process. On January 4, 2008, an employee of Global CompuSearch went to the FBI office in Spokane, obtained the hard drive copies, set up her forensic station and attempted to view the media unsuccessfully. She reported that a forensic image "of what appeared to be a Compaq computer" was encrypted and required a password to open. A second forensic image entitled "other media" was also encrypted, and required a password to open. The examiner then returned the hard drive, broke down her forensic station, returned to Global CompuSearch and contacted the defense attorney. This process took one-half day (Doc. 102-2, Affidavit of Marcus K. Lawson).

Defense attorney McCoy then contacted Agent Laws about the matter. Agent Laws reported:

> On or about January 7, 2008, I returned a telephone call to Kevin McCoy. Mr. McCoy inquired about some files on a hard drive sent to his computer expert in Spokane, Washington. Mr. McCoy said he was advised by his computer expert that some of the files on the hard drive where (sic) encrypted. I told Mr. McCoy that some of the files were

> encrypted, that the hard drive contained items seized that were not included in the Stipulation and therefore I encrypted the files. I told Mr. McCoy that the hard drive also contained the "image" of several "CD'S" and at least one "media card" and these items where (sic) encrypted. I also told Mr. McCoy that his expert in Spokane was "looking at the files wrong" because the files covered in the court order—those involving the HP Pavillion hard drive—where (sic) in fact not encrypted.

(Winslow Doc. 106-2, Affidavit of Senior Special Agent Kevin J. Laws at 2).

Based upon this conversation, two Global CompuSearch experts again went to the Spokane FBI office on January 7 and repeated the process of obtaining the hard drive copies, setting up their forensic equipment and making screen captures of the encrypted media. This again took most of a morning (Winslow Doc. 102-2, Lawson affidavit at 3).

Further dialogue occurred with Agent Laws that permitted Mr. McCoy to ultimately forward the necessary passwords after receiving them from the Government on January 11. Mr. Lawson also reported that "the Spokane FBI Office has decided that it will no longer accommodate defense forensic examinations under 18 U.S.C. §3509(m) for cases originating outside of the Eastern District of Washington. Such examinations will be permitted only when there is an order by the district court requiring the Spokane FBI to permit the forensic evaluation on its premises." (Winslow Doc. 102-2, Lawson affidavit at 4). Lawson concluded, stating, ". . . [T]he delay described in this affidavit illustrates and underscores the time consuming difficulties associated with performing a defense forensic examination of computer related media maintained in government controlled facilities."

In its response to expert Lawson's affidavit, the Government did not comment on the

assertion that the Spokane FBI office will no longer accommodate a defense forensic exam pursuant to the Walsh Act in the absence of a court order. It is also unclear from the present record whether the FBI is refusing the Global CompuSearch team access at the present time, or whether the Government views Judge Burgess' order enforcing the stipulation to require the FBI to cooperate.

III. ANALYSIS

A. Rule 16(a)(1)(E) of the Federal Rules of Criminal Procedure

The Walsh Act became effective on July 27, 2006. Prior to that date, Rule 16(a)(1)(E) of the Federal Rules of Criminal Procedure governed whether or not the prosecution provided the defense team copies of hard drives containing alleged child pornography. Winslow asserts that under Rule 16(a)(1)(E), this Court can order the Government to produce a mirror-image of the hard drives, citing United States v. Hill, 322 F. Supp.2d 1081 (C.D. Cal 2004) for the proposition that it is not an abuse of discretion to order production of contraband such as child pornography with an appropriate protective order in place.[2] However, the Government asserts that Rule 16(a)(1)(E) is no longer controlling in child pornography cases since the passage of the Walsh Act.

Title 18 U.S.C. § 3509(m) states as follows:

> **(m)** Prohibition on reproduction of child pornography.--

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[2]Hill was decided by Judge Alex Kozinski of the Ninth Circuit, who was sitting as the district court judge by designation pursuant to 28 U.S.C. § 291(b). In that case, Judge Kozinski, rejected the Government's argument that the computer hard drives containing child pornography had to remain in the Government's offices. He ordered the hard drives be turned over to the defense team pursuant to a detailed protective order. Hill was decided prior to enactment of the Walsh Act.

> **(1)** In any criminal proceeding, any property or material that constitutes child pornography (as defined by section 2256 of this title) shall remain in the care, custody, and control of either the Government or the court.
>
> **(2) (A)** Notwithstanding Rule 16 of the Federal Rules of Criminal Procedure, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography (as defined by section 2256 of this title), so long as the Government makes the property or material reasonably available to the defendant.
>
> **(B)** For the purposes of subparagraph (A), property or material shall be deemed to be reasonably available to the defendant if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

Section 3509(m)(2)(A) clearly nullifies the copying requirements of Rule 16 as applied to child pornography.

B. Constitutionality of 18 U.S.C. § 3509(m)

Winslow challenges 18 U.S.C. § 3509(m) as it applies to computer evidence. He argues that in situations where computer evidence is involved, the statute violates a Defendant's Fifth

Amendment Due Process rights and Sixth Amendment Compulsory Process and Effective Assistance of Counsel rights.

To date, it appears no appellate court has reviewed the constitutionality of § 3509(m). However, district courts around the country have addressed the issue. All have ruled that the statute is constitutional. See United States v. Sturm, No. 06-CR-00342, 2007 WL 1453108 (D. Colo. May 17, 2007) (rejecting defendant's constitutional challenges to the Walsh Act, both facially and as applied, holding that the requirements of Subsections (2)(A) and (2)(B) of § 3509(m) are "consistent, if not coterminous, with the due process guarantee that [defendant] be afforded a 'fair opportunity to defend against the [Government's] accusations,'" and holding that because the defendant made no attempt to reach an accommodation with the United States, his as-applied challenge also fails); United States v. Doane, 501 F. Supp. 2d 897 (E.D. Ky. 2007) (finding that the case law does not support the defendant's position that requiring defense expert to examine a computer hard drive at a Government facility interferes with defendant's constitutional rights to investigate charges and to have assistance of counsel and due process because such access is "ample opportunity" under the statute); United States v. Renshaw, No. 05-CR-00165, 2007 WL 710239 (S.D. Ohio Mar. 6, 2007) (finding that although "Section 3509(m) may inconvenience trial counsel and [d]efendant's experts, it does not preclude defendant from preparing his case for trial" and because the statue provides a safety valve permitting the court to order the production of evidence where the Government does not make it reasonably available, there is no basis for a due process challenge and therefore the statute does not necessarily deny defendant a fair trial); United States v. O'Rourke, 470 F. Supp. 2d 1049, 1054-55 (D. Ariz. 2007) (rejecting defendant's constitutional challenges to the Walsh Act, both facially and as applied,

holding defendant was not deprived of due process by any Government refusal to give defense experts private access to the Internet when performing their analysis of the hard drive taken from defendant's computer); United States v. Knellinger, 471 F. Supp. 2d 640, 650 (E.D. Va. 2007) (noting that such an evaluation to compel duplication of materials should be made on a case-by-case basis, and holding that while the statute was constitutional, the Government had not given ample access to defense experts); United States v. Johnson, 456 F. Supp. 2d 1014, 1019-20 (N.D. Iowa 2006) (finding that the statute did not, as applied, unduly burden defendant's Fifth Amendment rights to due process and fair trial and Sixth Amendment right to effective assistance of counsel, and the statute did not unreasonably restrict defendant's access to services of computer forensic expert); United States v. Spivack, No. 05-CR-98, 2007 WL 4593475 (E.D.N.Y. Nov. 29, 2007) (finding the statute constitutional and holding that defendant provided no evidence that Government failed to provide ample opportunity); United States v. Battaglia, No. 07-CR-0055, 2007 WL 1831108 (N.D. Ohio June 25, 2007) (finding the statute constitutional and finding that Government provided ample opportunity); and United States v. Flinn, No. S-05-314, 2007 WL 3034932 (E.D. Cal. Oct. 16, 2007) (finding the statute constitutional and finding that defense had not presented any case-specific concerns to establish the lack of ample opportunity).

In the O'Rourke case, the court rejected the defendant's as applied and facial challenges to 18 U.S.C. § 3509(m). While the defendant challenged the statute under both the Fifth and Sixth Amendment, the court addressed the statute's constitutionality under the Fifth Amendment's due process framework, finding that the Fifth Amendment's Due Process clause provides broader protections for a fair trial than the Sixth Amendment. O'Rourke, 470 F. Supp. 2d at 1054, fn 2 (citing Pennsylvania v. Ritchie, 480 U.S. 39, 56 (1987)). The Court found that the statute does

not provide for an absolute denial of a defense team's possession of alleged child pornography. Instead, the court noted that § 3509(m)(2)(A) denies the defense team possession of the material only if the Government otherwise makes the material "reasonably available" to the defendant. O'Rourke, 470 F. Supp. 2d at 1055. The court noted that subsection 3509(m)(2)(B) provides that the material is "reasonably available" to the defendant if "the Government provides ample opportunity for inspection, viewing , and examination at a Government facility" of the material by the defense team. Id. Therefore, according to the court, if the Government does not provide "ample opportunity" to analyze the material at a Government facility, the court can order the Government to provide a copy to the defendant. Id. The court concluded that "ample opportunity" is coterminous with the requirements of due process because it requires the Government to provide defendants the same access to material that due process mandates, otherwise the court can order the Government to give the defense team a copy of the hard drive. Id. at 1055-56.

In Knellinger, the court applied similar reasoning and found that the term "ample opportunity" could be construed to, at a minimum, protect the constitutional rights of defendants. 471 F. Supp. 2d 640, 644 (E.D. Va. 2007). It therefore held that 18 U.S.C. § 3509(m) was facially constitutional. Id. at 645. The court also held that the statute would not be unconstitutional as applied either because the statue permitted the court to remedy insufficient "ample opportunity" through a court order, thus rendering any as-applied challenge moot. Id. at 646. Applying the facts, the court found that the defense needed digital video experts to establish the defense that the images on his computer were virtual and not real. Id. at 647. The digital video experts who testified in the Knellinger case noted that they do not move the equipment needed to run digital

video analysis and that it would be a great cost and effort to do so. They testified that they would not agree to service the defense team because their ability to do the job would be compromised. Id. at 646-48. The court ultimately found that the Government did not provide the defense team with an ample opportunity to inspect, view, and examine the child pornography because the experts needed to assert a "virtual-child" defense and could not conduct an analysis at a Government facility. Id. at 650. Therefore, the court ordered the Government to turn over a copy of the hard drive to the defense. Id.

In Sturm, the court adopted the reasoning of O'Rourke and Knellinger, and determined that 18 U.S.C. § 3509(m) is not facially unconstitutional. No. 06-CR-00342, 2007 WL 1453108 (D. Colo. May 17, 2007), at *7. It also determined that the defense did not present with precision any actual or anticipated problems because the defense has not yet attempted to examine the images or work out an accommodation with the Government. Id. The court refused to rule for the defense based on hypothetical scenarios that could arise in any case, considering that witnesses suggested solutions to any hypothetical problems presented. Id. at *7-*8.

This Court finds the reasoning applied in O'Rourke, Knellinger, and Sturm persuasive. There is no indication of the purpose of § 3509(m) in the legislative history accompanying the Walsh Act.[3] See O'Rourke, 470 F. Supp. 2d at 1056 (citing 152 Cong. Rec. H676 (daily ed. Mar. 8, 2006) (statement of Rep. Conyers) and 152 Cong. Rec. H705-31 (daily ed. July 25, 2006)) (stating that § 3509(m) was added to the Walsh Act without consideration in committee and with virtually no explanation in the legislative history).

[3]There is a statement of purpose for the statute. However, there is no legislative history related to § 3509(m).

Nevertheless, it is the Court's responsibility to construe a statute to avoid a ruling of unconstitutionality, if possible. See Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr. Trades Council, 485 U.S. 568, 575 (1988) (citing Grenada County Supervisors v. Brown, 112 U.S. 261, 269 (1884)) (stating that a statute should be given a reasonable construction so that it is not ruled unconstitutional); United States v. Ray, 375 F.3d 980, 988-89 (9th Cir. 2004) (applying doctrine of constitutional avoidance); Abner J. Mikva & Eric Lane, An Introduction to Statutory Interpretation and Legislative Process 6-16, 23-27 (1997). Therefore, the term "ample opportunity" in 18 U.S.C. § 3509(m) must be read to at least include the same opportunity for inspection, viewing, and examination that is required by Fifth and Sixth Amendments of the Constitution. In other words, Winslow's opportunity to view, inspect, and examine the evidence must afford him a fair opportunity to defend against the Government's accusations as required by due process. If the Government is not providing a fair opportunity consistent with the Due Process clause, this Court can order the Government to turn over a copy of the evidence. This Court's ability to order the production of evidence and correct any situation that does not amount to "ample opportunity" renders any as-applied challenge moot. Instead, this Court must examine the facts to determine if the requisite access to the evidence will be provided to Winslow's defense team.

C. Adequacy of Opportunity to Review Computer Hard Drive

In this situation, expert Lawson testified that defense experts examining a hard drive in a Government facility encounter a number of problems that make inspection, viewing, and examination difficult, if not impossible. These problems involve limited hours to access the evidence; limited privacy; limited contact with colleagues and defense attorneys because of a lack

of phone reception; no Internet access to conduct research; inadequate preparation for trial, and possible damage to equipment when traveling. Winslow argues that because of these problems, when computer evidence is at issue, access to the computer at a Government facility is never going to amount to ample opportunity. The existence of these problems cause this Court concern about a defendant's right to a fair trial as encompassed in the Fifth and Sixth Amendments.

Winslow correctly argues that under constitutional jurisprudence he is entitled to access to evidence. See California v. Trombetta, 467 U.S. 479 (1984) (citing United States v. Valenzuela-Bernal, 458 U.S. 858, 867 (1982))(stating that to safeguard a criminal defendant's right to be afforded a meaningful opportunity to present a complete defense, the Court has developed "'what might loosely be called the area of constitutionally guaranteed access to evidence'").

Winslow also correctly argues that he has a right to the assistance of experts. See e.g., Ake v. Oklahoma, 470 U.S. 68, 83 (1985) (noting that indigent defendants have a right to receive the assistance of experts necessary for an adequate defense and holding that when sanity is to be an issue in trial, the state must assure the defendant access to a competent psychiatrist to conduct examinations and help prepare for the defense's preparation and presentation of the evidence).[4]

Underlying Winslow's argument as to why he does not have "ample opportunity" to view

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[4]This right to expert assistance does not confer a constitutional right to choose a specific expert. Id. In this case, there is no evidence to suggest that Winslow will not be able to obtain an expert. In the Knellinger case, there was testimony from the digital video experts indicating that they would not take the case, leaving the defendant without expert assistance. 471 F. Supp. 2d at 647. In this case, while Lawson testified that many computer forensic experts are no longer taking cases similar to this one because of the restrictions imposed by 18 U.S.C. § 3509(m), he said his company still conducts computer analyses at Government facilities. In Knellinger, the digital video experts testified about the increased costs and impossibility of moving their equipment. 471 F. Supp. 2d at 647. According to the testimony of Lawson, his company has been moving equipment in order to conduct analyses off-site and nothing presented to this Court suggests that the equipment cannot be moved safely.

the hard drive is concern about the lack of privacy and the resulting disclosure of defense strategies and weaknesses. One of the questions presented by this case is whether the defense has a constitutional right to have defense experts view the evidence in private or whether it is acceptable for government agents to maintain video surveillance while discovery is underway. Here, the Government has conditioned access to the evidence upon an agreement that the experts remain under video surveillance. The Government promised that no audio recording would be made during discovery. No representation was made that the video images would not be recorded.

In United States v. Nobles, 422 U.S. 225 (1975), the Court considered the qualified work product privilege in the criminal context (ruling that the privilege protecting a defense investigator's report is waived if the investigator seeks to testify on behalf of the defendant.) In describing the work product privilege, the Court stated:

> 'Historically, a lawyer is an officer of the court and is bound to work for the advancement of justice while faithfully protecting the rightful interests of his clients. In performing his various duties, however, it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. . . .
>
> * * * * * *
>
> Although the work-product doctrine most frequently is asserted as a bar to discovery in civil litigation, its role in assuring the proper functioning of the criminal justice system is even more vital. The interests of society and the accused in obtaining a fair and accurate resolution of the question of guilt or innocence demand that adequate

safeguards assure the thorough preparation and presentation of each side of the case.

* * * * * *

> . . . [T]he doctrine is an intensely practical one, grounded in the realities of litigation in our adversary system. One of those realities is that attorneys often must rely on the assistance of investigators and other agents in the compilation of materials in preparation for trial. It is therefore necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself.

United States v. Nobles, 422 U.S. 225, 238-9 (1975).

At least one district court has ruled that the Constitution requires that a defense expert be given private space to conduct a forensic examination of a hard drive allegedly containing child pornography. "Private space" was defined by the court as space where the expert "can conduct analyses of his choosing without purposeful or otherwise direct surveillance of those activities." United States v. Flinn, 2007 WL 3034932 at *7 (E.D. Cal. Oct. 16, 2007)

The Government's requirement that the discovery room remain under surveillance by closed circuit television, with the promise that the camera will not be trained on the computer monitor, does not provide "ample opportunity" to conduct discovery as required by the Constitution. Even without access to the final report of the expert, such surveillance can intrude upon the attorney work product privilege in meaningful ways. This is very troubling, particularly in light of the reason given by the Government for the surveillance. The stipulation of the parties states it is necessary "insure the integrity of FBI space and security of its occupants." The Court is confident that the FBI can accomplish this important goal by means that do not impermissibly infringe upon the constitutional rights of the defendant.

The effective examination by defense experts is further hampered in this case because the Government did not make phone lines available in the room and no cell phone reception was possible (Harvey Tr. 32, 73). Also, no internet access was possible (Harvey Tr. 72, 73). This makes communication with defense counsel impossible without leaving the building and stopping the forensic examination, causing significant delay in completion of discovery (Winslow Doc. 102, Affidavit of Marcus K. Laws).

As noted supra, Agent Laws testified that prior to the Walsh Act, mirrored hard drives containing copies of child pornography were delivered to defense attorneys and experts for discovery purposes. With a protective order in place, there had never been an instance in Alaska's history when the contraband was copied or illicitly distributed (Tr. 106). He also testified he was unaware of any instance in the country when that occurred. The single time a hard drive with contraband on it disappeared, it had been in the custody of the Government, he said (Tr. 110-111).

The Walsh Act greatly increases the inconvenience, difficulty, and expense connected with both the prosecution and defense of child pornography offenses. In this matter, the Government perceives the statute to require the monitoring of the discovery room by closed circuit TV while defense experts examine the hard drive and prepare for trial—a process that can require days or weeks. Similarly, defense expert time is spent traveling to the Government facility and returning to his lab as needed for equipment and expert consultations. This drives up the cost for the parties. United States v. Flinn, No. S-05-314, 2007 WL 3034932, at *5 (E.D. Cal. Oct. 16, 2007) (stating that the statute causes extra costs to be incurred). When a defendant is represented at taxpayer expense, the increased costs charged by the defense forensic examiner are ultimately paid by the taxpayer. See 18 U.S.C. § 3006A(e). When considering the new statute, one judge stated:

> One could reasonably argue that §3509(m) is legislation by anecdote, and is an overreaction to an infrequent problem, the burdens of which outweigh the possible benefits. However, Congress gets to make its judgments on less than empirically perfect data. Except in the most arbitrary situations, concerns about the wisdom of legislation are to be raised before Congress.

Flinn, 2007 WL 3034932, at *6.

In United States v. Harvey, 3:07-CR-00103-RRB-DMS, to accomplish discovery, the Government offered the defense a private room in a government facility, a basement room at Immigration and Customs Enforcement. The room was made available 24-hours a day both before and during trial, and phone access and internet access were provided. A government agent was posted outside the room but did not enter it. This Court ruled that these discovery conditions addressed all the significant problems set forth by defense expert Lawson, and provided ample opportunity to review the hard drive under circumstances coterminous with the constitutional requirements embodied in the Fifth and Sixth Amendments (Harvey, Doc. 104).

The same conclusion cannot be reached in the instant case. No phone or internet access is provided (Harvey Tr. 32, 72, 73). And, most importantly, privacy is not permitted. These restrictions impermissibly intrude upon both the defendant's Fifth and Sixth Amendment rights and are insufficient to "assure the thorough preparation and presentation of each side of the case" allowing for a "fair and accurate resolution of the question of guilt or innocence." U.S. v. Nobles, Id. As a result, this Court orders the Government to produce a copy of the hard drive to the defense team pursuant to the conditions described infra.

D. Ability to Copy Non-pornographic Files on Hard Drive

The hard drive in question also contains online chats and emails between Winslow and an undercover officer. This evidence is relevant to prove the charge of attempted aggravated sexual abuse. Defense expert Lawson testified that a forensic examination of such materials could reveal multiple users; determine whether the Internet chats reported by the Government were correctly reported and presented in the proper context; and profile the types of users in any chat rooms that may be at issue in the case.

In his motion, Winslow requests a copy of the computer files contained on the hard drive, which are not visual depictions of child pornography. See 18 U.S.C. §3509(m) (incorporating the definition of child pornography found at 18 U.S.C. §2256). The defense makes this request pursuant to Rule 16 of the Federal Rules of Criminal Procedure, United States v. Hill, 322 F. Supp. 2d 1081 (C.D. Call 2004), and the Fifth and Sixth Amendments to the Constitution.

It is unnecessary to resolve the question in the present case because the Court is directing that a copy of the hard drive be provided to defense counsel. Also, the stipulation of the parties states that the defense team can copy any file that is not contraband. If it is necessary for the expert to download copies of non-pornographic materials to complete his report, and this can be done without compromising the forensic integrity of the hard drive, this is permissible pursuant to Rule 16 and the Fifth and Sixth Amendments to the Constitution. There is nothing in the plain language of § 3509(m) to prohibit it.

In Flinn, the court considered the expert request to remove downloaded materials which were not child pornography from the custody of the Government facility. The Court ruled:

> With the exception of materials which would be considered child pornography

> under federal law, the expert may take off site that electronic or electronically derived information necessary for his examination or report; the expert will certify in writing that he has taken no materials which would be considered child pornography under federal law; and that he has not caused any such child pornography to be sent off site.. . .

Flinn, 2007 WL 3034932, at *6.

IV. CONCLUSION

This Court finds that the conditions for review offered by the Government in this case do not meet the Constitutional requirements of due process and a fair trial. The conditions also intrude on the defendant's Sixth Amendment rights. Thus, ample opportunity for review pursuant to 18 U.S.C. § 3509(m) has been denied. Therefore, Defendant Winslow's Motion for Order Compelling Discovery of All Computer-Related Evidence Seized from Randy D. Winslow is HEREBY GRANTED.

In light of the Government's failure to provide ample opportunity to review the hard drive, this Court orders that a copy of the HP Pavillion hard drive seized from the home of the defendant be immediately provided to defense attorney Kevin McCoy under the following terms and conditions:

1) The hard drive copy will be delivered to and remain in the exclusive control of defense investigator Bruce Johnson and will be maintained in a secure safe at the Federal Public Defender Agency in Anchorage.

2) Whenever the evidence is removed from the safe, the chain-of-custody will be documented and the date and time of its removal. Any analysis of the hard drive will occur in a locked,

secure room. Only the defense attorney, investigator and expert may have access.

3) Any individual who handles or views any portion of the hard drive must sign a non-disclosure agreement, agreeing to refrain from copying or publishing any material which would be considered child pornography under federal law.

4) With the exception of materials which would be considered child pornography under federal law, the defense investigator and/or expert may download files or portions of files as long as the forensic integrity of the hard drive is not altered. He may take off site that electronic or electronically-derived information necessary for his examination or report; the expert will certify in writing that he has kept no materials which would be considered child pornography under federal law and that he has not caused any child pornography to be sent off site.

5) Upon completion of the hard drive examination, the hard drive will be returned to the Government.

6) The defense expert and/or investigator will certify that, upon completion of the hard drive examination, all files and remnants of the hard drive are permanently removed and deleted from the defense computer equipment.

DATED this 28th day of January, 2008, at Anchorage, Alaska.

/s/ Deborah M. Smith
DEBORAH M. SMITH
United States Magistrate Judge

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Worden v. State
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May 22, 2009

Term

213 P.3d 144

Court of Appeals of Alaska.
Christopher J. WORDEN, Appellant,
v.
STATE of Alaska, Appellee.

No. A-10005.
May 22, 2009.

Renee McFarland, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for Appellant.

Blair M. Christensen, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Talis J. Colberg, Attorney General, Juneau, for Appellee.

Before: COATS, Chief Judge, and MANNHEIMER and BOLGER, Judges.

OPINION

COATS, Chief Judge.

After a jury trial, Christopher J. Worden was convicted of three counts of sexual abuse of a minor in the first degree,[FN1] six counts of sexual abuse of a minor in the second degree,[FN2] four counts of possession of child pornography,[FN3] and one count each of indecent exposure in the second degree [FN4] and unlawful exploitation of a minor. [FN5] Superior Court Judge Charles T. Huguelet sentenced Worden to a composite sentence of 37 years and 6 months' imprisonment with 21 years and 6 months suspended.

FN1. AS 11.41.434(a)(1).

FN2. AS 11.41.436(a)(2), (4).

FN3. AS 11.61.127.

FN4. AS 11.41.460(a).

FN5. AS 11.41.455(a)(6).

Worden appeals, arguing that Judge Huguelet erred in denying his motion to dismiss the indictment and in refusing to grant Worden's motion for a continuance when the State presented an expert witness without appropriate notice under Alaska Criminal Rule 16. Worden also argues that the evidence presented at trial was insufficient to support his conviction for possession of child pornography. Finally, Worden argues that Judge Huguelet imposed an excessive sentence.

We conclude that Judge Huguelet did not err in refusing to grant Worden's motion to dismiss the indictment and did not err in denying Worden's motion for a continuance. However, we conclude that the State did not present sufficient evidence to convict Worden of possession of child pornography. Because this latter decision affects Worden's sentence, we remand for resentencing and do not decide whether Worden's sentence was excessive.

Factual background

On May 27, 2002, Juanita Thirlwell was visiting her son and daughter-in-law, Gene and Shari Conner, and her grandchildren, including C.C. (age eleven) and S.B. (age nine) at their home in Kenai. Worden, a family friend, was also at the house. At some point, Worden, C.C., and S.B. went into another room to watch a movie. In a reflection in a window, Thirlwell saw Worden rubbing and squeezing S.B.'s buttocks and touching her vaginal area over her clothes. The next weekend, Thirlwell, Shari Conner, S.B., and C.C. reported the assault to the Kenai police.

On June 3, 2002, Kenai police officers interviewed Worden. Worden admitted to having engaged in some inappropriate conduct with C.C. and S.B. and was arrested. Worden's wife, Renee, gave the police permission to seize and search two computers from her home that Worden had used. Police department employee Virgil Gattenby conducted a forensic examination of the computers. He found multiple images of child pornography in the computer's cache files. Worden was indicted on numerous felony charges.

At trial, S.B. testified that Worden had touched her on her breasts, buttocks, and genital area numerous times, including the incident on May 27, 2002. She also stated that Worden digitally penetrated her vagina and anus, and made her masturbate him. C.C. testified that Worden had touched her buttocks and breasts on a few occasions. Worden was convicted and he now appeals.

Worden's motion to dismiss the indictment

Prior to trial, Worden moved to dismiss the indictment. Worden's motion was based on a factual inaccuracy. He argued that it was improper for Shari Conner, S.B.'s mother and C.C.'s stepmother, to sit on the grand jury panel that indicted him. In

its opposition, the State pointed out that, although Conner was a member of the grand jury venire which had been called to hear cases over a three-month period, she did not sit on the panel that indicted Worden. In denying Worden's motion to dismiss the indictment, Judge Huguelet noted that Conner was not on the panel that indicted Worden and that Worden had not presented "particularized circumstances establishing the likelihood of a significant influence on the grand jury as a whole." FN6

FN6. Judge Huguelet was quoting from *Patterson v. State*, 747 P.2d 535, 537 (Alaska App.1987).

On appeal, Worden argues that, at the grand jury proceeding, the State "should have conducted a more searching inquiry into the grand jury's ability to impartially and fairly assess [Conner's] testimony." But Worden concedes that he did not raise this issue in the trial court. He must therefore establish plain error. Because Worden never raised this issue in the trial court, there is simply no record to indicate whether the grand jurors might have been prejudiced by their association with Conner. Further, even if Worden had established prejudice and Judge Huguelet had granted the motion to dismiss the indictment, the State could have easily reindicted Worden because the case against him was strong.FN7 There is simply no basis to find plain error.

FN7. *See Gaona v. State*, 630 P.2d 534, 536-37 (Alaska App.1981).

Worden's motion for a continuance

Worden argues that the State called an expert witness at trial without giving him the notice required by Alaska Criminal Rule 16. Rule 16(b)(1)(B) requires the prosecutor to inform the defendant, no later than forty-five days before trial, of any expert witnesses the prosecutor is likely to call at trial. Among other things, the prosecutor is to furnish the defendant with "a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion." FN8

FN8. Alaska R.Crim. P. 16(b)(1)(B).

The witness in question was Virgil Gattenby. Gattenby worked at the Kenai Police Department as the communications supervisor. This job entailed running the 911 center, working as the system administrator, and occasionally doing computer forensics work. Gattenby was not a law enforcement officer but had previously been an information management officer in the military. In addition to maintaining computer networks for the Department of Defense, Gattenby's military experience included doing computer forensic analyses and testifying at court martials based on those analyses. Gattenby performed the computer forensic analysis on Worden's computer.

At trial, after the State asked Gattenby if he found child pornography on Worden's computer, Worden objected,

apparently because he believed that the State would be eliciting an expert opinion from Gattenby. After a mostly inaudible bench conference, Judge Huguelet stated: "I won't allow [Gattenby] to give any expert opinions."

Worden did not make any further objections during Gattenby's testimony. But after Gattenby testified, Worden argued that portions of Gattenby's testimony constituted expert testimony and that the State had violated Rule 16 by not giving notice that it was calling Gattenby as an expert witness. Worden asked Judge Huguelet to strike Gattenby's testimony or to grant the defense a continuance. Worden represented that if the State had given notice that Gattenby would be called to testify as an expert, he would have obtained his own expert to analyze the information presented by Gattenby and might have called the expert as a witness at trial.

Judge Huguelet observed that Gattenby had testified before the grand jury. He concluded that Worden had known about the nature of Gattenby's testimony and that he had copies of the exhibits that Gattenby had relied upon for a long time. Worden conceded that he had possessed this information "for years." But Worden's attorney argued that it was not his job to ask "the State to hurry up and get their expert notice in so they can convict my client."

Judge Huguelet denied Worden's motion for a continuance. He concluded that Worden was on notice of the type of testimony that Gattenby was going to give and the issues that would be raised by that testimony. This conclusion is supported by the record. Furthermore, when Worden moved for a continuance, he never gave any indication of how long of a continuance he would need or what he specifically intended to accomplish if the court granted the motion for a continuance. Accordingly, we conclude that Judge Huguelet did not abuse his discretion in denying Worden's motion for a continuance.

In addition, we find that Worden has waived this objection. When Worden initially objected to Gattenby's testimony, Judge Huguelet ruled that he would not allow Gattenby "to give any expert opinions." This ruling alerted Worden that if he believed that Gattenby was testifying as an expert during some portion of his testimony, Worden should object. Judge Huguelet's implication appeared to be that if Worden could show that Gattenby was giving expert testimony, Judge Huguelet would sustain Worden's objection. But Worden never objected on this ground during Gattenby's testimony. And he cross-examined Gattenby on several technical portions of his testimony. By his inaction, Worden has waived this objection.

The State did not present sufficient evidence to convict Worden of possession of child pornography

Gattenby testified that when he examined Worden's computer, he found images of child pornography that Worden had accessed and viewed on the Internet. Gattenby's testimony supported the conclusion that Worden had intentionally accessed the child-pornography sites because his examination showed that: (1) Worden had visited certain websites containing child pornography more than once, and (2) it would have taken Worden's computer several minutes to load the images, and the

images recovered had loaded completely.

But Gattenby testified that even though the images of child pornography were found amongst the cache files on the hard drive of Worden's computer, there was no indication that Worden had any intent to permanently store the images-his intent was simply to view the images on his computer screen for the time he was at a given website. Gattenby explained that when a person uses a computer to access a site on the Internet, the computer automatically stores the images from the web page in the browser cache. This enables the computer to load the web page more quickly when you revisit it, because data is accessed directly from the computer's hard drive rather than loading that data over the Internet. FN9

FN9. *See* United States v. Romm, 455 F.3d 990, 993 n. 1 (9th Cir.2006) ("Most web browsers keep copies of all the web pages that you view ... so that the same images can be redisplayed quickly when you go back to them." (quoting Douglas Downing et al., *Dictionary of Computer and Internet Terms* 149 (Barron's 8th ed. 2003))); *see also* Ty E. Howard, *Don't Cache out Your Case: Prosecuting Child Pornography Possession Laws Based on Images Located in Temporary Internet Files*, 19 Berkeley Tech. L.J. 1227, 1229-30 (2004) (explaining basic operation and purpose of cache).

Most people do not know that these temporary internet files are being stored on their computer when they access the Internet.FN10 A user would need a high level of computer knowledge to locate and access these images.FN11 Computer forensic experts like Gattenby often use specialized software to access the cache files.FN12

FN10. *See, e.g.*, United States v. Kuchinski, 469 F.3d 853, 862 & n. 24 (9th Cir.2006) (noting government expert's agreement with statement that "most sophisticated-or unsophisticated users don't even know [the cache files are] on their computer").

FN11. *See* Giannina Marin, *Possession of Child Pornography: Should You be Convicted When the Computer Cache does the Saving for You?*, 60 Fla. L.Rev. 1205, 1213-14 (2008) ("A user needs advanced computer skills to directly access files in the cache while the computer is offline.").

FN12. *See, e.g.*, Barton v. State, 286 Ga.App. 49, 648 S.E.2d 660, 661 (2007) (where State's expert testified that "no one using the computer can retrieve information stored in the temporary internet file folders without special forensic software").

In the present case, the State did not present any evidence

that Worden had this specialized knowledge-that he was aware that images were stored in his computer's browser cache or that he might have the ability to access those images-at the time of the alleged offense. As Gattenby testified, the evidence supported the inference that Worden had viewed child pornography on certain websites at some point in the past. But there was no evidence that Worden knew that the images from these websites were being stored in his computer's cache or that he intended to save them on his computer.

The State's case, therefore, rested upon proof that Worden intentionally accessed and viewed images of child pornography over the Internet. But we conclude that AS 11.61.127, the Alaska Statute prohibiting the knowing possession of child pornography, does not criminalize merely viewing images of child pornography on a computer. The statute prohibits the "possession" of "material that visually or aurally depicts conduct [constituting child pornography]." FN13 Another section of the statute provides that "[e]ach film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material" depicting child pornography that is knowingly possessed by the defendant constitutes a separate crime.FN14

FN13. AS 11.61.127(a).

FN14. AS 11.61.127(c).

It is questionable whether the act of possessing material encompasses viewing an image on a computer screen. If Worden had gone to a movie depicting child pornography, it could not be said that he possessed the child pornography depicted in the movie, even though it might be clear that he had intentionally set out to view those images. Interpreting the former version of the federal statute criminalizing the possession of child pornography,FN15 which is similar to AS 11.61.127(c), federal courts have concluded that merely viewing child pornography on a computer, as opposed to saving it on the computer, was not prohibited by the statute.FN16 The Court of Appeals for the Ninth Circuit interpreted the former federal statute to criminalize only the knowing possession of files on a hard drive or other computer storage device.FN17 It follows that where a defendant is not aware of the existence of the cache files, he has not committed a crime.

FN15. Former 18 U.S.C. 2252A(a)(5)(B) (2006) (making it a crime to "knowingly possess[ ] any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been ... transported in interstate or foreign commerce by any means, including by computer"), *amended by* Enhancing the Effective Prosecution of Child Pornography Act of 2007, Pub.L. No. 110-358, Title II § 203(b), 122 Stat. 4001, 4003-04 (2008) (inserting "or knowingly accesses with intent to view" into the operative language of 18 U.S.C. 2252A(a)(5)(B)).

FN16. *See, e.g., United States v. Stulock,* 308 F.3d 922, 925 (8th Cir.2002) (noting with approval the district court's holding that "one cannot be guilty of possession for simply having viewed an image on a web site, thereby causing the image to be automatically stored in the browser's cache, without having purposely saved or downloaded the image").

FN17. *Kuchinski,* 469 F.3d at 863 ("[W]here a defendant lacks knowledge about the cache files, and concomitantly lacks access to and control over those files, it is not proper to charge him with possession and control of the child pornography images located in those files, without some other indication of dominion and control over the images."); *Romm,* 455 F.3d at 1000 ("[T]o possess the images in the cache, the defendant must, at a minimum, know that the unlawful images are stored on a disk or other tangible material in his possession.").

Some state courts have construed their statutes prohibiting the possession of child pornography to criminalize the use of a computer to access images of child pornography over the Internet.[FN18] But those states' statutes are much broader than AS 11.61.127.[FN19]

FN18. *See, e.g., Ward v. State,* 994 So.2d 293, 301-02 (Ala.Crim.App.2007); *Tecklenburg v. Superior Court,* 169 Cal.App.4th 1402, 87 Cal.Rptr.3d 460, 472-73 (2009); *Commonwealth v. Diodoro,* 932 A.2d 172, 174-75 (Pa.Super.2007), *cert. granted,* 595 Pa. 537, 939 A.2d 290 (2007).

FN19. *See, e.g.,* Cal.Penal Code § 311.11 (West 2008) (criminalizing possession or control of "any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip," that depicts minors engaging in or simulating sexual conduct).

A basic rule of statutory construction "is that statutes imposing criminal liability should be construed narrowly." [FN20] Therefore, "[w]hen the scope of a criminal statute is unclear, courts should normally construe the statute against the government-that is, construe it so as to limit the scope of criminal liability." [FN21] At best, AS 11.61.127 is ambiguous as to whether it criminalizes viewing a digital image of child

pornography over the Internet. Because we must interpret the statute narrowly, we conclude that it does not prohibit viewing child pornography on a computer screen. Since this is the only conduct the State proved Worden knowingly engaged in, insufficient evidence existed to convict Worden of possession of child pornography.

FN20. *State v. ABC Towing*, 954 P.2d 575, 579 (Alaska App.1998).

FN21. *Id.*

Conclusion

We AFFIRM all of Worden's convictions except his convictions for possession of child pornography. Worden's convictions for possession of child pornography must be REVERSED and a judgment of acquittal must be issued. We do not decide whether Worden's sentence is excessive because Worden must be resentenced based on the reversal of his convictions for possession of child pornography.

The judgment of the superior court is AFFIRMED in part and REVERSED in part. The superior court shall resentence Worden within 90 days and transmit a copy of the judgment to this court. After the distribution of the amended judgment, Worden shall have 30 days to renew his sentence appeal. We retain jurisdiction.

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Analysis
As of: Mar 30, 2010

STATE OF TENNESSEE v. RE'LICKA DAJUAN ALLEN

No. E2007-01018-CCA-R3-CD

COURT OF CRIMINAL APPEALS OF TENNESSEE, AT KNOXVILLE

2009 Tenn. Crim. App. LEXIS 114

March 26, 2008, Session
February 12, 2009, Filed

SUBSEQUENT HISTORY: Rehearing denied by *State v. Allen, 2009 Tenn. Crim. App. LEXIS 359 (Tenn. Crim. App., Mar. 9, 2009)*
US Supreme Court certiorari denied by Allen v. Tenn., 2010 U.S. LEXIS 265 (U.S., Jan. 11, 2010)

PRIOR HISTORY: [*1]
Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed and Remanded. Direct Appeal from the Criminal Court for Knox County. No. 77455. Mary Beth Leibowitz, Judge.
State v. Butler, 2005 Tenn. Crim. App. LEXIS 302 (Tenn. Crim. App., Mar. 30, 2005)

DISPOSITION: Judgment of the Criminal Court Reversed and Remanded.

CASE SUMMARY:

PROCEDURAL POSTURE: The State sought review of a judgment of the Criminal Court for Knox County (Tennessee), which suppressed certain evidence it did not provide to defendant after being ordered to do so and which dismissed the indictment against defendant.

OVERVIEW: Defendant was indicted on two counts of aggravated exploitation of a minor and one count of sexual exploitation of a minor. The State refused to comply with requests for discovery by withholding the contents of defendant's computer hard drive and other computer materials alleged to contain incriminating evidence. The State refused to disclose the requested discovery despite the trial court's issuance of two protective orders, the ruling of the court on interlocutory appeal, and a third protective order by the trial court requiring disclosure. The court held that *18 U.S.C.S. § 3509* was not applicable to state prosecutions and even if it were, the difficulties of discovery only in a law enforcement facility and the compromise to the effectiveness of the defense expert justified the orders of production and the protective orders. In light of the prosecution statements to the trial court and the assurance of the attorney for the State at the appellate oral argument that the prosecution was ready to comply with the discovery orders, the court concluded that exclusion of the computer images in question and dismissal of the prosecution were erroneous under *Tenn. R. Crim. P. 16.*

OUTCOME: The court reversed the trial court's judgment, reinstated the indictment, and remanded the matter for trial.

LexisNexis(R) Headnotes

Criminal Law & Procedure > Discovery & Inspection > Discovery by Defendant > Tangible Objects > General Overview
[HN1] See *18 U.S.C.S. § 3509(m).*

Constitutional Law > Supremacy Clause > Federal Preemption
Governments > State & Territorial Governments > Police Power
[HN2] The police powers of a state are not to be preempted by federal legislation unless that is Congress's clear and manifest purpose. Congress's intent to preempt state laws must either be expressly stated in a federal statute or be implicit in the statute's structure and purpose.

Criminal Law & Procedure > Discovery & Inspection > Discovery by Defendant > Tangible Objects > General Overview
[HN3] *Title 18, § 3509(m) of the United States Code* does not explicitly refer to state prosecutions. The law references *Fed. R. Crim. P. 16* in superceding that rule's discovery procedures. The statute also refers to the prosecution as the Government, a term typically used in federal statutes to denote the government of the United States not the government of a state. Finally, the statute is part of Part II of Title 18 of the United States Code which is dedicated to Criminal Procedure. *Section 3509(m)* does not apply to proceedings in Tennessee state courts. Further, the statute does not criminalize any conduct that was not already illegal under *18 U.S.C.S. §§ 2251*, *2252* and *2252(a)* long before the passage of *§ 3509*.

Criminal Law & Procedure > Discovery & Inspection > Discovery by Defendant > Tangible Objects > General Overview
[HN4] Even if *18 U.S.C.S. § 3509* were applicable to state proceedings, the statute has been interpreted to allow disclosure of offending materials where a defendant has shown that an analysis of the material at a government facility would be cost prohibitive; doubt about the reliability of an expert's equipment would be raised if the expert were forced to move the equipment; or that the expert's ability to analyze the material is so compromised that he is of no effective service to Defendant or Defendant's attorney.

Criminal Law & Procedure > Discovery & Inspection > General Overview
[HN5] *Tenn. R. Crim. P. 16* governs most discovery issues in Tennessee criminal cases.

Criminal Law & Procedure > Discovery & Inspection > Discovery Misconduct > Sanctions > General Overview
Criminal Law & Procedure > Discovery & Inspection > Discovery Misconduct > Sanctions > Dismissal of Charges
Criminal Law & Procedure > Discovery & Inspection > Discovery Misconduct > Sanctions > Exclusion of Evidence
[HN6] Although under certain circumstances exclusion of evidence and dismissal of a criminal prosecution is proper under *Tenn. R. Crim. P. 16* for failure of the State to comply with discovery orders, that power should be used sparingly and only when necessary to avoid irremediable prejudice to Defendant from discovery violations.

COUNSEL: James A. H. Bell, Knoxville, Tennessee, for the appellant, Re'Licka Dajuan Allen.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel West Harmon, Assistant Attorney General; Randall E. Nichols, District Attorney General; and Kevin J. Allen, Assistant District Attorney General, for the appellee, State of Tennessee.

JUDGES: JERRY L. SMITH, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER, J., joined and J. C. McLin, J., dissenting.

OPINION BY: JERRY L. SMITH

OPINION

Defendant, Re'Licka Dajuan Allen, was indicted on two counts of aggravated exploitation of a minor and one count of sexual exploitation of a minor. The State refused to comply with Defendant's requests for discovery by withholding the contents of Defendant's computer hard drive and other computer materials alleged to contain incriminating evidence. The State refused to disclose the requested discovery despite the trial court's issuance of two protective orders, the ruling of the appellate [*2] court on interlocutory appeal, and a third protective order by the trial court requiring disclosure. After a final hearing, the trial court suppressed the evidence and dismissed the indictment against Defendant. The State argues on appeal that the trial court erred in suppressing the evidence based upon the perceived threat of federal prosecution to defense counsel. Following our review of the parties' briefs, the record, and the applicable law, we reverse the judgment of the trial court, reinstate the indictment and remand for trial.

OPINION

I. BACKGROUND

Defendant was charged in a three-count indictment alleging sexual and aggravated sexual exploitation of a

minor stemming from the possession of child pornography. Defendant's case was consolidated with another case presented by the State on interlocutory appeal. The facts of Defendant's underlying offenses were summarized in the appellate court's opinion as follows:

> [The defendant] was charged by the Knox County Grand Jury on June 17, 2003, with one count of sexual exploitation of a minor for possessing materials that included a minor engaged in sexual activity, and with two counts of aggravated sexual exploitation of a minor for possessing, [*3] with the intent to transport and with the intent to distribute, materials that included a minor engaged in sexual activity, in violation of *Tennessee Code Annotated section 39-17-1004*. Both cases involved material located on Defendants' computers. In [the defendant's] case, the material was originally discovered by a computer repair technician at a store where [the defendant] had taken his computer for repair. The technician informed his manager of his discovery, and the manager in turn contacted Knox County law enforcement.

*State v. Richard Allen Butler, No. E2004-00359-CCA-R9-CD, 2005 Tenn. Crim. App. LEXIS 302, 2005 WL 735080, at *1 (Tenn. Crim. App., at Knoxville, Mar. 30, 2005) perm. app. denied 2005 Tenn. LEXIS 687 (Tenn. Aug. 22, 2005), abrogated by State v. Pickett, 211 S.W.3d 696 (Tenn. Jan. 22, 2007).*

After the charges were filed, Defendant filed a motion for discovery, which included a request that the State provide him with copies of the computer hard drive and other computer materials. The State refused Defendant's discovery request but offered instead to make Defendant's computer hard drive available for inspection at the Sheriff's Department. Thereafter, Defendant filed a motion to compel discovery. At a hearing on his motion [*4] to compel, Defendant's computer expert testified that simply being allowed access to Defendant's computer hard drive at the Sheriff's Department would not permit him to conduct a sufficient evaluation. The defense expert's testimony was summarized in this court's opinion as follows:

> In [Defendant's] case, a hearing on his motion to compel was held at which the State presented one witness, Carlton Bryant, an attorney employed at the Knox County Sheriff's Department. Bryant testified that his understanding of the law was that the sheriff's department could not allow counsel to take a copy of the computer hard drive from the department because the sexual exploitation statute did not contain any exemption for defense counsel to be given child pornography. He said they would, however, accommodate counsel and counsel's computer experts by mirror-imaging the hard drive and allowing them to examine the copy while it remained in the "custody and control" of the department. He testified that they contemplated setting aside a conference room for that purpose and would arrange a schedule that was convenient for counsel and his experts.
>
> Herbert Mack, [Defendant's] expert computer witness, described [*5] in detail the various programs and viruses by which material can be both deliberately and inadvertently downloaded into a computer and estimated that it would take him approximately one week of intensive twelve-to fourteen-hour days to complete an examination of [Defendant's] computer hard drive. He testified he would probably require the assistance of support personnel from his office and, in addition, would need to consult regularly with counsel with respect to whether any sexually explicit files he found on the computer qualified as child pornography. He said that, given the large number of images allegedly contained on the computer, he would not be able to remember the specifics of the information without taking the computer hard drive from the sheriff's department.
>
> Mack expressed concern about working from a "mirror image" rather than the hard drive itself, testifying that the computer programs in existence did not create true mirror images:
>
> A. Well, the question-what I heard before was providing me with a mirror image. Okay. If we're talking about me working on the original computer, no, I don't need another computer as long as I can, you know, load my tools and take my tools off. [*6] If what you're going to give me is a mirror image, my concern there is that I'm not getting all of the data that's there.

> Q. And why is that? If it's a mirror image wouldn't you just get everything that's in the mirror?
>
> A. No, sir.
>
> Q. Why not?
>
> A. A mirror image is a misnomer, okay. The computer programs that you have right now, okay, are for the purpose of recovering good data. Okay. So if a file has been ordered damaged or erased it's not going to be on the image.
>
> Mack conceded that his examination of the actual hard drive would entail reconnecting the original personal computer equipment, turning the computer on, and loading his software file-searching tools, and he agreed that in the process of booting up the Windows operating system the contents of the hard drive would be changed. However, according to his testimony, booting the computer would not alter either the file creation date or last accessed date of the images in question. Mack testified he was familiar with "EnCase," a forensic examination software utility available exclusively to law enforcement, but he was not aware that it had been approved by several federal district and appellate courts as a "non-invasive forensic examination [*7] tool."

*2005 Tenn. Crim. App. LEXIS 302, [WL] at *2-3.*

In addition to the testimony above, Mack further testified that the risk of transmitting inaccurate information was high if defense counsel was dependent upon Mack to tell defense counsel what he had seen on a computer disk image. Mack stated that there was an increased risk of disclosing non-discoverable information because the State's expert would be able to determine what tools had been run on Defendant's computer hard drive and what information had been recovered before Defendant was obligated to disclose its expert report. Mack also stated that Defendant would have no choice but to involuntarily disclose information that was not subject to discovery and that Defendant did not intend to use at trial.

At the conclusion of the hearing on the motion to compel, the trial court issued a protective order requiring disclosure of a mirror image of the computer hard drive. However, the State refused to comply. Defendant filed a "Renewed Motion to Suppress" as a result of the State's noncompliance with the court's order. In response, the trial court issued a second protective order requiring disclosure of the discovery materials to Defendant.

After the issuance of the second [*8] protective order by the trial court, the State filed an interlocutory appeal under *Rule 9 of the Tennessee Rules of Appellate Procedure.* The State argued that compliance with the discovery request violated Tennessee sexual exploitation statutes. At the conclusion of the interlocutory appeal, this court found that the trial court did not err in ordering the State to comply with Defendant's discovery request.

> [We] conclude that the possession, copying, or distribution of child pornographic materials does not constitute a violation of Tennessee's sexual exploitation of a minor statutes so long as it occurs in the context of the prosecution or defense of a case under the statute. . . . [T]he trial court[ ] entered protective orders to keep the evidence secure and to confine its dissemination to defense counsel and counsel's agents and employees in the preparation of their defense. We find these orders reasonable and appropriate, especially given [Defendant's] computer expert's testimony with respect to the extensive and exhaustive work entailed in his examination of [Defendant's] computer hard drive. Accordingly, we conclude that the trial courts did not err in granting Defendant['s] motion [*9] to compel the production of the evidence.

*Richard Allen Butler, 2005 Tenn. Crim. App. LEXIS 302, 2005 WL 735080, at *11.* This Court affirmed the trial court's issuance of the two previous protective orders. However, the State continued to deny Defendant's discovery request. Thereafter, Defendant filed a "Second Renewed Motion to Suppress," again requesting suppression of the evidence. The State filed a response to Defendant's motion and argued that enactment of an amendment to federal law, known as the "Adam Walsh Child Protection and Safety Act" ("the Adam Walsh Act"), now prevented the State from granting Defendant's discovery request to provide copied images of the alleged child pornography taken from Defendant's computer. The trial court entered a third protective order, which again instructed the State to provide copies of the discovery material requested by the defense. In its order, the court stated:

> In its March 30, 2005 decision, the Court of Criminal Appeals clearly contemplated the State's proposal of mir-

ror-imaging Defendant's hard drive and allowing counsel to examine the copy while it remained in the "custody and control" of the Sheriff's Department. *State v. Butler, No. E2004-00359-CCA-R9-CD, 2005 Tenn. Crim. App. LEXIS 302, at *6 (Tenn. Crim. App. Mar. 30, 2005).* [*10] The Court also considered the State's argument that the sexual exploitation statute provides no exception allowing possession of such material by defense counsel or experts. *Id. at *26.* Despite taking these arguments under advisement, the court held "that the possession, copying, or distribution of child pornographic materials does not constitute a violation of Tennessee's exploitation of a minor statutes so long as it occurs in the context of the prosecution or *defense* of a case under the statute." *Id. at *33* (emphasis added). The Court clearly stated that both the *Allen* and *Butler* Trial Courts' Protective Orders were "reasonable and appropriate" under *Tenn. R. Crim. P. 16(a)(1)(C). Id.* In upholding the *Butler* and *Allen* Orders, the Court specifically relied upon computer expert testimony detailing the extensive and exhausting work involved in examining a computer hard drive. *Id.*

> The state has continued to refuse to provide [Defendant] with an independent examination of the evidence against him. The State has persisted in allowing [Defendant] access to his hard drive and other evidence only while it is under the "custody and control" of the Sheriff's Department, despite the fact that [*11] the Criminal Court of Appeals found this Court's . . . Order to be reasonable and appropriate. *Butler, No. E2004-00359-CCA-R9-CD, 2005 Tenn. Crim. App. LEXIS 302, at *33.*

In response to the issuance of the trial court's third protective order mandating disclosure of discovery, the State filed a "Motion to Reconsider and/or Motion to Clarify the Court's Protective Order." In this motion, the State argued that the enactment of the Adam Walsh Act "unequivocably bann[ed]" the distribution or dissemination of child pornography to defense counsel during litigation, thereby reversing the appellate court's ruling in *Butler* on the basis that the Adam Walsh Act, under the doctrine of federal preemption, superseded Tennessee criminal procedural rules governing discovery. Defendant filed a memorandum in response to the State's motion. In Defendant's response memorandum, Defendant detailed cases in other jurisdictions which held that the Adam Walsh Act did not preempt those States' discovery rules.

A hearing was held on the State's motion to reconsider. At the hearing, the State informed the court that it had contacted the U.S. Attorney's office, as it believed it was obligated to do, and disclosed [*12] that a copy of the mirror image of the computer hard drive would be provided to defense counsel and their experts. The State informed the court that defense counsel, any defense expert, as well as court staff and others could be at risk of federal prosecution for possession of child pornography in violation of the Adam Walsh Act if the discovery material was turned over to Defendant. At the hearing, the following exchange occurred between the trial court and the State:

> [Prosecutor]: I'm here and ready, Judge. I can't make any promises about what would happen in - I mean there's dual jurisdiction in child pornography cases. They know that.
>
> The Court: What happens if my court reporter takes it? Is she subject to federal prosecution? Is the court clerk and Miss Phillips subject to federal prosecution?
>
> [Prosecutor]: Judge, I have absolute immunity in my prosecutorial functions. This is a prosecutorial function. I don't know about anybody else.
>
> The Court: Well, there's another alternative. And that is because I have ordered this be turned over at least three times and the appellate court has too, I can suppress the evidence and you can appeal that to the appellate court and see if we can't [*13] get the appellate court to tell us how they'd like to approach these cases because the State of Tennessee is going to have to do something.
>
> . . . .
>
> [Prosecutor]: I'm here and ready to comply with the order, Judge, the initial order where you'd have me turn it over. We appealed that to the Court of Appeals and it came back down.
>
> The Court: Yes, and they told you to turn it over, and I told you to turn it over.

[Prosecutor]: You re-ordered me, and then I filed a Motion to Reconsider based on the Adam Walsh case, and you haven't ruled on the Adam Walsh case yet. Today is the day that you rule on Adam Walsh -

. . . .

The Court: Did you notify the U.S. Attorneys?

[Prosecutor]: Yes, I did.

The Court: Then - then I want the disc lodged with the court reporter to be sealed and filed under seal. I hereby suppress the evidence in this case, and the State is free to appeal the suppression of evidence. I hereby suppress the evidence that's on the disc; let's put it like that. I don't know what other evidence the State wants to offer . . . .

. . . .

The Court: Well, I'm suppressing the evidence based upon what Mr. Bell just said, that they cannot - they're totally chilled from being able to evaluate their [*14] own - evaluate the evidence against them.

[Prosecutor]: So you're suppressing it because I notified the U.S. Attorney that they were taking possession -

The Court: No. I'm suppressing it because they can't get it under federal law because - you know, that's up to you whether you notified the U.S. Attorney because I think you - there are certain things you have to do under the law as well. But I don't see how you can proceed with a prosecution with regard to this, turn that over to them, and not - and them not be able to do what they need to do, which was what the whole issue was about.

The disc had to be a mirror image because any manipulation of the computer disc changes the evidence, and that was the whole point. And they need to have their expert evaluate it. So how can they do that? They can't not without violating the law.

And as attorneys, they're standing up and saying to me, as officers of the court, they don't wish to violate the law, and I respect that.

So I'm going to suppress the evidence as a result of that disc, but I'm locking it up so that we have that disc. And I think you ought to consult with whoever you consult with to deal with the suppression issues -

. . . .

[Prosecutor]: [*15] The contents of that hard drive are - contain all of the counts in the indictment. So if you're suppressing . . . the actual child pornography that's contained thereon, then you're in effect -

The Court: In effect, dismissing -

[Prosecutor]: - dismissing -

The Court: - the case.

. . . .

The Court: If you'd like me to go ahead -

[Prosecutor]: - so that we could -

The Court: - and do an outright dismissal, then I dismiss it.

[Prosecutor]: Yes. So that we could *Rule 3* it.

The Court: It's hereby dismissed.

After the trial court suppressed the evidence and dismissed the case against Defendant, the state filed a timely notice of appeal.

II. ANALYSIS

Risk of Federal Prosecution

As noted, the State argued in the trial court that *Section 3509(m) of Title 18 of the United States Code*, part of the Adam Walsh Act, effectively preempts discovery in child pornography cases and that conducting discovery in violation of the act could subject defense counsel to federal prosecution for possession of child pornography. *18 U.S.C. § 3509(m)* provides:

> [HN1] (1) In any criminal proceeding, any property or material that constitutes child pornography (as defined by section 2256 of this title) shall remain in the care,

> custody, [*16] and control of either the Government or the court.
>
> (2)(A) Notwithstanding Rule 16 of the Federal Rules of Criminal Procedure, a court shall deny, in any criminal proceeding, any request by Defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography (as defined by section 2256 of the title), so long as the Government makes the property or material reasonably available to Defendant.
>
> (B) For the purposes of subparagraph (A), property or material shall be deemed to be reasonably available to Defendant if the Government provides ample opportunity for inspection, viewing and examination at a Government facility of the property or material by Defendant, his or her attorney, and any individual Defendant may seek to qualify to furnish expert testimony at trial.

The question we must initially address is whether this statute preempts our own state rules regarding discovery in state prosecutions for crimes involving child pornography. This is a question of first impression in this state.

[HN2] "The police powers of a state are not to be preempted by federal legislation unless that [is] Congress's clear and manifest purpose." *State v. Scott, 678 S.W.2d 50, 51 (Tenn. 1984).* [*17] Congress's intent to preempt state laws must either be expressly stated in a federal statute or be implicit in the statute's structure and purpose. *Id.*

It can readily be seen that [HN3] *Section 3509(m)* does not explicitly refer to state prosecutions. The law references *Fed. R. Crim. P. 16* in superceding that rule's discovery procedures. The statute also refers to the prosecution as the "Government," a term typically used in federal statutes to denote the government of the United States not the government of a state. Finally, the statute is part of Part II of Title 18 of the United States Code which is dedicated to "Criminal Procedure." In the case of *State ex rel. Tuller v. Crawford, 211 S.W.3d 676 (Mo. Ct. App. 2000)*, the Missouri Court of Appeals relied on these factors in concluding that *Section 3509(m)* is a procedural provision applicable only to federal courts. *Id. at 679.* We agree with the reasoning of *Crawford* and hold that *Section 3509(m)* does not apply to proceedings in Tennessee state courts. Further, the statute does not criminalize any conduct that was not already illegal under *Sections 2251, 2252* and *2252(a) of Title 18 of the United States Code* long before the passage of *Section 3509.*

We [*18] have been unable to find a single state or federal criminal prosecution of defense counsel anywhere in the country based on counsel's possession of child pornography as part of a state's discovery procedures. We think the likelihood of federal prosecution of defense counsel in this case for possession of child pornography is remote at best and did not justify the suppression of evidence and dismissal of the prosecution of Defendant.

Moreover, [HN4] even if *Section 3509* were applicable to state proceedings, the statute has been interpreted to allow disclosure of offending materials where a defendant has shown that an analysis of the material at a government facility would be cost prohibitive; doubt about the reliability of an expert's equipment would be raised if the expert were forced to move the equipment; or that the expert's ability to analyze the material is so compromised that he is of no effective service to Defendant or Defendant's attorney. *See United States v. Knellinger, 471 F.Supp. 2d 640, 647-48 (E.D.Va. 2007).* In *Richard Allen Butler* the trial court and this Court found that forcing the defense expert to conduct the "extensive and exhaustive work" entailed in examining Defendant's [*19] computer hard drive in a law enforcement facility would compromise significantly the expert's usefulness to the defense. *2005 Tenn. Crim. App. LEXIS 302, 2005 WL 735080, at *11.* Consequently, we held the trial court's orders compelling production of evidence along with protective orders to restrict the dissemination of the offending material solely in the preparation of the defense were reasonable and proper. *Id.* We believe this case is analogous to *Knellinger* and that even if *Section 3509* were applicable to this prosecution the difficulties of discovery only in a law enforcement facility and the compromise to the effectiveness of the defense expert justify the orders of production in this case as well as the protective orders. Therefore, we hold that the trial court erred in dismissing this case out of fear that defense counsel would be subject to a federal prosecution under *§3509.*

Dismissal for Failure to Comply with Tennessee Rule of Criminal Procedure 16

[HN5] *Tennessee Rule of Criminal Procedure 16* governs most discovery issues in Tennessee criminal cases. The record in this case also reflects that the trial court was to some extent concerned about the prosecution's obstinate refusal to comply with the orders of both [*20] the trial court and this Court regarding discovery in this case. The dismissal of the indictment could be interpreted as punishment for the prosecution's pertinacious-

ness in the failing to follow the discovery orders. [HN6] Although under certain circumstances exclusion of evidence and dismissal of a criminal prosecution is proper under *Tennessee Rule of Criminal Procedure 16* for failure of the State to comply with discovery orders, that power should be used sparingly and only when necessary to avoid irremediable prejudice to Defendant from discovery violations. *See State v. Garland, 617 S.W.2d 176, 185 (Tenn. Crim. App. 1981)*. In light of the prosecution statements at the hearing in the trial court on this matter and the assurance of the attorney for the State at the appellate oral argument that the prosecution is now ready to comply with the discovery orders of this Court and trial court, we hold that exclusion of the computer images in question and dismissal of the prosecution were erroneous. If the prosecution is now willing to comply, the potential prejudice to Defendant is not irremediable.

We understand the frustration of the trial court over the persistent refusal of the prosecution [*21] to comply with court orders. However, exclusion of the evidence in question and dismissal of the indictment was not the proper method to punish the prosecution once a willingness even grudgingly expressed was made to at last comply with the discovery orders. Any further refusal to comply with the orders of the trial court should be punished with the court's contempt powers. *Garland, 617 S.W.2d at 185.*

CONCLUSION

In light of the foregoing the judgment of the trial court is reversed, the indictment is reinstated and the case is remanded for trial.

JERRY L. SMITH, JUDGE

DISSENT BY: J.C. MCLIN

DISSENT

J.C. MCLIN, Judge, dissenting.

Because the state, as the appellant, failed to meet its burden of proving that the trial court committed an abuse of discretion by suppressing the evidence, I must respectfully dissent from the majority.

The state's refusal to disclose the discovery material it was obligated to provide was a violation of the rules of discovery. Specifically, the rule states that: "[u]pon a defendant's request, the state shall disclose to the defendant . . . (I) the defendant's relevant written or recorded statements, or copies thereof . . . ." *Tenn. R. Crim. P. 16(a)(1)(B)*. "'[S]uppression by the prosecution [*22] of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.'" *Sample v. State, 82 S.W.3d 267, 270 (Tenn. 2002)* (quoting *Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)*). A defendant may be accorded certain remedies based upon the state's noncompliance. *Rule 16(d)(2)(A)-(D) of the Tennessee Rules of Criminal Procedure* provides as follows:

> If a party fails to comply with this rule, the court may: (A) order that party to permit the discovery or inspection; specify its time, place, and manner; and prescribe other just terms and conditions; (B) grant a continuance; (C) prohibit the party from introducing the undisclosed evidence; or (D) enter such other order as it deems just under the circumstances.

The exchange of discovery matters is regulated by our Tennessee Rules of Criminal Procedure. Specifically, *Rule 16(d)(2)(D)* governs the exchange in criminal matters:

> Although *Rule 16 of the Rules of Criminal Procedure* does not explicitly provide as one of the sanctions the dismissal of the indictment after failure to comply with a discovery request or order, the rule [*23] does provide that the court may enter such sanction "as it deems just under the circumstances." *Tenn. R. Crim. P. 16(d)(2)(D)*. This opened-ended language of the Rule authorizes the dismissal of an indictment in certain circumstances when a court would otherwise have "no effective sanction for failure to comply with its order." *State v. Collins, 35 S.W.3d 582, 585 (Tenn. Crim. App. 2000)*; *see also State v. Freseman, 684 S.W.2d 106, 107 (Tenn. Crim. App. 1984)* (suggesting that if a trial court has the authority to dismiss a case as a sanction for failure to comply with discovery orders, it is implied authority pursuant to *Tenn. R. Crim. P. 16(d)(2)*). However, the Rule provides the court with many other methods for assuring compliance without resorting to such extreme measures. A trial court has wide discretion in fashioning a remedy for non-compliance with a discovery order, and the sanction should fit the circumstances of the case. *See Collins, 35 S.W.3d at 585.*

*State v. Downey, 259 S.W.3d 723, 2008 WL 3540371 at *9 (Tenn. 2008).* After providing this analysis, the court held that "[g]iven the discretion afforded the trial court in fashioning the penalty, we [*24] conclude that the trial court's decision to suppress . . . was sufficient penalty for the State's discovery violation." *Id.* Furthermore, "[i]t is well settled that decisions with regard to pre-trial discovery matters rest within the sound discretion of the trial court. The decision of the trial court in discovery matters will not be reversed on appeal unless a clear abuse of discretion is demonstrated." *Benton v. Snyder, 825 S.W.2d 409, 416 (Tenn. 1992).* "The abuse of discretion standard contemplates that before reversal the record must show that a judge 'applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining.'" *State v. Coley, 32 S.W.3d 831, 833 (Tenn. 2000)* (citations omitted) *overruled on other grounds* by *State v. Copeland, 226 S.W.3d 287 (Tenn. 2007).*

In the instant case, the hearing on the state's motion to reconsider arose from the trial court's issuance of a third protective order requiring disclosure of the requested discovery materials under *Rule 16 of the Tennessee Rules of Criminal Procedure.* The state's blatant, continued refusal to disclose the requested discovery created the very [*25] problem which forced the trial court to suppress the evidence. The trial court issued a total of three protective orders requiring disclosure, and the state refused to comply each time. The third order came after the appellate court, upon interlocutory appeal, affirmed the trial court's two previous orders. The state had ample time to comply, and its failure to do so is evidence of its intentional bad faith. The period of time ranging from the trial court's issuance of the first protective order to the passage of the Adam Walsh Act was more than two-and-half years. Assuming the state was entitled to excuse its delay in part based upon its reliance on the appellate court's interlocutory ruling, the state still refused to turn over the requested discovery for a period of more than one year and four months before the passage of the Adam Walsh Act. Even more importantly, the state has offered no justification for its failure to comply with the court's orders at any point in time. I would also note that the trial court's decision was further complicated by the state's eleventh-hour willingness to provide the discovery to the defendant only under threat of potential federal prosecution. [*26] Based on the passage of the Adam Walsh Act, it appeared that anyone, including defense counsel, its staff, or experts retained by the defendant, faced possible federal prosecution once they took possession of the discovery material. Given the precarious position that both the defendant and the court were placed in by the state if they accepted the discovery material, it is my view that the trial court did not err when it found that it had "no other reasonable alternative" but to suppress the evidence. *See State v. Smith, 926 S.W.2d 267, 270 (Tenn. Crim. App. 1995).*

As identified previously, the state, as the appealing party, has a duty to demonstrate that the trial court abused its discretion by suppressing the evidence. *Snyder, 825 S.W.2d at 416.* The state is unable to show how, or in what manner, the trial court committed such abuse. The state argues without citation to legal authority, that there was "no need for the trial court to take the drastic measure of *sua sponte* suppressing the evidence" and further contends that there was "no lawful basis" for suppression. As noted above, the trial court clearly had the discretion to suppress the evidence. *See Downey, 259 S.W.3d 723, 2008 WL 3540371, at *9.* [*27] It is the state who has appealed, and it is the state that has failed to meet its burden of showing that the trial court abused its discretion by suppressing the evidence or abused its inherent powers to dismiss a case for failure to comply with discovery. *Iverson v. Xpert Tune, Inc.., 553 So. 2d 82, 87 (Ala. 1989).*

I agree with the majority that the trial court could have and should have sanctioned the state by holding it in contempt for its willful non-compliance with the court's repeated orders. However, this remedy, in my view, is not one that the trial court was necessarily required to employ. Furthermore, arguing that the trial court erred because it did not exhaust all possible remedies before suppressing the evidence erroneously shifts the burden from the state as the appellant, whose obligation it is to show an abuse of discretion, by the trial court. The majority opinion imposes an affirmative duty upon the trial court to show why it did not hold the state in contempt or institute any other remedies before suppressing the evidence. Because the function of this appellate court is to act as a court of error, it is my opinion that the majority opinion exceeds this court's authority [*28] by requiring that the trial court first exhaust all other remedies before finding that it acted within its discretion under *Rule 16* by suppressing the evidence in this case.

For the reasons stated above, I would affirm the judgment of the trial court.

J.C. McLIN, JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA

v. Criminal No. 3:06cr126

DAVID LEROY KNELLINGER

MEMORANDUM OPINION

This matter is before the Court on the Supplemental Brief in Support of Motion to Dismiss (Docket No. 46) filed by the defendant, David Leroy Knellinger, in which Knellinger asserts that 18 U.S.C. § 3509(m) is both invalid and unconstitutional. For the following reasons, Knellinger's motion is denied. However, Knellinger's request for a mirror image copy of his computer hard drive, which contains the child pornography images listed in the Superseding Indictment (Docket No. 14), is granted subject to the entry of an appropriate protective order and a certification by counsel for Knellinger that he will use that copy for assessment and preparation of a defense.

BACKGROUND

Knellinger stands charged with seven counts of transporting, attempting to transport, receiving, and possessing child pornography (Docket No. 14). The statutory maximum sentence faced by Knellinger is twenty years imprisonment on each count. On July 17, 2006, Knellinger filed a Motion for Independent Analysis of Physical Evidence and Protection Order (Docket No. 21), in which he

requested a copy of the computer hard drive that was seized during a search of his residence and that now is in the possession of law enforcement authorities. That hard drive contains the images of child pornography at issue in this case, and Knellinger's counsel sought a copy of the hard drive so that computer experts could examine it, and the images contained therein, to help counsel ascertain therefrom the basis for a defense to the pending charges. During a telephone conference on July 26, 2006, the United States agreed to provide Knellinger with a mirror image copy of his computer hard drive and, accordingly, the Court denied as moot Knellinger's Motion for Independent Analysis (Docket No. 31).

However, the very next day, on July 27, 2006, the Adam Walsh Child Protection and Safety Act, Pub. L. No. 109-248, 120 Stat. 587 (2006), was signed into law. A provision of that statute, codified at 18 U.S.C. § 3509(m), requires that child pornography remain in the custody of the United States or the Court, and prohibits a defendant from obtaining copies thereof so long as the United States provides the defendant "ample opportunity for inspection, viewing, and examination" of the child pornography "at a Government facility." Because of this new law, the United States told Knellinger that it could not honor its agreement to turn over a mirror image copy of his computer hard drive, and the United States has been in sole possession of the child pornography images ever since.

At a hearing on August 28, 2006, Knellinger raised a challenge to the constitutionality of 18 U.S.C. § 3509(m). Knellinger claimed that he is constitutionally entitled to copies of the child pornography that will be presented as evidence against him and that 18 U.S.C. § 3509(m) violates the Constitution by preventing him from having those copies. The Court asked the parties to brief the issue, invited *amicus* briefs from the National Association of Criminal Defense Lawyers, the Federal Public Defender, and the University of Richmond Law School, and held an evidentiary hearing on November 6, 2006 to determine whether 18 U.S.C. § 3509(m) violates Knellinger's rights under the United States Constitution.

DISCUSSION

As described above, Knellinger's primary objection to 18 U.S.C. § 3509(m) is that it prevents him from obtaining a copy of the child pornography in this case for independent examination. Section 3509(m) reads as follows:

> (M) Prohibition on reproduction of child pornography. --
>
> (1) In any criminal proceeding, any property or material that constitutes child pornography (as defined by section 2256 of this title) shall remain in the care, custody, and control of either the Government or the court.
>
> (2)(A) Notwithstanding Rule 16 of the Federal Rules of Civil Procedure, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or

> otherwise reproduce any property or material that constitutes child pornography (as defined by section 2256 of this title), so long as the Government makes the property or material reasonably available to the defendant.
>
> (B) For the purposes of subparagraph (A), property or material shall be deemed to be reasonably available to the defendant if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

18 U.S.C. § 3509(m) (emphasis added). As Knellinger correctly points out, the effect of the statute is to prevent the Court from ordering the United States to provide Knellinger with a copy of the child pornography in this case so long as the United States makes that material "reasonably available" to Knellinger in a Government facility. The upshot is that Knellinger's counsel has not been able to conduct the type of examination that he feels is necessary to assess effective defenses to the very serious charges that Knellinger now faces. For that reason, Knellinger challenges the validity of § 3509(m). He first argues that § 3509(m) is an invalid amendment to the Federal Rules of Criminal Procedure. He also asserts that § 3509(m) is unconstitutional, both facially and as applied in this case. Knellinger seeks either dismissal of the indictment or a copy of the child pornography that will be presented as evidence against him.

A. Knellinger's Assertion That § 3509(m) Offends The Rules Enabling Act

Knellinger contends that § 3509(m) is invalid because it promulgates a rule of criminal procedure, thereby amending a current rule, without following the requirements of the Rules Enabling Act, 28 U.S.C. § 2071 et seq. This challenge to the power of Congress lacks merit. Congress at all times retains the authority to enact statutes affecting federal rules of procedure. As the Fifth Circuit summarized in Jackson v. Stinnett:

> It has long been settled that Congress has the authority to regulate matters of practice and procedure in the federal courts. ... Congress delegated some of this power in 1934 by passing the Rules Enabling Act, which gave the Supreme Court the power to promulgate rules of practice and procedure for United States courts. ... Although Congress has authorized the Court to exercise some legislative authority to regulate the courts, Congress at all times maintains the power to repeal, amend, or supersede its delegation of authority or the rules of procedure themselves.

102 F.3d 132, 134-35 (5th Cir. 1996) (citations omitted). Indeed, Congress often has enacted statutes that repeal, amend, or supercede existing rules of federal procedure, and courts consistently upheld the power of Congress to do so. See, e.g., Floyd v. United States Postal Service, 105 F.3d 274, 277-78 (6th Cir. 1997) (upholding provisions of the Prison Litigation Reform Act which conflicted with the Federal Rules of Appellate Procedure); United States v. Mitchell, 397 F. Supp. 166, 170

(D.D.C. 1974), aff'd sub nom, United States v. Haldeman, 559 F.2d 31 (D.C. Cir. 1976) (upholding authority of Congress to extend the life of a federal grand jury beyond the expiration date prescribed by Rule 6 of the Federal Rules of Criminal Procedure). Given the ultimate Congressional authority over the federal rules of procedure, there is no merit to Knellinger's argument that Congress ran afoul of the Rules Enabling Act by passing a subsequent statute that also affects the rules of federal criminal procedure.

B. Knellinger's Constitutional Challenges To § 3509(m)

1. Separation of Powers

In ways that are neither adequately explained nor readily apparent, Knellinger asserts that § 3509(m) offends the constitutionally-imposed separation of powers between the legislative and the judicial branches of government. The argument amounts to an assertion that Congress cannot tell "an Article III court how to rule on a motion before it." (Def's Reply to United States' Resp. in Opp. to Def.'s Supp. Br. in Supp. of Mot. to Dismiss "Def.'s Reply" at 15.) This contention appears to be predicated on the arguments respecting the Rules Enabling Act, and, to that extent, is meritless for the reasons explained above.

In any event, this argument, which was unaccompanied by citation in Knellinger's Supplemental Brief in Support of Motion to Dismiss (Docket No. 46), and was accompanied only by indiscriminate inapposite citation in his Reply (Docket No. 50), was not raised

during or after the evidentiary hearing on November 6, 2006, and, quite frankly, appears to have been abandoned. Hence, it will not be further considered.

2. Knellinger's Constitutional Arguments Respecting The Rights Of Criminal Defendants

Knellinger also argues that § 3509(m) deprives criminal defendants of their right to a fair trial under the United States Constitution.[1] (See Def.'s Supp. Br. in Supp. Of Mot. to Dismiss at 16-17; Def.'s Reply at 6-11.) The constitutional rights which produce a "fair trial" are implicated by the restrictions imposed by § 3509(m) on the custody and reproduction of child pornography that is the subject of a criminal proceeding. However, while those restrictions are serious and significant, they have limited reach. Defendants, including Knellinger, may obtain, by court order, copies of child pornography when the United States cannot provide an "ample opportunity for inspection, viewing, and examination at a Government facility." Consequently, § 3509(m) is not an absolute prohibition on copying child pornography for inspection outside a Government facility. That being the case, Knellinger's facial challenge to the statute can succeed only if he can demonstrate that no application of the statute's safety valve provision ("ample

[1] Knellinger's "fair trial" argument seems to encompass many of the various rights afforded by the Fifth and Sixth Amendments. See Strickland v. Washington, 466 U.S. 668, 684-85 (1984) ("The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment").

opportunity for inspection, viewing, and examination at a Government facility") would be sufficient to protect the constitutional rights of any criminal defendant. See United States v. Salerno, 481 U.S. 739, 745 (1987). Knellinger's argument therefore turns on the definition of "ample opportunity."

While the statute does not define "ample opportunity," that term must be read to include at least every opportunity for inspection, viewing, and examination required by the Constitution. If read in that way, any opportunity for inspection that falls short of that mark would enable a court to order a copy given to the defendant for inspection outside a "Government facility." Long-established canons of statutory construction require the Court to read "ample opportunity" in just this way. As the Supreme Court reiterated in Edward J. DeBartolo Corp. V. Florida Gulf Coast Building & Constr. Trades Council:

> '[t]he elementary rule is that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.' This approach ... also recognizes that Congress, like this Court, is bound by and swears an oath to uphold the Constitution. The courts will therefore not lightly assume that Congress intended to infringe constitutionally protected liberties or usurp power constitutionally forbidden it.

485 U.S. 568, 575 (1988) (citing Grenada County Supervisors v. Brown, 112 U.S. 261, 269 (1884)). Because Knellinger does not explain why "ample opportunity" cannot reasonably be read to, at a minimum, protect the constitutional rights of defendants, the Court

need not further address Knellinger's facial constitutional challenge.[2]

Moreover, "ample opportunity" may, in some circumstances, include greater access than what the Constitution alone would require. In interpreting this same statutory provision, another district court noted that "[t]he word 'ample' means 'generous or more than adequate in size, scope, or capacity.'" United States v. O'Rourke, No. CR 05-1126-PHX-DGC, 2007 WL 104901, *4 (D. Ariz. Jan. 17, 2007) (citing Webster's New Collegiate Dictionary 39 (1981)). As discussed above, the opportunity to inspect, view, and examine contemplated by § 3509(m)(2)(B) requires, at a minimum, whatever opportunity is mandated by the Constitution; therefore, an opportunity that is "generous" or "more than adequate" may, in some circumstances, require more access than what would be mandated by the Constitution alone.[3] Under that interpretation of "ample

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[2] To the extent that Knellinger contests this reading of the statute, he does not explain why this reading is unreasonable, nor does he offer an alternative definition for "ample opportunity." (See Def.'s Reply at 6.) Indeed, even after the evidentiary hearing in this matter, which focused largely on the meaning of "ample opportunity," Knellinger has never adequately explained why the Court cannot order production of the child pornography if the Government has failed to provide an ample opportunity for inspection, viewing, and examination at a Government facility. (See Def.'s Post-Hearing Br.; Def's Post-Hearing Reply Br.)

[3] The O'Rourke court similarly construes "ample opportunity." While, in rejecting the defendant's constitutional challenges to § 3509(m), the court noted that "ample opportunity" might be "coterminous with the requirements of due process," and that "ample opportunity" requires "due-process-level access" to evidence, the court ultimately held that the defendant was not entitled to a copy

opportunity," the Court need not necessarily resolve Knellinger's as applied constitutional challenge in order to determine whether Knellinger has been afforded an "ample opportunity" to access his hard drive. If the statutorily required ample opportunity to access his hard drive has not been provided, the Court may order production of the hard drive without deciding whether the Constitution would also compel its production.

As the United States correctly argues, whether there is ample opportunity for inspection, viewing, and examination is a factual issue that must be resolved on the record in each case. Thus, the threshold task here is to assess, on the record made in this case, whether Knellinger has been afforded an ample opportunity to inspect, view, and examine the hard drive at a Government facility. If the Court finds that the statutorily required ample opportunity has been provided, Knellinger's constitutional rights will, by definition, have been protected.[4] If ample opportunity has not

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of his computer hard drive because his particular concerns did not "amount to a denial of due process or of an ample opportunity to inspect the hard drive." 2007 WL 104901, *6 (emphasis added). If "ample opportunity" were necessarily "coterminous" with the requirements of due process, there would have been no need for the court to have considered the defendant's alleged difficulties with § 3509(m) under the requirements of both due process and "ample opportunity." Thus, the O'Rourke court, like this Court, concluded that "ample opportunity" means, only at a minimum, the opportunity for inspection, viewing, and examination required by the Constitution.

[4] This conclusion accords with those reached by the only courts to have previously considered the constitutionality of § 3509(m). See United States v. Johnson, 456 F. Supp. 2d 1016 (N.D.

been provided, the statute itself renders Knellinger's as applied constitutional challenge moot because the statute permits the Court to provide a copy of the materials to the defense. Here, as discussed below, the Court finds that ample opportunity has not been provided on the facts of this case, so there is no need further to consider Knellinger's as applied challenge to the statute.

C. Knellinger's Opportunity To Inspect, View, And Examine The Child Pornography In This Case

The United States contends that it has afforded an adequate opportunity for inspection, viewing, and examination by offering to provide a private room in the Richmond, Virginia offices of the Federal Bureau of Investigation where counsel and his experts can access the hard drive. Knellinger disputes that contention.

An evidentiary hearing was held on November 6, 2006 to resolve this factual dispute. In support of his position, Knellinger presented expert testimony from one computer forensic expert, two digital video experts, and a trial attorney with extensive experience handling child pornography cases.[5] The United States

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Iowa 2006); O'Rourke, No. CR 05-1126-PHX-DGC, 2007 WL 104901; United States v. Butts, No. CR 05-1127-PHX-MHM, 2006 WL 3613364 (D. Ariz. Dec. 6, 2006).

[5] The United States challenges the relevance of the testimony provided by Knellinger's digital video experts because they do not have extensive experience in child pornography cases. (See United States Resp. in Opp. to Def.'s Post-Hearing Br. Concerning the Constitutionality of 18 U.S.C. § 3509(m) at 20-22.) However, while the experts have minimal experience in child pornography cases,

presented no evidence.

Knellinger's first witness, Mark Vassel, is a computer forensic expert who already has conducted an analysis of Knellinger's hard drive in this case. Vassel, however, does not need to view images of child pornography to conduct the sort of analysis in which he specializes, so, while he expressed some frustration with the strictures of § 3509(m), the statute apparently did not prevent him from doing his job. (See Evidentiary Hr'g Tr. ("Hr'g Tr.") 9, 33, Nov. 6, 2006.)

Knellinger's second witness, Louis Sirkin, is a trial lawyer based in Cincinnati, Ohio. Sirkin has extensive experience as a defense attorney in child pornography cases, and was primary counsel in Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002). (Hr'g Tr. 75.) In Ashcroft, the Supreme Court of the United States struck down certain provisions of the Child Pornography Prevention Act of 1996 as overbroad. 535 U.S. at 258. The provisions were overbroad because they proscribed images that were neither obscene nor produced with real children. See id. at 250. Therefore, Sirkin noted, a defendant like Knellinger, who is not charged with violating obscenity laws, may argue that the child pornography he

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they have extensive experience in the sort of analysis that would be conducted in a child pornography case. The experts are therefore qualified to assist the Court in understanding the type of analysis that Knellinger seeks to undertake. If the United States had wanted to challenge the substantive testimony of these two experts, it could have put on testimony from its own experts. The United States chose not to do so.

possessed was not produced using real minors.[6] (Hr'g Tr. 83.) Sirkin himself has pursued that "viable defense" and has had child pornography analyzed by experts in order to determine whether or not the children depicted were real. (Id. at 120.) According to Sirkin, such an analysis is "absolutely essential" where a defendant intends to pursue that line of defense.[7] (Id. at 87.)

Knellinger's final two witnesses were the types of digital video experts who could conduct the analysis described by Sirkin as "absolutely essential" in a case like Knellinger's. Both described the great cost and effort that would be required to conduct their analyses in a Government facility. Tom Owen, the third witness, testified that he would normally charge approximately $135,000 to analyze the child pornography in this case, but that he would charge approximately $540,000 if he had to analyze those materials away from his offices in a Government facility. (Id. at 163-64.) That figure does not include the cost of transporting the quite extensive collection of equipment that is necessary to his analysis, which would take approximately one week and three men to

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[6] Knellinger is charged in this case with transporting, attempting to transport, receiving, and possessing child pornography made only with real minors. See 18 U.S.C. § 2256(8)(A). That, of course, does not foreclose the defense that the images are not real minors but, instead, are computer-generated images.

[7] Sirkin also testified at length about many practical problems that § 3509(m) will create for defense attorneys. While helpful to the Court, a recitation of his testimony is not necessary here.

move, and which would require "a box truck... 20 feet long and 10 feet wide."[8] (Id. at 152-53.)

Moreover, even if Owen were able to move his equipment to a Government facility, he would have concerns about its reliability after the move. (Id. at 165.) And, even if he thought his equipment was functioning properly, his personal ability to analyze the evidence thoroughly and carefully would be compromised to such a degree that he "wouldn't be able to service the client or the attorney" effectively. (Id. at 165-66.) The practical consequence of all these difficulties is that, while Owen's testimony indicates that it would be conceptually possible for Owen to conduct his time-consuming analysis in a Government facility, Owen would not agree to work on a case like Knellinger's because he could not feasibly move his equipment to, or properly do his work in, a Government facility. (Id. at 165.)

Knellinger's final witness, James Griffin, testified similarly. Griffin has never moved all of his digital video analysis equipment from his offices to another location, but he calculated that such an effort would take more than "several days" each time he was required to disassemble and transport his

[8] It would be necessary for Owen or any other expert to bring his own equipment because the United States has not offered to provide the requisite equipment in a Government facility for the expert's use. (See Hr'g Tr. 268-69; United States' Resp. in Opp. to Def.'s Post-Hearing Br. Concerning the Constitutionality of 18 U.S.C. § 3509(m) at 22-23.) This is not surprising, because Owen's equipment costs approximately $350,000. (Hr'g Tr. 167.)

equipment. (Id. at 232.) Like Owen, Griffin testified that he would also have to charge significantly more for his services if he conducted an analysis of child pornography outside his offices in a Government facility, even if transportation of his equipment were possible. (Id. at 235.) Finally, Griffin also testified that, although it might theoretically be possible to bring his own equipment to a Government facility and analyze the child pornography images outside his offices, he would not agree to work on a case like Knellinger's because of the difficulty associated with moving equipment to, and adequately performing his analytical work in, a Government facility. (Id. 242.)

In sum, Knellinger's witnesses established that assessment and presentation of a viable legal defense in Knellinger's case requires expert analysis and testimony, and that qualified experts could not reasonably be expected to agree to conduct the required analysis given the extremely burdensome practical effects of § 3509(m) on the reliable discharge of their obligations. The United States presented no witnesses or other evidence to controvert that offered by Knellinger.

Although the United States put on no evidence of its own, it was able, on cross-examination, to make two salient, but ultimately non-dispositive points: (1) that none of Knellinger's technical witnesses were aware personally of a case in which child pornography had been produced using entirely virtual children; and

(2) that the analysis sought by Knellinger could, in abstract theory, be conducted in a Government facility. The United States therefore argues that Knellinger is pursing a "fairy tale" defense and that he has not made sufficient efforts to comply with § 3509(m). (United States' Resp. in Opp. to Def's Post-Hearing Br. Concerning the Constitutionality of 18 U.S.C. § 3509(m) ("United States' Resp.") at 5.)

The first point asks the Court to foreclose to Knellinger the opportunity to explore a potentially viable legal defense simply because it is novel. The United States has cited no authority to support the principle that a district court is empowered to intrude into the investigation and preparation of potential defenses in a criminal case at such a preliminary stage and, in so doing, to peremptorily preclude the development of a potential defense.[9]

Moreover, in Ashcroft, the United States argued that "the possibility of producing [child pornography] images by using computer imaging makes it very difficult for it to prosecute those who produce pornography by using real children," and that experts "may have difficulty in saying whether the pictures were made by

[9] Of course, it always is appropriate for a district court to assess whether requested evidence may be relevant to the case and to the defense thereof when deciding whether the evidence must be made available to the defense. The United States has conceded that point by agreeing to make the hard drive available to Knellinger's counsel before § 3509(m) was enacted. Moreover, the record developed since then shows that the hard drive could form the basis for a viable defense. Neither § 3509(m) nor any other principle of law cited by the United States or known to the Court requires more.

using real children or by using computer imaging." 535 U.S. at 254. The rather obvious implication of that argument, of course, is that improvements in technology may make it increasingly difficult for laymen to distinguish pornography produced with real children from pornography produced with virtual children. Furthermore, the Supreme Court has recognized the potential availability of the defense that Knellinger wishes to develop. Id. at 254-55. And, this record establishes that a respected and competent lawyer has pursued this defense and has had child pornography analyzed by experts in assessing the availability of that defense. For the foregoing reasons and on this record, the Court is loath to foreclose to Knellinger the opportunity to explore the possibility that the child pornography at issue here was produced without the use of real children.[10]

As to the second point, the record here establishes that the defense theory being pursued by Knellinger requires a kind of analysis that cannot be conducted feasibly by outside experts in the facility as offered by the United States. Even though, as the United States pointed out, it is theoretically possible for outside experts to transport their equipment to a Government facility and

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[10] After Ashcroft, Congress amended its child pornography statutes in a manner that still proscribes certain computer-generated images of child pornography. See 18 U.S.C. 2256(8)(b). As noted above, however, Knellinger is not charged under that definition of child pornography, so Knellinger's proposed "virtual child" defense is viable in this case.

conduct their analyses on-site, the practical reality is that experts would not agree to such terms and that Knellinger ultimately would be prevented from conducting his analysis at all. Considering the testimony from the legal and technical experts in this case and the absence of any opposing evidence, the Court concludes that, at least in this case, the record permits no other factual conclusion.

The United States also argues that Knellinger's request to analyze the child pornography in this case is "disingenuous." (Id. at 3.) The United States argues that Knellinger has not yet hired an expert like Owen or Griffin to conduct the analysis, and that Knellinger has not contacted the United States about conducting such an analysis in a Government facility were an expert like Owen or Griffin hired. (Id. at 3-5.) A simple explanation for this, however, is that, as far as the Court can tell from the record, a reasonable expert would not agree to conduct the analysis required in this case because of the cost and difficulty of moving the necessary equipment to, and adequately providing the appropriate services in, a Government facility. Therefore, it would make sense that Knellinger has not yet hired an expert because Knellinger has not known whether or not he will be given a copy of the child pornography in this case. Moreover, the record provides good reason to conclude that Knellinger is not, as the United States puts it, simply engaging in "litigation for litigation's sake"

because of the great cost associated with conducting the analysis that the evidence shows to be appropriate here. (United States' Resp. at 5.)

Because the United States did not present evidence that contradicts the evidence put forth by Knellinger, and because Knellinger's witnesses were both credible and relevant, the Court accepts the showing made by Knellinger's experts as true. On this record, which includes the evidence from Knellinger's legal and technical expert witnesses, the Court finds that technical expert witnesses are a necessary component of the assessment and presentation of a viable legal defense that is available to Knellinger, and that the United States has not provided Knellinger an ample opportunity for those experts, or counsel in conjunction with the experts, to conduct the required analysis of the child pornography in this case at a Government facility. The Court further concludes that the analysis described by Owen and Griffin at the evidentiary hearing constitutes an "examination" within the plain meaning of 18 U.S.C. § 3509(m)(2).[11]

Thus, under the terms of § 3509(m), it is necessary to order production of a copy of the hard drive to the defense. Production is necessary to ensure Knellinger an ample opportunity to conduct the examination described by Owen and Griffin at the evidentiary hearing, and to give his counsel an opportunity to participate in

[11] To "examine" means "to test by an appropriate method," and an "examination" is "the act or process of examining." Webster's Third New International Dictionary 790 (1961).

that examination in order to evaluate its ramifications for the legal defenses Knellinger might raise.[12]

However, the Court also is mindful that Knellinger has not yet advised that he has retained expert witnesses to examine the copy of the hard drive here at issue. And, the record establishes that a copy of the hard drive is of no use to the defense unless there is a defense expert to examine the copy. Therefore, it would be contrary to the provisions of § 3509(m) to require delivery of a copy of the hard drive unless the defendant promptly advises the Court that it has retained an expert witness for that purpose.

In sum, the statute, § 3509(m), can be given a reasonable construction which avoids the need for a constitutional decision in this case. That construction simply requires the Court to ascertain on the basis of a record whether the statutorily required ample opportunity to examine, view, and inspect the hard drive has been given. If not, the statute permits a copy to be supplied. On this record, the ample opportunity has not been provided, and production of a copy, on certain terms, will be required.

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[12] The United States has conceded that "[a]mple opportunity also requires that the defense is able to prepare any exhibits it deems necessary to be used in support of their case." (See United States' Resp. at 17.) That issue is not presently before the Court, so a mirror image copy of Knellinger's hard drive will not be allowed, at this point, to be used by Knellinger's experts or counsel to produce exhibits. That issue will be taken up, as necessary, at a later time.

CONCLUSION

For the foregoing reasons, Knellinger's motion to dismiss the indictment based on the unconstitutionality of § 18 U.S.C. § 3509(m) (Docket No. 46) is denied. However, because the Court also concludes that the United States cannot provide Knellinger an ample opportunity to inspect, view, and examine the child pornography listed in the Superseding Indictment, the Court, pursuant to 18 U.S.C. § 3509(m)(2), will order a mirror image copy of Knellinger's hard drive provided to Knellinger's counsel and made available to either Tom Owen or James Griffin if counsel for Knellinger certifies to the Court that the copy will be used for the assessment or presentation of a defense as discussed by Owen, Griffin and Sirkin during the evidentiary hearing held on November 6, 2006. Custody and use of that copy will be subject to an appropriate protective order that, inter alia, will punish any distribution or publication not authorized.

The Clerk of the Court is directed to send a copy of this Memorandum Opinion to all counsel of record.

It is so ORDERED.

/s/
Robert E. Payne
United States District Judge

Richmond, Virginia
Date: January 25, 2007

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

SEAN PARNELL, GOVERNOR

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January 19, 2010

Senator Hollis French
Chair, Senate Judiciary Committee
Alaska State Capitol, Room 417
Juneau, Alaska 99801

Re: Senate Bill 222 – relating to sexual offenses and domestic violence

Dear Senator French:

I am writing to respectfully request that you schedule Senate Bill 222 for a hearing in the Senate Judiciary Committee at your earliest convenience. SB 222 is one of several bills that the Governor has introduced to confront and help reduce the alarming and discouraging rate of sex offenses and crimes involving domestic violence in our state.

The bill makes important changes to several criminal laws. For example, it clarifies that accessing child pornography with and intent to view it is a crime. A recent court decision found that our statute requires more than viewing child pornography on a computer to be a crime. The bill responds to this decision. The bill also requires a person to register as a sex offender in our state if they are required to do so in another state. Alaska should not be a friendly destination to persons hoping to avoid sex offender registration by moving to our state.

A sectional analysis is attached that describes each provision of the bill.

Thank you for your consideration of this request.

Sincerely,

Daniel S. Sullivan
Attorney General

DSS:ADC: sf

SENATE BILL 222
SEXUAL ASSAULT AND DOMESTIC VIOLENCE
Sectional Analysis

Sections 1 and 2 correct an error made in 2007 when the legislature enacted AS 11.56.759, that adopted a class A misdemeanor if a sex offender violates specific conditions of probation or parole. One of the requirements of the crime is that the person have served the entire period of incarceration imposed for the crime. This is effective for probationers, but not for parolees, because a person is never on parole if he or she has served the entire period of incarceration. A member of the Parole Board brought this issue to our attention, because the statute has caused problems for the board in dealing with parolees. These sections remove parolees from the statute.

Section 3 rewrites AS 11.56.840, failure to register as a sex offender in the second degree. Although the proposal is similar to current law, it removes the requirement that the state prove a culpable mental state for the conduct of not registering or otherwise filing the required notices and information. The state would still be required to prove that the person knew he or she was required to register and failed to do so. The section also adopts an affirmative defense that unforeseeable circumstances outside the control of the person prevented him or her from registering, and that the person contacted the Department of Public Safety immediately upon being able to do so.

Section 4 would raise a form of harassment in the second degree (that is, with intent to harass or annoy another person, the person subjects the other person to offensive physical contact) to harassment in first degree if the offensive physical contact is by the offender touching the other person's genitals, anus, or female breast. Harassment in the first degree is a class A misdemeanor; the second degree offense is a class B misdemeanor. There have been prosecutions recently involving offensive touchings that occurred so quickly that the court concluded that the victim did not have time to convey lack of consent to the offender. The court reduced these charges from sexual assault to harassment in the second degree. This conduct is more serious that a class B misdemeanor; the bill would raise it to a class A misdemeanor.

Sections 5, 6, and 7 address a problem with Alaska law prohibiting possession of child pornography that was raised by a recent decision of the Alaska Court of Appeals, *Worden v. State*, 213 P.3d 144 (Alaska App. 2009). *Worden* held that our current statute does not prohibit a person from viewing child pornography on a computer; rather, the statute requires that the person must also save it on the computer to be considered to possess it. In response to this decision, the bill adopts the federal approach. It prohibits possession of child pornography, and it also prohibits a person from knowingly accessing child pornography on a computer with the intent to view it.

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The bill also proposes an affirmative defense that is similar to federal law. The affirmative defense would address a situation where a person finds child pornography on their computer, and did not obtain it themselves. The defense requires that there are three or less depictions, and the person, without showing the material to another person except law enforcement, destroys the depictions or contacts law enforcement and turns it over to them.

Sections 8, 9, and 10 amend the crime that prohibits the electronic distribution of indecent material to minors by expanding the offense to prohibit any distribution of indecent material to minors.

Section 11 adds the crimes of human trafficking in the first and second degrees, distribution of child pornography, possession of child pornography, and distribution of indecent materials to minors to the crimes that are not eligible for a suspended imposition of sentence.

Section 11 also includes an amendment that removes "substantially" when describing a crime in another jurisdiction that may be a predicate conviction that would disallow the use of a suspended imposition of sentence for other offenses. This conforms with other statutes that require that a predicate offense in another jurisdiction be only similar to an offense in Alaska. Examples include AS 12.55.145(a) (presumptive sentencing), AS 11.41.320(a)(5) (third degree assault), and AS 11.41.110(a)(5) (murder in the second degree).

Section 12 adds to the conditions of probation that may be imposed on a person convicted of a sex offense. It gives the court discretion to order the person to submit e-mail addresses and other networking addresses to his or her probation officer, who would be required to give this information to the Troopers and to the local law enforcement agency. If the person was convicted of sexual abuse of a minor or an offense related to child pornography, it gives the court discretion to prohibit the person from using an Internet site, communicating with children under 16 years of age, or possessing or using a computer.

Section 13 amends the aggravating factor at sentencing that allows the court to increase a sentence above the sentencing range if the defendant knew that the victim was particularly vulnerable. It does this by adding the consumption of alcohol or drugs as factors that might make a victim particularly vulnerable.

Section 14 adds two new aggravating factors to the sentencing law. First, it allows the court to increase a sentence above the sentencing range for a crime against a person (AS 11.41) committed against a person that the defendant was dating or with whom the defendant has engaged in a sexual relationship. Second, it allows the court to increase the sentence if the defendant is convicted of sexual abuse of a minor in the second degree under AS 11.41.436(a)(2) (a person 16 years of age or older having sexual contact with a child under 13 years old), if the defendant is 18 years old or older.

Section 15 adds a new provision to sex offender registration law that requires a person present in Alaska, who is convicted of an offense out of state that requires registration in that jurisdiction, to register in Alaska. This requirement would apply even if Alaska does not have a criminal provision similar to the crime in the other state that requires registration there.

Section 16 amends Rule 16(b)(1)(A) by prohibiting the copying of child pornography as part of the discovery process in a criminal prosecution. It would allow defense counsel, the defendant, and defense experts to examine the material, but it must be kept in the custody and control of a law enforcement agency or the prosecuting authority. Federal law has a similar provision. 18 U.S.C.A. § 3509(m).

Sections 17 and 18 include the applicability and effective date provisions.

SB

239

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Alaska State Legislature

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Session:
State Capitol Building
Juneau, Alaska 99801-1182
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Senator Kevin Meyer
Senate District O

TO: Senator Kevin Meyer
FROM: Christine R. Marasigan, Legislative Aide
DATE: March 19, 2010
RE: SB 239: Correction on number of ignition interlock devices issued in Alaska in 2009

After the March 11th Senate Judiciary Hearing on SB 239, there was some concern expressed over the presentation of the 218 limited licenses issued as compared to over 3,513 court orders for ignition interlock devices in 2009.

I did contact DMV again to verify the count. In my correspondence with Kerry Hennings, Drivers License Manager for the Department of Motor Vehicles, she stated that there were 218 applications for limited licenses of which 193 were approved. These are licenses which require proof of an ignition interlock device installation.

According to Cindy Cashen at the Highway Safety Office, there were 1,245 IIDs installed in the state in 2009. Cashen contacted four interlock providers. A breakdown of the companies and numbers of IID's installed is provided below.

Smart Start	570
Draeger Safety Diagnostics	500
Autosense International	130
LifeSafer Interlock	45
Total:	**1,245**

I also contacted two IID providers. The first provider, located in Fairbanks, stated that in 2009 he installed approximately 500 devices and gave anecdotes of people keeping the IID after the required court ordered time. The second provider, located in Anchorage, stated that he installed 130 IIDs, he gave anecdotes of more female drivers being compliant than male drivers.

26-LS1210\S
Luckhaupt
3/1/10

CS FOR SENATE BILL NO. 239( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR MEYER

A BILL

FOR AN ACT ENTITLED

"An Act relating to ignition interlock devices, to refusal to submit to a chemical test, and to driving while under the influence."

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

*** Section 1.** AS 11.76.140(a) is amended to read:

(a) A person commits the crime of avoidance of ignition interlock device if the person knowingly

(1) circumvents or tampers with an ignition interlock device in a manner intended to allow a person on probation under AS 12.55.102, with a condition of sentence under AS 12.55.102 **or another section**, or who has an ignition interlock limited license to avoid using the device;

(2) rents a motor vehicle to a person and with criminal negligence disregards the fact that the person is on probation under AS 12.55.102, has a condition of sentence under AS 12.55.102 **or another section**, or has an ignition interlock limited license, unless the vehicle is equipped with an ignition interlock device

described in AS 12.55.102; or

(3) loans a motor vehicle to a person and knowingly disregards the fact that the person is on probation under AS 12.55.102, has a condition of sentence under AS 12.55.102 **or another section**, or has an ignition interlock limited license, unless the vehicle is equipped with an ignition interlock device described in AS 12.55.102.

*** Sec. 2.** AS 28.35.030(b) is amended to read:

(b) Except as provided under (n) of this section, driving while under the influence of an alcoholic beverage, inhalant, or controlled substance is a class A misdemeanor. Upon conviction,

(1) the court shall impose a minimum sentence of imprisonment of

(A) not less than 72 consecutive hours, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of **six** [12] months [DURING THE PERIOD OF PROBATION], and impose a fine of not less than $1,500 if the person has not been previously convicted;

(B) not less than 20 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of **12** [24] months [DURING THE PERIOD OF PROBATION], and impose a fine of not less than $3,000 if the person has been previously convicted once;

(C) not less than 60 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of **18** [36] months [DURING THE PERIOD OF PROBATION], and impose a fine of not less than $4,000 if the person has been previously convicted twice and is not subject to punishment under (n) of this section;

(D) not less than 120 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle **for a minimum of 24 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $5,000 if the person has been previously convicted three times and is

not subject to punishment under (n) of this section;

(E) not less than 240 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle **for a minimum of 30 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $6,000 if the person has been previously convicted four times and is not subject to punishment under (n) of this section;

(F) not less than 360 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle **for a minimum of 36 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $7,000 if the person has been previously convicted more than four times and is not subject to punishment under (n) of this section;

(2) the court may not

(A) suspend execution of sentence or grant probation except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; [AND]

(ii) pay the minimum fine required under (1) of this subsection;

(B) suspend imposition of sentence; **or**

(C) suspend the requirement for an ignition interlock device;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the motor vehicle, aircraft, or watercraft that was used in commission of the offense be forfeited under AS 28.35.036; and

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under

another provision of law.

*** Sec. 3.** AS 28.35.030(g) is amended to read:

(g) Notwithstanding (b) of this section, [IF THE COURT IMPOSES PROBATION UNDER AS 12.55.102] the court may reduce the fine required to be imposed under (b) of this section by the cost of the ignition interlock device.

*** Sec. 4.** AS 28.35.030(n) is amended to read:

(n) A person is guilty of a class C felony if the person is convicted under (a) of this section and either has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense, or punishment under this subsection or under AS 28.35.032(p) was previously imposed within the last 10 years. For purposes of determining minimum sentences based on previous convictions, the provisions of (u)(4) of this section apply. Upon conviction, the court

(1) shall impose a fine of not less than $10,000, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle **for a minimum of 60 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a minimum sentence of imprisonment of not less than

(A) 120 days if the person has been previously convicted twice;

(B) 240 days if the person has been previously convicted three times;

(C) 360 days if the person has been previously convicted four or more times;

(2) may not

(A) suspend execution of sentence or grant probation except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; [AND]

(ii) pay the minimum fine required under (1) of this subsection; [OR]

(B) suspend imposition of sentence; **or**

(C) suspend the requirement for an ignition interlock

device;

(3) shall permanently revoke the person's driver's license, privilege to drive, or privilege to obtain a license subject to restoration of the license under (o) of this section;

(4) may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs, intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law;

(5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft, or aircraft used in the commission of the offense, subject to remission under AS 28.35.037; and

(6) shall order the department to revoke the registration for any vehicle registered by the department in the name of the person convicted under this subsection; if a person convicted under this subsection is a registered co-owner of a vehicle or is registered as a co-owner under a business name, the department shall reissue the vehicle registration and omit the name of the person convicted under this subsection.

*** Sec. 5.** AS 28.35.030(t) is amended to read:

(t) Notwithstanding (b) **or** [,] (n) [, OR (r)] of this section, the court shall waive the requirement of the use of an ignition interlock device when a person operates a motor vehicle in a community included on the list published by the department under AS 28.22.011(b).

*** Sec. 6.** AS 28.35.032(g) is amended to read:

(g) Upon conviction under this section,

(1) the court shall impose a minimum sentence of imprisonment of

(A) not less than 72 consecutive hours, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of **six** [12] months [DURING THE PERIOD OF PROBATION], and impose a fine of not less than $1,500 if the person has not been previously convicted;

(B) not less than 20 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of **12** [24] months [DURING THE PERIOD OF PROBATION], and impose a fine of not less than $3,000 if the person has been previously convicted once;

(C) not less than 60 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of **18** [36] months [DURING THE PERIOD OF PROBATION], and impose a fine of not less than $4,000 if the person has been previously convicted twice and is not subject to punishment under (p) of this section;

(D) not less than 120 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle **for a minimum of 24 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $5,000 if the person has been previously convicted three times and is not subject to punishment under (p) of this section;

(E) not less than 240 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle **for a minimum of 30 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $6,000 if the person has been previously convicted four times and is not subject to punishment under (p) of this section;

(F) not less than 360 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle **for a minimum of 36 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $7,000 if the person has been previously convicted more than four times and is not subject to punishment under (p) of this section;

(2) the court may not

(A) suspend execution of the sentence required by (1) of this

subsection or grant probation, except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; [AND]

(ii) pay the minimum fine required under (1) of this subsection; [OR]

(B) suspend imposition of sentence; **or**

(C) suspend the requirement for an ignition interlock device;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the motor vehicle, aircraft, or watercraft that was used in commission of the offense be forfeited under AS 28.35.036;

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law; and

(5) the sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the person.

* **Sec. 7.** AS 28.35.032(k) is amended to read:

(k) Notwithstanding (g) of this section, [IF THE COURT IMPOSES PROBATION UNDER AS 12.55.102] the court may reduce the fine required to be imposed under (g) of this section by the cost of the ignition interlock device.

* **Sec. 8.** AS 28.35.032(p) is amended to read:

(p) A person is guilty of a class C felony if the person is convicted under this section and either has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense, or punishment under this subsection or under AS 28.35.030(n) was previously imposed within the last 10 years. For purposes of determining minimum sentences based on previous convictions, the provisions of AS 28.35.030(u)(4) apply. Upon conviction,

(1) the court shall impose a fine of not less than $10,000, require the

person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle **for a minimum of 60 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a minimum sentence of imprisonment of not less than

(A) 120 days if the person has been previously convicted twice;

(B) 240 days if the person has been previously convicted three times;

(C) 360 days if the person has been previously convicted four or more times;

(2) the court may not

(A) suspend execution of the sentence required by (1) of this subsection or grant probation, except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; [AND]

(ii) pay the minimum fine required under (1) of this subsection; [OR]

(B) suspend imposition of sentence; **or**

(C) suspend the requirements for an ignition interlock device;

(3) the court shall permanently revoke the person's driver's license, privilege to drive, or privilege to obtain a license subject to restoration under (q) of this section;

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug, or combination of drugs, intended to prevent consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law;

(5) the sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the person;

(6) the court shall order forfeiture under AS 28.35.036, of the motor vehicle, aircraft, or watercraft used in the commission of the offense, subject to

remission under AS 28.35.037; and

(7) the court shall order the department to revoke the registration for any vehicle registered by the department in the name of the person convicted under this subsection; if a person convicted under this subsection is a registered co-owner of a vehicle, the department shall reissue the vehicle registration and omit the name of the person convicted under this subsection.

* **Sec. 9.** AS 12.55.102(e)(2) and AS 28.35.030(r) are repealed.

26-LS1210\E
Luckhaupt
2/20/10

CS FOR SENATE BILL NO. 239( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR MEYER

A BILL

FOR AN ACT ENTITLED

"An Act relating to ignition interlock devices, to refusal to submit to a chemical test, and to driving while under the influence."

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

*** Section 1.** AS 28.35.030(b) is amended to read:

(b) Except as provided under (n) of this section, driving while under the influence of an alcoholic beverage, inhalant, or controlled substance is a class A misdemeanor. Upon conviction,

(1) the court shall impose a minimum sentence of imprisonment of

(A) not less than 72 consecutive hours, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of 12 months during the period of probation, and impose a fine of not less than $1,500 if the person has not been previously convicted;

(B) not less than 20 days, require the person to use an ignition

interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of 24 months during the period of probation, and impose a fine of not less than $3,000 if the person has been previously convicted once;

(C) not less than 60 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of 36 months during the period of probation, and impose a fine of not less than $4,000 if the person has been previously convicted twice and is not subject to punishment under (n) of this section;

(D) not less than 120 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle **for a minimum of 60 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $5,000 if the person has been previously convicted three times and is not subject to punishment under (n) of this section;

(E) not less than 240 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle **for a minimum of 60 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $6,000 if the person has been previously convicted four times and is not subject to punishment under (n) of this section;

(F) not less than 360 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle **for a minimum of 60 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $7,000 if the person has been previously convicted more than four times and is not subject to punishment under (n) of this section;

(2) the court may not

(A) suspend execution of sentence or grant probation except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; [AND]

(ii) pay the minimum fine required under (1) of this subsection;

(B) suspend imposition of sentence; **or**

(C) suspend the requirement for an ignition interlock device;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the motor vehicle, aircraft, or watercraft that was used in commission of the offense be forfeited under AS 28.35.036; and

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law.

* **Sec. 2.** AS 28.35.030(g) is amended to read:

(g) Notwithstanding (b) of this section, [IF THE COURT IMPOSES PROBATION UNDER AS 12.55.102] the court may reduce the fine required to be imposed under (b) of this section by the cost of the ignition interlock device.

* **Sec. 3.** AS 28.35.030(n) is amended to read:

(n) A person is guilty of a class C felony if the person is convicted under (a) of this section and either has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense, or punishment under this subsection or under AS 28.35.032(p) was previously imposed within the last 10 years. For purposes of determining minimum sentences based on previous convictions, the provisions of (u)(4) of this section apply. Upon conviction, the court

(1) shall impose a fine of not less than $10,000, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle **for a minimum of 10 years** [THROUGHOUT THE PERIOD OF

PROBATION], and impose a minimum sentence of imprisonment of not less than

(A) 120 days if the person has been previously convicted twice;

(B) 240 days if the person has been previously convicted three times;

(C) 360 days if the person has been previously convicted four or more times;

(2) may not

(A) suspend execution of sentence or grant probation except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; [AND]

(ii) pay the minimum fine required under (1) of this subsection; [OR]

(B) suspend imposition of sentence; **or**

(C) suspend the requirement for an ignition interlock device;

(3) shall permanently revoke the person's driver's license, privilege to drive, or privilege to obtain a license subject to restoration of the license under (o) of this section;

(4) may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs, intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law;

(5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft, or aircraft used in the commission of the offense, subject to remission under AS 28.35.037; and

(6) shall order the department to revoke the registration for any vehicle registered by the department in the name of the person convicted under this subsection; if a person convicted under this subsection is a registered co-owner of a vehicle or is registered as a co-owner under a business name, the department shall

reissue the vehicle registration and omit the name of the person convicted under this subsection.

*** Sec. 4.** AS 28.35.030(t) is amended to read:

(t) Notwithstanding (b) **or** [,] (n) [, OR (r)] of this section, the court shall waive the requirement of the use of an ignition interlock device when a person operates a motor vehicle in a community included on the list published by the department under AS 28.22.011(b).

*** Sec. 5.** AS 28.35.032(g) is amended to read:

(g) Upon conviction under this section,

(1) the court shall impose a minimum sentence of imprisonment of

(A) not less than 72 consecutive hours, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of 12 months during the period of probation, and impose a fine of not less than $1,500 if the person has not been previously convicted;

(B) not less than 20 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of 24 months during the period of probation, and impose a fine of not less than $3,000 if the person has been previously convicted once;

(C) not less than 60 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of 36 months during the period of probation, and impose a fine of not less than $4,000 if the person has been previously convicted twice and is not subject to punishment under (p) of this section;

(D) not less than 120 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle **for a minimum of 60 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $5,000 if the person has been previously convicted three times and is not subject to punishment under (p) of this section;

(E) not less than 240 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle **for a minimum of 60 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $6,000 if the person has been previously convicted four times and is not subject to punishment under (p) of this section;

(F) not less than 360 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle **for a minimum of 60 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $7,000 if the person has been previously convicted more than four times and is not subject to punishment under (p) of this section;

(2) the court may not

(A) suspend execution of the sentence required by (1) of this subsection or grant probation, except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; [AND]

(ii) pay the minimum fine required under (1) of this subsection; [OR]

(B) suspend imposition of sentence; **or**

(C) suspend the requirement for an ignition interlock device;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the motor vehicle, aircraft, or watercraft that was used in commission of the offense be forfeited under AS 28.35.036;

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law; and

(5) the sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the person.

*** Sec. 6.** AS 28.35.032(p) is amended to read:

(p) A person is guilty of a class C felony if the person is convicted under this section and either has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense, or punishment under this subsection or under AS 28.35.030(n) was previously imposed within the last 10 years. For purposes of determining minimum sentences based on previous convictions, the provisions of AS 28.35.030(u)(4) apply. Upon conviction,

(1) the court shall impose a fine of not less than $10,000, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle **for a minimum of 10 years** [THROUGHOUT THE PERIOD OF PROBATION], and impose a minimum sentence of imprisonment of not less than

(A) 120 days if the person has been previously convicted twice;

(B) 240 days if the person has been previously convicted three times;

(C) 360 days if the person has been previously convicted four or more times;

(2) the court may not

(A) suspend execution of the sentence required by (1) of this subsection or grant probation, except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; [AND]

(ii) pay the minimum fine required under (1) of this subsection; [OR]

(B) suspend imposition of sentence; **or**

(C) suspend the requirements for an ignition interlock device;

(3) the court shall permanently revoke the person's driver's license, privilege to drive, or privilege to obtain a license subject to restoration under (q) of this section;

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug, or combination of drugs, intended to prevent consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law;

(5) the sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the person;

(6) the court shall order forfeiture under AS 28.35.036, of the motor vehicle, aircraft, or watercraft used in the commission of the offense, subject to remission under AS 28.35.037; and

(7) the court shall order the department to revoke the registration for any vehicle registered by the department in the name of the person convicted under this subsection; if a person convicted under this subsection is a registered co-owner of a vehicle, the department shall reissue the vehicle registration and omit the name of the person convicted under this subsection.

*** Sec. 7.** AS 12.55.102(e)(2) and AS 28.35.030(r) are repealed.

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM March 12, 2010

SUBJECT: Sectional Summary - CSSB 239( ), "S" Version
(Work Order No. 26-LS1210\S)

TO: Senator Kevin Meyer
Attn: Christine Marasigan

FROM: Gerald P. Luckhaupt
Legislative Counsel

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

Section 1 amends AS 11.76.140(a) to provide criminal liability in relation to ignition interlock devices regardless of whether the requirement to use the ignition interlock devices arises under AS 12.55.102 or another statute.

Section 2 amends AS 28.35.030(b), misdemeanor drunk driving, to provide that the requirement for an ignition interlock device for drunk drivers applies regardless of whether the offender receives probation; starts at a minimum of six months for a first offender and increases by six months for each offense (this is a minimum period for use of an interlock the court may impose a greater period); and provides that the ignition interlock requirement may not be suspended by the court.

Section 3 amends AS 28.35.030(g) to conform to sec. 2, as ignition interlock is no longer tied to probation.

Section 4 amends AS 28.35.030(n), the felony drunk driving statute, in a manner similar to sec. 2, by no longer tying imposition of ignition interlock to probation. In addition, this section requires the use of an ignition interlock device for a minimum of five years for anyone convicted of felony drunk driving and provides that the ignition interlock requirement may not be suspended.

Section 5 makes a technical change to correspond to the repeal of AS 28.35.030(r) in sec. 9 of the bill.

Section 6 amends AS 28.35.032(g), misdemeanor refusal to submit to a chemical test, by making the same changes that are made in sec. 2 of the bill for misdemeanor drunk driving.

Section 7 amends AS 28.35.032(k) to conform to sec. 6, as ignition interlock is no longer tied to probation.

Section 8 amends AS 28.35.032, felony refusal to consent, by making the same changes that are made in sec. 4, felony drunk driving.

Section 9 repeals AS 12.55.102(e)(2) and AS 28.35.030(r).

GPL:ljw
10-166.ljw

Using SB 284 Version P (differences from HB 409)

Sec. 2. AS 15.13.030

Page 2, after line 27, there would be another paragraph:

(11) make available to the public information contained in a report filed under AS 15.13.040(e) within 24 hours after filing of the report with the commission.

Sec. 4. AS 15.13.040(e)

Page 3, line 5 after "commission." There would be another line:

If the report is filed by a person that is not an individual, the report must be certified as correct by the treasurer of fiscal officer of the person.

Page 3, line 14, after address, insert **nationality**

Sec. 13. AS 15.13.090(a)

Page 7, line 10, it would identify the person's **three** largest contributors, not five

Sec. 14. AS 15.13.090(c)

Page 7, line 25, there would be an additional section:

(c) The provisions of this subsection apply to a person who makes an independent expenditure for communication described in (a) of this section. If the person making the independent expenditure is not an individual, the responsible officer or officers of the person shall be held personally, jointly, and severally liable together with the person for the payment of all civil damages for which the person may be liable as a result of the communication.

Sec. 15. AS 15.13.110(g) would require filing with the commission not later than 24 hours after expenditure has been made.

Page 10 ... A severability section:

Section 21. The uncodified law of the State of Alaska is amended by adding a new section to read:

SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application of it to any person or circumstance, is held invalid, the remainder of this Act and the application to other persons or circumstances are not affected.

ALASKA STATE LEGISLATURE

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Senator_Kevin_Meyer@legis.state.ak.us

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Juneau, Alaska 99801-1182
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SENATOR KEVIN MEYER
SENATE DISTRICT O

SPONSOR STATEMENT FOR SB 239

"An Act relating to ignition interlock devices, to refusal to submit to a chemical test, and to driving while under the influence."

SB 239 would clarify the sentencing statutes regarding the use of ignition interlock device (IID).

Effective in 2009, legislation was passed mandating an IID as part of the sentencing for driving while under the influence of an alcoholic beverage, inhalant, or controlled substance.

In 2009, there were 3,513 court orders requiring IID. In 2009 only 218 limited licenses for IID were actually issued. There have been some reports of the IID being suspended in sentencing and of people "waiting out" the probationary period so as not to be required to install an IID.

SB 239 would seek to remedy these loopholes by 1) requiring an IID whenever a person regains and exercises their driving privilege and 2) lists an IID as a condition of sentencing that cannot be suspended.

According to the National Conference of State Legislatures January 2010 Legisbrief, research shows that installation of an IID reduces recidivism between 50 and 90 percent.

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Wrangell

February 2, 2010

Senator Kevin Meyer
Alaska State Senate
State Capitol
Juneau AK 99801-1182

Dear Senator Meyer:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing Senate Bill 239, an act relating to ignition interlock devices, to refusal to submit to a chemical test, and to driving while under the influence.

The APOA State Board of Directors recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

John Lucking, Jr.
State President

SB

241

1987

COMPARISON OF FEDERAL INNOCENCE PROTECTION ACT TO SB 241, SEC. 6

Most of the provisions of section of 6 of SB 241 were drawn from the federal Innocence Protection Act (IPA), 18 U.S.C. § 3600. (A copy of the IPA is attached.) The following is a comparison of the provisions of the IPA and section 6 of SB 241, which would establish procedures for postconviction DNA testing.

Innocence Protection Act – 18 U.S.C. § 3600	*HB 241, sec. 6 – AS 12.73*
The IPA authorizes postconviction DNA testing for applicants who have been convicted of any federal crime and received a sentence of death or imprisonment. § 3600(a)(1)(A). (The IPA also applies (with some additional limitations) to a state conviction evidence of which was admitted at a federal death-sentencing hearing when exoneration of the state offense would entitle the applicant to a reduced sentence or resentencing. § 3600(a)(B)(i).)	HB 241 would apply only to persons who have been convicted of a felony offense against a person under AS 11.41. AS 12.73.010(a)
The IPA requires the applicant to assert under penalty of perjury that he is innocent of the offense for which he is imprisoned. § 3600(a)(1)(A).	HB 241 would require the applicant to attest that he did not (1) commit the offense for which he was convicted or any lesser included offense or (2) solicit another person to commit, or aid and abet another person in planning or committing the offense or any lesser included offense. AS 12.73.010(b)(1).
The IPA limits testing to only specific evidence obtained in relation to the investigation or prosecution of the offense for which the applicant claims to be innocent. § 3600(a)(2).	HB 241 would require that the evidence to be tested have been obtained as part of the investigation or prosecution of the offense for which the applicant claims to be innocent. AS 12.73.020(4).

COMPARISON OF FEDERAL INNOCENCE PROTECTION ACT TO SB 241, SEC. 6

If the evidence to be tested was not previously subjected to DNA testing, the IPA requires that the applicant did not knowingly or voluntarily waive the right to request testing after the enactment date of the IPA or knowingly fail to request DNA testing of that evidence in a prior motion for postconviction DNA testing. § 3600(a)(3)(A).	If the evidence to be tested was not previously subjected to DNA testing, HB 241 would require that the applicant did not waive or that his lawyer did not forgo for tactical reasons the right to request DNA testing. AS 12.73.020(5)(A).
If the evidence was previously subjected to DNA testing, the IPA requires that the testing currently sought be based on a new technology that is substantially more probative than the prior DNA testing. § 3600(a)(3)(B).	If the evidence was previously subjected to DNA testing, HB 241 would require that the testing currently sought be based on a method or technology that is substantially more probative than the prior DNA testing and that the applicant did not waive or that his lawyer did not forgo for tactical reasons the right to request DNA testing whose probative value was similar to the method to be used in the requested testing. AS 12.73.020(5)(B).
The IPA requires that the evidence to be tested must be in the government's possession, has been subject to a chain of custody, and retained under conditions that ensure the integrity of the evidence. § 3600(a)(4).	HB 241 would impose the same requirements of chain of custody and retention. AS 12.73.020(6). (HB 241 does not expressly require that the evidence be in the government's possession, but that requirement is implied by AS 12.73.020(4), which requires that the evidence to be tested must have been obtained as part of the investigation or prosecution of an offense.)
The IPA requires that the proposed testing be reasonable in scope and involves scientifically sound methods consistent with forensic practices. § 3600(a)(5).	HB 241 has an identical requirement. AS 12.73.020(7).

Innocence Protection Act – 18 U.S.C. § 3600	*HB 241, sec. 6 – AS 12.73*
The IPA requires the applicant to identify a theory of defense that is not inconsistent with an affirmative defense presented at trial and that would establish the applicant's actual innocence of the offense for which he seeks exoneration. § 3600(a)(6).	HB 241 has an identical requirement. AS 12.73.020(8).
If the applicant was convicted after a trial, the IPA requires that the identity of the perpetrator must have been an issue at the applicant's trial. § 3600(a)(7).	HB 241 would require that the identity of the perpetrator must have been a disputed issue at the applicant's trial. AS 12.73.020(9).
The IPA requires that the requested DNA testing of the evidence "may produce new material evidence" that would support the theory of defense identified by the applicant and would "raise a reasonable probability that the applicant did not commit the offense." § 3600(a)(8).	HB 241 would require that the requested DNA testing of the evidence "will produce new material evidence" that would support the theory of defense identified by the applicant and "could conclusively establish that the applicant is innocent." AS 12.73.020(10).
The IPA requires that the applicant consent to provide a DNA sample for comparison purposes. § 3600(a)(9). The IPA also requires that any results of testing relating to the applicant's DNA be submitted to the National DNA Index System (NDIS). § 3600(e)(2).	HB 241 would impose a similar requirement. HB 241 would require the defendant to consent to entering the results into the DNA identification registration system (AS 44.41.035) and any other law enforcement database. AS 12.73.020(11).

Innocence Protection Act – 18 U.S.C. § 3600	*HB 241, sec. 6 – AS 12.73*
The IPA requires that the request for testing be timely. § 3600(a)(10). Timeliness is determined by two rebuttable presumptions:	HB 241 would require that the request for testing be timely. AS 12.73.020(12). Timeliness would be determined by two rebuttable presumptions:
(1) a motion made within the later of 5 years after enactment of the IPA or 3 years after conviction is presumed to be timely; this presumption may be rebutted by showing (a) the motion is based solely on information used in a previously denied motion or (b) by clear and convincing evidence that the motion is solely for the purpose of delay or harassment;	(1) an application filed within 3 years after the date of conviction would be presumed to be timely; this presumption may be rebutted by showing that the application is based solely on information used in a previously denied application;
(2) a motion filed after the above deadlines is presumed to be untimely; this presumption may be rebutted by showing (a) that the applicant is incompetent and that incompetence substantially contributed to the delay in filing, (b) the evidence to be tested is newly discovered evidence, (c) the motion is not based solely on the applicant's own assertion of innocence and, based on all relevant facts and circumstances surrounding the motion, denial of the motion would be manifestly unjust, or (d) "upon good cause shown." § 3600(a)(10).	(2) an application filed after the above deadline would be presumed to be untimely; this presumption may be rebutted by showing (a) that the applicant is incompetent and that incompetence substantially contributed to the delay in filing, or (b) "other good cause" for the delay. AS 12.73.040.
When an applicant files a motion under the IPA, the court must notify the government, direct the government to preserve the specific evidence referred to in the motion, and may appoint a lawyer for the applicant. § 3600(b).	HB 241 would require an applicant to serve the application on "the prosecuting authority responsible for obtaining the conviction." AS 12.73.010(a).

Innocence Protection Act – 18 U.S.C. § 3600	*HB 241, sec. 6 – AS 12.73*
The IPA requires that any DNA testing ordered by carried out by the FBI, but the court may allow testing by another qualified laboratory so long as integrity of the evidence and reliability of the testing is ensured. The cost of testing shall be borne by the applicant, but if the applicant is indigent, the government will bear the cost. § 3600(c).	HB 241 would require that testing by performed at a laboratory operated or approved by the Department of Public Safety and at the state's expense. A court could order additional testing at the applicant's request, but that would be at the applicant's expense. In addition, the laboratory selected by the applicant would have to satisfy national quality-assurance standards. The applicant would also have to pay any reasonable costs for retrieving the evidence from storage before testing. AS 12.73.050(c).
Under the IPA, if the results of the new DNA testing are inconclusive or show that the applicant was the source of the evidence, then the applicant's sample may be retained in the NDIS. § 3600(e)(3)(A). If the results of the new DNA testing exclude the applicant as the source, but the applicant's DNA matches evidence of another offense, then the Attorney General must notify the appropriate agency and preserve the applicant's sample. § 3600(e)(3)(B). If the results of the new DNA testing exclude the applicant as the source and there exists no match with evidence of another offense, then the applicant's sample shall be destroyed and no information may be retained in the NDIS absent some other basis for retention. § 3600(e)(3)(C).	HB 241 would require that results of any testing of the applicant's DNA be entered in the DNA identification registration system under AS 44.41.035. While HB 241 makes no provision for destruction of samples or retention of information, AS 44.41.035(*i*) authorizes a court to order destruction of DNA material included in the system.

Innocence Protection Act – 18 U.S.C. § 3600

HB 241, sec. 6 – AS 12.73

Notwithstanding any other limitations that may exist, the IPA authorizes an applicant to file a motion for new trial if the new DNA testing excluded the applicant as the source of the evidence. § 3600(g)(1). The court must grant the motion if the DNA test results, "when considered with all other evidence in the case (regardless of whether such evidence was introduced at trial), establish by compelling evidence that a new trial would result in an acquittal of the offense for which the applicant is imprisoned. § 3600(g)(2)(A).

HB 241 does not address what would happen if new DNA testing were to exclude the applicant as the source of the evidence. However, a favorable test result would form the basis for an application for postconviction relief based on the existence of new, material facts "that requires vacation of the conviction . . . in the interest of justice," AS 12.72.010(4).

Section 6 of SB 241 includes provisions that find no analogue in the IPA. Both the IPA and section 6 authorize postconviction DNA testing only when a court makes the specific findings set forth in the statutes. *See* § 3600(a); AS 12.73.020. Those findings implicitly establish the factual allegations an applicant must make in the motion under the IPA or the application under section 6. Section 6 goes a step further and requires an applicant to submit affidavits from (1) the applicant, attesting that he did not admit or concede guilt in any official proceeding for the offense that was the basis of the conviction or any lesser included offense, AS 12.73.010(b)(1)(C) (CSHB 316 (Jud) amended this provision by defining admission or concession of guilt to exclude the entry of a guilty or no contest plea); (2) the applicant or his lawyer, describing (a) the results of any DNA testing performed on evidence used in the prosecution and conviction of the applicant and (b) all previous efforts to obtain DNA testing and any previous application filed under AS 12.72 or AS 12.73, AS 12.73.010(b)(2), (3); and (3) the lawyer who represented the applicant in the criminal trial resulting in conviction, describing why DNA testing was not sought before or during the trial, AS 12.73.010(b)(4).

Representative Jay Ramras
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To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover:

From: Jane W. Pierson

Date: March 4, 2010

Re: HB316

Jerry,

The House Judiciary Committee moved out HB316. The HJUD version of the bill will include the following amendments:

Amendment #2 – Amendment A.18

Amendment #3 DOL
Page 3, line 9, following "crime,"
Insert "the person is required to register as a sex offender

Amendment #4 – Amendment A.11

Amendment #5 – Amendment A.17

Amendment #7 – DOL As amended
Page 5, line 6:
Following "a"

1994

Insert: "good faith" The amendment to this amendment is final sentence to read " The burden of proof to establish good faith shall be on the prosecution."

Amendment #9 – DOL

Page 8, line 7

Insert the following:

"for purposes of this section, the entry of a guilty or nolo contender plea is not an admission or concession of guilt;"

Page 8, line 30

Following "conviction;"

Insert the following:

"for the purposes of this section, the entry of a guilty or a nolo contender plea is not an admission of guilt;"

Amendment # 10 – Amendment A.8, as amended as follows, but in proper form:

Page 9, lines 3 – 5:

Delete ", and the applicant did not waive, or the applicant's lawyer did not forgo for tactical reasons, the right to request DNA testing"

Page 9, lines 6 – 13:

Delete all material and insert:

"(B) was previously subjected to DNA testing, and the applicant is requesting DNA testing using a method or technology that is substantially more probative than the previous DNA testing; or

(C) the court determines that granting the application is in the best interest of justice."

Amendment #12 – DOL

Page 9, line 29 delete "conclusively"

Amendment #15 – DOL

Page 10, lines 18-23:

Delete all material and insert:

"three years or more after conviction; this presumption may be rebutted if the court finds good cause for filing three years or more after conviction."

Amendment #16 – A.16

Amendment #17 – DOL

Page 15, between lines 24 and 25:

Insert the following:

"(9) the public defender;

(10) a member of the Alaska Senate appointed by the President of the Senate;

(11) a member of the Alaska House of Representatives appointed by the Speaker of the House."

Amendment #18 – A.19 as amended

After amendment 17 Insert:
(12) a representative of the office of public advocacy
(13) a representative of the Alaska Native Justice Center

Amendment #19 – A.13

Amendment #20 – A.14

Amendment #21 – DOL
Page 16, lines 28 -30
Delete all materials:
Insert the following:
"(c) Notwithstanding any other provision of this Act, a person whose conviction was entered before July 1, 2010, has until July 1, 2013 to file a claim under AS 12.73, or a later date if the court finds good cause for a later filing."

Renumber the following sections accordingly.

	Alaska HB 316	Alaska HB 174	Miss. Code Ann. § 99-39-3, et al.	18 USC 3600	Other States' Statutes
Discovery of new evidence/DNA technology permits interruption of statute of limitations (or ability to rebut presumption of untimeliness)	No	No statute of limitations	Yes	Yes	Only 12 (of 47) states have any time limitations; 5 of those 12 allow for an interruption of the SOL
Potential applicants whose attorneys forewent testing for tactical reasons are explicitly barred	Yes	No	No	No	2
Requirement that trial attorney provide affidavit stating why he did not seek testing	Yes	Yes	No	No	0
Explicit outright bar to potential applicants who admitted guilt	Yes	No	No	No	2; 1 of which provided a date after which pleas would prevent an application
Court may entertain new evidence not introduced at trial to determine whether DNA would provide evidence of innocence*	Yes	No	No	No	0
Requirement that applicant pay for retrieval of evidence	Yes	No	No	No	0

*This element of HB 316 is unheard of among post-conviction DNA testing access statutes. And rightly so, as it permits a judge to take into account any and all evidence of guilt in deciding a motion for mere testing, without requiring the judge to assume exculpatory results. In essence, the judge could cite "overwhelming evidence of guilt" in denying a motion for post-conviction DNA testing. This—despite the fact that appellate judges found harmless error in the appeals of ten percent of 133 DNA exonerees, citing overwhelming evidence of guilt.[1] Put differently, 13 exonerees in this cohort of 133 would likely still be in prison had they been subjected to this aberrant provision.

[1] Brandon Garrett, *Judging Innocence*, 108 Colum. L. Rev. 55, 107-09 (2008).

	HB 316 Governor	SB 110 French	HB 174 Lynn
Procedure for disposal of evidence or biological material before expiration of time period for preservation	**Preservation of Evidence** **Section 3** **AS 12.36.200(e)** Allowed after notice to the parties and attorneys, if no party objects. If there is an objection, the agency can make a request to the court to allow disposal	**Preservation of Evidence** *Section 1* *AS 12.36.200(d)* Similar, but also includes notice to the Public Defender Agency	
Remedies if evidence is destroyed in violation of this section	**Preservation of Evidence** **Section 3** **AS 12.36.200(h)** The court may order the remedy it determines appropriate. However, the court may not reverse or vacate a conviction	**Preservation of Evidence** **Section 1** **AS 12.36.200(g)** The court may order the remedy it determines appropriate.	
Civil immunity for failure to comply with this section	**Preservation of Evidence** **Section 3** **AS 12.36.200(i)** A person may not bring civil action for damages for any good faith failure to comply	**Preservation of Evidence** **Section 1** **AS 12.36.200(h)** A person may not bring civil action for damages for any unintentional failure to comply	
Disposal of DNA for persons not guilty	**DNA identification system** **Sections 9&10** **AS 44.41.035(g)&(i)** Makes amendments to disposal of DNA for persons not guilty of offense for which arrested	**DNA identification system** **Sections 2&3** **AS 44.41.035(g)&(i)** Same	
Creation and Repeal of Task Force		**Uncodified Law** **Section 5&7** Creates, then later repeals, a task force to address standards and practices for proper collection and preservation of evidence	

	HB 316 Governor	SB 110 French	HB 174 Lynn
Conforming amendments	**Disposition of recovered or seized property** **Sections 1 & 2** **12.36.020 & 12.36.090** Clarifies that retention of evidence in this bill takes precedence over existing provisions that address disposition of evidence in various circumstances		
Crimes covered under the retention requirements	**Preservation of Evidence** **Section 3** **AS 12:36:200(a)(1)** Homicide; sexual assault in first and second degree	**Preservation of Evidence** **Section 1:** **AS 12:36:200(a)(1)** Same	
Retention time for evidence (other than biological material)	**Preservation of Evidence** **Section 3** **AS 12.36.200(a)(1)** Until the expiration of the prosecution, including time for an appeal and any post-conviction DNA relief application	**Preservation of Evidence** **Section 1** **AS 12:36.200(a)(1)** For the period of time that the crime remains unsolved	
Retention of biological material or evidence	**Preservation of Evidence** **Section 3** **AS 12:36:200(a)(2)** Until a person is unconditionally discharged for crime; or until the retention periods for physical evidence expires, whichever is longer	**Preservation of Evidence** **Section 1** **AS 12.36.200(a)(2)** While the person remains a prisoner in the custody of the Department of Corrections or subject to registration as a sex offender	
Disposal of evidence that is that is of a size, bulk, quantity , or physical character that makes preservation impractical or hazardous	**Preservation of Evidence** **Section 3** **AS 12.36.200(b)** Agencies retain samples of evidence through written policies on removal and preservation of samples	**Preservation of Evidence** **Section 1** **AS 12.36.200(b)** Similar, but does not include the word, "hazardous"	

CS FOR SENATE BILL NO. 110(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/7/09
Referred: Finance

Sponsor(s): SENATOR FRENCH

A BILL

FOR AN ACT ENTITLED

"An Act relating to the preservation of evidence and to the DNA identification system."

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

*** Section 1.** AS 12.36 is amended by adding a new section to read:

Article 2. Preservation of Evidence.

Sec. 12.36.200. Preservation of evidence. (a) Notwithstanding AS 12.36.010 - 12.36.090, the Department of Law, the Department of Public Safety, the Alaska Court System, or a municipal law enforcement agency shall preserve

(1) all evidence that is obtained in relation to an investigation or prosecution of a crime under AS 11.41.100 - 11.41.130, 11.41.410, or 11.41.434 for the period of time that the crime remains unsolved;

(2) biological evidence in an amount and manner that is sufficient to develop a DNA profile from any material contained in or included on the evidence that was obtained in relation to the prosecution of a person convicted of, or adjudicated a delinquent for, a crime under AS 11.41.100 - 11.41.130, a person convicted of a crime after being indicted under AS 11.41.410 or 11.41.434 while the

2000

person remains a prisoner in the custody of the Department of Corrections or subject to registration as a sex offender, or a person adjudicated a delinquent for a crime after the filing of a petition alleging a violation of AS 11.41.410 or 11.41.434 while the person remains committed to a juvenile facility or subject to registration as a sex offender.

(b) Under (a) of this section, an agency is not required to preserve physical evidence of a crime that is of a size, bulk, quantity, or physical character that renders preservation impracticable. When preservation of evidence of a crime is impracticable, the agency shall, before returning or disposing of the evidence, remove and preserve portions of the material likely to contain relevant evidence related to the crime in a quantity sufficient to permit future DNA testing. In making decisions under this section, an agency shall follow written policies on evidence retention.

(c) Upon written request of a person convicted of a crime and a prisoner, adjudicated delinquent for a crime and committed, or subject to registration as a sex offender, an agency shall prepare or provide an inventory of biological evidence that has been preserved under (a)(2) of this section in connection with the person's criminal case.

(d) An agency required to preserve biological evidence under (a) of this section may destroy biological evidence before the expiration of the time period in (a)(2) of this section if

(1) the agency is not required to maintain the evidence under another provision of state or federal law;

(2) the agency mails a certified delivery of notice of intent to destroy evidence to

(A) each person who remains a prisoner or committed or subject to registration as a sex offender for the crime for which the evidence was preserved under (a)(2) of this section;

(B) the attorney of record for each person listed in (A) of this paragraph;

(C) the Public Defender Agency;

(D) the district attorney responsible for prosecuting the crime;

and

(3) no person who is notified under (2) of this subsection, within 120 days after receiving the notice,

(A) files a motion for testing of the evidence; or

(B) submits a written request for continued preservation of the evidence.

(e) Upon receipt of a request for continued preservation of biological evidence under (d)(3)(B) of this section, an agency may petition the court for permission to destroy the evidence. The court may grant the petition if the court finds that the request is without merit or that the evidence has no significant value for biological material.

(f) When an agency is required to produce biological evidence required to be preserved under this section and the agency is unable to locate the evidence, the chief evidence custodian of that agency shall submit an affidavit, executed under penalty of perjury, describing the evidence that could not be located and detailing the efforts taken to locate the evidence.

(g) If a court finds that evidence was destroyed in violation of the provisions of this section, the court may order remedies the court determines to be appropriate.

(h) A person may not bring a civil action for damages against the state or political subdivision of the state, their officers, agents, or employees, or a law enforcement agency, its officers, or employees for any unintentional failure to comply with the provisions of this section.

(i) In this section,

(1) "agency" means the Department of Law, the Department of Public Safety, the Alaska Court System, or a municipal law enforcement agency;

(2) "biological evidence" means

(A) the contents of a sexual assault forensic examination kit;

(B) semen, blood, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable human bodily material, collected as part of a criminal investigation;

(C) a slide, swab, or test tube containing material described in

(B) of this paragraph; and

(D) swabs or cuttings from items that contain material described in (B) of this section;

(3) "DNA" means deoxyribonucleic acid;

(4) "prisoner" has the meaning given in AS 33.30.901.

*** Sec. 2.** AS 44.41.035(g) is amended to read:

(g) A person from whom a sample has been collected under this section

(1) may inspect and obtain a copy of the identification data regarding the person contained within the DNA identification registration system**; and**

(2) may request the Department of Public Safety to destroy the material in the system regarding the person under the provisions described in (i) of this section.

*** Sec. 3.** AS 44.41.035(i) is amended to read:

(i) The Department of Public Safety shall [, UPON RECEIPT OF A COURT ORDER,] destroy the material in the system relating to a person **or minor on the written request of the person or minor, if the request is accompanied by a certified copy of a court order making the written findings required by this subsection**. The court **may** [SHALL] issue **an** [THE] order **under this subsection** if the person's or minor's DNA was included in the system under

(1) (b)(1) or (2) of this section**,** and the court **order establishes** [DETERMINES] that

(A) the conviction or adjudication that subjected the person to having a sample taken under this section **was** [IS] reversed; and

(B) the person

(i) **was** [IS] not retried, readjudicated, or convicted or adjudicated for another crime that requires having a sample taken under this section; or

(ii) after retrial, **was** [IS] acquitted of the crime or**,** after readjudication for the crime**, was** [IS] not found to be a delinquent, and **was** [IS] not convicted or adjudicated for another crime that requires a sample under this section;

(2) (b)(6) of this section, and the court **order establishes** [DETERMINES] that

(A) the person arrested was released without being charged; [OR]

(B) the criminal complaint, indictment, presentment, or information for the offense for which the person was arrested was dismissed, and a criminal complaint, indictment, presentment, or information for an offense requiring submission of a DNA sample **was** [IS] not refiled**; or**

(C) the person was found by the trier of fact to be not guilty of the offense for which the person was arrested and was not convicted of another offense requiring submission of a DNA sample under (b)(1) or (2) of this section.

*** Sec. 4.** AS 44.41.035 is amended by adding a new subsection to read:

(r) A DNA sample collected or placed in the DNA identification registration system, that was taken or retained in good faith, may be used as provided by law in a criminal investigation. Evidence obtained from a match from a data collection system may be used in a criminal prosecution if the DNA sample was taken or retained in good faith, even if the DNA sample is later removed from the DNA identification registration system.

*** Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TASK FORCE ON STANDARDS AND TRAINING OF EVIDENCE TECHNICIANS. (a) The Task Force on Standards and Training of Evidence Technicians is created in the Department of Law. The task force consists of the following persons appointed by the governor:

(1) the attorney general;

(2) the public defender;

(3) the director of the office of public advocacy;

(4) a chief of a municipal police department not on the state's interconnected road system;

(5) the commissioner of public safety;

(6) a chief of a municipal police department;

(7) a representative of the Alaska Innocence Project; and

(8) a representative of the state crime lab.

(b) There shall be three ex officio members of the task force as follows:

(1) a member of the House Judiciary Committee selected by the speaker of the house of representatives;

(2) a member of the Senate Judiciary Committee selected by the president of the senate; and

(3) the victims' advocate.

(c) Persons appointed under (a) of this section or identified under (b) of this section may select a designee from the same agency or organization to act on the person's behalf as a member of the task force.

(d) Not later than December 31, 2011, the task force shall

(1) devise standards regarding the proper collection, retention, and cataloging of evidence, for ongoing investigations and prosecutions;

(2) recommend practices, protocols, models, and resources for the cataloging and accessibility of preserved evidence.

*** Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 12.36.200, enacted in sec. 1 of this Act, applies to all evidence in the possession of an agency listed in AS 12.36.200(a) on the effective date of this Act for crimes committed before the effective date of this Act and all evidence collected on or after the effective date of this Act.

*** Sec. 7.** Section 5 of this Act is repealed January 1, 2012.

Proposed amendments to SB 241 recommended by the
Alaska Innocence Project

I organized these proposed amendments in order of their appearance in the current bill. The number in parentheses is the order of importance of the amendment to the Alaska Innocence Project.

1. (3) Strike page3 lines 29 – 31 deleting the language "(d) The person who requests evidence that has been preserved under this section shall pay reasonable costs incurred in the retrieval of the evidence from storage

This provision requires an inmate claiming innocence, who has likely been incarcerated for years, if not tens of years, to pay for a police evidence custodian to retrieve evidence. It makes no exception for indigency. The burden is even greater when the law enforcement department is inefficient in keeping its evidence. This term will, literally, restrict DNA testing access on the basis of poverty. In the very few cases where testing will occur the law enforcement agency should collect the evidence without cost to the petitioner, especially since that agency is required by this statute to provide an inventory of the evidence it has, which will undoubtedly require they confirm each piece of evidence exists. Not one other state in the nation charges petitioners to locate evidence. This term should be stricken from the bill.

2. (1) Strike page 8 lines 5 – 7 deleting the language "(C) the applicant did not admit or concede guilt in any official proceeding for the offense that was the basis of the conviction or any lesser included offense:"

Despite the state's claim to the contrary, the language as drafted would include all those who pled guilty or confessed to a charge. The language "admit or concede guilt" would clearly cover a guilty plea, even if made through a lawyer and not out of the defendant's mouth, and a change of plea hearing is clearly an official proceeding. Even if this were clarified to mean only admissions of guilt out of a defendant's own mouth, this restriction turns a blind eye to the real life situation that admissions are made, especially by the younger or disabled defendants, to crimes they did not commit. Post-conviction DNA testing is the only opportunity for an individual to correct this wrong. If a person can meet the standard that evidence exists which, if it returned a favorable result, would create a reasonable probability that the person would not have been charged or convicted, they should not be prevented from obtaining testing because they admitted guilt. This term should be deleted. 45 of the 250 DNA exonerees across the nation confessed to crimes they did not commit. 19 plead guilty to crimes they did not commit. This amounts to 25% of those individuals proven innocent through DNA testing. Only one state explicitly excludes individuals who pled guilty from seeking testing. Not one state explicitly excludes individuals who confessed. This term should be deleted.

3. (4) At page 8 line 11, Strike "an affidavit by the applicant or the applicant's lawyer describing all previous efforts to obtain DNA testing and", add instead **"a statement describing"**

This removes a process which restricts DNA testing depending on tests performed or not performed at the trial level. It s removal correctly places the focus on the existence of DNA testing which could provide a reasonable probability of indicating the person would not have been charged or convicted. The language remaining in the statute informs the court of previous post-conviction actions filed by the applicant, consistent with current post-conviction procedures.

4. (2) Strike page 8 lines 14 – 17 deleting "(4) an affidavit by the applicant's lawyer in the criminal trial stating the reason that DNA testing was not sought before or during trial, or an affidavit by the applicant or the applicant's lawyer describing the efforts made to obtain the affidavit from the criminal trial lawyer and the reason the applicant was unable to obtain it.

As with the previous section, deletion of this section places attention on the proper information, the existence of evidence which could meet the standard set in this statute. The process contained in this section is terribly burdensome. It also allows a mistake made by trial counsel to be compounded by allowing the attorney to prevent post-conviction testing through this affidavit. This section should be deleted in its entirety.

5. (1) Strike page 8 lines 29 – 30 deleting "(3) the applicant has not in an official proceeding admitted or conceded guilt for the crime that was the basis for the conviction."

See # 2 above as it deals with essentially the same language and should be deleted in its entirety for the same reasons.

6. (1) Strike page 9 line 3 beginning with "and" deleting "and the applicant did not waive, or the applicant's lawyer did not forgo for tactical reasons, the right to request DNA testing:"

This restriction prevents an innocent person from obtaining testing if their trial lawyer made a bad decision and didn't get testing at the trial level, or if the individual paid for his or her own defense and couldn't afford testing. An error by the trial attorney resulting in an innocent person being convicted would be multiplied by then denying that person access to the very evidence which could prove their innocence. In addition, if the evidence was not subjected to DNA testing at the trial level, it means the prosecution, in its search for the truth, also did not test the evidence. Rather then trying to parse out responsibility for the terrible oversight at the trial level, this statute should allow testing to those individuals who can meet the criteria. This language should be deleted.

7. (1) Strike page 9 line 9 beginning with "and" through line 13 deleting "and (ii) the applicant did not waive the right to request , or the applicant's lawyer did not forgo for tactical reasons, DNA testing using a method whose probative value was similar to the method to be used in the requested testing:

See # 6 above. The language restricting testing if it was not done at the trial level is basically the same in this section. The same reasoning applies. This section should be deleted in its entirety.

8. (2) Strike p. 9 lines 24 – 29 deleting "(10) there is a reasonable probability, in light of all available evidence, regardless of whether the evidence was introduced at the applicant's trial, that the requested DNA testing will produce new material evidence that (A) would support the theory of defense described in (8) of this section; and (B) could conclusively establish that the applicant is innocent;" and replace it with **"(10) a reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing."**

The deleted language removes the need for the trial judge to guess at what the testing results might be. The proposed language is the most common language used in other DNA testing statutes throughout the country and focuses, correctly, on what the effect would have been at the trial level if testing had been done with exculpatory results. That test properly focuses on the DNA evidence and its impact, not on a judge trying to guess what the DNA testing will produce. The existing language will be asking the impossible of judges. It should be replaced with the more common language.

9. (1) Strike p. 10 lines 11 – 23 deleting all of proposed "Sec. 12.73.040. Timeliness"

Innocence claims should not be subject to an arbitrary time limit. Incarcerating an innocent individual is no less wrong four years after conviction then three years. Or five years, or six. If an individual can meet the standard set out in # 8, and provides the other information in a reasonably drafted testing statute, that person should obtain testing of the evidence regardless of when the petition is brought. The finality argument put forward for time restrictions on testing statutes is really a red herring, since what finality is there for anyone if an innocent person is incarcerated and the actual perpetrator remains unidentified. Certainly the original victim would rather have the right person caught and convicted no matter when that happens. The people of the State of Alaska want the same. Such arbitrary time limitations should be deleted from the bill. Thirty-five of the nations 47 laws contain NO time bars. Most others focus on deadlines on the effective date and none contemplate anything this restrictive.

10. (3) Strike page 11 line 17 beginning with "The" through line 18 deleting "The applicant shall pay the reasonable costs incurred in the retrieval from storage of the material to be tested."

See # 1 above discussing an almost identical term. The same reasons for deletion apply here.

11. (5) On page 15 add after (8) on line 24
(9) A member of the Alaska Senate
(10) A member of the Alaska House of Representatives
(11) The Public Defender
(12) A representative of the Office of Public Advocacy
(13) A representative from the Alaska Native Justice Center
(14) A representative of the Alaska Innocence Project

As set out in # 12, below, the charge of the task force set up by this bill should be expanded to address the real issue of evidence retention and preservation. When this is done, the membership of the task force should be expanded to include all groups that have an interest in the issue and likely have unique perspectives and expertise to contribute. The three groups proposed here certainly meet those criteria. Without this input, an incomplete report would be produced by an incomplete task force.

12. (5) At page 16 line 3 after "cataloging" add **"retention",** before retrieval delete "and" and after "retrieval" add **"and disposal"**

Much of what the task force created by the current language in HB 316 is asked to look at does not require a task force created by statute. They are law enforcement issues regarding the handling of evidence. The real questions raised by this bill are what collection, retention, retrieval and destruction issues will best carry out the intent of this bill. These are questions best addressed by a diverse group who all come to the table with significant and useful information impacting these important issues. Adding the words retention and destruction charge this task force with looking at what the real and significant impact of this statute is and how to best deal with those impacts.

13. (1) Strike page 16 line 28 - 30

See # 9 above, as this section also deals with an arbitrary time limit within which to bring a request for post-conviction DNA testing.

I would also urge the addition of language that addresses what happens after the test results are returned. This should include, at least, the following three sections.

I. APPEAL

The applicant shall have the right to appeal a decision denying post-conviction DNA testing.

II. ORDERS FOLLOWING TEST RESULTS

A. If the results of ordered DNA testing are favorable to the petitioner, the court shall schedule a hearing to determine the appropriate relief to be granted. Based on the result of the testing and any evidence or other matter presented at the hearing, the court shall thereafter enter any order that serves the inters5s of justice, including any of the following:

1. An order setting aside or vacating the applicant's judgment of conviction or adjudication of delinquency;
2. An order granting the applicant a new trial or fact-finding hearing;
3. An order granting the applicant a new sentencing hearing or dispositional hearing;
4. An order discharging the applicant from custody;
5. An order specifying the disposition of any evidence that remains after the completion of the testing;
6. An order granting the applicant additional discovery on matters related to DNA test results or the conviction or sentence under attack including, but not limited to, documents pertaining to the original criminal investigation or the identities of other suspects; and
7. An order directing the state to place any unidentified DNA profiles obtained from post-conviction DNA testing into state and federal databases.

B. If the results of the tests are not favorable to the petitioner, the court:

1. Shall dismiss the petition;
2. Provide that the parole board or probation department be notified of the test results;
3. Make any further order it deems appropriate.

III. REACTIVATION OF VICTIMS SERVICES

When post-conviction DNA testing is being considered by the court, the State shall, upon request, reactivate victim services for the victim of the crime being reinvestigated during the reinvestigation of the case, the pendency of the

proceedings, and , as determined by the court after consultation with the victim and/or victim advocate, following final adjudication of the case.

ALASKA INNOCENCE PROJECT

ANALYSIS BY WILLIAM B. OBERLY,
EXECUTIVE DIRECTOR ALASKA INNOCENCE PROJECT
OF SB 241 – AN ACT RELATING TO POST-CONVICTION DNA TESTING
FEBRUARY 19, 2010

Post-conviction evidence preservation and access to post-conviction DNA testing are the two most important legislative issues for the Alaska Innocence Project at this time. We thank Governor Parnell for recognizing the importance of these issues by proposing a bill dealing with them. However, the Alaska Innocence Project cannot support SB 241 as it is currently written. The effect of SB 241 as currently written is to drastically limit access to DNA testing in Alaska. A number of modifications will need to be made before this bill is in line with the current approach to DNA testing accepted in the rest of the country.

The major concern of the Alaska Innocence Project with this legislation is the restrictive nature of the access to DNA testing provided in this bill. In its current form this bill would establish the most restrictive procedure to obtain post-conviction DNA testing in any state and would be more restrictive than the current process available in Alaska without a specific statute. It is particularly troubling to consider how this restrictive procedure would negatively impact rural Alaskans, especially Alaskan Natives seeking post-conviction DNA testing.

This analysis will try and describe the specific parts of SB 241 which serve to deny DNA testing to individuals with innocence claims in the state of Alaska. The sections of the bill will be addressed in the order of their significance and impact on innocence claims. If these sections are removed from the bill or amended, SB 241 will then provide a procedure for wrongfully convicted Alaskans to obtain post-conviction DNA testing to establish their innocence.

The first area of concern is the prohibitions on testing contained in this bill. I have included with this analysis a chart that compares this bill with other bills currently before the Alaska Legislature, the bill passed in recently in Mississippi, the federal post-conviction DNA testing bill, and bills from other states generally. The combined effect of these prohibitions is to deny virtually every person currently in prison who would seek DNA testing. This approach flies directly in the face of current thinking, which was described by Senator Patrick Leahy when he sponsored the federal Innocence Protection Act. "The criminal justice system should err on the side of permitting testing, in light of the low cost of DNA testing and the high cost of keeping the wrong person locked up."

The most serious prohibition on testing in HB 316 is contained on page 10, lines 11 through 23

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of the bill in Sec. 12.73.040, entitled Timeliness. This section establishes a presumption of untimeliness if an application for post-conviction testing is not filed within three years. This restriction will prohibit most, if not all, innocent individuals who are currently incarcerated from obtaining the testing necessary to establish their innocence. This section would make post-conviction DNA testing claims in Alaska much more limited then under the current process of post-conviction claims based on newly discovered evidence. Time limitations ignore the fact that without proper preservation standards and requirements, as well as state of the art identification methods, exculpatory DNA evidence may only be located after years have elapsed. It should be remembered that, unlike other forms of evidence, DNA evidence is not less reliable as time goes by, one of the main reasons for limiting the time within which to bring new evidence motions based on other evidence. A workable solution to this concern is to differentiate between those convicted before the effective date of the statute and those convicted after. Those convicted before the effective date of the statute should not have an arbitrary time limit placed on their claims. The three year presumption could become effective for convictions arising after the date of this law.

Page 9 section (5) at lines 2 through13. This section prohibits an individual from seeking testing if evidence was not subjected to DNA testing at the trial level or a more probative method of DNA testing was not used, and the applicant waived the testing or the applicant's lawyer did not test for tactical reasons. This section denies the reality of the real world that bad lawyering is one of the most common causes of wrongful convictions. Since we are dealing with claims of actual innocence, it would be improper to deny an individual the opportunity to perform the most accurate tests on evidence to establish innocence because a trial lawyer made a bad decision, or couldn't afford a test. The problem is compounded in this bill by allowing the trial lawyer to cover the bad decision by requiring an affidavit from the trial lawyer explaining their actions. It is presumed under this bill that if a lawyer chooses to spend the limited resources available in a defense case on other then DNA testing, this decision will preclude post-conviction testing to establish that an individual is innocent. In our system of justice, innocence should not be able to be waived.

Page 8 subsection (C) at lines 5 through 7 and section (3) at lines 29 through 30. These sections make post-conviction DNA testing unavailable to anyone who admits or concedes guilt in any official proceeding or whose statement of guilt was the basis of the conviction. This section, again, denies hard facts we have learned from the 250 DNA exonerations nationwide, that 25% of those exonerations have involved an innocent individual who admitted their guilt or pled guilty to the crime. This category of wrongfully convicted individuals is largely represented by the most vulnerable in society; young people, people with mental disabilities, those most susceptible to suggestion. Rather then protecting the vulnerable in our society, this bill aims to take advantage of them. The State has indicated its willingness to make a distinction between those who pled guilty or no contest, which they would exclude from this restriction, and those who admitted guilt in some official proceeding. A better distinction, and more the goal of the State's inclusion of this restriction, would be to say "the applicant did not admit or concede guilty in a parole hearing or the equivalent of a parole hearing."

Page 9 section (10) at lines 24 through 29. This section of the bill calls for the court considering a post-conviction DNA testing request to guess at the outcome of the requested

testing based on the court's view of other evidence. Other states and the federal government, when establishing a standard for the court to apply to the requested evidence, reasonably assume a favorable result of the testing for the petitioner, and then have the court decide if that would establish a reasonable probability that the petitioner would not have been convicted. This long established standard does not require a judge to try and guess what the result of the requested DNA testing might be. Rather, it reasonably asks a court to decide whether a favorable test result would be significant in the outcome of the case.

Page 3 section (d), lines 29 through 31. Also page 11, lines 17 through 18. This term of the bill calls for the person requesting evidence be tested pay for its retrieval. This is a concept totally unique to the Alaska post-conviction DNA testing process. Not one statute passed by any other state or the federal government imagines such a requirement. An irony in including this section where it is in the bill is that it follows a section which requires an agency holding preserved evidence to produce an inventory of that evidence. It must be presumed that the agency will actually confirm they have each of the items on the inventory before providing it. Under this bill, after physically confirming they have each piece of evidence, the holding agency will then get to turn around and charge for going back again and collecting it. A more reasonable approach would envision the agency putting the evidence in a convenient place at the time of preparing the inventory, thus performing their work more efficiently, while doing away with the need to charge to collect evidence. A serious impact of this section will be that some individuals will be precluded from obtaining the evidence due to an inability to pay this tax on their right to DNA testing. The section is particularly offensive since evidence does not belong to one side or the other, but rather to the people. Charging a person claiming innocence to collect the evidence is inconsistent with this concept.

Page 15 section (a) at lines 16 through 24. This section establishes a task force to recommend standards and protocols regarding evidence preservation issues. Unlike a similar section in SB110, this version excludes any representative from the criminal defense bar, like the public defender or office of public advocacy, or any member from the innocence community, like from the innocence project, or any member from the legislature. The task force established by this section would not receive a wide range of information in order to produce the most balanced report based on the best information. The task force created by this bill will be limited to information from one part of the criminal justice community and will thus produce a report that is less then complete and so will be that much less effective. The mandate for the task force should also be expanded to address the issues likely raised by this legislation. It should also look into "retention" and "disposal" of evidence.

Page 2 lines 25 through 31 through page 3 lines 1 through 6. This section sets deadlines for destruction of evidence obtained during the investigation of a case rather then allows the Task Force which is established at the end of the bill to study the issue and make recommendations. SB110 also established a task force with a wide ranging mandate to study evidence preservation issues, including the issue of proper retention. Reasonably, one of the issues that task force was to report back on was destruction deadlines. SB241 also establishes a task force but, without any study, also creates time limits for destruction. This does not seem to be making the best use of the task force created. As an example of why more study might be necessary, this section also seems to allow for destruction of evidence if a challenge to the

conviction is filed in federal district court. The section defining "direct review" mentions only judgment on appeal, petition for hearing and review by the United States Supreme Court. A task force studying this issue and making recommendations would most likely recommend evidence be retained during the pendency of a habeas action filed in federal district court.

The concerns listed above set out serious shortfalls in the contents of SB241. If these sections are allowed to remain in the bill, unchanged, not only would post-conviction DNA testing be more difficult for the wrongfully convicted in Alaska to obtain then it currently is, it would be more difficult then anywhere else in the country. I urge the committee to correct these problems by removing the language of SB241 set out above before the bill is passed out of committee. If the sections I have identified are removed from SB241, the bill will then actually provide innocent individuals with a procedure to obtain post-conviction DNA testing of potentially exculpatory evidence. Alaska will have a bill that works.

Thank you for allowing me to address this very important legislation. If the committee has any questions on any matters arising from SB241 which I might help answer, please don't hesitate to contact me.

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INNOCENCE PROJECT
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WRITTEN TESTIMONY OF REBECCA BROWN
POLICY ADVOCATE, INNOCENCE PROJECT
BEFORE THE ALASKA HOUSE JUDICIARY COMMITEE
RE: SB 241 – AN ACT RELATING TO POST-CONVICTION DNA TESTING
FEBRUARY 22, 2010

Thank you for the opportunity to speak before you today and submit written comments for your consideration of SB 241, which seeks to create statutory access to post-conviction DNA testing.

The Innocence Project assists persons in proving their innocence through post-conviction DNA testing. To date there have been 251 men and women exonerated by post-conviction DNA testing nationwide, one exonerated just yesterday. The emergence of forensic DNA technology changed the fabric of the criminal justice system. Whereas prior to the advent of forensic DNA there were few clear ways to assess prisoners' claims of wrongful conviction, DNA testing of crime scene evidence can provide the criminal justice system with significant and enduring proof of innocence or guilt, from the initial stages of an investigation to years after a conviction. With the ability to transcend fallible human judgment, DNA testing – and particularly post-conviction DNA exonerations – have proven the potential for error that exists in our criminal justice system, and that our appeals processes are not sufficient for identifying those errors.

Our policy agenda is a pro-law enforcement agenda, win-win reforms that protect the innocent and help identify the guilty. It is precisely because of the dual nature of our work – both the efforts to exonerate the innocent and the constructive efforts to strengthen the capacity of the criminal justice system to make more accurate guilt/innocence determinations – that we may be able to provide a somewhat unique and hopefully helpful perspective on the complicated issue you are addressing today.

Having worked in this field for thirty years, the co-founders of our organization often remark that perhaps the most significant lesson they have learned is that in matters of crime and justice humility is important because even the most experienced among us are often wrong. They have reviewed hundreds of cases. In most, they have pored over reams of court transcripts, scrutinized piles of police reports, dissected crime lab analyses, sifted through evidence and property logs, and studied scores of witness statements, and have strongly suspected some men's guilt, only later to discover they were wrong. No less often, someone they strongly suspect is innocent turns out to be guilty. Indeed, because every one of us is human and all of us are actors in a fact-finding mission, if just one of us makes an error, jumps to a conclusion, or acts on a false assumption, an innocent man can be condemned to a guilty man's fate.

Congress recognized DNA's potential for justice, and it was bi-partisan support that led to passage of the Innocence Protection Act contained in the Justice for All Act of 2004. Then-President George W. Bush noted in his 2005 State of the Union address: "In America we must make doubly sure no person is held to account for a crime he or she did not commit. So we are dramatically expanding the use of DNA evidence to prevent wrongful conviction."

The preservation of biological evidence and access to post-conviction DNA testing – fundamental elements of the IPA's innocence protections – are as important today as ever. The Innocence Project

continues to unearth cases where post-conviction DNA testing proves the innocence of those convicted in both the relatively recent and distant past.

Unfortunately, when forensic DNA testing was first made available, it provided little help to the truly innocent who were facing charges like rape or murder, or who had been previously convicted. For these men and women, hope existed only later, with the potential of the performance of DNA testing on the crime scene evidence connected to their cases. For many, if not most of them, such testing represented a last chance to prove their innocence, as they had already exhausted all available state remedies, as well as federal habeas corpus relief. Yet without the benefit of state statutes providing access to post-conviction DNA testing, they faced daunting, if not unattainable, paths to such testing.

The scales of justice began to tilt when states started to pass laws allowing convicted persons access to post-conviction DNA testing. These laws not only allowed DNA testing to be performed on genetic material that was never tested at trial; it also allowed more modern, sophisticated technology to be utilized on previously tested evidence that had yielded inexact or unreliable conclusions.

Over time, newer DNA technologies have emerged, enabling us to create perpetrator DNA profiles from physical evidence that was previously useless. The amount of evidence items that are being successfully tested now, but could never have been tested successfully only a few years ago, is enormous. As DNA testing methods continue to emerge, they reveal new information about even those crimes committed in the distant past. Post-conviction DNA testing statutes have begun to contemplate these technological advances and many now include provisions that permit additional testing in cases where previous testing using older testing methods could not produce conclusive results.

The passage of post-conviction DNA testing statutes also explicitly exempted DNA testing motions and related proceedings from the procedural bars that govern other forms of post-conviction relief. Before the emergence of this discrete statutory avenue that allowed petitioners to seek post-conviction DNA testing, the innocent were forced to rely upon processes that put the burden on the petitioner to effectively solve the crime and prove that the DNA evidence promises to implicate another individual. In states without post-conviction DNA testing laws, many efforts to achieve testing were stymied, egregiously delayed or flatly denied.

Consider the following case of justice denied in the absence of a post-conviction DNA testing law. In March of 1989, New Jerseyan Larry Peterson was convicted of the sexual assault and murder of a woman in Burlington County. Although three men originally indicated to police that they were with Mr. Peterson at the time the murder took place, they later changed their accounts during interrogations and told law enforcement that Mr. Peterson confessed to them that he had indeed committed the crime. One forensic scientist testified at trial that her hair comparison analysis tied Mr. Peterson to the murder and another analyst with the New Jersey State Police testified that there was seminal fluid on the victim's jeans and sperm on her underwear. No seminal fluid or sperm was found in her rape kit. All tests on these items of evidence were inconclusive at the time of trial.

Mr. Peterson testified in his own defense at trial. Alibi witnesses supported his whereabouts during the time of the crime. Work records also showed that he did not work on the day that the victim was found – the day he supposedly confessed to the crime on his way to work. The jury convicted Mr.

Peterson of felony murder and aggravated sexual assault in March 1989. He was sentenced to life plus twenty years in prison.

Although there was no post-conviction DNA testing law in New Jersey, Mr. Peterson first sought access to DNA testing in 1994 under the state's existing post-conviction review process. When the court finally heard his motion in 1998, it denied his petition. In 2000, the Appellate Division affirmed the denial of his petition for post-conviction relief ruling that there was overwhelming evidence of guilt in his case. In March of 2001, the Supreme Court denied his Petition for Certification.

Mr. Peterson was without hope until New Jersey passed a statute granting access to post-conviction DNA testing. The law was made effective on July 7, 2002. On July 8, 2002, Larry Peterson became the first New Jerseyan to file a petition for post-conviction DNA testing under the new law and ultimately testing was granted, after an appeal of an initial denial.

In February of 2005, the Serological Research Institute (SERI) reported the results of testing: Mr. Peterson was excluded as a contributor of any and all of the biological evidence. Although the New Jersey State Police Laboratory had reported that there was no semen in the victim's rape kit, SERI identified sperm on her oral, vaginal, and anal swabs. Two different male profiles were found. One of the males was one of the victim's consensual partners, and his profile was also found on her underwear, jeans, and rape kit. The other unknown male was found on all of the swabs in her rape kit. Based on this evidence, Mr. Peterson's conviction was vacated in July 2005. On May 26, 2006, the prosecution decided to drop all charges against Mr. Peterson. Without the passage of New Jersey's post-conviction DNA testing law, Mr. Peterson would have perished in prison.

Today, 47 states have post-conviction DNA testing laws, which vary in substance and scope. In some states with laws, the "right" to DNA testing remains illusory for many categories of potentially innocent defendants. ***That said, the proposal under consideration in SB 241 more affirmatively denies post-conviction testing than any other statute we have ever seen.***

We offer this perspective based on our breadth of experience litigating claims of innocence all across the nation. We have worked closely with legislatures around the country to establish meaningful post-conviction DNA access, most recently in South Carolina, Mississippi and Nevada, which chose last year to expand its statute to additional categories of deserving applicants. We have learned that seemingly innocuous provisions can spell a dead end for justice for many deserving applicants and wish to spare Alaska such a fate. While there are many provisions that create barriers to meaningful access to post-conviction DNA testing in this proposal, in the interest of time, I will focus on the most problematic areas.

Timeliness

Perhaps the most restrictive provision in this proposal can be found in Section 12.73.040, which effectively puts a three year statute of limitations from the time of conviction on filing a post-conviction claim of innocence. As I mentioned earlier, nearly every single individual who was able to prove innocence through post-conviction DNA testing had already exhausted all available state remedies, as well as federal habeas corpus relief before seeking testing. Not one of these individuals would be eligible for testing under the framework contemplated in this proposal. ***There is not one law in the***

nation that includes such a restrictive timeliness provision. Indeed, 35 of 47 statutes possess no time limitation on the filing of a post-conviction DNA testing petition whatsoever. Perhaps more concerning, the inclusion of such a provision in a post-conviction testing law would make claims more difficult to bring than under the current post-conviction review process.

Barring Testing to Individuals Whose Attorneys Did Not Previously Seek Testing
Traditionally, a defendant seeking post-conviction DNA testing might be able to accomplish such testing under the post-conviction relief process. Unfortunately, though, that framework has proven illusory, given the fact that not a single Alaskan has achieved post-conviction DNA testing to date. If properly structured, a post-conviction DNA testing framework would correct this and allow an Alaskan access to testing under such a framework. Unfortunately, however, the framework proposed also effectively blocks access to post-conviction DNA testing.

A provision inserted into the existing post-conviction review law, located in Section 12.72.010(4), indicates that if an individual seeks post-conviction DNA testing to support his claim of innocence, the person's "exclusive method for obtaining that testing is an application under the post-conviction DNA testing statute," yet Section 12.73.020(5)(A), a provision in the proposed, new post-conviction DNA testing framework, bars an individual from seeking post-conviction DNA testing if the evidence "was not subjected to DNA testing, and the applicant did not waive, or the applicant's lawyer did not forego for tactical reasons, the right to request DNA testing." This provision is made worse by the requirement, in Section 12.73.010(4), which requires an affidavit by the applicant's lawyer stipulating to the reasons DNA testing was *not* sought before or during trial.

These sections effectively bar innocent individuals who were victimized by poor representation, a common cause of wrongful conviction, from post-conviction DNA testing. Put simply, this proposal requires an individual seeking DNA testing to abandon the post-conviction relief process for the purposes of accessing post-conviction DNA testing in favor of the newly created avenue for post-conviction DNA testing. Once the defendant seeks DNA testing under the post-conviction DNA testing framework, however, which is his "exclusive method for obtaining that testing," he is at the mercy of his trial attorney to disclose potential incompetence in order to be granted that post-conviction DNA testing. Therefore, he must rely upon his trial attorney, the same trial attorney who ineffectively represented him, to admit to his negligence or indolence to obtain access to post-conviction DNA testing under the post-conviction DNA testing framework.

It is improper to deny an individual the opportunity to test scientific evidence to establish innocence because a trial lawyer failed to explore DNA testing, made a poor decision, or could not afford a test. It is difficult to conceive that the same trial attorney who made a poor decision would be willing provide an affidavit to this effect. ***Put simply, these provisions deny the most vulnerable – those who were represented poorly or ineffectively – the ability of proving innocence through DNA testing.***

Barring Individuals Who Admitted Guilt
There are three areas of the proposal that would foreclose the possibility of post-conviction DNA testing to an individual who admitted or conceded guilt to the crime for which he was convicted. Section 12.73.010(b)(1)(C); 12.73.020(3); and 12.73.020(9). While it is counterintuitive to most, the innocent, with great regularity, plead guilty, falsely confess and otherwise provide admissions to

crimes they did not commit.

Researchers who study this phenomenon have determined that the following factors contribute to or cause such admissions or false confessions:

- Real or perceived intimidation of the suspect by law enforcement
- Use of force by law enforcement during the interrogation, or perceived threat of force
- Compromised reasoning ability of the suspect, due to exhaustion, stress, hunger, substance use, and, in some cases, mental limitations, or limited education
- Devious interrogation techniques, such as untrue statements about the presence of incriminating evidence
- Fear, on the part of the suspect, that failure to confess will yield a harsher punishment

Some populations, including youth and individuals with mental limitations, are particularly vulnerable, but we have uncovered many cases that involve individuals who do not fall into these "at risk" categories. ***Nearly 25% of the nation's wrongful convictions proven through DNA testing reveal involved an admission or confession.*** The proposal currently under consideration would have barred all of these people from seeking testing.

Requiring Courts to Anticipate the Outcome of Testing
Section 12.73.020(10) requires the court to assess whether there is a reasonable probability, in light of all available evidence, including even evidence that was not introduced at trial, that the requested DNA testing would demonstrate innocence. In essence, this provision would allow the courts to guess the outcome of testing rather than to just accomplish that requested testing. We have learned in the course of our work, that only DNA can provide definitive answers about guilt or innocence. Time and again, we have uncovered cases which contain multiple elements seemingly pointing to the defendant's guilt only to learn through DNA testing that the defendant is, in fact, innocent. As I described earlier, at our office, we have reviewed cases where we were fairly confident in a defendant's guilt only to learn later of his innocence and vice versa. Therefore, it is simply irresponsible to place such a burden on the court, and it certainly sets the stage for irreparable mistakes that any one of us, placed in that same position, would make.

Requiring the Petitioner to Pay for the Retrieval of Evidence
Section 12.36.200(d) of the proposal requires the defendant seeking biological evidence connected to his case to pay for its retrieval. ***There is no other state in the country that places this burden on the defendant.*** In light of all of the other barriers to meaningful post-conviction DNA testing contained in this proposal, this additional burden – particularly for an indigent defendant – could effectively bar deserving individuals from seeking testing.

We believe the Governor put forward this proposal in the hopes of helping the truly innocent who are languishing behind bars in the state of Alaska. Unfortunately there are many provisions in this bill

that would prevent access to post-conviction DNA testing from being meaningful. In essence, their hopes of demonstrating their innocence will be forever prohibited. Our office would appreciate the opportunity to offer our perspective to the Alaskan legislature with the goal of crafting a statute that provides meaningful access to testing in the way we believe Alaskans want.

Thank you for the opportunity to share these views with you. I hope you will contact me if there is any additional information that I can provide on the subject.

	Alaska HB 316	Alaska HB 174	Miss. Code Ann. § 99-39-3, et al.	18 USC 3600	Other States' Statutes
Discovery of new evidence/DNA technology permits interruption of statute of limitations (or ability to rebut presumption of untimeliness)	No	No statute of limitations	Yes	Yes	Only 12 (of 47) states have any time limitations; 5 of those 12 allow for an interruption of the SOL
Potential applicants whose attorneys forewent testing for tactical reasons are explicitly barred	Yes	No	No	No	2
Requirement that trial attorney provide affidavit stating why he did not seek testing	Yes	Yes	No	No	0
Explicit outright bar to potential applicants who admitted guilt	Yes	No	No	No	2; 1 of which provided a date after which pleas would prevent an application
Court may entertain new evidence not introduced at trial to determine whether DNA would provide evidence of innocence*	Yes	No	No	No	0
Requirement that applicant pay for retrieval of evidence	Yes	No	No	No	0

*This element of HB 316 is unheard of among post-conviction DNA testing access statutes. And rightly so, as it permits a judge to take into account any and all evidence of guilt in deciding a motion for mere testing, without requiring the judge to assume exculpatory results. In essence, the judge could cite "overwhelming evidence of guilt" in denying a motion for post-conviction DNA testing. This—despite the fact that appellate judges found harmless error in the appeals of ten percent of 133 DNA exonerees, citing overwhelming evidence of guilt.[1] Put differently, 13 exonerees in this cohort of 133 would likely still be in prison had they been subjected to this aberrant provision.

[1] Brandon Garrett, *Judging Innocence*, 108 Colum. L. Rev. 55, 107-09 (2008).

SENATE BILL 241
EVIDENCE RETENTION AND
POST-CONVICTION DNA TESTING
Sectional Analysis

Sections 1 and 2 are conforming amendments to clarify that the evidence retention provisions in the bill take precedence over the provisions of AS 12.36.010 – 12.36.090 that address disposition of evidence in various circumstances, including disposal of unclaimed property.

Section 3 proposes a new statute in AS 12.36, Preservation of Evidence, that would require municipal police departments, the Department of Public Safety, the Department of Law, and the Alaska Court System to preserve both physical evidence and biological evidence for the periods described below. The highlights include:

- The retention requirements apply to an investigation and prosecution of homicide (murder, manslaughter, and criminally negligent homicide), sexual assault in the first degree, and sexual abuse in the first degree.

  Because this is a new (and unfunded) duty imposed on municipal agencies in addition to state agencies, the bill was drafted to apply to a limited number of offenses; the offenses are the most likely to include evidence with DNA as part of the investigation and prosecution.

- Requires evidence (not including biological material) to be retained until the expiration of the prosecution, including the time for completing an appeal (including time for applying for review to the United States Supreme Court) or the litigation of any post-conviction relief application.

  The bill allows agencies to preserve samples of evidence if the item itself is impractical or hazardous to preserve. It recognizes that municipal police agencies will have varying storage capacity; that is, a rural agency will have a smaller storage ability that a larger municipality. The bill requires each agency to adopt written policies addressing removal and preservation of samples.

- Requires biological material to be retained by an agency until the defendant is unconditionally discharged for the crime (including any period of probation or parole), or until the period for retention of physical evidence have expired, whichever is longer.

  Biological material is defined to include the contents of a sexual assault examination kit, all human bodily material collected in the investigation, slides, swabs, or test

tubes containing human bodily material, and swabs or cuttings from other evidence that contain human bodily material.

- The bill adopts a procedure for an agency, after notice to the parties and their attorneys, to dispose of or return evidence or biological material if no party objects to the disposal or return of the evidence or biological material. If there is an objection, it allows the agency to request the court to allow the disposal or return of evidence or biological material.

- The remedy for an agency's failure to preserve evidence and biological material is left to the court. However, a court may not reverse or otherwise vacate a conviction based solely on a violation of the new law.

- The bill prohibits a person from bringing a civil action against an agency for a good faith failure to abide by the new requirements.

Section 4 requires that a person who seeks post-conviction DNA testing to support a claim of innocence bring the application for testing under AS 12.73, proposed in the bill.

Section 5 clarifies practice in the area of post-conviction relief by putting in statute the common law rule that requires an applicant to plead a prima facie case for post-conviction relief, and the court make a finding that a prima facie case has been pled before the state responds. Then the parties may pursue discovery on the matter. *State v. Jones*, 759 P.2d 558, 565-566.

Section 6 adopts procedures for post-conviction DNA testing. These include the following:

- **Sec. 12.73.010** sets out the information that must be included in an application for post-conviction DNA testing. The applicant must file
    - An affidavit by the applicant that states
        - that the applicant did not commit the crime for which he was convicted or any lesser included offense;
        - that the applicant did not solicit another person to commit, or aid or abet another person in planning or committing, the offense or any lesser included offense;
        - that the applicant did not admit or concede guilt for the offense in any official proceeding;

- An affidavit by the applicant or the applicant's lawyer stating the results of each DNA test already performed on evidence in the prosecution of the defendant;

- An affidavit by the applicant or the applicant's lawyer describing previous efforts to obtain DNA testing;

- An affidavit by the applicants trial lawyer stating the reason the DNA testing was not requested at the trial level, or a affidavit stating the efforts taken to obtain this affidavit.

- **Sec. 12.73.020** provides the standards for when a court may order post-conviction DNA testing. These include:

  - The applicant was convicted of a felony against a person (AS 11.41);

  - Completion of the affidavits required by AS 12.73.010 have been submitted;

  - The applicant has not admitted or conceded guilt in an official proceeding;

  - The evidence was obtained as part of an investigation of the crime;

  - Either

    - The evidence has not been tested or the right to test the evidence was not waived for tactical reasons; or

    - The evidence has been previously tested, the applicant is requesting a more probative test, and the applicant did not waive for tactical reasons a similarly probative test;

  - The evidence has been retained under conditions that ensure that it has not changed in a way that would undermine the accuracy of the test;

  - The applicant proposes a defense theory not inconsistent with the defense at trial, and that would establish innocence;

  - If the defendant was convicted at trial, the identity of the perpetrator was an issue;

  - There is a reasonable probability that the testing requested will produce new evidence that would support the new defense theory and could conclusively establish innocence;

- The applicant consents to give a DNA sample and to have that sample entered into the DNA identification registration system; and

- The application is timely.

- **Sec. 12.73.030** allows for summary dismissal by the court if the application does not include the information required. If the application is not summarily dismissed the prosecuting authority has 45 days to file a response.

- **Sec. 12.73.040** adopts presumptions regarding timeliness. There is a presumption that filed an application within three years after conviction is timely. There is a presumption that an application filed later is untimely; this may be rebutted by a finding that the applicant was incompetent or for any other good reason.

- **Sec. 12.73.050** adopts procedures for collecting DNA samples. It also provides that the testing must be performed at a laboratory operated by the state or approved by the state. The cost of testing will be paid for by the state; if the applicant requests additional testing, the applicant must pay for it, and it must be performed at an accredited laboratory or one approved by the Department of Public Safety.

- **Sec. 12.73.060** clarifies that the prosecution and an applicant may stipulate to DNA testing without following the procedures in the bill.

- **Sec. 12.73.070** includes definitions for the new chapter.

Section 7 provides that an indigent applicant is entitled to representation by the Public Defender Agency in bringing an application for post-conviction DNA testing.

Sections 8 – 12 make clarifying amendments to the DNA identification registration system statutes. The bill clarifies that a minor must be 16 years of age or older at the time of offense for the minor's DNA to be entered into the database. It also requires that the Department of Public Safety remove a DNA sample entered into the database if the individual was found not guilty for the offense that was the basis of the DNA entry. The bill also makes several draft changes to improve the readability of the law.

Section 13 provides that a DNA sample from the registration system may be used in a criminal investigation if it was mistakenly in the system, if the error was made in good faith. Section 13 also clarifies that if a sample does not include sufficient material to obtain an accurate identification, another sample may be taken.

Sections 14 and 15 note the effect the bill has on Rule 35.1, Alaska Rules of Criminal Procedure.

Section 16 creates a task force to consider and recommend standards for preservation of evidence. The task force would consist of the attorney general, the commissioner of public safety, a chief of police from a community not on the state's road system, a chief of police from a municipal department, the state medical examiner, representatives from the crime laboratory and the court system, and the victims' advocate.

The task force's work would be to recommend standards for collection, storage, organization, cataloging, and retrieval of evidence; identify sources of financial help for implementing the standards; recommend minimum qualification and training of persons responsible for storing evidence. After completing its work, the task force will report its recommendations to the legislature.

Sections 17 – 19 include applicability and effective date provisions.

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January 27, 2010

Senator Hollis French
Chair, Senate Judiciary Committee
Alaska State Capitol, Room 417
Juneau, Alaska 99801

Re: Senate Bill 241 – post-conviction DNA testing and evidence retention

Dear Senator French:

I am writing to respectfully request that you schedule Senate Bill 241 for a hearing in the Senate Judiciary Committee at your earliest convenience. SB 241 is one of several bills that the Governor has introduced to confront and help reduce crime in our state, and to provide for evidence retention and for post-conviction DNA testing.

The bill adopts standards for law enforcement agencies to retain evidence. This is important for later testing of the evidence for both cold case prosecutions and for people who claim they were wrongfully convicted. The bill adopts standards for post-conviction DNA testing. The bill also makes drafting and other minor changes to the DNA identification system.

Attached is a sectional analysis that explains the bill in detail.

Thank you for your consideration of this request.

Sincerely,

Daniel S. Sullivan
Attorney General

DSS:ADC: sf

SB 244

SENATE COMMITTEE REPORT

DATE: 2/12/10

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 244

SB 244 GOVERNOR'S DUTY STATION/TRAVEL ALLOWANCES

"An Act providing that, during the governor's term of office, the duty station of the governor is Ju
prohibiting payment of certain travel allowances for use of the governor's personal residence."

and recommends:

[ ] be **replaced** with [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt _____Letter of Intent

[ ] further referral to _____Committee

SENATE BIL
[✓] Same Ti
[ ] New Titl

HOUSE BIL
[ ] Same Ti
[ ] Technic
Change
[ ] New Titl
SCR #_

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
~~006~~				✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.
GOV	2/9/10		

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO R
	Coghill	✓		
	Wielechowski			✓
	GOV	✓		
	McGuire			✓
CHAIR:	French	✓		

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MEMORANDUM March 4, 2010

SUBJECT: Senate Bill 244: would the measure, if enacted in its current form, support a successful complaint under the Executive Branch Ethics Act against a governor spending less than half of his or her time in Juneau? (Work Order No. 26-LS1322\P)

TO: Senator Hollis French

FROM: Jack Chenoweth
Assistant Revisor

AS 39.20.060 provides that "state personnel laws relating to hours of employment, annual leave, sick leave, overtime, compensatory time, and travel allowances" are inapplicable to the governor and lieutenant governor. As introduced, Senate Bill 244 proposes to add an exception to that general exemption with reference to the governor that would formally declare that the governor's duty station[1] during term of office is Juneau and that would

---

[1] Although it appears in the Alaska Statutes, the term "duty station" is not defined there. The bill draft was prepared with an eye to the definition of the term as it is set out in Alaska Administrative Manual § 60.020:

> The duty station of a traveler includes the city, town, or village within 50 miles of where the traveler spends the major portion of their working time, *or the place to which the traveler returns to duty on completion of special assignments*. On a case-by-case basis, commissioners may identify a radius or commuting area that is broader than 50 miles within which per diem will not be allowed for travel within one calendar day.

The same rule also sets out a related definition of the term "residence":

> The residence of a traveler is the location, or within 50 miles thereof, where the traveler maintains the primary dwelling.
>
> If a traveler maintains multiple residences, the commissioner of the department shall designate the residence that bears the most logical relationship to the traveler's duty station as the traveler's primary residence. Factors to be considered in determining the primary residence include: the time ordinarily spent performing duties at each location; the degree of business activity at each location; the relative amount of state wages earned at each location. . . . .

explicitly preclude the governor's claim of lodging allowance "when staying in the governor's personal residence while in travel status away from [that] designated duty station."

The measure does not propose an amendment to the Executive Branch Ethics Act (AS 39.52). While an ethics charge certainly may be initiated against a governor who spends inordinate time away from the duty station designated in the measure, if that assertion is the whole argument offered in support of the claim or complaint, then, in my judgment it would be a complaint without merit.

In some instances, the decision by the governor and his or her family not to use and occupy the residence may be one compelled by reality. For example, an extended period of medical care (such as the state's first governor, Bill Egan, required) may result in absence from the seat of government. Similarly, if major renovation or repairs to the residence are scheduled, it may prove impractical for the governor's family to remain while the work is being undertaken. In other instances, the governor may conclude that attention to duties on site requires temporary station for an extended period in another part of the state.

The decision on where to conduct day-to-day business has been, for more than 50 years, and would remain, under the proposed measure, committed to the governor's discretion. However, I see nothing in the Executive Branch Ethics Act to support a conclusion that the governor violates the Act due just to his or her spending extraordinary amounts of time away from Juneau without additional evidence that the governor has violated another provision of the chapter. I've looked particularly at provisions of the Act that address "misuse of official position" (AS 39.52.120) and it doesn't seem that any of the activities identified in (a) and (b) of that section[2] -- provisions that appear to me to be the

---

A related provision, Alaska Administrative Provision § 60.240, ties these provisions together by directing, in relevant part,

> Travelers are not entitled to a lodging allowance when staying in their own residence(s).

The language of the statute, without the language of the proposed amendment, negates application of this provision to the governor and lieutenant governor.

[2] These subsections provide:

> **Misuse of official position.** (a) A public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person.

most directly relevant to the performance of the state's chief executive -- would support the claim.

Nothing in SB 244 appears to be intended to alter the ability of the governor to maintain his or her own schedule in order to fulfill the constitutional obligation that the governor has to see to the faithful execution of the laws. A governor who determines to exercise authority from a location other than the seat of government may do so, and his or her decision on how to allocate time between the state capital and other locations remains a matter committed to the governor's discretion and is not, and should not be, the basis of a claim of violation of AS 39.52.

*

Spot research discloses that identifying an official "residence" or an obligation to maintain a "principal office" -- a "duty station" -- and directing the state's chief executive

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(b) A public officer may not

(1) seek other employment or contracts through the use or attempted use of official position;

(2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state;

(3) use state time, property, equipment, or other facilities to benefit personal or financial interests;

(4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest;

(5) attempt to benefit a personal or financial interest through coercion of a subordinate or require another public officer to perform services for the private benefit of the public officer at any time; or

(6) use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes; this paragraph does not prohibit use of the governor's residence for meetings to discuss political strategy and does not prohibit use of state aircraft or the communications equipment in the governor's residence so long as there is no charge to the state for the use; in this paragraph, "for partisan political purposes"

(A) means having the intent to differentially benefit or harm a

(i) candidate or potential candidate for elective office; or

(ii) political party or group;

(B) but does not include having the intent to benefit the public interest at large through the normal performance of official duties.

to undertake obligations in and to reside at the seat of government during the executive's term of office is not an exceptional requirement. The mandate appears as a constitutional provision or in state statutes in just over half the states.

Of those, about 18 jurisdictions include the requirement or an explicit reference to a requirement in the state constitution --

Alabama, art. V, sec. 118: The governor [and other statewide elected officers . . .] shall, except the lieutenant governor, reside at the state capital during the time they continue in office, except during epidemics. . . . .

Arizona, art. V, sec. 1(C): The officers of the executive department during their terms of office shall reside at the seat of government where they shall keep their offices and the public records, books, and papers.

Arkansas, art. V, sec. 1: **Executive department . . . .** A. The executive department shall consist of the **governor [and other specified officers].**

C. The officers of the executive department during their terms of office shall reside at the seat of government where they shall keep their offices and the public records, books, and papers. . . . .

Idaho, art. IV, sec. 1: The executive department shall consist of a governor [and other designated officers] . . . . Their official office shall be located in the county where the seat of government is located, there they shall keep public records, books and papers. . . . .

Illinois, art. V, sec. 1: **Officers.** The Executive Branch shall include a Governor [and other designated officers] elected by the electors of the State. They shall keep the public records and maintain a residence at the seat of government during their terms of office.

Indiana, art. VI, sec. 5: **Residence of state officers.** (a) The Governor [and other designated officers] shall severally keep the public records, books, and papers, in any manner relating to their respective offices, at the seat of government.

(b) The Governor shall reside at the seat of government.

Maryland, art. II, sec. 21: **Residence of Governor.** The Governor shall reside at the seat of government . . . .

Michigan, art. V, sec. 24: **Executive residence.** An executive residence suitably furnished shall be provided at the seat of government for the use of the governor. He shall receive an allowance for its maintenance as provided by law.

Montana, art. VI, sec. 1: **Officers.** (1) The executive branch includes a governor [and other designated elected officers].

. . .

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.

New Mexico, art. V, sec. 1: The executive department shall consist of a governor [and other elected officers specified]. . . . The officers of the executive department, except the lieutenant governor, shall during their terms of office, reside and keep the public records, books, papers and seals of office at the seat of government.

New York, art. IV, sec. 3: . . . The governor shall receive for his or her services an annual salary to be fixed by joint resolution of the senate and assembly, and there shall be provided for his or her use a suitable and furnished executive residence.

North Carolina, art. III, sec. 5: **Duties of Governor.** (1) Residence. The Governor shall reside at the seat of government of this State. . . . .

North Dakota, art. V, sec. 1: The executive power is vested in the governor, who shall reside in the state capital and shall hold the office for the term of four years beginning in the year 2000, and until a successor is elected and qualified.

South Carolina, art. IV, sec. 20: **Residence of Governor.** The Governor shall reside at the Capital of the State except in case of epidemics, natural disaster, or the emergencies of war; but during the sittings of the General Assembly he shall reside where its sessions are held.

Texas, art. IV, secs. 5 and 13:

-- **Compensation of Governor.** The Governor shall, at stated times, receive as compensation for his services an annual salary in an amount to be fixed by the Legislature, and shall have the use and occupation of the Governor's Mansion, fixtures and furniture.

-- **Residence of Governor.** During the session of the Legislature the Governor shall reside where its sessions are held, and at all other times at the seat of Government, except when by act of the Legislature, he may be required or authorized to reside elsewhere.

Virginia, art. V, sec. 4: **Place of residence and compensation of Governor.** The Governor shall reside at the seat of government. . . . .

Washington, art. III, sec. 24: **Records, where kept, etc.** The governor, secretary of state, treasurer, auditor, superintendent of public instruction, commissioner of public lands and attorney general shall severally keep the public records, books and

papers relating to their respective offices, at the seat of government, at which place also the governor, secretary of state, treasurer and auditor shall reside.

West Virginia, art. VII, sec. 1: The executive department shall consist of a governor [and other designated officers]. . . . They shall reside at the seat of government during their terms of office, keep there the public records, books and papers pertaining to their respective offices and shall perform such duties as may be prescribed by law.

Another half dozen states prescribe residence at the state capital or seat of government by law --

Florida, Fla. Stat. § 14.01: **Governor; residence; office; authority to protect life, liberty, and property.** The Governor shall reside at the head of government, and the Governor's office shall be in the capitol. The Governor may have such other offices within the state as he or she may deem necessary. . . . .

Georgia, O.C.G.A. § 45-12-6: **Executive office; Governor's residence.** The executive office of the Governor shall be in the capitol. If from any cause there is no capitol or if it is abandoned, then the executive office shall be at such place at the seat of government as the Governor may direct, and not elsewhere, unless made necessary by invasion, insurrection, pestilence, or rebellion. The Governor shall reside at the state capital during his term of office.

Louisiana, La. Rev. Stat, § 49.208: The governor shall be entitled to the use and occupancy of the governor's mansion as his official place of residence during his term of office; . . . .

Maine, 2 Maine Rev. Stat. § 1: **Residence; office hours; . . . .** The Governor shall have his official residence at Augusta during his term of office, and shall keep his office at the State House open for the transaction of the business of the State during all normal working hours of the State House.

Nevada, Nev. Rev. Stat. Ann. § 223.040: **Office and residence.** The governor shall keep his office and reside at the seat of government.

Wyoming, Wyo. Stat. Ann. § 9-1-101(b): The governor, secretary of state, state treasurer, state auditor and state superintendent of public instruction shall reside and maintain their offices at the seat of government.

Another handful of jurisdictions explicitly direct the governor to maintain an office or principal office at the seat of government during the term of office without also specifying a place of residence or abode at that location. In some few instances, that directive appears in the state constitution --

Kansas, Constitution of the State of Kansas, § 6: **Offices at capital.** The governor [and other enumerated state officials] shall keep their respective offices at the seat of government.

Oklahoma, Okla. Const. art. VI, § 1(A): **Executive officers enumerated--Offices and records--Duties.** The Executive authority of the state shall be vested in a Governor [and other designated public officers] provided by law and this Constitution, each of whom shall keep his office and public records, books and papers at the seat of government, and shall perform such duties as may be designated in this Constitution or prescribed by law.

Oregon, Oregon Const., art. VI, § 5: **Offices and records of executive officers.** The Governor, Secretary of State, and Treasurer of State shall severally keep the public records, books and papers at the seat of government in any manner relating to their respective offices.

In others, it is a mandate imposed by law --

Colorado, Colo. Rev. Stat. § 24-20-101: **Office at seat of government - secretary.** The governor shall keep his office at the seat of government, in which shall be transacted the business of the executive; and he shall keep a secretary at said office during his absence.

Iowa, Iowa Code § 7.1: **Office -- secretary.** The governor shall keep the governor's office at the seat of government, in which shall be transacted the business of the executive department of the state. The governor shall keep a secretary at the office during the governor's absence.

In the roughly 20 remaining jurisdictions apart from Alaska, while there are often statutory references to an "executive residence," "governor's mansion," or a similar phrase, indicative that the state government furnishes an "official residence" at or near the state's seat of government for the governor's use during a term of office, they appear without a corresponding requirement or mandate that the governor shall occupy the space provided.

JBC:plm
10-137.plm

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SENATOR BERT K. STEDMAN

SPONSOR STATEMENT

SB 244 – GOVERNOR'S DUTY STATION

SB 244 will clarify state law regarding the governor's duty station and travel allowance. Currently in statute, there are no provisions that require the governor to reside in the capital city and occupy the governor's mansion during his or her term of office. The bill specifies that the governor's duty station, defined as the location where the governor spends the major portion of time assigned to fulfill the duties of office, is considered to be Juneau.

The proposed law does not prohibit the governor from maintaining a personal residence in another part of the state, but if he chooses to reside there and not in the governor's mansion, he will not be entitled to a travel allowance when away from the capital.

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SENATOR BERT K. STEDMAN

SECTIONAL ANALYSIS

SB 244

"An Act providing that, during the governor's term of office, the duty station of the governor is Juneau, and prohibiting payment of certain travel allowances for use of the governor's personal residence."

Sec. 1 Amends AS 39.20.060 by removing the exemption in state law enjoyed by the governor and lt. governor with respect to the calculation and payment of travel allowances.

Sec. 2 Adds a new subsection to AS 39.20.060 declaring Juneau to be the governor's designated duty station and makes conforming amendments to the calculation and payment of travel allowances that apply to the governor.

Sec. 3 Satisfies AS 39.20.070 which requires modifications to AS 39.20.050 or AS 39.20.060 be done so expressly.

AAM 60. TRAVEL

60.010	Introduction to Travel	07/05
60.020	Travel Definitions	01/10
60.030	E-Travel	01/10
60.040	Travel Approvals	10/09
60.050	Travel Purchase Policies	01/10
60.060	Payment Methods for Transportation and Expenses	01/10
60.070	Travel Advances	10/09
60.080	Interruption or Deviation of Travel for Traveler Convenience	01/10
60.090	Unused Transportation and Accommodations	01/10
60.100	Airline Delays, Rescheduling, and Overheading	01/07
60.110	Excess Baggage	04/05
60.120	Rental Cars	01/10
60.130	Airport Shuttle, Courtesy Van, and Taxi Service	01/07
60.140	Privately Owned Vehicles	04/09
60.150	Privately Owned Aircraft	10/07
60.160	Charters and Group Transportation	01/10
60.170	Alternatives to Travel	04/05
60.180	Boards and Commissions	01/07
60.190	Health and Safety of Travelers	01/10
60.200	Travel Related to Contracts	10/08
60.210	Completion of the Travel Authorization	01/10
60.220	Travel Expenses - Required Receipts and Documentation	07/09
60.230	Third Party Reimbursements	01/07
60.240	Lodging Types and Rates	04/07
60.250	Meal and Incidental Expense Allowances	01/10
60.260	Contracting for Subsistence	07/05

AAM 60.010 Introduction to Travel (07-05)

The travel policies of the State of Alaska are adopted by the Commissioner of the Department of Administration in accordance with AS 39.20.160. State agencies and travelers are required to comply with these policies whenever traveling on state business. Department heads may approve policy exceptions on a trip-by-trip basis for subordinate personnel within their departments based on documented circumstances or unique business requirements. Policy exceptions for department heads must be approved by the Commissioner of the Department of Administration.

The purpose of the travel policies is to provide approval to travel on state business, and to provide reimbursement for actual and necessary expenses incurred by travelers while traveling on state business. The policies apply uniformly to all travelers unless otherwise provided for by a collective bargaining agreement. When there is a conflict between these policies and a collective bargaining agreement, the relevant provisions of the collective bargaining agreement supersede.

The travel policies of the state are generally intended to be in compliance with current IRS regulations as an accountable plan. See AAM 320 for tax implications related to state travel reimbursement policies.

AAM 60.020 Travel Definitions (01-10)

Commercial Lodging Facility

A commercial lodging facility is a licensed entity that is in the business of selling lodging to the general public and includes hotels, inns, motels, apartments, and campgrounds.

Department Travel Administrator

Travel administrators are department personnel responsible for maintaining the travel profiles for their department. They may or may not also be the department's travel coordinator.

Department Travel Coordinator

Employee designated within a department to oversee the travel function. Department travel coordinators assist and train travel planners, monitor travel operations, and make recommendations on statewide travel policy.

Duty Station

The duty station of a traveler includes the city, town, or village within 50 miles of where the traveler spends the major portion of their working time, or the place to which the traveler returns to duty on completion of special assignments. On a case-by-case basis, commissioners may identify a radius or commuting area that is broader than 50 miles within which per diem will not be allowed for travel within one calendar day.

Emergency

An emergency is defined as an unforeseen set of circumstances that calls for immediate action. Emergencies include those that are the result of business-related occurrences, as well as personal situations. Personal emergencies generally do not affect travel status, except in the following cases:

- Traveler suffers a serious health condition (as defined by AS 39.20.550(5) while in travel status
- Death of an immediate family member [as defined by 2 AAC 08.999 (c)] occurs while traveler is in travel status
- Other situations deemed by department management as severe enough to affect travel status

E-Travel

Managed travel program for the State of Alaska Executive Branch.

E-Travel Management Team (ETMT)

The ETMT is comprised of the State Travel Manager and Assistant, as well as others from the Division of Finance that support this program.

E-Travel Office

The E-Travel Office is a section within the Division of Finance that manages the travel function for the Executive Branch. Staffed by the State Travel Manager and Assistant, this office serves as the liaison between state agencies and the contracted travel agency.

E-Travel Online

The online booking tool for travel arrangements, provided by the contracted travel agency and powered by RESX.

Lodging Allowance

Lodging allowance is the portion of per diem that covers lodging, generally the actual cost of the traveler's hotel room unless otherwise stated in individual bargaining unit agreements.

M&IE

Meals and incidental expense allowance. The portion of per diem that reimburses travelers for the cost of meals and incidental expenses including discretionary tips, laundry expenses, and other personal costs of travel.

Note: Any incidental expenses charged to a State credit card will be deducted from M&IE paid to the traveler.

MCAAK Credits

Cash equivalent credit received for purchases of MCAAK airfares from the contract travel agency. These credits are no longer accrued, but remaining balances may be used as a form of payment for airfare.

Non-Commercial Lodging Facility

A non-commercial lodging facility may include, but is not limited to, a public facility in a rural setting such as a community building or school, motor home, or private home.

Per Diem

Per diem allowance is a daily payment instead of reimbursement for actual expenses for lodging, meals, and incidental expenses. It is separate from transportation expenses and other miscellaneous expenses.

Residence

The residence of a traveler is the location, or within 50 miles thereof, where the traveler maintains the primary dwelling.

If a traveler maintains multiple residences, the commissioner of the department shall designate the residence that bears the most logical relationship to the traveler's duty station as the traveler's primary residence. Factors to be considered in determining the primary residence include: the time ordinarily spent performing duties at each location; the degree of business activity at each location; the relative amount of state wages earned at each location. Agencies may also contact the Division of Finance for assistance.

Tourist Class

The least costly class of accommodations on a regularly scheduled airplane, ship, or train.

Travel Planners

Individuals within each department that support travelers by making travel arrangements, explaining policies, ensuring travel is approved prior to purchase, and ensuring reimbursement occurs timely after travel is complete.

Traveler

Throughout these policies, traveler usually means a state official or a person employed by a state agency. At times, an agency may require board or commission members, volunteers, wards of the state, or other nonemployees to travel on state business. The agency must generally apply the same travel policies for nonemployees, except when travel reimbursement terms under a professional service contract differ as discussed in AAM 60.200.

Travel Expenses

- Transportation expenses consist of commercial carrier fares, vehicle mileage allowances, taxi fares, bus fares, and other essential transportation expenses while on official state business.
- The per diem consists of two parts, meals and incidental expenses, and lodging.
- Other expenses consist of charges for business telephone calls, internet, parking fees, emergency purchases of supplies, and other charges necessary to conduct official business.

Travel Status

Travelers shall be considered in travel status from the time an authorized trip begins until it ends. An "authorized trip" is a trip approved in accordance with administrative manual guidelines and where a traveler travels outside the boundaries of the duty station. An authorized trip begins when a traveler is leaving the duty station and:

- A traveler leaves the normal work location during normal work hours; or
- A traveler leaves the residence outside normal work hours.

An authorized trip ends when:

- A traveler returns to the normal work location during normal work hours; or

- A traveler returns to the residence if the trip ends outside normal work hours; or
- A traveler accepts voluntary denied boarding compensation. Refer to AAM 60.080 Interruption or Deviation of Travel for Traveler Convenience.

Refer to:

http://dop.state.ak.us/docpool/pdf/sop/Ch08TravelasTimeWorked/traveltimeworkSOPrev1.pdf for policies on compensation for travel as time worked.

Travel status is either short-term or long-term and per diem allowances vary according to status. The determination of short-term or long-term is based upon the duration and type of lodging facility provided to the employee. See AAM 60.240 for further guidance. A brief return of the employee to their duty station for business or personal convenience does not disrupt the long-term status of the trip.

A traveler is not in travel status for local travel or day trips. The following are some examples of travelers who would not be considered in travel status under the local travel or day trip provision:

- A state trooper while on patrol in his/her assigned territory.
- A safety inspector whose normal duties include driving from his/her normal duty station to a construction site for purposes of conducting an inspection.
- A health inspector whose normal duties include driving from his/her normal duty station to various communities to inspect facilities.

A mileage reimbursement form may be used to reimburse transportation costs when the criteria for travel status are not met.

AAM 60.030 E-Travel (01-10)

The Department of Administration has established E-Travel as the managed travel program serving the State of Alaska Executive Branch, including employees, members of boards and commissions, inmates, witnesses, and other individuals that travel on official State business.

E-Travel is comprised of:

- Travel policies contained in AAM 60
- E-Travel Online, which is the online booking tool RESX configured for State of Alaska travel policies
- Travel management contractor

- Other contracts with vendors in the travel industry including airlines, hotels, and rental car agencies
- E-Travel Management Team (ETMT)
- Travel coordinators, travel administrators, and travel planners within each department
- Employees and others traveling on official State business

Travel Management Contract

The State's travel management contract contains performance measures that affect the fees charged by the contractor. Measurements are performed quarterly and the fees are adjusted +/- 20% from a base amount.

Service standards for performance under the contract are available on the Division of Finance travel web site.

All contracted travel personnel are required to sign and adhere to a confidentiality agreement. The confidentiality agreement prohibits contracted personnel from discussing state travel arrangements with anyone that does not have a valid State of Alaska-related business need to know. The agreement includes a liquidated damage clause for breach of confidentiality.

Traveler Profile

An electronic traveler profile is required for booking travel. The state information in these profiles is maintained by department travel administrators. Optional information such as mileage number or seat preference may be entered by the traveler. Traveler profile instructions are available on the Division of Finance travel web site.

Department Travel Policies

Within the confines of this section, agencies may establish more specific travel policies.

Travel Purchase Process

Travel may be purchased using the E-Travel Online booking tool or by calling the contracted travel agency.

Travel planners should confirm the details of the itinerary before purchasing. After purchase, the agency is responsible for the carrier's change fee and any additional service fees to cancel and reissue the ticket. The traveler is personally responsible for the change fee when the change is for personal convenience.

Travel purchases must include the name of the approving official authorizing the purchase.

Fare Increases

Fares may increase before purchase. The state agency pays the increased fare unless it is due to a contractor delay, in which case the contractor will absorb the fare increase.

24-Hour Hold

A reservation should only be placed on a 24-hour hold when it is **certain** it will be purchased within that time frame. If the held reservations can not be purchased within 24 hours, the reservation **must** be cancelled.

Multiple or duplicate 24-hour held reservations are not allowed and run the risk of the ticketed reservation being cancelled by the airlines as a duplicate or debit memos from the airlines that are the responsibility of the state agency.

Refunds

Departments may request a refund for a refundable ticket at any time by replying to the final itinerary asking the contractor to refund the ticket. Any unused refundable ticket will be refunded 60 days after the return date on the ticket by the contractor and the state agency will be notified.

AAM 60.040 Travel Approvals (10-09)

All travel shall be approved in advance. The request for approval shall be in writing and must document essentials of the travel including purpose, destination, dates and times, a total not-to-exceed amount, any related leave requests, and whether an advance is authorized. The approval required depends on the location of the travel:

Travel within Alaska

Prior approval is required within the department and shall at a minimum have the approval of the traveler's immediate supervisor or designee.

Travel to the Contiguous United States, Hawaii, British Columbia, and Yukon Territory

Prior approval is required by the department and by the department's commissioner or designee.

Travel Outside the United States

Prior approval is required by the department, the department's commissioner and the Governor's Office.

Travel Completion Approvals

Following completion of travel, all travel related expenses and any deviation from the originally approved travel arrangements must be documented in the travel authorization. If the total cost of travel exceeds the amount approved in advance by more than 10%, the same level of approval must re-approve the travel, before the traveler reimbursement is approved by the appropriate agency authority.

General Travel Approval Policies

- All state travel shall be work-related and essential for state business.
- Agencies may document pre-approval for certain types of travel that does not fit the specific trip-by-trip approval process.
- Personal travel plans of the traveler shall not influence the approval of state-funded travel. Refer to AAM 60.080 Interruption or Deviation of Travel for Traveler Convenience.
- Travel status should be confined to the minimum amount of time required to conduct the business of the state. As a general rule, a traveler may travel the day prior if the only available flights depart prior to 7:00 a.m. and a traveler may stay an extra night if the only available flights make scheduled home arrival occur after 10:00 p.m. Supervisors may approve exceptions to these travel times when circumstances justify.
- When the required travel period exceeds 15 consecutive days, division directors may authorize employees to return home on days off at state expense. Such trips shall not curtail productive work time, and shall be limited to no more than one per month. Authorized costs for such trips are limited to the amount of avoided per diem.
- Whenever a traveler and the state opt to share the cost of business travel, the agreement will be documented in advance, including the duration of state business within the travel period. For bargaining unit members, such agreements require the concurrence of the union and must be authorized by the Division of Labor Relations.

AAM 60.050 Travel Purchase Policies (01-10)

Alaska Statute 39.20.140(b) requires that the state pay no more than "the lowest tourist class fare for the most direct route" unless specific exemptions are met:

- tourist class accommodation is not available;
- waiting for tourist class accommodation would cause a delay harmful to the state; or
- the Department of Administration finds that travel by tourist class accommodation is not in the best interest of the state, and authorizes other accommodation.

First or business class is allowed if it is offered to the traveler on a complimentary basis because of frequent flyer status and upgraded by the airline involved.

The statutes require purchasing the best fare for the most direct route that meets the state's business needs. This requirement also applies to contractors traveling on behalf of the state, regardless of whether the state is paying the travel expenses directly or reimbursing the contractor. The best fare does not require the purchase of nonrefundable tickets; agencies should make this business decision based on the nature of the travel.

Travelers and approvers are required to document reasons for declining savings where the lowest available airfare is not purchased. Variances from State of Alaska travel policy may be reported to the departments for analysis.

Electronic ticketing is the method preferred by the state. Paper tickets will be issued only when necessary.

Travel planners must confirm the name on the traveler's government-issued ID card before an airline ticket is issued using a generic profile. The airline ticket must be issued in the name on the driver's license or government-issued ID card.

Alaska Airlines EasyBiz miles will be tracked by the travel management contractor for each agency. State agencies will direct the contractor on use of EasyBiz miles that will ensure maximum value upon redemption.

All air and ferry travel must be ticketed using E-Travel except as noted in the service standards.

Travelers are generally required to use State of Alaska contracted / preferred travel providers. The Department of Administration, Division of General Services has negotiated travel contracts as listed in the Contract Award Manual. Use of these providers ensures travelers receive the best

fares, rates, and insurance coverage. Exceptions to required use of contracted / preferred providers are limited to:

- Contracted / preferred provider is not available.
- Contracted / preferred provider does not meet a specific business need (requires pre-trip department approval).
- Space or scheduled flights are not available from the contracted / preferred provider to accomplish the purpose of the travel.
- Use of the available contract / preferred provider service would require the traveler to incur unnecessary costs which would increase the total cost of the trip.
- A traveler is inconvenienced more than three hours by using the contracted / preferred airline provider.

State contract airfares are not available for travel by consultants and contractors, even if their travel is reimbursed by the state.

If an airline lowers a fare and a state-purchased ticket is reissued to a lower fare, the difference in fare belongs to the state. Airlines sometimes issue a nonrefundable electronic discount code credit (e-certificate) in lieu of refunding the form of payment used to purchase the original ticket. This e-certificate belongs to the state. State travelers are not allowed to use these e-certificates for personal travel, even if deposited in their personal account by the airline. The e-certificate number must be given to the traveler's department to be used for future state travel.

Excess costs, circuitous routes, delays, or luxury accommodations unnecessary or unjustified in the performance of official state business travel are not acceptable. The traveler will not be reimbursed for any additional costs that result from unauthorized travel arrangements.

AAM 60.060 Payment Methods for Transportation and Expenses (01-10)

The State of Alaska uses two primary methods to purchase transportation for individuals traveling on official state business:

1. One Card Alaska Corporate Credit Card (Card) – Agencies shall issue corporate credit cards to employees who travel. Employees with Cards are required to use them for purchases when the state pays actual costs, as in the case of transportation and actual lodging expenses. These purchases are expenditures from the state to vendors and are generally tax-exempt under local Alaska tax ordinances when purchased with the Card or other means of direct payment by the state.

2. Central Travel System (CTS) Accounts - The State of Alaska has established CTSs, which are used to purchase airfares and pay for

rental cars for travelers without Cards. CTSs are ghost accounts for which plastic cards are not issued.

There may be occasions when neither the Card nor the CTS can be used to purchase transportation. In these cases, it should be purchased using EDI or a state warrant.

Additional charges, such as taxes, resulting from purchasing with the traveler's personal resources are the responsibility of the traveler unless none of these payment methods were available to the traveler.

Mileage and MCAAK Credit

Agencies no longer accrue mileage or MCAAK credits for airfare purchases. Agencies accrued MCAAK credits from the contracted travel agency when purchasing MCAAK fares, for which no mileage was available from the airline. Accumulated mileage and MCAAK credits are tracked for the purchasing department, and may be used in lieu of money to purchase airfare.

Mileage may be used to reduce travel costs with Alaska Airlines. Miles are worth slightly less than $0.02 each, which should be a standard for deciding whether to use miles to purchase tickets. For example, 25,000 miles should be considered when the value of the ticket purchased is at least $500.

MCAAK credits can be used to pay for any airline tickets purchased using E-Travel.

Both mileage and MCAAK credits remain available to the purchasing agency for one year after they are earned. At that point, they revert to a statewide pool for use by agencies that have used their mileage and MCAAK credits.

Alaska Marine Highway

Transportation on state ferries may be authorized when in the best interest of the state. All ferry transportation will be paid by the employee using their Card, or by the department through use of the CTS or an interdepartmental billing. Staterooms may be paid in advance utilizing the Card only if the appropriate authorization has been obtained in advance. Meals are to be paid directly by the traveler. The traveler may be eligible for reimbursement of lodging expenses and/or M&IE in accordance with AAM 60.240 and AAM 60.250.

Lodging

Hotel charges paid directly by the state are generally exempt from local taxes within Alaska. Frequent travelers should use their Card to pay for

lodging. When the Card is not available, departments may choose to use direct billing as the method of payment. When taxes are charged on direct payments, state agencies should contact the vendor for refunds as appropriate and reflect this action on the travel authorization.

This policy does not apply to lodging purchased by employees who are reimbursed a per diem allowance for lodging per the terms of their labor contract. This lodging is a purchase of the employee, not a direct state purchase, and is therefore subject to hotel and sales tax under local ordinances.

Meals and Incidental Expenses

For meals and other out-of-pocket expenses, the traveler receives a meals and incidental expense allowance as described in AAM 60.250. These actual costs are purchases of the traveler, and are therefore taxable transactions under local tax ordinances. The Card should not be used for such purchases to avoid improper tax exemption. Personal expenses for meals, phone calls, and entertainment should not be commingled with purchases for lodging expenses on the state Card.

AAM 60.070 Travel Advances (10-09)

An advance of the estimated per diem allowance may be made to a traveler before the traveler enters travel status. Departments may choose to pay travel advances using EDI, or through use of the Card at an ATM.

All travel advances require employee notification that any monies owed the State of Alaska by the traveler may be deducted from the employee's paycheck. The Travel Advance Authorization form, available on the Division of Finance web site, needs to be signed only once by a traveler for recovering all subsequent advances through payroll deductions. These forms should be kept on file by travel planners.

A traveler shall not receive an additional travel advance until the previous travel advance and trip has been reconciled and closed out.

Agencies may make exceptions to policies in this section when circumstances justify.

AAM 60.080 Interruption or Deviation of Travel for Traveler Convenience (01-10)

Any interruption or deviation from the most direct and efficient means of travel for traveler convenience requires prior approval at the agency level by the appropriate supervisor or designee. Any additional time or expense

resulting from an interruption or deviation for traveler convenience shall be borne solely by the traveler. See AAM 60.140 for clarification on travel involving privately owned vehicles.

When a traveler interrupts business travel for personal reasons, the following apply:

1. Per diem, travel allowances, and reimbursements may not exceed such charges as would have been incurred if traveling by the most direct and efficient means.

2. Per diem, travel allowances, and reimbursements stop the hour a traveler interrupts business travel for personal reasons and resumes the hour the traveler returns to duty or resumes route of travel required by state business. For example, a traveler (Anchorage duty station) is traveling on state business (in Seattle) and the business is concluded at noon on Wednesday. For personal reasons the traveler will not return to the duty station until the following Monday. In this example, the traveler's entitlement to per diem, mileage, and other travel expenses reimbursements end at noon on Wednesday and would start two hours before flight time from Seattle to return to the duty station, subject to the limitations in 1 above.

3. Any additional time away from the traveler's duty station that may be required for such indirect travel will be charged to annual leave, personal leave, or leave without pay. In the example 2 above, the employee's leave status would begin at noon when business travel was interrupted for personal reasons. Leave in conjunction with business travel must be documented in prior approval and copies of leave slips shall be submitted upon completion of the trip.

4. Per diem is allowed when a traveler is granted leave due to illness. However, the per diem allowance shall not be authorized for a period of illness exceeding three calendar days in any one period of absence. Per diem is not authorized if the traveler is hospitalized or otherwise has no actual and necessary business expenses requiring reimbursement.

5. Rental cars obtained for official state business must be returned.

6. State exemption for hotel taxes does not extend to lodging.

7. Personal travel segments cannot be purchased at state contracted rates.

8. A traveler on official state business requesting approved personal air travel deviation for an alternate routing, personal discount coupons to purchase companion travel, or travel that increases airfare, will make their own travel arrangements. These arrangements will be purchased

by the traveler using a personal form of payment instead of a state form of payment. A state-authorized fare quote must be obtained for a price comparison to determine traveler reimbursement. Once travel is completed the traveler must present a copy of the ticket receipt or itinerary showing payment and the state-authorized fare quote to obtain reimbursement. The fare quote may be obtained and saved in E-Travel Online with the research option (no fee), or by calling the contracted travel agency (fee applies). After travel is complete, the state will reimburse the lesser amount of either the ticket or the state-authorized fare quote obtained prior to travel. If the only deviation is an extension of dates on either end of the state-authorized dates, departments may opt to pay for the combined airfare when purchased if the personal portion can be recovered from the traveler's reimbursement after travel is complete.

9. Agencies must ensure that employees combining business and personal travel are well-informed and cautioned that airfares may result in a liability to the employee, should the reason for the business travel be cancelled. Employees leaving on vacation in conjunction with the business event will become responsible for all costs should the business event be cancelled. Employees opting not to travel if the business event is cancelled will be responsible for the cost of travel that the state cannot recover that was attributable to the personal portion of the airfare. The employee may be reimbursed, at the department's option, for the business portion of unused tickets. The business portion of unused tickets paid to employees must be monitored by the department as state assets until they are used or expire. Employees leaving the department prior to the expiration of such a ticket are required to return the state payment for any business portion that is still available for use by the employee.

10. Voluntary denied boarding compensation where the traveler voluntarily vacates his/her seat and takes a later flight may be retained by a traveler (viewed as an insignificant personal travel credit under ethics rules). A traveler cannot volunteer for denied boarding on an outbound flight unless the traveler has previously approved personal travel for the beginning of the travel period. Nor may a traveler volunteer for denied boarding if it may cause a delay in return to work. By accepting a voluntary bump on the return portion, the traveler puts himself on personal travel rather than state business. Travel status ends, no further per diem is allowed, and all state insurance coverage ceases for the duration of the trip. The traveler is responsible for any additional travel expenses caused by the voluntary action.

AAM 60.090 Unused Transportation and Accommodations (01-10)

When travelers' plans change, travelers shall release air, car, and hotel reservations within the required time limits. Travelers may contact vendors directly or contact the travel management contractor to cancel reservations. The state shall not reimburse travelers for charges incurred as a result of failure to release reservations.

Travelers shall submit any unused portion of air or ferry tickets with the travel authorization to their travel planner. Travel planners may forward unused tickets to the travel management contractor to process refunds or the department may retain them for reissuing later.

AAM 60.100 Airline Delays, Rescheduling, and Overheading (01-07)

When an airline assumes the cost of a traveler's lodging and/or meals due to airline delays or overheading, the traveler shall be paid a per diem allowance up to the originally scheduled arrival time. When the airline does not assume the cost of a traveler's lodging and/or meals, the traveler shall be paid the per diem allowance that applies for the actual trip.

Involuntary denied boarding compensation is payable to the state, not to the individual employee. If a traveler is performing official travel and a carrier denies a confirmed reserved seat on a plane, the traveler must submit to the department any payment received for liquidated damages. The traveler must ensure the carrier shows the "State of Alaska" as payee on the compensation. Any such compensation must be submitted with the travel authorization.

AAM 60.110 Excess Baggage (04-05)

The state will only pay for excess personal and state baggage necessary to carry out official state business. Such baggage shall be transported by the most economical method (checked as excess baggage, shipped via airfreight, etc.).

AAM 60.120 Rental Cars (01-10)

When necessary, the rental of a car may be authorized for travelers in travel status. The estimated cost for the rental car must be included in the prior approval process required under AAM 60.040 Travel Approvals. The cost and intended use of the car must be considered in determining the size and type of car to rent. The State of Alaska supports a mid-size or less car rental. Rental of a car larger than mid-size may be allowed when several

travelers are traveling together or circumstances require the use of a larger car. Such situations must also be documented on the completed travel authorization.

- All car rentals must be reserved using E-Travel.
- Travelers cannot upgrade their rental cars at the airport.
- Travelers are responsible for refueling rental cars prior to returning them to the rental car companies. If the rental car company refuels the vehicle, a justifiable business purpose must be provided for incurring the additional cost.

All insurance offered by car rental companies must be declined by state travelers. By most state laws, auto liability insurance (covering third party damage or injury claims) is provided by the car-rental company as owner of the vehicle. Excess auto liability coverage is provided through Risk Management for authorized business travel.

Collision or Physical Damage Waiver for any damage to the rental car (collision, comprehensive coverage, and related loss of use claims) is often offered by the car-rental company at the counter at the time of hire and should be refused by the State of Alaska employee on business travel status. Risk Management will respond and resolve any physical damage claims to rental cars while used on state business related travel.

Rental cars may be driven on state business only, and Risk Management self-insurance coverage applies only where the car is used on state business. State business includes usual travel related activity (restaurants, hotels, etc.), but does not extend to any personal deviations for individual traveler convenience. Refer to AAM 60.080 Interruption or Deviation of Travel for Traveler Convenience.

If there is damage to any rental car:

- Travelers are cautioned to never accept responsibility or admit liability.
- If the lessor requests information or payment, advise the lessor to contact the Department of Administration, Division of Risk Management.
- If there is personal injury or an accident, telephone the Division of Risk Management as soon as possible.

See AAM 60.350 for use of rental cars connected with an employee move.

AAM 60.130 Airport Shuttle, Courtesy Van, and Taxi Service (01-07)

When a traveler in travel status requires transportation either to or from an airport or ferry terminal, an airport shuttle, courtesy van, taxi or limousine service is allowed. When departing on state travel, if a traveler uses a

privately owned vehicle for transportation to or from an airport or ferry terminal, the amount of reimbursement for mileage, parking, and other costs is limited to the equivalent cost of a taxi.

AAM 60.140 Privately Owned Vehicles (04-09)

A traveler may use a privately owned vehicle, such as auto, snowmobile, motorcycle, or boat when it is in the best interest of the state. The approving official shall be responsible for substantiating that use of a privately owned vehicle is in the state's best interest. The traveler shall receive a mileage reimbursement equal to the established rates published on the Division of Finance web site at: http://fin.admin.state.ak.us/dof/travel/resource/POV_Rate_Table.pdf.

When a traveler uses a privately owned vehicle, the amount of reimbursement shall be limited to what the lowest available commercial alternative would have cost. Per diem, actual hotel expenses and meal allowances, or other travel reimbursements shall not exceed the amounts that would have been incurred had the traveler used common carrier transportation. Only mileage incurred while engaged in official state business is reimbursable.

Mileage incurred for commuting between an employee's residence and normal work location is not reimbursable. Mileage incurred for commuting to/from a temporary worksite is reimbursable to the extent that it exceeds the distance from the employee's residence to the normal work location.

Any additional regularly scheduled work time away from the duty station required as a result of using a privately owned vehicle for personal convenience will be charged to annual leave, personal leave, or leave without pay.

When two or more state travelers are traveling in the same direction, and it is possible to share a privately owned vehicle or airplane, the state will reimburse the total mileage only once (AS 39.20.130).

AAM 60.150 Privately Owned Aircraft (10-07)

When a state employee, who is a qualified pilot, rents an aircraft or uses a privately owned aircraft for state business, the following items must be filed with the Department of Administration or the agency administrative officer before using the aircraft:

- A copy of a valid pilot's license.
- A copy of current medical certification.

- Proof of aircraft liability insurance with limits not less than $1,000,000 combined single limit for bodily injury and property damage per occurrence/annual aggregate.

It is the responsibility of each agency to ensure these documents are on file before authorizing, or reimbursing a traveler for the use of a privately owned aircraft. No passengers are permitted to accompany a pilot except other state employees who are also traveling on state business to the same destination.

For state travelers who do not have the required $1,000,000 aircraft liability insurance coverage, the Division of Risk Management has an insurance policy to provide the required coverage for travelers who meet certain minimum pilot qualifications. This coverage is a separate aircraft liability policy for $1,000,000 combined single limit liability, for bodily injury and property and may be purchased on a per-flight basis with individual coupons. In the event the aircraft owner has liability insurance, the state policy applies as excess insurance over any other valid and collectible policies.

To obtain individual trip coupons for this per-flight, aircraft liability insurance, contact Risk Management at:

Division of Risk Management
Department of Administration
P.O. Box 110218
Juneau, AK 99811-0218
Phone (907) 465-2180
Fax (907) 465-3690

The cost is $30 per aircraft per round trip flight. The first order for coupons must be accompanied by a copy of the Pilot Qualification Certification (note minimum flight hour requirements on this form), a copy of the pilot's license, and current medical certification. The coupons may be purchased by the traveler pilot or through a request to transfer the funds via an interdepartmental billing (Journal Entry).

The original completed coupon shall be attached to the travel authorization. A copy of the coupon must be returned to Risk Management to comply with insurance policy requirements.

The reimbursement rate for privately owned aircraft is the lesser of the state-published rate on the Division of Finance web site at: http://fin.admin.state.ak.us/dof/travel/resource/POV_Rate_Table.pdf or the common carrier rate to the same destination. Bargaining unit agreements may supersede this rate.

AAM 60.160 Charters and Group Transportation (01-10)

When it is necessary to hire a boat, aircraft, or other special conveyance, an explanation stating the facts constituting the necessity must be included with the travel authorization. When two or more travelers travel as a group or with a group, the names and business relationship of each member of the group shall be included with the travel authorization of each traveler.

All charters must be handled in compliance with the policies and provisions of AS 36.30, purchasing regulations 2 AAC 12, and the agency's delegation of purchasing authority. E-Travel may be used for chartering transportation.

AAM 60.170 Alternatives to Travel (04-05)

Agencies are to develop and implement alternatives to travel, as well as less expensive means of travel. These methods should include, but are not limited to:

- Teleconferencing and video conferencing.
- Video recordings and published reports.
- Reduced frequency of regularly scheduled out of town meetings.
- Restrictions on the number of staff traveling to the same destination.
- Coordinating between agencies for joint travel arrangements when more than one agency is involved.

If an agency determines that a seminar, workshop, or training program is essential to staff development for five or more employees, the agency will investigate the option of bringing the trainer on-site instead of authorizing employees to travel to an off-site location. The agency will document the comparative cost of an on-site session and retain such documentation on file with the agency's travel records. The agency must also explore the practicality of fulfilling the desired staff development goals through use of video teleconferencing or web-based conferencing where these options may be more cost-effective.

AAM 60.180 Boards and Commissions (01-07)

Except for those board and commission members specifically covered in statute, each state board and commission member is entitled to the same reimbursement for lodging and M&IE allowances as provided to state officials and employees in this section of the administrative manual.

When the meeting or other business takes place in the vicinity of the member's residences (see definition at AAM 60.020), members are not in

travel status and are not entitled to reimbursement or a per diem for lodging. However, the commissioner of the department with oversight authority of the board may authorize reimbursement of such lodging expenses when deemed necessary and in the best interests of the state. For example, it might be authorized if the travel home would present a hardship due to the age and health of the board member. When such payments are authorized, approval must be noted on the travel authorization.

A board or commission member, who is not a state employee, attending a board or commission meeting is entitled to a prorated M&IE if meals are not provided. To be eligible for each meal period allowance requires the member to be in attendance for at least three consecutive hours within that meal period as defined in AAM 60.250. See AAM 320 for when this allowance may be taxable to board and commission members.

State employees serving as board or commission members as part of their official duties are not entitled to an M&IE allowance or reimbursement for lodging expenses when the board or commission meeting is in the vicinity of their residence and/or duty station. (AS 39.20.180, AS 39.20.185)

AAM 60.190 Health and Safety of Travelers (01-10)

The health and safety of travelers is a top priority in the conduct of state travel related activities. It is advantageous to the state for agencies to establish and alter travel plans and itineraries with consideration of hazardous weather and other situations that could threaten the health and safety of state personnel. When this occurs, travelers should note the reason for any additional expense on the travel authorization.

Travelers with Physical and Medical Conditions

The impact of the medical conditions of travelers on state travel should be considered on a case-by-case basis. For travelers weighing over 300 pounds, the state can pay for two seats in coach class or one first class ticket, whichever costs less. Similar accommodations can be made for travelers weighing less than 300 pounds if the airline requires the purchase of a second seat.

Compliance with the Americans with Disabilities Act (ADA) is mandatory. Each department has the authority to provide reasonable accommodations during state travel for travelers with disabilities. Decisions regarding specific situations not addressed by policy shall be made and documented by the department, conferring with the Division of Personnel and Labor Relations as necessary.

All state personnel are to be afforded equal opportunity to perform travel for official state business even if the travel costs for disabled travelers will exceed what would normally be most economical to the state. For example:

- When a traveler uses a wheelchair and it is necessary to pay more for an airline ticket so the traveler can fly on a larger airplane that can accommodate the wheelchair.
- When a traveler has hearing or vision impairments and there is a cost of providing auxiliary aids and services to enable the traveler to successfully accomplish the purpose of the travel.

All special needs of travelers should be documented in their travel profile.

The extra travel costs required to comply with the ADA shall be documented and reviewed by the Division of Personnel and Labor Relations. ADA supporting documentation should remain confidential with no details on the travel authorization beyond a statement added indicating the agency file location.

AAM 60.200 Travel Related to Contracts (10-08)

Agencies are encouraged to require the policies of AAM 60 in the terms of their professional service contracts which include travel. When the state reimburses a contractor for travel under these policies, the travel account codes in AKSAS may be used because the travel reimbursements are excludable under the rules governing IRS accountable plans.

When contract terms for travel reimbursement differ from the policies of AAM 60, or the contractor does not account to the state for travel costs, the services account codes must be used to ensure that travel reimbursements are reported as taxable income to the contractor.

AAM 60.210 Completion of the Travel Authorization (01-10)

Each agency will prepare their employees' travel authorizations, and bill other agencies via adjusting journal entry when appropriate. Exceptions to this policy may be agreed to between agencies.

All travel expenses incurred by State of Alaska employees will be reimbursed based upon bargaining unit contracts, Alaska Statutes, and this section of the Alaska Administrative Manual. Lack of adherence to State of Alaska travel policies may result in non-reimbursement.

Within five business days after travel is complete, the traveler, or someone acting for the traveler, is required to complete a travel authorization in a

form approved by the Department of Administration. The travel authorization summarizes the trip details, including actual costs, and calculates reimbursement due. Required receipts and evidence of pre-approval must be included.

If the traveler is due an additional amount, final payment shall be made within ten business days of the receipt of a properly completed travel authorization. However, if the final amount to be reimbursed is $.49 or less, no reimbursement will be processed. If the final amount to be reimbursed is $.50 or more, the amount to be paid will be rounded up to $1.00.

Reimbursements to the traveler will be deposited directly into the traveler's bank account unless the traveler chooses non-electronic payment. Any monies owed the State of Alaska by the traveler may be deducted from employee paychecks. When money is owed the State of Alaska and no payroll deduction is done, a personal check or money order must accompany the travel authorization.

If, in an emergency situation, it is necessary for an employee to book travel outside of the E-Travel Office, written documentation will be necessary to explain the circumstances in the travel authorization. This documentation is required for reimbursement.

AAM 60.220 Travel Expenses – Required Receipts and Documentation (07-09)

The following shall be attached to the travel authorization when submitted for final payment:

- A copy of the final itinerary
- Itemized commercial lodging facility receipts (short-term per diem)
- Receipts for expenses exceeding $25
- ATM receipt for any cash advances on state credit cards
- A copy of the rental car agreement
- Leave slips, if the trip includes leave

Though receipts for expenses of $25 or less are not required, total reimbursement for which receipts are not available shall not exceed a cumulative total of $30 per trip.

Receipts are strongly encouraged. All expenses claimed are subject to review. Reimbursement of unsupported expenses may be disallowed. Fraudulent claims may be subject to disciplinary action.

The following travel-related expenses are not reimbursable:

- Lost or stolen articles
- Alcoholic beverages
- Damage to personal cars, clothing, or other items
- Services to gain entry to a locked car
- Movies charged to hotel bills
- All expenses related to the personal negligence of the traveler, such as fines, parking tickets and traffic citations
- Entertainment expenses
- Tips and gratuities
- Towing charges
- Expenses for children, spouses, and companions while in travel status
- Personal phone calls or faxes

The above list is not all-inclusive.

AAM 60.230 Third Party Reimbursements (01-07)

Occasionally a third party (outside entity) may agree to pay all or a part of a traveler's travel expenses. In such cases, the travel authorization will indicate the third party's involvement in the trip. The traveler is only entitled to reimbursement for travel expenses, per diem or other expense allowances, etc., in accordance with state policies and is to be paid by the state agency for which they are traveling and/or employed. Travelers may not accept honorariums as long as they are traveling for and representing the state.

The third party should be instructed to reimburse the state directly for the travel expenses to reduce potential tax consequences to the traveler. When this is not possible, any third party reimbursement made directly to the traveler for travel expenses, per diem, and/or meal allowances shall be turned over to the traveler's state agency for deposit into the state treasury.

Payments by a third party for state agency travel expenses must be recorded appropriately in the state accounting system. If the travel is material to the agency's travel budget and is part of the agency's regular duties or is connected with carrying out the purpose of the agency, the costs must be recorded as an expenditure with an offset recorded as a revenue. If the state incurs the expenditure and is reimbursed by the third party, the reimbursement is to be recorded as revenue.

However, if the travel is not directly related to the state agency's program, is not a recurring event, or is immaterial to the agency's travel budget, this transaction does not need to be recorded as an expenditure and a revenue of the state agency. If the state incurs the expenditure and is reimbursed by the third party, the reimbursement may be recorded as an abatement. If the third party pays directly for state expenses, such as purchasing the airline

ticket for the state traveler, these expenses do not need to be recorded. However, any receipts obtained by the traveler showing the cost of the airline ticket or lodging must be attached to the travel authorization.

Any time a third party is paying for a state traveler's travel expenses, the state agency must avoid the appearance of or the fact of any conflict of interest. The agency should also ensure the transaction does not violate the code of ethics and if there is any question, the Department of Law should be consulted on the matter.

AAM 60.240 Lodging Types and Rates (04-07)

Travelers are permitted actual costs or an allowance for lodging and an allowance for meal and incidental expenses (M&IE). Refer to AAM 60.250 for policies on M&IE. The combined costs for lodging and M&IE are referred to as the per diem allowance. Where applicable, travel provisions of collective bargaining agreements supercede AAM per diem allowance policies and rates.

A traveler is not entitled to a lodging allowance when provided lodging by the state or a third party with whom the state is conducting business. Travelers are not entitled to a lodging allowance when staying in their own residence(s).

The term of a stay (short- or long-term), type of lodging facility, and location of overnight lodging determine applicable lodging types and rates. Agencies should take into consideration the length of stay in one location in determining the type of lodging accommodations.

For current lodging rates, refer to the State of Alaska Per Diem Rates published on the Division of Finance web site at: http://fin.admin.state.ak.us/dof/travel/index.jsp#trav_acct.

In- and Out-of-State, Short-Term Lodging (Actuals or Allowance)

Travelers on short-term travel status in or outside of Alaska are eligible for reimbursement of actual lodging expenses. Actual costs for short-term lodging are authorized for moderately priced commercial lodging. Each agency must ensure that lodging costs are reasonable and necessary and that government or other discount rates are used. Travelers must submit original itemized commercial lodging receipts with their travel authorizations.

Actual lodging expenses that exceed $300 room rate per night must be approved in advance by the director of the Division of Finance, or, the commissioner of the Department of Administration may delegate this approval to department commissioners. All requests shall include justification that clearly demonstrates the lodging is a government rate and

cannot be acquired for less than $300 per night. Quotes from at least three moderately priced hotels in the same vicinity should be included with the justification.

Travelers on short-term travel status in Alaska are eligible for a daily noncommercial allowance when the travelers are required to stay in a community or location where commercial lodging facilities and state- or vendor-provided facilities are not available.

In-State, Long-Term Lodging (Allowance)

Agencies should provide in-state long-term lodging accommodations when the assignment is expected to be longer than 30 days at any one location.

- The long-term commercial lodging allowance rate is authorized when a traveler stays in commercial lodging facilities.
- The long-term noncommercial lodging allowance rate is authorized when a traveler is required to stay in a community or location where commercial lodging facilities and state- or vendor-provided facilities are not available.

These rates apply beginning the first day of travel status. Brief interruptions for business or personal convenience do not change the status from long-term.

Out-of-State, Long-Term Lodging (55% of Federal Lodging Allowance)

The long-term lodging rate outside Alaska is 55 percent of the federal lodging allowance. A link to the federal per diem rates is located on the Division of Finance web site at:
http://fin.admin.state.ak.us/dof/travel/index.jsp#trav_acct.

Required Approvals for Short- and Long-Term Travel Assignments

The short-term lodging allowance rate may not be used after a traveler's 30th consecutive day in one location unless a continuation has been approved in advance by the director of the Division of Finance, Department of Administration.

When travel status is expected to extend beyond six consecutive months in one location, the traveler's agency must receive advanced approvals for the assignment and for use of the long-term lodging rate from the department's administrative services division and the director of the Division of Finance. The approvals are requested on the Long-Term Travel Assignment form. Refer to the form for specific information required for the approvals. Page 2 of this form is used to request continued travel status that extends beyond a year and requires the requestor(s) to justify why it is in the state's best interest to pay per diem rather than

move the traveler to the project location. This form is published on the Division of Finance web site at: http://fin.admin.state.ak.us/dof/travel/resource/longterm.pdf.

See AAM 320 for a summary of tax implications related to state travel reimbursement policies.

AAM 60.250 Meals and Incidental Expense Allowances (01-10)

Meal and incidental expense (M&IE) allowances and prorated M&IE allowances are provided to the state traveler to cover the cost of meals and incidental expenses such as discretionary tips, laundry expenses, etc. Where applicable, M&IE provisions of collective bargaining agreements supercede AAM M&IE allowance policies and rates.

There are two types of M&IE allowances, short-term and long-term/noncommercial. The appropriate M&IE allowance rate for a day is the rate established for the community in which the traveler is required to obtain overnight lodging. On the day of return, a traveler is entitled to the M&IE allowance rate applicable for the preceding day. When travel involves crossing the International Date Line, the M&IE allowance shall be calculated based on the total number of hours in flight.

For current M&IE allowances, refer to the State of Alaska Per Diem Rates published on the Division of Finance web site at: http://fin.admin.state.ak.us/dof/travel/index.jsp#trav_acct.

In-state M&IE rates are reviewed annually and adjusted as appropriate.

A link to the federal per diem rates is located on the Division of Finance web site at: http://fin.admin.state.ak.us/dof/travel/index.jsp#trav_acct.

Short-Term M&IE (Allowance)

Travelers on short-term travel status in Alaska are eligible for a daily M&IE allowance.

Travelers on short-term travel status outside of Alaska, including travel to Hawaii and foreign destinations, are eligible for the federal M&IE rate for the location.

A traveler is eligible for the short-term M&IE allowance rate in two circumstances: when a traveler in short-term travel status is expected to incur expenses from dining at commercial establishments; and when a traveler in long-term travel status will incur expenses from dining at commercial establishments because the traveler is required to stay in a lodging facility that does not provide cooking facilities to its guests.

Long-Term/Noncommercial M&IE (Allowance)

Travelers on long-term travel status in Alaska are eligible for a daily M&IE allowance.

Travelers on long-term travel status outside of Alaska, including travel to Hawaii and foreign destinations, are eligible for 55% of the federal M&IE rate for the location.

A traveler is eligible for a long-term/noncommercial M&IE allowance in two circumstances: when a traveler in long-term travel status, is expected to prepare meals; and when a traveler is in short-term travel status in a location where there are no commercial dining establishments.

M&IE Rules for Specific Situations

Whenever a traveler is in travel status and is entitled to reimbursement for lodging under both the short-term and long-term/noncommercial per diem rules, the traveler is entitled to only the M&IE allowance that applies to the location where the traveler is staying.

If a traveler maintains a dwelling at their destination and it is available to them, they will be entitled to only an M&IE allowance for normal workdays. An M&IE allowance for other than normal workdays is not allowed.

If a traveler is temporarily returned to the traveler's duty station while on a long-term assignment and is continuing to receive a long-term lodging per diem, the traveler is not entitled to any M&IE allowance while at the duty station.

Prorated M&IE Allowances

The normal meal periods are published on the Division of Finance web site at: http://fin.admin.state.ak.us/dof/travel/resource/rates.pdf, and a table of the prorated short- and long-term M&IE rates for Alaska and out-of-state travel are published at: http://fin.admin.state.ak.us/dof/travel/resource/M&IE_AK_&_CONUS_Rates.pdf.

A traveler must be in travel status at least three consecutive hours during a meal period to be entitled to the M&IE for that meal.

On the days of departure and return, the traveler receives a prorated M&IE based upon scheduled flight (or other common carrier) departure and actual return times as follows:

Departure Time	Before 9:01 AM	Before 2:01 PM	Before 11:01 PM
M&IE	Full day	Lunch & Dinner	Dinner
Return Time	12:00 PM (Noon)	Before 5:00 PM	After 4:59 PM
M&IE	Breakfast	Breakfast & Lunch	Full day

This table factors in a two-hour check-in period for departures and one hour for luggage retrieval upon arrival. In circumstances where the traveler is required by the carrier to report to the terminal more than two hours prior to departure (such as for international flights), the traveler is to note in the travel authorization the additional time required by the airline and the traveler's actual check in time. In the above table, this additional time (beyond two hours) is added to the departure time to determine the allowable prorated M&IE. For example, if required check in time is three hours before flight time, "Before 9:01 AM" departure time would be adjusted to "Before 10:01 AM."

When travelers drive to a destination, on the days of departure and return, the travelers are entitled to prorate M&IE when they are in travel status at least three consecutive hours during a normal meal period.

Travel Status Less Than 24 Hours, More Than 12 Hours

Travelers who are in travel status less than 24 hours but more than 12 hours and who return to their residence and/or duty station rather than obtaining overnight lodging at their travel destination, may be entitled to an M&IE allowance. For air travel, the M&IE allowance is calculated using the departure and return times presented in the prorated M&IE table above. If the scheduled flight (or other common carrier) departure is before 9:00 a.m., the travelers are entitled to the breakfast M&IE. Travelers may be entitled to the M&IE for lunch and dinner if they are in travel status for at least three consecutive hours during these meal periods.

A traveler, who travels by means other than common carrier, must be in travel status at least three consecutive hours during a meal period to be entitled to the M&IE for that meal.

Travelers who are normally scheduled to work more than ten hours per day must be in travel status at least two hours more than their regular scheduled workday to be eligible for the M&IE allowance. See AAM 320 for details on taxability of such an allowance.

Meals Provided to Travelers

Occasionally, a traveler is provided a meal while at a conference, training, seminar, etc., or as part of a lodging package such as at bed and breakfast inns (where the state is paying for actual lodging costs). When a traveler is provided a meal in these or similar circumstances, the traveler is not

eligible for the related M&IE allowance unless sufficient justification is provided by the traveler and approved to obtain the M&IE allowance.

AAM 60.260 Contracting for Subsistence (07-05)

The state may enter into agreements with restaurants, hotels, and lodging houses to furnish subsistence to a traveler or groups of travelers when in the best interest of the state (AS 36.30). A contract for subsistence must comply with appropriate procurement regulations. Such agreements require the vendor to provide itemized invoices for services.

ALASKA STATE LEGISLATURE

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SENATOR BERT K. STEDMAN

MEMORANDUM

To: Senator Hollis French, Chair
Senate Judiciary Committee

From: Senator Bert Stedman

Date: February 11, 2010

Subject: Request for Hearing

I respectfully request that Senate Bill 244, An Act relating to the governor's duty station and travel allowance, be scheduled for a hearing in the Senate Judiciary Committee at your convenience.

Attached is the following documentation:

- SB 244
- Zero fiscal note from the Office of the Governor
- Sponsor Statement
- Sectional Analysis
- Alaska Administrative Manual on Travel

If you have any questions or need more information, feel free to contact me or my aide Darwin Peterson at 465-3873. Thank you for your consideration.

SB 246

Sponsor Statement
SB 246

The Alaska Supreme Court is asking for a new superior court judge in Anchorage. The judge would be assigned to civil cases.

An additional judge is needed because Anchorage superior court judges have the highest caseloads in the state and a combination of devoting more time to Child in Need of Aid (CINA) cases and an ever-increasing number of unrepresented litigants has created a workload that is unsustainable.

Although judges' workloads are increasing, some of the additional work is the result of the court system doing a better job meeting the needs of those who come before it. This is particularly true with CINA cases.

Prior CINA practice was to have standing masters preside over all phases of a case with the exception of contested hearings. If a hearing was contested it would be assigned to an available superior court judge who would resolve the contested issue and then return the case to the standing master. Although that practice saved superior court time, it led to other problems.

The new practice begins the same as the old; a CINA case starts with a master until there is a contested issue. However, once that occurs, the case is permanently assigned to a superior court judge; it does not return to the master. Having a judge permanently assigned to the case is a better model in a number of ways, one of which is that it eliminates shuffling the family back and forth between a standing master and any number of superior court judges.

In addition to CINA cases, another prime driver behind the current workload is the prevalence of unrepresented litigants in domestic relations cases. Although we do not have historical statistics that track these cases, Alaska judges, like judges from across the country, have seen a significant increase over the past several years. What we know from current data is that when first filed about 37% of the cases have attorneys for both parties, 25% have an attorney for only one party and in 37% of the cases neither party has an attorney. The percentage of litigants appearing without counsel increases as the cases progress and increases significantly once litigants are filing motions after the initial decree is entered. Most of these post-judgment motions relate to child custody disputes.

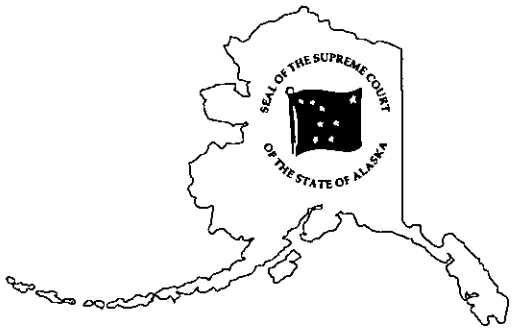
Judges cite a list of time-consuming challenges that arise when counsel is absent from one side or both sides. Frequent motion practice, arguments unrelated to the relevant legal issues, delays stemming from the failure to submit needed information and judicial time spent calculating child support awards are some of those challenges. However, even though these litigants take more time, their cases are as important as those where the parties have lawyers and the judiciary is committed to ensuring that they too can meaningfully access the court.

Adding one new judge will not significantly reduce the workload of the Anchorage superior court (more judges will likely be needed in the very near future), but it will provide some relief as the court works to develop alternative ways to manage that workload. Thank you for considering this request.

Alaska Court System
Fiscal Note Calculations for SB 246

Personal Services

Superior Court Judge - Anchorage	257,300
In-Court Clerk - Anchorage, Range 12A	61,400
Law Clerk - Anchorage, Range 13D	60,400
Administrative Assistant - Anchorage, Range 12A	61,400
Subtotal Personal Services	440,500
WAN Fees, Software & Licensing	18,800
Supplies (desk, computer, courtroom electronics, and chair) for four PFT positions	39,800
Fiscal Note Total	499,100
Breakdown by Expense Category:	
Personal Services Total	440,500
Contractual Total	18,800
Supplies Total	39,800
Total	499,100



ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8265
FAX (907) 264-8291

Doug Wooliver
Administrative Attorney

February 3, 2010

The Honorable Hollis French
Chair, Senate Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Senator French:

The Alaska Supreme Court respectfully requests that the House Judiciary Committee schedule a hearing on SB 246, which creates a new superior court judge position in Anchorage. The judge will handle civil cases.

An additional judge is needed because Anchorage superior court judges are the busiest in the state and a combination of more time being devoted to Child in Need of Aid cases and an ever-increasing number of unrepresented litigants has created a workload that is unsustainable.

Adding one new judge will not solve this problem (more judges will likely be needed in the very near future), but it will provide some relief as the court works to develop alternative ways to manage the workload.

A fiscal note and sponsor statement are attached. Thank you for considering this request.

Sincerely,

Doug Wooliver
Administrative Attorney
Alaska Court System

SB 249

26-LS1014\P
Wayne
4/7/10

CS FOR SENATE BILL NO. 249( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR ELLIS

A BILL

FOR AN ACT ENTITLED

"An Act relating to official action by electronic transmission, to records, and to public records."

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

*** Section 1.** AS 11.81.900(b)(53) is amended to read:

(53) "public record"

(A) means **each of the following that is** [A DOCUMENT, PAPER, BOOK, LETTER, DRAWING, MAP, PLAT, PHOTO, PHOTOGRAPHIC FILE, MOTION PICTURE, FILM, MICROFILM, MICROPHOTOGRAPH, EXHIBIT, MAGNETIC OR PAPER TAPE, PUNCHED CARD OR OTHER DOCUMENT OF ANY OTHER MATERIAL, REGARDLESS OF PHYSICAL FORM OR CHARACTERISTIC,] developed or received under law or in connection with the transaction of official business and preserved or **required by law to be preserved** [APPROPRIATE FOR PRESERVATION] by **an** [ANY] agency, **a**

municipality, or **a** [ANY] body subject to the open meeting provision of AS 44.62.310 [,] as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of **that agency, municipality, or body** [THE STATE OR MUNICIPALITY] or because of the informational value in it**:**

(i) a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, electronic record, or other document of any other material, regardless of physical form or characteristic; and

(ii) [; IT ALSO INCLUDES] staff manuals and instructions to staff that affect the public;

(B) does not include

(i) proprietary software programs;

(ii) library and museum material developed or acquired and preserved solely for reference, historical, or exhibition purposes;

(iii) extra copies of documents preserved solely for convenience of reference;

(iv) stocks of publications and processed documents; or

(v) material that is available for public inspection during state business hours in an agency's office or in a public library, unrestricted records in the custody of the state archivist or the state recorder, records relating to a public agency's regularly conducted activities, including adjudicatory activities, that are recorded and open to the public, books in a public library, statutes, published court opinions, published legal opinions, published regulations, magazines, journals, state land plats, published portions of case files maintained by the department of natural resources, unrestricted motor vehicle records, and published

treatises;

* **Sec. 2.** AS 39.25 is amended by adding a new section to read:

Sec. 39.25.165. Official action through private electronic transmission systems prohibited. (a) When sending or receiving a written electronic transmission for the purpose of taking or withholding official action, a public officer shall use a system that is operated and maintained by the state or under a contract with the state, unless

(1) it is not feasible to use that system;

(2) there is a compelling reason for the transmission to occur without delay; and

(3) the material transmitted is not confidential by law.

(b) An electronic transmission under (a) of this section is a public record under AS 40.25.

(c) The prohibition under (a) of this section does not apply to a public officer who is taking or withholding official action during a public safety emergency.

(d) In this section,

(1) "official action" means advice, participation, or assistance, including for example, a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer;

(2) "public officer" means

(A) a permanent, probationary, seasonal, temporary, provisional, or nonpermanent employee of an agency, whether in the classified, partially exempt, or exempt service;

(B) a member of a board or commission; and

(C) a state officer designated by the governor to act as trustee of the trust, or a person to whom the trustee has delegated trust duties; in this paragraph, "trust" has the meaning given in AS 37.14.450.

* **Sec. 3.** AS 40.21.150(6) is amended to read:

(6) "record"

(A) means **each of the following that is** [ANY DOCUMENT, PAPER, BOOK, LETTER, DRAWING, MAP, PLAT, PHOTO,

PHOTOGRAPHIC FILE, MOTION PICTURE FILM, MICROFILM, MICROPHOTOGRAPH, EXHIBIT, MAGNETIC OR PAPER TAPE, PUNCHED CARD, ELECTRONIC RECORD, OR OTHER DOCUMENT OF ANY OTHER MATERIAL, REGARDLESS OF PHYSICAL FORM OR CHARACTERISTIC,] developed or received under law or in connection with the transaction of official business and preserved or **required by law to be preserved** [APPROPRIATE FOR PRESERVATION] by an agency or a political subdivision **of the state** [,] as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the state or political subdivision or because of the informational value in **it:**

(i) a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, electronic record, or other document of any other material, regardless of physical form or characteristic; and

(ii) staff manuals and instructions to staff that affect the public;

(B) [THEM; THE TERM] does not include

(i) proprietary software programs;

(ii) library and museum material developed or acquired and preserved solely for reference, historical, or exhibition purposes**;**

(iii) [,] extra copies of documents preserved solely for convenience of reference**;**

(iv) [, OR] stocks of publications and processed documents**; or**

(v) material that is available for public inspection during state business hours in an agency's office or in a public library, including unrestricted records in the custody of the state archivist or the state recorder, records relating to a public agency's regularly conducted activities, including adjudicatory activities, that are recorded and open to the public, books in a public library,

statutes, published court opinions, published legal opinions, published regulations, magazines, journals, state land plats, published portions of case files maintained by the department of natural resources, unrestricted motor vehicle records, and published treatises;

*** Sec. 4.** AS 40.25.110(b) is amended to read:

(b) Except as otherwise provided in this section, the fee for copying public records may not exceed the **cost of materials and supplies used to duplicate the records** [STANDARD UNIT COST OF DUPLICATION] established by the public agency **and may not include the labor costs or overhead costs associated with the duplication**.

*** Sec. 5.** AS 40.25.110(c) is amended to read:

(c) If the production of records for one requester in a calendar month exceeds five person-hours **and the agency determines that the request is by a corporation other than a news media corporation, is unduly burdensome, or is for a commercial purpose**, the public agency shall require the requester to pay the personnel costs required during the month to complete the search and copying tasks. The personnel costs may not exceed the actual salary and benefit costs for the personnel time required to perform the search and copying tasks. The requester shall pay the fee before the records are disclosed, and the public agency may require payment in advance of the search. **If the agency determines that the request is unjustifiably burdensome, it shall suspend searching and copying for a period of 10 business days with notice to requestor, help the requestor revise the request, and reconsider the agency's determination. If the agency determines after reconsideration that the request is justifiable, the agency may not require the requestor to pay personnel costs under this subsection.**

*** Sec. 6.** AS 40.25.115(a) is amended to read:

(a) Notwithstanding **AS 40.25.110(b) and (d)** [AS 40.25.110(b) - (d)] to the contrary, upon request and payment of a fee established under (b) of this section, a public agency may provide electronic services and products involving public records to members of the public. A public agency is encouraged to make information

available in usable electronic formats to the greatest extent feasible. The activities authorized under this section may not take priority over the primary responsibilities of a public agency.

*** Sec. 7.** AS 40.25.125 is repealed and reenacted to read:

Sec. 40.25.125. Enforcement; crimes. (a) Whether acting independently or in concert with another, a person who unlawfully impairs or attempts to impair the verity, legibility, or availability of a public record is subject to

(1) prosecution for a criminal offense under AS 11.56.815 and 11.56.820;

(2) injunction by order of the superior court.

(b) A person may seek injunctive relief under (a) of this section without exhausting that person's remedies under AS 40.25.123 and 40.25.124.

*** Sec. 8.** AS 40.25.220(3) is amended to read:

(3) **"public record" or** "public records"

(A) means **each of the following** [BOOKS, PAPERS, FILES, ACCOUNTS, WRITINGS, INCLUDING DRAFTS AND MEMORIALIZATIONS OF CONVERSATIONS, AND OTHER ITEMS, REGARDLESS OF FORMAT OR PHYSICAL CHARACTERISTICS,] that **is** [ARE] developed or received **under law or in connection with the transaction of official business** by a public agency [, OR BY A PRIVATE CONTRACTOR FOR A PUBLIC AGENCY,] and [THAT ARE] preserved **or required by law to be preserved** [FOR THEIR INFORMATIONAL VALUE OR] as evidence of the organization**, function, policies, decisions, procedures, operations, or other activities** [OR OPERATION] of the public agency **or because of the informational value in it:**

(i) a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, electronic record, or other document of any other material, regardless of physical form or characteristic; and

(ii) staff manuals and instructions to staff that affect

the public;

(B) [; "PUBLIC RECORDS"] does not include

(i) proprietary software programs;

(ii) library and museum material developed or acquired and preserved solely for reference, historical, or exhibition purposes;

(iii) extra copies of documents preserved solely for convenience of reference;

(iv) stocks of publications and processed documents; or

(v) material that is available for public inspection during state business hours in an agency's office or in a public library, including unrestricted records in the custody of the state archivist or the state recorder, records relating to a public agency's regularly conducted activities, including adjudicatory activities, that are recorded and open to the public, books in a public library, statutes, published court opinions, published legal opinions, published regulations, magazines, journals, state land plats, published portions of case files maintained by the department of natural resources, unrestricted motor vehicle records, and published treatises;

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

SEAN PARNELL, GOVERNOR

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April 2, 2010

Senator Hollis French
State Capital, Room 417
Juneau, Alaska 99801

Dear Senator French:

Senate Bill No. 249 ("SB 249") would amend laws regarding access to public records. The Department of Law supports the attempt in SB 249 to remove unnecessary inconsistencies in the definitions of "public record" and "record" and to partially codify the Email Retention Policy issued by the Department of Administration on August 7, 2009. The bill, however, raises some significant legal and policy issues.

We are concerned that sections 4 and 5 of SB 249 create substantial, unfunded monetary burdens for all Alaska public agencies in responding to Alaska Public Records Act requests. State and municipal agencies already absorb the cost of reviewing records for privileged and confidential information.[1] The personnel time required for these tasks is often vastly greater than that required to search for and copy the requested records. As discussed in section A, below, the bill seeks to add to public agencies' fiscal burden the labor and overhead costs of copying records. And, apparently, it would require them to cover the cost of providing electronic services and products when the time needed to do so does not exceed five-person hours in a calendar month: under current law, the requester pays this cost.

In addition, as explained below, we have several additional concerns. The definitions (in sections 1, 3, and 7) of "public record" and "record," including the definition of "electronic transmission" (which is also in section 2), are not clear or are overly broad or both. The intended scope of the proposed Alaska Executive Branch Ethics Act amendment (in section 2), which would prohibit certain electronic transmissions, is not clear and could substantially impede state business; also, the proposed amendment does not seem appropriate for inclusion in the Ethics Act. Finally, the proposed Public Records Act amendment (in section 6), which would add a provision

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[1] The task of reviewing records for protected information includes redacting and logging that information.

making tampering with or otherwise affecting the availability of a public record an undefined criminal offense, is incomplete and also might impede state business.

A. The Proposed Amendments Would Fiscally Burden State and Municipal Agencies.

The Alaska Supreme Court has characterized public access to records as a fundamental right. But who should bear the cost of responding to record requests is not clear. For example, providing persons copies of their own medical records without charge seems reasonable, but should limited state and municipal revenues be used to cover the cost of responding to extremely broad requests of large corporations for records that are sought for commercial uses? And if public agencies are to bear more of the expense of responding to record requests, the legislature should consider what source of funds the agencies should use to cover the additional costs. Addressing these issues is especially important given the following: the exponential growth in public records because of the increase in the number of electronic records; the numerous locations where electronic and non-electronic records are stored; and the increased public awareness of the availability of, and interest in obtaining, government records. Also, if the cost to a requester of obtaining records decreases, requests for records will likely increase.

Accordingly, sections 4 and 5 of SB 249 raise significant concerns because they would amend the Public Records Act to shift more of the cost of responding to record requests from requesters to state and municipal agencies: *i.e.*, the amendments would require public agencies to use additional government revenues to respond to the requests of any requesters regardless of the commercial or non-commercial use of the records or the electronic services and products.[2]

Section 4 would shift costs to public agencies by amending AS 40.25.110(b) to limit the fees that are chargeable for copying records to the "cost of materials and supplies used to duplicate the records": "the labor costs or overhead costs associated with the duplication" would not be recoverable.[3] Thus, section 4 would shift from requesters

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[2] Under the Public Records Act, "'public agency' means a political subdivision, department, institution, board, commission, division, authority, public corporation, council, committee, or other instrumentality of the state or a municipality; 'public agency' includes the University of Alaska and the Alaska Railroad Corporation." AS 40.25.220(2).

[3] Whether the terms "materials" and "supplies" are intended to cover different things is not clear.

to each public agency the personnel cost and the proportionate share of the overhead costs of operating copy machines and printers that are incurred when responding to public record requests. And section 4 would do so without regard to the breadth of a request, how many times a requester has made requests, and whether a request is likely to serve a commercial or personal interest, as opposed to a public interest. And if personnel and overhead costs are paid with government revenues, even less incentive will exist for requesters to narrow their requests and to choose to review records at the agencies, rather than request copies.

Also, excluding personnel costs from the costs that are recoverable when a public agency copies records would conflict with AS 40.25.110(c), which provides that, "[i]f the production of records for one requester in a calendar month exceeds five person-hours, the public agency shall require the requester to pay the personnel costs required during the month to complete the search and copying tasks;" personnel costs are defined as "the actual salary and benefit costs for the personnel time required to perform the search and copying tasks."

Section 5 would amend AS 40.25.115(a) to delete the reference to AS 40.25.110(c) and therefore would shift costs of responding to requests for electronic services and products to public agencies: under current law, the requester pays those costs. AS 40.25.115(a) now provides that, "[n]otwithstanding AS 40.25.110(b) — (d) to the contrary, upon request and payment of a fee established under (b) of this subsection, a public agency may provide electronic services and products involving public records to members of the public." By removing the reference to AS 40.25.110(c), section 5 seems to require agencies to absorb costs that are now recoverable when a public agency provides electronic services and products: *i.e.*, to make the costs of responding to an AS 40.25.115 request recoverable only "[i]f the production . . . for one requester in a calendar month exceeds five person-hours." AS 40.25.110(c).

By shifting to each public agency the cost of providing electronic services and products when the time needed to respond to a request is five-person hours or less in a calendar month, section 5 could very substantially increase the cost to public agencies of complying with the Public Records Act. This is so because of the likelihood that public agencies will be asked to respond to a great number of AS 40.25.115 requests, and because the agencies cannot recover the cost to review records for information that is protected from disclosure by a common law privilege or a constitutional or statutory source of confidentiality.[4] For example, when (in the next few months) the state

[4] *Fuller v. City of Homer*, 113 P.3d 659, 662-66 (Alaska 2005). For example, in 2009, the Department of Law spent thousands of hours—totaling hundreds of thousands of dollars in personnel costs—working on matters relating to the Public

completes the conversion to the Symantec Enterprise Vault email archiving system, any or all of the contents of any state executive branch employee's email account will be producible in five person-hours. Under the law now, a requester will be required to pay almost $300 for the work. If this fee is statutorily waived by the enactment of section 5, no reason will exist for members of the public not to seek all of the emails in the email account of any public agency employee; and each month, a requester could make such a request, or any number of requesters could make such requests.

While SB 249 would commit even more of the limited revenues of the state and municipalities to responding to Public Records Act requests, the legislature may wish to consider requiring requesters to pay the cost of reviewing records for protected information, especially where the requester is a corporation, other entity, or individual who is not a resident of, and otherwise has no substantial contacts with, Alaska; seeks records for a commercial purpose; is not seeking records concerning himself or herself (such as medical records); or has made an extremely broad request for records.[5]

B. The Definitions of "Public Record" and "Record" Raise Several Concerns.

Section 1 of SB 249 would amend the AS 11.81.900(b)(53) definition of "public record" that is used in the state's criminal statutes; section 3 would amend the AS 40.21.150(6) definition of "record" that is used in the state's records retention statute; and section 7 would amend the AS 40.25.220(3) definition of "public record" that is used in the Public Records Act. Significant problems exist with each of these proposed amendments.

Records Act. The vast majority of the work involved reviewing records for privileged and confidential information.

[5] Depending on certain factors—such as the amount of search time, number of copies, and intended use of the records—the federal government and some states, including Michigan and Mississippi, require or permit public agencies to seek reimbursement for the cost of reviewing records for protected information. *See* 5 U.S.C. § 552(a)(4)(ii)(I) (providing that "fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use"); M.C.L. § 15.234; Miss. Code Ann. § 25-61-7.

1. The Definition of "Electronic Transmission" Is Vague and Overly Broad.

Sections 1, 3, and 7 of SB 249 would include "electronic transmissions" in the definitions of "public record" and "record."[6] The definition of "electronic transmission" would cover electronic mail and "any other form of communication . . . that creates a record that can be retained, retrieved, and reviewed by a recipient of the communication and that can be reproduced in paper form through an automated process." This definition is so broad that it would require that telephone conversations be treated as "public records" and as "records" under the state's criminal, records retention, and access-to-records laws: telephone conversations on state landlines are digitized and, therefore, can be retained and reviewed and can be reproduced in paper form through the use of speech recognition software.

Also, the SB 249 definition of "electronic transmission" includes text and instant messages, but public agencies are unable to capture text messages and cannot efficiently capture instant messages. Third-party vendors provide these services. Text messages can be retrieved only from a cell phone's internal storage or the vendor's server or backup storage, and therefore retrieving text messages depends on the vendor and is subject to its charges. Also, the state is aware of no software for automatically retaining instant messages. To save instant messages, users must manually store them, which defeats the purpose of using this communication tool. And even if text and instant messages could reasonably be stored and retrieved, given the exponential increase in their use, the costs of storing, searching, reviewing, and producing such messages would be very substantial now and continue to grow. If the definitions of "public record" and "record" are amended to cover instant and text messages, public agencies might well be forced to ban the use of such forms of communication because of the costs of—and potential to violate the law by not—saving and producing them, regardless of the effects of such a ban on government efficiency.

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[6] The same definition of "electronic transmission" is in sections 1, 3, and 7. Section 2 of SB 249 also includes a definition of "electronic transmission"; this definition—unlike the one in sections 1, 3, and 7—includes the clause "whether the recipient is the state or any other person the sender intended to receive the electronic transmission"; regardless, the same problems with the definition of "electronic transmission" in sections 1, 3, and 7 apply to the definition of "electronic transmission" in section 2.

2. SB 249 Does Not Make the Definitions of "Public Record" and "Record" Consistent.

In several respects, SB 249 does not remove unnecessary inconsistencies in the definitions of "public record" and "record."

a. Section 1 retains in the definition of "public record" "staff manuals and instructions to staff that affect the public." These records are not explicitly referenced in the AS 40.21.150(6) definition of "record" (section 3) or the AS 40.25.220(3) definition of "public record" (section 7). The need to expressly reference these records in AS 11.81.900(b)(53) and the reason for not doing so in AS 40.21.150(6) and AS 40.25.220(3) are not clear.

b. Sections 3 and 7, but not section 1, would add "electronic record" to the AS 40.21.150(6) definition of "record" and the AS 40.25.220(3) definition of "public record." This term should be added to the AS 11.81.900(b)(53) definition of "public record."

c. Section 3, but not sections 1 and 7, excludes from the definition of "record" "library and museum material developed or acquired and preserved solely for reference, historical, or exhibition purposes, extra copies of documents preserved solely for convenience of reference, or stocks of publications and process documents." This exclusion should be added to the AS 11.81.900(b)(53) and AS 40.25.220(3) definitions of "public record" and expanded to encompass all other "readily available" records, as that term is defined in 2 AAC 96.100(b); the definition of "readily available" should also include all records that are available on the Internet.

d. Section 7, but not sections 1 and 3, excludes from the definition of "public record" "proprietary software programs." This exclusion should be added to the AS 11.81.900(b)(53) and AS 40.21.150(6) definitions of "public record" and "record."

3. The Phrase "Or Appropriate for Preservation" Is Unnecessary.

Sections 1, 3, and 7 would amend the definitions of "public record" and "record" to cover records "preserved, required by law to be preserved, or appropriate for preservation." If a record is not subject to an approved (under AS 40.21) records retention schedule and a public agency is not otherwise legally required to retain it, it would not be "appropriate for preservation": only records that are "preserved" (for their informational value or as evidence of the organization or operation of the agency) or that a public agency is legally required to retain should be "public records" in the context of the state's criminal and access-to-records statutes and "records" in the context of the state's records retention statute. Accordingly, the phrase "appropriate for preservation" should be deleted from the AS 11.81.900(b)(53) definition of "public record" and the AS 40.21.150(6) definition of "record."

4. The Phrase "Under Law" Is Unnecessary

Section 7 would amend the Public Records Act definition of "public record" to include the phrase "under law": "'public record' . . . means each of the following developed or received under law or in connection with the transaction of official business . . . ." The phrase would add nothing to the AS 40.25.220(3) definition of "public record": records developed or received by a public agency "under law" are developed or received "in connection with the transaction of official business." Accordingly, this phrase should be deleted from the AS 11.81.900(b)(53) definition of "public record" and the AS 40.21.150(6) definition of "record."

5. A Means of Paying for Private Contractor's Records Is Not Identified.

Section 7 would not change the following language in the definition of "public record" in the Public Records Act: "developed or received . . . by a private contractor for a public agency." AS 40.25.220(3). The Act does not, however, expressly address the recovery of the costs contractors charge to respond to record requests: *i.e.*, to search for records, review records for protected information, and duplicate records. The Act should be amended to make clear whether—even in response to extraordinarily broad requests that serve only commercial interests—the public agencies or requesters must bear these costs.

C. The Proposed Ethics Act Amendment Might Impede State Business and Raises Other Concerns.

Section 2 of SB 249 would amend the Alaska Executive Branch Ethics Act, AS 39.52, to provide that, "[w]hen taking or withholding official action, a public officer may not send or cause another to send information by electronic transmission within a system for electronic delivery unless the system is operated and maintained by the state"; and the section would amend the Ethics Act to provide that a covered electronic transmission is "a public record under AS 40.25." The intended scope of this prohibition—which includes no exceptions, even for covered communications regarding any law enforcement or emergency matters—is unclear, and the prohibition might substantially impede state business.

The amendment has been described as prohibiting certain state officers from using email systems other than the state email system to conduct state business. However, given the terms used, the amendment appears to have a much broader reach. It would not simply codify the part of the Department of Administration's Email Retention Policy that requires executive branch employees to use (whenever feasible) their state email accounts to conduct state business. The phrase "electronic transmission within a system for electronic delivery" appears to encompass more than email.[7] The term "public officer" includes all state employees, regardless of classification, and all members of boards and commissions subject to the Ethics Act.[8] And the term "official action" is also broadly defined: it includes not only what would be considered a final state action, but also advice, participation, and assistance leading to the action.[9] Accordingly, the prohibition in section 2 would arguably apply to participation by any public officer in a matter of

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[7] The definition of "electronic transmission" is vague and overly broad for the reasons explained above. The meaning and scope of the phrase "within a system for electronic delivery" is also vague: *e.g.*, does it include the computer and, therefore, prohibit a public officer from sending an "electronic transmission" from a home computer? And may the electronic delivery system be operated and maintained by a contractor of the state?

[8] Testimony has suggested that this prohibition will not apply to every "public officer" as that term is defined in the Ethics Act at AS 39.52.960(21), but no restriction appears in the bill.

[9] "'[O]fficial action' means advice, participation, or assistance, including, for example, a recommendation, decision, approval, disapproval, vote, or similar action, including inaction, by a public officer." AS 39.52.960(14).

state business. Thus, the prohibition on sending an "electronic transmission within a system for electronic delivery" that is not "operated and maintained by the state" would result in consequences such as the following:

1. public officers would be prohibited from requesting that others—including state contractors and other non-state personnel—send information to other third-parties' electronic mail addresses or facsimile machines;
2. public officers would be prohibited from sending facsimiles from any non-state equipment to any non-state equipment (*e.g.*, from a state contractor's office to a federal government office), even if the facsimile were also sent to a state office;
3. public officers would be prohibited from leaving messages on social media, such as Twitter and Facebook, for state business;
4. public officers would be prohibited from leaving voicemail messages on any system not operated and maintained by the state;
5. public officers would be prohibited from engaging in telephone conversations with any non-state person with the capacity to record and transcribe (through an automated process) such conversations; and
6. the state would need to provide state email accounts to all volunteer members of state boards and commissions.

The prospect of inadvertently committing a violation of the Ethics Act or a provision of the criminal code would likely cause state officers to avoid the use of accepted and efficient means of modern communication.

Also, if section 7 is enacted, no need exists for proposed subsection AS 39.52.135(b), which provides that an "electronic transmission" under the proposed subsection AS 39.52.135(a) is "a public record under AS 40.25." Section 7 includes "electronic transmissions" in the AS 40.25.220(3) definition of "public records."

Finally, section 2 does not seem to fit within the Ethics Act. Generally, the Ethics Act seeks to preserve the integrity of state action by prohibiting conduct or the misuse of state resources that results in personal gain (*e.g.*, benefits a personal or financial interest of a public officer), provides an unwarranted benefit to another, or otherwise suggests an intention to improperly influence state action. The prohibition in section 2—*i.e.*, on sending "information by electronic transmission within a system for electronic delivery" that is not "operated and maintained by the state"—does not appear to be based on the same premise. Also, in the Ethics Act, the legislature mandates a focus on substantial and material conflicts and misconduct and recognizes that minor conflicts are unavoidable. The Ethics Act standards in AS 39.52.110(b) for making the relevant determination would not apply to the conduct prohibited by section 2 because the use of

"a system for electronic delivery" that is not "operated and maintained by the state" does not arise from a public officer's outside interests and would likely always have an insignificant effect on a matter of state business. Thus, section 2 seems inappropriate for inclusion in the Ethics Act.[10]

D. The Proposed Criminal Provision Is Critically Vague and Might Well Substantially Impede State Business.

Section 6 is critically vague. It would amend AS 40.25.125 to subject a person who tampers with or otherwise affects the availability of a public record to "prosecution for a criminal offense, including an offense under AS 11.56.815 and AS 11.56.820." Other than AS 11.56.815 and AS 11.56.820, however, section 6 does not identify what crime and what degree of the crime that person would be guilty of.[11]

Also, section 6 would likely substantially impede state business. First, given that "public records" include records "that are developed or received . . . by a private contractor for a public agency," the section could make retaining contractors substantially more difficult and expensive. AS 40.25.220(3). Second, the section would make public agency employees extremely reluctant to discard records in compliance with record retention schedules, resulting in extraordinary records management problems. Third, it would make public agency employees extremely reluctant to participate in efforts to respond to public record requests because of a concern that their involvement would lead to charges that they somehow unlawfully attempted to affect the availability of a public record when, for example, their search for a record was unsuccessful; they withheld a record on the grounds that it is privileged or confidential; they misunderstood the request; or they accidentally overlooked a record.

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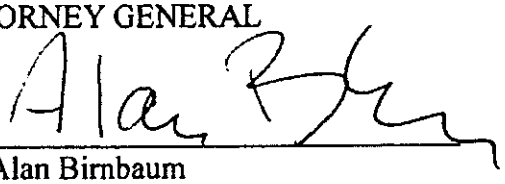
[10] The prohibition would seem to be more consistent with AS 39.25.160, which is part of the State Personnel Act.

[11] A provision—if any—making a violation of the Public Records Act a criminal offense should apply only to actions intended to prevent the state from substantially complying with its statutory obligations and, accordingly, should be limited to the period between when a sufficiently clear request is received (triggering the duty to preserve and produce or identify records) and all opportunities to appeal have expired or been exhausted. Also, it should not apply in connection with any record that is identified as privileged or confidential: a public officer should not fear prosecution for protecting privileged or confidential information.

We are available to answer any questions you have regarding our comments on SB 249 and to work with the Judiciary Committee and Senator Ellis to address our concerns.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: 
Alan Birnbaum
Assistant Attorney General

cc: Senator Johnny Ellis

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SENATOR JOHNNY ELLIS
SENATE MAJORITY LEADER

MEMORANDUM

To: Senator Hollis French
Chair, Senate Judiciary Committee

From: Senator Johnny Ellis

Date: March 23, 2010

Subject: Scheduling Request for SB249 – Public Records/Electronic Transmissions

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I am requesting that you schedule Senate Bill 249, "An Act relating to official action by electronic transmission, to records, and to public records" for a hearing in the Senate State Affairs Committee at your earliest convenience.

SB249 would clarify and strengthen our public records laws by imposing consistent definitions and requirements on what makes up a public record, who the laws apply to, what the public has access to, and how that access is governed.

Thank you for your consideration, and my staff and I are available for any questions.

ALASKA STATE LEGISLATURE

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SENATE MAJORITY LEADER
JOHNNY ELLIS

SPONSOR STATEMENT – SENATE BILL 249

SB 249 – An Act relating to official action by electronic transmission, to records, and to public records.

SB 249 clarifies and strengthens current law regarding the preservation of and access to public records. Our public records statutes are made up of three chapters, relating to the preservation and maintenance of records, and a criminal statute to set out potential punishments. Inconsistencies and variations between the three have led to confusion and controversy on the part of the public in its attempts to access records they are entitled to, and the agencies in their efforts to preserve and maintain records while balancing open government with personal privacy and legal limits.

As technology advances and government and society are forced to adapt, it becomes essential for our Public Records statutes to keep up with current practices in order to fulfill their original purpose. Alaska's original public records law was adopted as a part of the Organic Act of 1913. Over the years, it has been revised and expanded to keep up with changes in government practice and technological advances. However, the original statute provides a powerful statement of intent: "*Every person has a right to inspect any public writing or record . . . and every public officer having the custody thereof is bound to permit such inspection. . .*"

The bill makes the following changes:

- Applies a consistent definition to the term 'public record' throughout the Alaska statutes.
- Clarifies that electronic transmissions, including text messages, instant messages, email, or other forms of electronic communication are included within that definition.
- Clarifies the duty of state agencies to preserve records, and the ability of the public to access records which are required by law to be preserved.
- Amends the Executive Branch Ethics Act to codify in statute Commissioner Kreitzer's policy which requires state employees to use state electronic systems in order to take official actions so that emails about state business can be included in the public records systems.
- Limits the fees that may be charged to members of the public who wish to access public records to the actual costs of materials and supplies needed to provide the records.
- Explains that impeding either the preservation of or access to public records is a violation of existing criminal law.

SB 249 preserves the ability of Alaskans to keep their government open and accountable. I urge you to join me in support of ethical and transparent government.

STATE OF ALASKA

SEAN PARNELL, GOVERNOR

DEPARTMENT OF ADMINISTRATION

P.O. BOX 110200
JUNEAU, ALASKA 99811-0200

ANNETTE KREITZER
CHIEF INFORMATION OFFICER

PHONE: (907) 465-2200
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Focus: State of Alaska Executive Branch Employees	State of Alaska Department of Administration Office of the Commissioner Chief Information Officer
Topic: Email Retention Policy	**Effective Date:** August 7, 2009
Authority: AS 44.21	

POLICY

Emails, including attachments, are subject to the same records retention requirements that apply to any other electronic or non-electronic records. Like paper records, if an email is subject to multiple records retention requirements, it must be archived for the longest applicable period. The applicable records retention requirements are the State of Alaska executive branch records retention schedules imposed pursuant to AS 40.21 and any implementing regulations, and the requirements imposed pursuant to a notification of a legal hold in connection with judicial or administrative litigation, or imposed because of a request under the Alaska Public Records Act, AS 40.25.100 - 40.25.220.

Accordingly, all executive branch employees are responsible for archiving into the designated executive branch email archiving system their sent and received emails (including any attachments) in accordance with the policy identified here.[I])

ALL EXECUTIVE BRANCH EMPLOYEES

When executive branch employees conduct state business through email they must, whenever feasible, use the state's electronic mail system. In some circumstances, employees may need to use, or may inadvertently use, private email accounts to conduct state business. In those

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[I] **Guidelines for determining what types of emails must be archived** can be found in the document entitled "Email: FAQ and Rules,» linked on the Division of Archives home page and found at *http://www.archives.state.ak.us/pdfs/records* management *le* mail.pdf

instances, employees must send copies of those messages to their state email accounts.

Under no circumstance may State of Alaska personally identifiable information (PII) be sent to or from an executive branch employee's private email account. PII is defined in AS 45.48.590(4).[2]

Employees are required to follow the executive branch email policy. Failure to do so may result in discipline up to and including dismissal.

EXECUTIVE EMPLOYEES

Any email sent or received by an executive employee[3]) may be deleted within 90 days unless the email is subject to a records retention requirement, public records request or legal hold. If within that 90-day period a sent or received email becomes subject to a records retention requirement, public records request or legal hold then it cannot be deleted unless the requirement, request, or hold is lifted before the end of the period. All email not deleted within 90 days will be automatically archived.

NON-EXECUTIVE EMPLOYEES

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[2] Definition of Personally Identifiable Information:
AS 45.48.590(4): "personal information' means (A) an individnal's passport number, driver's license **number, state identification number, bank account number, credit card number, debit card number, other** payment card number, financial account information, or information from a financial application; or (B) a combination of an individual's (i) name; and (ii) medical information, insurance policy number, employment information, or employment history ....."

[3] Definition of Execntive Employee:
The following persons are executive employees: (I) the Executive Branch employees defined as "public officials" in AS 39.50.200(a)(9); and (2) the persons employed in the following job classifications:

Assistant Commissioner
Executive Director
Assistant Director
Labor Relations Manager
State Accountant
State Leasing and Facilities Manager
Department of Public Safety Liaison
Chief, Worker's Compensation Adjudication
Veterans Affairs Administrator
Administrator, Violent Crimes Compensation Board
Administrator, Highway Safety Planning Agency
Marine Highway Transportation Services Manager

Positions placed in the partially exempt service under AS 39.25.130(a)(I) or (2) will be added to this list.

If a records retention requirement applies to a sent or received email of a non-executive employee, then within 90 days after the email was sent or received, it must be archived into the state's designated email archiving system in accordance with the records retention requirement. If an email is subject to multiple records retention requirements, it must be archived for the longest applicable period. Any email not archived within 90 days after it was sent or received will be automatically deleted.

EDUCATION

All employees with an email account must be educated on the executive branch email policy. Any new employee with an assigned email account must be educated on the policy before the account is activated. The education portion of this policy does not take effect until the state implements the email archiving system.

8-7-09

Annette Kreitzer, Commissioner Date
Department of Administration
Chief Information Officer

adn.com
Anchorage Daily News

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Our view: Private e-mails

Court says loophole is OK; legislators, governor should act

(08/14/09 21:17:14)

Judge Jack Smith says there is no state law requiring state employees to do their state business on the state e-mail system. With the ruling, employees may still potentially hide messages from public scrutiny by using private e-mail accounts, as Gov. Sarah Palin and her staff did. OK, then, it's time to pass a state law.

State Rep. Mike Doogan offered one such bill last year, HB195. It went nowhere, though. Doogan is stuck in the House minority, with relatively little power.

In any event, it will be months before the Legislature can close this gap in the state public records law. Lawmakers don't convene again until January.

In the meantime, Gov. Sean Parnell can help immensely by taking a more forceful approach to this question.

His spokeswoman Sharon Leighow said last week that Gov. Parnell stands by a previous directive from Gov. Palin's chief of staff, who said any private e-mails concerning state business must be copied into the state's e-mail system.

However, that directive was issued only to the governor's office staff, rather than to all state government employees. Leighow said in an e-mail Thursday that a new state policy is due out soon and will deal with this issue.

Gov. Parnell needs to issue a clear, unambiguous order to all state employees and ensure that all e-mails about state business appear in the state e-mail system. That way, the e-mails can be properly archived for possible public access until the Legislature has time to write this requirement into state law.

BOTTOM LINE: E-mails about state business need to be in the state e-mail system.

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11.81.900 (b)

(53) "Public record" means:

(A) each of the following that is developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by any agency, municipality, or any body subject to the open meeting provision of AS 44.62.310, as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the state or municipality or because of the informational value in it:

(i) a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card or other document of any other material, regardless of physical form or characteristic; and

(ii) an electronic transmission, including a text message, an instant message, electronic mail, or any other form of communication not directly involving the physical transmission of paper that creates a record that can be retained, retrieved, and reviewed by a recipient of the communication and that can be reproduced in paper form through an automated process;

(B) staff manuals and instructions to staff that affect the public;

40.21.150

(6) "record"

(A) means each of the following that is developed or received under law or in connection with the transaction of official business and preserved, required by law to be preserved, or appropriate for preservation by an agency or a political subdivision as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the state or municipality or because of the informational value in it:

(i) a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card or other document of any other material, regardless of physical form or characteristic; and

(ii) an electronic transmission, including a text message, an instant message, electronic mail, or any other form of communication not directly involving the physical transmission of paper that creates a record that can be retained, retrieved, and reviewed by a recipient of the communication and that can be reproduced in paper form through an automated process;

(B) does not include library and museum material developed or acquired and preserved solely for reference, historical, or exhibition purposes, extra copies of documents preserved solely for convenience of reference, or stocks of publications and processed documents;

40.25.220

(3) "public record" or "public records"

(A) means the following that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved, required by law to be preserved, or appropriate for preservation as information or as evidence of the organization or operation of the public agency:

(i) books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics; and

(ii) an electronic transmission, including a text message, an instant message, electronic mail, or any other form of communication not directly involving the physical transmission of paper that creates a record that can be retained, retrieved, and reviewed by a recipient of the communication and that can be reproduced ibn paper form through an automated process;

(B) does not include proprietary software programs;

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SENATOR JOHNNY ELLIS
SENATE MAJORITY LEADER

MEMORANDUM

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Chair, Senate Judiciary Committee

From: Senator Johnny Ellis

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Thank you for your consideration, and my staff and I are available for any questions.

SB 252

26-GS2910\R
Luckhaupt
4/11/10

CS FOR SENATE BILL NO. 252(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to the crime of failure to appear; relating to arrest for violating certain conditions of release; relating to release before trial, before sentence, and pending appeal; relating to material witnesses; relating to temporary release; relating to release on a petition to revoke probation; relating to the first appearance before a judicial officer after arrest; relating to service of process for domestic violence protective orders; making conforming amendments; amending Rules 5 and 41, Alaska Rules of Criminal Procedure, and Rules 206 and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

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

*** Section 1.** AS 11.56 is amended by adding a new section to read:

Sec. 11.56.730. Failure to appear. (a) A person commits the crime of failure to appear if the person

(1) is released under the provisions of AS 12.30;

(2) knows that the person is required to appear before a court or judicial officer at the time and place of a scheduled hearing; and

(3) with criminal negligence does not appear before the court or judicial officer at the time and place of the scheduled hearing.

(b) In a prosecution for failure to appear under (a) of this section, it is an affirmative defense that unforeseeable circumstances, outside the person's control, prevented the person from appearing before the court or judicial officer at the time and place of the scheduled hearing, and the person contacted the court orally and in writing immediately upon being able to make the contact.

(c) A person who commits failure to appear incurs a forfeiture of any security for any appearance of the person that was given or pledged to the court for the person's release, and is guilty of a

(1) class C felony if the person was released in connection with a charge of a felony, or while awaiting sentence or appeal after conviction of a felony;

(2) class A misdemeanor if the person was released in connection with a

(A) charge of a misdemeanor, or while awaiting sentence or appeal after conviction of a misdemeanor; or

(B) requirement to appear as a material witness in a criminal proceeding.

*** Sec. 2.** AS 12.25.030(b) is amended to read:

(b) In addition to the authority granted by (a) of this section, a peace officer

(1) shall make an arrest under the circumstances described in AS 18.65.530;

(2) without a warrant may arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer,

(A) committed a crime involving domestic violence, whether the crime is a felony or a misdemeanor; in this subparagraph, "crime involving domestic violence" has the meaning given in AS 18.66.990;

(B) committed the crime of violating a protective order in

violation of AS 11.56.740; or

(C) violated a condition of release imposed under **AS 12.30.016(e)** [AS 12.30.025] or 12.30.027;

(3) without a warrant may arrest a person when the peace officer has **probable** [REASONABLE] cause for believing that the person has

(A) committed a crime under or violated conditions imposed as part of the person's release before trial on misdemeanor charges brought under AS 11.41.270;

(B) violated AS 04.16.050 or an ordinance with similar elements; however, unless there is a lawful reason for further detention, a person who is under [THE AGE OF] 18 **years of age** and who has been arrested for violating AS 04.16.050 or an ordinance with similar elements shall be cited for the offense and released to the person's parent, guardian, or legal custodian; or

(C) violated conditions imposed as part of the person's release **under the provisions of AS 12.30** [BEFORE TRIAL ON FELONY CHARGES BROUGHT UNDER AS 11.41.410 - 11.41.458].

* **Sec. 3.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.006. Release procedures. (a) At the first appearance before a judicial officer, a person charged with an offense shall be released or detained under the provisions of this chapter.

(b) At the first appearance before a judicial officer, a person who is charged with a felony may be detained up to 48 hours for the prosecuting authority to demonstrate that release of the person under AS 12.30.011(a) would not reasonably assure the appearance of the person or will pose a danger to the victim, other persons, or the community.

(c) A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If the judicial officer who imposed the conditions of release is not available, any judicial officer in the judicial district may review the conditions.

(d) If a person remains in custody after review of conditions by a judicial officer under (c) of this section, the person may request a subsequent review of conditions. Unless the prosecuting authority stipulates otherwise or the person has been incarcerated for a period equal to the maximum sentence for the most serious charge for which the person is being held, a judicial officer may not schedule a bail review hearing under this subsection unless

(1) the person provides to the court and the prosecuting authority a written statement that new information not considered at the previous review will be presented at the hearing; the statement must include a description of the information and the reason the information was not presented at a previous hearing; in this paragraph, "new information" does not include the inability to post the required bail;

(2) the prosecuting authority and any surety, if applicable, have at least 48 hours' written notice before the time set for the review requested under this subsection; the defendant shall notify the surety; and

(3) at least seven days have elapsed between the previous review and the time set for the requested review.

(e) A judicial officer may solicit comments by the victim or a parent or guardian of a minor victim who is present at the bail review hearing and wishes to comment. The judicial officer shall consider those comments and any response by the person before making a decision concerning the release of the person.

(f) The judicial officer shall issue written or oral findings that explain the reasons the officer imposed the particular conditions of release or modifications or additions to conditions previously imposed. The judicial officer shall inform the person that a law enforcement officer may arrest the person without a warrant for violation of the court's order establishing conditions of release.

(g) Information offered or introduced at a bail hearing to determine conditions of release need not conform to the rules governing the admissibility of evidence.

*** Sec. 4.** AS 12.30 is amended by adding new sections to read:

Sec. 12.30.011. Release before trial. (a) Except as otherwise provided in this chapter, a judicial officer shall order a person charged with an offense to be released on the person's personal recognizance or upon execution of an unsecured appearance

bond, on the condition that the person

(1) obey all court orders and all federal, state, and local laws;

(2) appear in court when ordered;

(3) if represented, maintain contact with the person's lawyer; and

(4) notify the person's lawyer, who shall notify the prosecuting authority and the court, not more than 24 hours after the person changes residence.

(b) If a judicial officer determines that the release under (a) of this section will not reasonably assure the appearance of the person or will pose a danger to the victim, other persons, or the community, the officer shall impose the least restrictive condition or conditions that will reasonably assure the person's appearance and protect the victim, other persons, and the community. In addition to conditions under (a) of this section, the judicial officer may, singly or in combination,

(1) require the execution of an appearance bond in a specified amount of cash to be deposited into the registry of the court, in a sum not to exceed 10 percent of the amount of the bond;

(2) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash;

(3) require the execution of a performance bond in a specified amount of cash to be deposited in the registry of the court;

(4) place restrictions on the person's travel, association, or residence;

(5) order the person to refrain from possessing a deadly weapon on the person or in the person's vehicle or residence;

(6) require the person to maintain employment, or if unemployed, actively seek employment;

(7) require the person to notify the person's lawyer and the prosecuting authority within two business days after any change in employment;

(8) require the person to avoid all contact with a victim, a potential witness, or a codefendant;

(9) require the person to refrain from the consumption and possession of alcoholic beverages;

(10) require the person to refrain from the use of a controlled substance

as defined by AS 11.71, unless prescribed by a licensed health care provider with prescriptive authority;

(11) require the person to be physically inside the person's residence, or in the residence of the person's third-party custodian, at time periods set by the court;

(12) require the person to keep regular contact with a law enforcement officer or agency;

(13) order the person to refrain from entering or remaining in premises licensed under AS 04;

(14) place the person in the custody of an individual who agrees to serve as a third-party custodian of the person as provided in AS 12.30.021;

(15) if the person is under the treatment of a licensed health care provider, order the person to follow the provider's treatment recommendations;

(16) order the person to take medication that has been prescribed for the person by a licensed health care provider with prescriptive authority;

(17) order the person to comply with any other condition that is reasonably necessary to assure the appearance of the person and to assure the safety of the victim, other persons, and the community.

(c) In determining the conditions of release under this chapter, the court shall consider the following:

(1) the nature and circumstances of the offense charged;

(2) the weight of the evidence against the person;

(3) the nature and extent of the person's family ties and relationships;

(4) the person's employment status and history;

(5) the length and character of the person's past and present residence;

(6) the person's record of convictions;

(7) the person's record of appearance at court proceedings;

(8) assets available to the person to meet monetary conditions of release;

(9) the person's reputation, character, and mental condition;

(10) the effect of the offense on the victim, any threats made to the

victim, and the danger that the person poses to the victim;

(11) any other facts that are relevant to the person's appearance or the person's danger to the victim, other persons, or the community.

(d) In making a finding regarding the release of a person under this chapter,

(1) except as otherwise provided in this chapter, the burden of proof is on the prosecuting authority that a person charged with an offense should be detained or released with conditions described in (b) of this section or AS 12.30.016;

(2) there is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the victim, other persons, or the community, if the person is

(A) charged with an unclassified felony, a class A felony, a sexual felony, or a felony under AS 28.35.030 or 28.35.032;

(B) charged with a felony crime against a person under AS 11.41, was previously convicted of a felony crime against a person under AS 11.41 or a similar offense in another jurisdiction, and less than five years have elapsed between the date of the person's unconditional discharge on the immediately preceding offense and the commission of the present offense;

(C) charged with a felony offense committed while the person was on release under this chapter for a charge or conviction of another offense;

(D) charged with a crime involving domestic violence, and has been convicted in the previous five years of a crime involving domestic violence in this state or a similar offense in another jurisdiction;

(E) arrested in connection with an accusation that the person committed a felony outside the state or is a fugitive from justice from another jurisdiction, and the court is considering release under AS 12.70.

Sec. 12.30.016. Release before trial in certain cases. (a) A judicial officer may impose, in addition to those required or authorized under AS 12.30.011, conditions of release for offenses described in this section, if necessary to reasonably assure the person's appearance or the safety of the victim, other persons, or the community.

(b) In a prosecution charging a violation of AS 04.11.010, 04.11.499,

AS 28.35.030, or 28.35.032, a judicial officer may order the person

(1) to refrain from

(A) consuming alcohol beverages; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, alcoholic beverages;

(2) to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of alcoholic beverages by a peace officer who has reasonable suspicion that the person is violating the conditions of the person's release by possessing alcoholic beverages;

(3) to submit to a breath test when requested by a law enforcement officer;

(4) to provide a sample for a urinalysis or blood test when requested by a law enforcement officer;

(5) to take a drug or combination of drugs intended to prevent substance abuse;

(6) to follow any treatment plan imposed by the court under AS 28.35.028.

(c) In a prosecution charging a violation of AS 11.71 or AS 11.73, a judicial officer may order the person

(1) to refrain from

(A) consuming a controlled substance; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, a controlled substance or drug paraphernalia;

(2) to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of a controlled substance or drug paraphernalia by a peace officer who has reasonable suspicion that the person is violating the terms of the person's release by possessing controlled substances or drug paraphernalia;

(3) to enroll in a random drug testing program, at the person's expense, to detect the presence of a controlled substance, with testing to occur not less than once a week, and with the results being submitted to the court and the prosecuting authority;

(4) to refrain from entering or remaining in a place where a controlled substance is being used, manufactured, grown, or distributed;

(5) to refrain from being physically present, within a two-block area of, or within a designated area near, the location where the alleged offense occurred or at other designated places, unless the person actually resides within that area; or

(6) to refrain from the use or possession of an inhalant.

(d) In a prosecution charging misconduct involving a controlled substance under AS 11.71.020(a)(2) for the manufacture of methamphetamine, or its salts, isomers, or salts of isomers, if the person has been previously convicted in this or another jurisdiction of a crime involving the manufacturing, delivering, or possessing methamphetamine, or its salts, isomers, or salts of isomers, a judicial officer shall require the posting of a minimum of $250,000 cash bond before the person may be released. The judicial officer may reduce this requirement if the person proves to the satisfaction of the officer that the person's only role in the offense was as an aider or abettor and that the person did not stand to benefit financially from the manufacturing.

(e) In a prosecution charging the crime of stalking that is not a crime involving domestic violence, a judicial officer may order the person to

(1) follow the provisions of any protective order to which the person is respondent;

(2) refrain from contacting in any manner, including by telephone or electronic communication, the victim;

(3) engage in counseling; if available in the community, the judicial officer shall require that counseling ordered include counseling about alternatives to aggressive behavior.

(f) In a prosecution charging a crime under AS 11.41.410 - 11.41.458, a judicial officer

(1) may order the person to have no contact with the victim except as

specifically allowed by the court;

(2) may order the person to reside in a place where the person is not likely to come into contact with the victim of the offense;

(3) may order the person to have no contact with any person under 18 years of age except in the normal course of business in a public place;

(4) shall assure that the victim and the parent or guardian of a minor victim have been notified by a law enforcement agency or the prosecuting authority of a hearing where release is being considered, or that a reasonable effort at notification has been made; and

(5) shall solicit comments from the victim or a parent or guardian of the minor victim who is present and wishes to comment, and consider those comments before making a decision concerning the release of the person.

*** Sec. 5.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.021. Third-party custodians. (a) In addition to other conditions imposed under AS 12.30.011 or 12.30.016, a judicial officer may appoint a third-party custodian if the officer finds that the appointment will, singly or in combination with other conditions, reasonably assure the person's appearance and the safety of the victim, other persons, and the community.

(b) A judicial officer may appoint an individual as a third-party custodian if the proposed custodian

(1) provides information to the judicial officer about the proposed custodian's residence, occupation, ties to the community, and relationship with the person, and provides any other information requested by the judicial officer;

(2) is physically able to perform the duties of custodian of the person;

(3) either personally, by telephone, or by other technology approved by the court, appears in court with the person and acknowledges to the judicial officer orally and in writing that the proposed custodian

(A) understands the duties of custodian and agrees to perform them; the proposed custodian must specifically agree to immediately report in accordance with the terms of the order if the person released has violated a condition of release; and

(B) understands that failure to perform those duties may result in the custodian being held criminally liable under AS 09.50.010 or AS 11.56.758.

(c) A judicial officer may not appoint a person as a third-party custodian if

(1) the proposed custodian is acting as a third-party custodian for another person;

(2) the proposed custodian has been convicted in the previous three years of a crime under AS 11.41 or a similar crime in this or another jurisdiction;

(3) criminal charges are pending in this state or another jurisdiction against the proposed custodian;

(4) the proposed custodian is on probation in this state or another jurisdiction for an offense;

(5) the proposed custodian may be called as a witness in the prosecution of the person;

(6) the proposed custodian resides out of state; however a nonresident may serve as a custodian if the nonresident resides in the state while serving as custodian.

*** Sec. 6.** AS 12.30.027(a) is amended to read:

(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the **judicial officer** [COURT] shall consider the safety of the [ALLEGED] victim or other household member. To protect the [ALLEGED] victim, household member, **other persons,** and the **community** [PUBLIC] and to reasonably assure the person's appearance, the **judicial officer shall impose conditions required under AS 12.30.011, and** [COURT] may impose [BAIL AND] any of the conditions authorized under **AS 12.30.011** [AS 12.30.020], any of the provisions of AS 18.66.100(c)(1) - (7) and (11), and any other condition necessary to protect the [ALLEGED] victim, household member, **other persons,** and the **community** [PUBLIC], and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

*** Sec. 7.** AS 12.30.027(b) is amended to read:

(b) A **judicial officer** [COURT] may not order or permit a person released under (a) of this section to return to the residence **or place of employment** of the [ALLEGED] victim or the residence **or place of employment** of a petitioner who has a protective order directed to the person and issued or filed under AS 18.66.100 - 18.66.180 **unless**

(1) 20 days have elapsed following the date the person was arrested;

(2) the victim or petitioner consents to the person's return to the residence or place of employment;

(3) the person does not have a prior conviction for an offense under AS 11.41 that is a crime involving domestic violence; and

(4) the court finds by clear and convincing evidence that the return to the residence or place of employment does not pose a danger to the victim or petitioner.

*** Sec. 8.** AS 12.30.030 is repealed and reenacted to read:

Sec. 12.30.030. Appeal from conditions of release. (a) If a person remains in custody after a review provided for in AS 12.30.006(c) or (d), an appeal may be taken to the court having appellate jurisdiction over the court imposing the conditions. The appellate court shall affirm the order unless it finds that the lower court abused its discretion.

(b) If the appellate court finds that the lower court abused its discretion, the appellate court may modify the order, remand the matter for further proceedings, or remand the matter directing entry of the appropriate order, including release under AS 12.30.011(a). The appeal shall be determined promptly.

*** Sec. 9.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.031. Temporary release. (a) A person either before trial or after conviction who is detained under this chapter may be released temporarily if

(1) the person is being held in connection with a misdemeanor or class B or C felony;

(2) the release is requested because of the

(A) death of an immediate family member of the person;

(B) birth of the person's child if the defendant executes an affidavit of paternity before the release;

(C) person's need for a mental health or substance abuse assessment that the court finds cannot be accommodated in the facility or telephonically; or

(D) person's need for a medical or dental examination required for acceptance into a residential treatment facility; and

(3) the court solicits information from the Department of Corrections regarding the defendant's conduct while incarcerated and considers that information when making a decision under this subsection.

(b) If a court orders temporary release of a person under (a) of this section, the court shall order the person to appear in court during normal business hours at the end of the period of temporary release and before the person is returned to a correctional facility.

* **Sec. 10.** AS 12.30.040 is repealed and reenacted to read:

Sec. 12.30.040. Release before sentence; release after conviction. (a) Except as provided in (b) of this section, a person who has been convicted of an offense and is awaiting sentence or who has filed an appeal may be released under the provisions of this chapter if the person establishes, by clear and convincing evidence, that the person can be released under conditions that will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

(b) A person may not be released under (a) of this section if the person has been convicted of an offense that is

(1) an unclassified or class A felony;

(2) a sexual felony;

(3) a class B felony if the person has been convicted within the previous 10 years of a felony committed in this state or a similar offense committed in another jurisdiction; or

(4) a felony in violation of AS 11.41, and the person has been found guilty but mentally ill.

(c) A person who has been convicted of an offense and who has filed an

application for post-conviction relief may not be released under this section until the court enters an order vacating all convictions against the person. A person who has prevailed in an application for post-conviction relief may seek release before trial in accordance with the provisions of this chapter.

*** Sec. 11.** AS 12.30.050 is repealed and reenacted to read:

Sec. 12.30.050. Release of material witnesses. (a) If the prosecution or defense establishes by affidavit or other evidence that the testimony of a person is material in a criminal proceeding, and that it may be impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and consider the release or detention of the person under the provisions of AS 12.30.011.

(b) A material witness may not be detained because of inability to comply with any condition of release if the testimony of the witness can adequately be secured by deposition, unless further detention is necessary to prevent a failure of justice.

(c) Release of a material witness under (a) of this section may be delayed for a reasonable period of time for the deposition of the witness to be taken.

*** Sec. 12.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.055. Persons appearing on petition to revoke. A person who is in custody in connection with a petition to revoke probation does not have a right to be released under this chapter. A judicial officer may, however, release the person under the provisions of this chapter, if it is established by a preponderance of the evidence that the proposed release conditions will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

*** Sec. 13.** AS 12.30.075(a) is amended to read:

(a) Cash or other security posted by a **person** [DEFENDANT] under **AS 12.30.011** [AS 12.30.020] that would otherwise be forfeited shall be held by the court in trust for the benefit of the victim if, within 30 days after an order of the court establishing a failure to appear or a violation of conditions of release, the prosecuting authority gives notice that restitution may be requested as part of the sentence if the **person** [DEFENDANT] is convicted.

*** Sec. 14.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.078. Conviction occurrence. In this chapter, a conviction occurs at the time the person is found guilty, either by plea or verdict, of the offense.

* **Sec. 15.** AS 12.30.080 is amended by adding new paragraphs to read:

(3) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(4) "knowingly" has the meaning given in AS 11.81.900;

(5) "peace officer" has the meaning given in AS 11.81.900;

(6) "sexual felony" has the meaning given in AS 12.55.185;

(7) "stalking" means a violation of AS 11.41.260 or 11.41.270.

* **Sec. 16.** AS 12.55.155(c)(12) is amended to read:

(12) the defendant was on release under **AS 12.30** [AS 12.30.020 OR 12.30.040] for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

* **Sec. 17.** AS 12.80.060(g)(2) is amended to read:

(2) "offense" means conduct subjecting a person to arrest as an adult offender, or as a juvenile charged as an adult,

(A) due to a violation of a federal or state criminal law, or municipal criminal ordinance;

(B) under AS 12.25.180;

(C) under **AS 11.56.730** [AS 12.30.060]; or

(D) under AS 12.70.

* **Sec. 18.** AS 18.65.530(a) is amended to read:

(a) Except as provided in (b) or (c) of this section, a peace officer, with or without a warrant, shall arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer, within the previous 12 hours,

(1) committed domestic violence, except an offense under AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;

(2) committed the crime of violating a protective order in violation of AS 11.56.740;

(3) violated a condition of release imposed under **AS 12.30.016(e) or**

(f) or 12.30.027 [AS 12.30.025, 12.30.027, OR 12.30.029].

*** Sec. 19.** AS 18.66.160(a) is amended to read:

(a) **Unless, on the record in court, the person has already been provided a copy of the court's order, process** [PROCESS] issued under this chapter shall be promptly served and executed. If process is to be served upon a person believed to be present or residing in a municipality, as defined in AS 29.71.800, or in an unincorporated community, process shall be served by a peace officer of that municipality or unincorporated community who has jurisdiction within the area of service. If a peace officer of the municipality or unincorporated community who has jurisdiction is not available, a superior court, district court, or magistrate may designate any other peace officer to serve and execute process. A state peace officer shall serve process in any area that is not within the jurisdiction of a peace officer of a municipality or unincorporated community. A peace officer shall use every reasonable means to serve process issued under this chapter. **A judge may not order a peace officer to serve a petition that has been denied by the court.**

*** Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 5(a)(1), Alaska Rules of Criminal Procedure, is amended to read:

(a) **Appearance Before the Judge or Magistrate.**

(1) Except when the person arrested is issued a citation for a misdemeanor or a violation and immediately thereafter released, the arrested person shall be taken before the nearest available judge or magistrate without unnecessary delay. This appearance may be accomplished by the use of telephonic or television equipment pursuant to Criminal Rules 38.1 and 38.2. **Necessary** [UNNECESSARY] delay within the meaning of this paragraph (a) is defined as a period not to exceed **forty-eight** [TWENTY-FOUR] hours after arrest, including Sundays and holidays.

*** Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 5(a)(2), Alaska Rules of Criminal Procedure, is amended to read:

(2) If

(i) The judge or magistrate commits the arrested person to jail for a purpose other than to serve a sentence, and

(ii). The jail is situated in a different community from the place where the judge or magistrate committed the arrested person to jail, and

(iii) The arrested person is not represented by counsel, and

(iv) The arrested person has not previously had a bail review, and

(v) The arrested person has no date, time and place established for his or her next court appearance, then the arrested person shall be taken before a judge or magistrate in the community where the jail is located within **forty-eight** [TWENTY-FOUR] hours of the person's detention in that jail

(aa) in order for bail to be reviewed, and

(bb) in order to determine if the person is represented by counsel, and

(cc) in order for [THE] counsel to be appointed, if appropriate.

*** Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(a), Alaska Rules of Criminal Procedure, is amended to read:

(a) **Admission to Bail.** The defendant in a criminal proceeding is entitled to be admitted to bail pursuant to **AS 12.30.006 - 12.30.080** [AS 12.30.010 -12.30.080].

*** Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(b), Alaska Rules of Criminal Procedure, is amended to read:

(b) **Types of Bonds.** The court may require:

(1) the execution of an unsecured appearance bond in an amount specified, under the criteria set forth in **AS 12.30.011** [AS 12.30.010(a)];

(2) the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash [or other security], of a sum not to exceed 10 percent of the amount of the bond;

(3) the execution of a bail bond with sufficient solvent sureties or the deposit of cash; or

(4) the execution of a performance bond in a specified amount and the deposit in the registry of the court of cash [or other security].

*** Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(c), Alaska Rules of Criminal Procedure, is amended to read:

(c) **Separate Bonds.** If a performance bond is required, it must be enforced separately from any appearance or bail bond.

(1) Appearance in court may not be a condition of a performance bond. **A court may not order that an appearance bond be concurrent with an appearance bond in a pending case unless the surety who posed the first appearance bond approves.**

(2) The court may not change a performance or appearance bail requirement without agreement by the surety, unless

(A) the surety waives the requirement for agreement in advance and in writing; or

(B) the court, in writing, finds that the change in the condition of bail poses no increase in risk of loss to the surety and the court sets out in writing the reason for finding that there is no increase in the risk of loss to the surety.

*** Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 206(b), Alaska Rules of Appellate Procedure, is amended to read:

(b) **Release Pending Appeal.** When an appeal on the merits is pending, an appeal under **AS 12.30.030** [AS 12.30.030(b)] from an order refusing bail pending

appeal or imposing conditions of release pending appeal shall be in the form of a motion filed in the merit appeal. The motion must be filed with the clerk of the appellate courts within 30 days after the date of the notice of the order from which review is sought. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c). The motion shall comply with Rule 503, and shall contain specific factual information relevant to **AS 12.30.011(c)** [AS 12.30.020(c)], including but not limited to the following:

(1) The full name of the appellant; the trial court case number; the offenses of which the appellant was convicted, if applicable; the date of sentencing; and the complete terms of the sentence;

(2) That application for release pending appeal has been made to the trial court, the reasons given by the trial court for denying the application in whole or in part, and facts and reasons demonstrating why the action of the trial court on the application was erroneous or an abuse of discretion;

(3) A concise statement of the question or questions to be raised on the appeal with a showing that the question or questions were raised in the trial court;

(4) Family: marital status; length of marriage; children, and their ages; other relatives in the area of residence;

(5) Employment and financial circumstances: name of employer at time of arrest and during pre-trial release; type of work; how long so employed; and offer or promise of employment if released pending appeal; assets of the appellant or of relatives or friends relevant to the ability to post money bail;

(6) Health: history of mental illness, alcoholism, or addiction to drugs, if any;

(7) Residence: length of residence in the city or town in which the appellant resided at the time of arrest;

(8) Criminal history: criminal convictions within ten years prior to the present arrest; if the appellant has ever forfeited bail, or had release, probation, or parole revoked, the date, the name and location of the court, and a brief description of the circumstances; whether the present offense was committed while the appellant was on bail or other release or on probation or parole; any other criminal charges pending

against the appellant at the time [OF] the motion is filed.

*** Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 603(b), Alaska Rules of Appellate Procedure, is amended to read:

(b) **Criminal Appeals.** If a sentence of imprisonment is imposed, **the court may admit the defendant to bail and stay the sentence as provided by law and by these rules** [ADMISSION TO BAIL WILL BE ALLOWED AND THE SENTENCE STAYED], pending appeal. A sentence to pay a fine or a fine and costs may be stayed, if an appeal is taken, by the district judge or magistrate or by the superior court upon such terms as the court deems proper. During appeal the court may require the defendant to deposit the whole or any part of the fine and costs in the registry of the superior court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his or her assets. An order placing the defendant on probation will be stayed if an appeal is taken.

*** Sec. 27.** AS 12.30.010, 12.30.020, 12.30.023, 12.30.025, 12.30.027(g), 12.30.029, and 12.30.060 are repealed.

*** Sec. 28.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) AS 11.56.730, enacted in sec. 1 of this Act, applies to acts committed on or after the effective date of this Act.

(b) The amendments to AS 12.25.030(b) made by sec. 2 of this Act apply to arrests for violation of conditions of release occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(c) AS 12.30.006 - 12.30.021, enacted in secs. 3 - 5 of this Act; AS 12.30.030, repealed and reenacted in sec. 8 of this Act; AS 12.30.031, enacted in sec. 9 of this Act; AS 12.30.040, repealed and reenacted in sec. 10 of this Act; AS 12.30.055, enacted in sec. 12 of this Act; and AS 12.30.078, enacted in sec. 14 of this Act apply to bail proceedings occurring on and after the effective date of this Act for offenses occurring on or after the effective date of this Act.

(d) AS 12.30.050, repealed and reenacted in sec. 11 of this Act, applies to bail proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(e) The amendments to AS 12.30.027(a) and (b) made by secs. 6 and 7 of this Act; to AS 12.30.075 made by sec. 13 of this Act and to 12.30.080 made by sec. 15 of this Act apply to bail proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(f) The amendments to Rule 5, Alaska Rules of Criminal Procedure, made by secs. 20 and 21 of this Act apply to offenses occurring on or after the effective date of this Act.

(g) The amendment to Rule 41(c), Alaska Rules of Criminal Procedure, made by sec. 24 of this Act applies to bail proceedings occurring on or after the effective date of this Act.

(h) The amendment to Rule 603(b), Alaska Rules of Criminal Procedure, made by sec. 26 of this Act applies to convictions occurring on or after the effective date of this Act.

*** Sec. 29.** This Act takes effect July 1, 2010.

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax

Pages (including cover sheet): 2

Date: April 2, 2010

To: Jerry Luckhaupt
From: Cindy Smith

RE: Amendment s to SB252

Please draft the following amendments to SB252:

1. **Add criminal negligence mental state to failure to appear section 1 and in any other sections as needed to conform.**

2. **On page 4 at line 18, delete the first sentence in (e).**

3. **On page 7, at line 18, change (B) to be felony crimes against a person – both charged and previously convicted. Change (C) to felony offenses. Add a new section for charged with felony level DUI.**

4. **On page 10 line 29 – we need language in addition to telephone for other technology (for instance, courtrooms are beginning to use Skype).**

5. **In section 12, at line 25 delete the words "the person" and subsititue "it is" established so that the sentence reads "if it is established by…"**

6. **In section 24, change language to the amendment attached.**

(c) **Separate Bonds.** If a performance bond is required, it must be enforced separately from an appearance or bail bond.

(1) Appearance in court may not be a condition of a performance bond. A court may not order an appearance bond be concurrent with an appearance bond in a pending case unless the surety who posted the first appearance bond approves.

(2) The court may not change a performance or appearance bail requirement, without agreement by the surety, unless;

(A) the surety waives the requirement for agreement in advance and in writing or;

(B) the court, in writing, finds that the change in the condition of bail poses no increase in risk of loss to the surety and the court sets forth in writing the reason for finding that there is no increase in the risk of loss to the surety.

pg 4, lines 18 & 19

Hello Cindy. We would still like to see the removal of lines 22 through 25 on page 4. That is the section that requires the defendant to sign a release agreement and file it with the clerk of court before he or she may be released from custody. I have not pushed this with the Department of Law, though they know of our concerns. What I have been trying to ascertain is how often we already do this. We do this in many locations and we apparently do it in all cases with a third party custodian. However, one of our goals is to move away from those practices that require clerks to copy and fax documents. This goes in the opposite direction.

The court system is currently changing our computer system so that clerks enter the conditions of release into the computer (which are then electronically available to law enforcement) and then simply print off the required number of forms (e.g. one for the defendant, one for defense counsel, one for the prosecutor, one for the court file, etc.) Everyone gets a copy off of the printer in the court room and the clerk does not have to make additional copies on the copy machine and does not have to fax copies anywhere. This is the kind of process we want to move to in as many cases as possible. The trouble with the signature requirement is that it keeps us stuck in the copy and fax process.

It is not that we can't do this, it is that it keeps us from streamlining our process. And, the defendant's signature is not required. Defendants are subject to their conditions of release regardless of whether they sign them. I have no reason to believe that a defendant who would otherwise violated those conditions will be less likely to violate had they signed a release agreement promising not to. So, this provision keeps us from improving our in-court practices without creating any corresponding benefit.

We also need to fix the problem with getting surety permission to change conditions of release found in section 24 on page 18 at lines 25-27. I have been working with the Department of Law on this. Our concern is that the current language seems to require the entity posting an appearance bond to agree to any changes to the conditions of release. That is a problem.

Yesterday I spoke with Fred's Bail Bonds (who do the vast majority of all appearance bonds in Alaska) about the provision. They do not care what the conditions of release are. Getting their permission would be a waste of time for them and for the entire system. They do, however, care about the practice of concurrent bail. That is the practice of a judge adding a new charge to an existing bail bond. Section 24 was requested by the Division of Insurance because they believe that the practice of concurrent bail violates contract law and they oversee bail bonding companies. I agree that prohibiting concurrent bail is a good idea. With the help of Judge Steinkruger, I have proposed the following language to fix that problem:

From: Cindy Smith [mailto:Cindy_Smith@legis.state.ak.us]
Sent: Thursday, April 08, 2010 10:47 AM
To: Doug Wooliver
Subject: SB 252 Bail Bill question #3
Importance: High

Which of these concerns have been addressed in the house bill language already? Which are remaining?

From: Doug Wooliver [mailto:dwooliver@courts.state.ak.us]
Sent: Wednesday, March 17, 2010 12:13 PM
To: Cindy Smith
Subject: SB 252 Bail Bill

Cindy Smith

From: Doug Wooliver [dwooliver@courts.state.ak.us]
Sent: Thursday, April 08, 2010 10:23 AM
To: Cindy Smith
Subject: RE: a question

Hello Cindy. In FY 09 there were 566 felony DUI charges filed statewide.

From: Cindy Smith [mailto:Cindy_Smith@legis.state.ak.us]
Sent: Thursday, April 08, 2010 10:20 AM
To: Doug Wooliver
Subject: a question

Senator French is wanting to know approximately how many felony DUI folks the court sees each year - this in reference to the bail bill so a quick and dirty estimate is better than an accurate but late one.

Cindy Smith
Office of Senator Hollis French
(907) 465-3892
www.aksenate.org

Cindy Smith

From: Doug Wooliver [dwooliver@courts.state.ak.us]
Sent: Wednesday, March 17, 2010 7:29 AM
To: Cindy Smith
Subject: SB 252 Bail Bill

Hello Cindy. Here is a description of one of the concerns that the court system has with SB 252. We have gone over this with the Department of Law; they may or may not agree to remove this provision. I will be sending more issues to you later today and tomorrow, but I am getting behind on this and decided not to wait until I have it all written down before I send anything.

Probably the biggest single change we would like to see is the deletion of lines 14 through 16 on page 4. That is the provision that directs the court clerk to issue a report that describes any previous criminal charges against the person and the person's history of compliance with conditions of release that are in the records of the court. There are several reasons why we would like to see this section removed.

1) The information is largely redundant. The parties should have already provided the court with the defendant's criminal history. If not presented at the original bail hearing (and one of the reasons for increasing to 48 hours the time for a defendant's first appearance is to allow the prosecutor to get more information for the first bail hearing), then it certainly would have been presented at the first bail review hearing.
2) If the bill anticipates court clerks searching through volumes of paper records looking for the defendant's history then the proposal is all but unworkable. Many defendants have boxes of case files. I think that the sponsor contemplates a search through our computer reports, which is possible, but still objectionable.
3) To the extent that the bill contemplates a computer records search and those records have some information that are not found in other databases, then, since March of 2009, both the prosecutor and the defense counsel have the same access as the court to those records. If the parties believe that there is information in those reports that are relevant they can search them and bring that information to the court's attention.
4) In an adversarial system it is the responsibility of the parties to bring all relevant information to the court's attention. It is not a proper role for the court to do its own fact-finding research.
5) Finally, there is no connection between gathering this information and the decision to hold a bail review hearing. The court can't hold a hearing until it has the report, but nothing in the report has any bearing on whether to hold the hearing. It is a procedural requirement that serves no procedural purpose.

This work takes time and will affect hundreds of cases. We would very much like to see this removed from the bill. Thanks, Doug

OK — fixed IL unmse

McLean, Susan S (LAW)

From: Doug Wooliver [dwooliver@courts.state.ak.us] **Sent:** Tue 4/6/2010 1:09 PM
To: Carpeneti, R Anne D (LAW); McLean, Susan S (LAW); Svobodny, Richard (LAW)
Cc:
Subject: Surety in bail bill
Attachments:

Hello all. Today I spoke with Annett, who is the office manager from Fred's bail bonds. They are not interested in conditions of release and don't want to have to be involved in issues related to conditions of release. They are, obviously, interested in concurrent bail.

As you know, our concern with the current proposed amendment to Criminal Rule 41(c) is that it is too broad and would require Fred's to consent to any change in conditions of release. So, how about if we try this:

> The court may not order concurrent bail or bond unless the surety who posted the surety is in agreement. Concurrent bail or bond is when the same bail or bond applies to two different cases of the same defendant.
>
> Whenever a performance bond has been posted, any modifications to the conditions of release will result in the remand of the defendant until a new performance bond has been posted. No remand is necessary if, prior to the modification, the surety agrees to the modification.

This prohibits concurrent bail (which is the concern of the Division of Insurance and the appearance bond providers), and it prohibits changes to conditions of release, which addresses the concerns of those who post performance bonds.

Still the performance bond issue seems to be a minor one. Out of 3,303 performance bonds issued in FY 09, a total of 231 were forfeited with 26 of those being reinstated. That works out to about 6% of performance bonds being forfeited. We have no way of knowing how many (if any) were forfeited due to a condition that was added after the bond was posted.

Let me know what you think. Doug

Doug Wooliver

From: Doug Wooliver
Sent: Tuesday, April 06, 2010 1:10 PM
To: Carpeneti, R Anne D (LAW); 'McLean, Susan S (LAW)'; 'Svobodny, Richard (LAW)'
Subject: Surety in bail bill

Hello all. Today I spoke with Annett, who is the office manager from Fred's bail bonds. They are not interested in conditions of release and don't want to have to be involved in issues related to conditions of release. They are, obviously, interested in concurrent bail.

As you know, our concern with the current proposed amendment to Criminal Rule 41(c) is that it is too broad and would require Fred's to consent to any change in conditions of release. So, how about if we try this:

(2) The court may not order concurrent bail or bond unless the surety who posted the surety is in agreement. Concurrent bail or bond is when the same bail or bond applies to two different cases of the same defendant.

Whenever a performance bond has been posted, any modifications to the conditions of release will result in the remand of the defendant until a new performance bond has been posted. No remand is necessary if, prior to the modification, the surety agrees to the modification.

This prohibits concurrent bail (which is the concern of the Division of Insurance and the appearance bond providers), and it prohibits changes to conditions of release, which addresses the concerns of those who post performance bonds.

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Let me know what you think. Doug

Cindy Smith

From: Doug Wooliver [dwooliver@courts.state.ak.us]
Sent: Wednesday, March 17, 2010 12:13 PM
To: Cindy Smith
Subject: SB 252 Bail Bill

Hello Cindy. Lines 10 and 11 on page 2 allows a person charged with failure to appear to offer an affirmative defense if he or she contacted the court or judicial officer orally and in writing prior to the scheduled hearing. We do not want defendants calling judges, either at home or in their offices. We would like to see the removal of "judicial officer" on line 10.

The court would like to see the removal of lines 22 through 25 on page 4. That section requires the defendant to sign a release agreement and file it with the clerk of court before he or she may be released from custody. Although some courts already do this in many cases, it creates real problems when the defendant is not in the courtroom and the hearing is conducted telephonically. It would require more work for clerks and more work for corrections (as conditions of release are faxed to corrections, signed by the defendant and then faxed back to the court) and would come with very little, if any, benefit. The defendants already have their conditions of release explained to them and they are bound by them whether they sign anything or not. It is not clear that a defendant who signs his or her conditions of release is any more likely to abide by them.

Section 5 deals with third party custodians. Lines 8 and 9 on page 11 require a third party custodian to appear in court. Like other provisions in this bill, that does not work for telephonic hearings. Many times the third party is in a village and cannot fly to the courthouse in another community. If this section remains in the bill it will mean that many very good third party custodians will not be able to serve.

We need to do more work on two provisions related to (1) notice to a surety prior to changes in bail conditions and (2) notice to and consent from a surety prior to making a change. Those provisions are found on page 4, line 17 and on page 18, lines 25 – 27 respectively. Although the court understands the problem being addressed in these two sections (the court changing the bail conditions in a way that may impact the surety's decision to remain a surety without telling or getting consent from the surety), as drafted, these two provisions will add considerable time to the bail process. We will continue to work on this issue.

Thanks, Doug

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STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION

SEAN PARNELL, GOVERNOR

Mailing: PO Box 110300
Juneau, AK 99811-0300
Delivery: 123 4th Street, Ste 717
Juneau, AK 99801
Phone: (907) 465-3428
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April 5, 2010

The Honorable Hollis French
Chair, Senate Judiciary Committee
Alaska State Capitol, Room 417
Juneau, Alaska 99801

Re: Senate Bill 252 – Bail Reform

Dear Chairman French:

Thank you for the thoughtful and thorough hearing that you held for SB 252 (sexual assault and abuse) today and for our meeting on other criminal law legislation. I am writing to ask that you consider scheduling Senate Bill 252, the bail reform bill, for a hearing in the Senate Judiciary Committee as soon as practical. I hope you will not think this is presumptuous, but there are good reasons to hear the bail bill: in addition to protection of the public and other victims, victims of sexual abuse and domestic violence will greatly benefit from the passage of the bill. Although bail reform is not directly targeted at sexual abuse or domestic violence in the state, the bill would provide additional protection to victims of these crimes.

The Problems with current law:

Our bail laws date back to 1966. It is clear that when the legislature adopted these statutes, times were not as difficult as present. For example, unless a person has been convicted of an unclassified felony or a class A felony, our bail laws allow a person found guilty of any other crime, either by plea or by verdict, to be released pending the imposition of sentence or during an appeal. The following scenarios are only a few of many examples of the danger that can result from the application of the current law.

> Larry Berryhill, IJU-07-992 CR, was convicted of two counts of Sexual Abuse of a Minor in the Second Degree for having sexual contact with a young boy who worked for him at his lodge in Gustavus. After being found guilty, and over the state's objection, the court released him on an

unsecured signature bond, in lieu of posting bail, in the amount of $25,000. Mr. Berryhill did not appear for his sentencing. Alaska State Troopers and law enforcement agents from other states (Mr. Berryhill had committed similar crimes in other states) found that Mr. Berryhill had fled to Argentina, and was vacationing in New Zealand and Europe when he should have appeared in court for his sentencing. Mr. Berryhill died before the Troopers were able to arrest him. He did not spend a single day in jail for his sexual abuse of that young boy.

Michael Williams, 3AN-10-166 CR, has been convicted of a felony five times, two of the felonies were federal armed bank robbery convictions from the late 1980s. In January, 2008, he was charged with Robbery in the First Degree for a home invasion robbery with multiple victims. The state proceeded with the prosecution under the three strikes law – with a 99 year sentence possible if convicted. This potential sentence is higher than most people convicted of homicide would receive. Over the state's objection, bail was set at $5,000 cash appearance bond and a third party custodian was appointed. The state requested several times that his bail be increased, but was unsuccessful. Mr. Williams skipped out soon after release, and a bench warrant was issued for his arrest. He has not been found.

James Spencer, 3AN-09-2113 CR, was charged with Robbery in the First Degree after confronting a Carr's employee with a handgun. Over the state's objection, his bail was set at $1,000 cash performance bond, and $5,000 cash or corporate appearance bond. Last month, Mr. Spencer was arrested and charged with a new Robbery in the First Degree for an armed robbery at the Burger King (3AN010-2471 CR).

Jack Lee Espinoza, Jr., 3AN-10-2113 CR, was charged with two counts of Robbery in the First Degree. He had been convicted of more than 10 crimes in the past, several of them were felonies. Over the state's objection, Mr. Espinoza had been released on bail of $2,500 cash or corporate appearance bond and ankle monitoring. Within 48 hours of his release, Mr. Espinoza had cut off his ankle monitor, and with another person, committed another armed robbery at a trailer in Anchorage. The victim was shot, allegedly by the other person, during the robbery.

How SB 252 will help avoid these problems

Section 10 of SB 252 (page 13, beginning at line 26) provides that a person found guilty of a sexual felony may not be released pending imposition of sentence or appeal. The legislature has raised the maximum term of imprisonment for a person convicted of a sexual felony to 99 years; with that maximum term the danger of flight is high. Additionally, the danger of sex offenders victimizing others is significant. Mr. Berryhill would not have been released after being found guilty of sexual abuse under SB 252.

SB 252 is similar to federal law in part because it would adopt a presumption, that is rebuttable, that no combination of conditions or monetary bail would ensure the safety of the public and the appearance of the defendant in cases where the person is either charged with an unclassified or a class A felony (similar to current law), or the defendant is a higher risk of flight or danger to the public (new in SB 252). The bill provides that other persons with higher risk include the following:

- persons charged with a felony who have a prior felony conviction and less that five years have elapsed since unconditional release for the prior felony;
- persons charged with a crime committed while the person was on release for another charge or conviction;
- persons charged with a domestic violence crime if the person has a conviction for a domestic violence crime within the previous five years;
- persons arrested in connection with a felony charge or conviction out of state and the person is a fugitive from the other jurisdiction.

The individuals described in the scenarios above (except for Mr. Berryhill) would have the burden of going forward, under SB 252, with suggestions for release conditions. For example, Mr. Williams would have to present information and suggestions for conditions of release that would satisfy a judicial officer that he would not be a danger to the public and he would not be a flight risk. Mr. Williams still has the constitutional right to have bail set for him.

Additionally, SB 252 would adopt standards for third party custodians so that, for example, a person charged with crimes, a person who is on probation, or a person with recent convictions could not act as a third party custodian. SB 252 would require a

judicial officer to do basic screening of a person before appointing the person as a custodian. Defendants have taken advantage of third party custodians in the past. There have been advertisements on Craig's list for third party custodians (see attached).

Misconceptions about SB 252

We have heard several comments about SB 252 that are simply not accurate. For example, the bill changes the deadline for the first appearance before a court of a person arrested from 24 to 48 hours. This change has been described as contrary to the practice of a majority of other states. As can be seen by the attached memorandum and chart, Alaska is one of only three states that require a first appearance within 24 hours. The remaining states have later deadlines. There are many good reasons to change this deadline. It would give all parties a chance to gather information for better informed bail hearings. Even more important is that victims in Alaska have a constitutional right to appear at arraignments and bail hearings. Often we are unable to notify them of a hearing that must be held within 24 hours of arrest; other times the victim is still in the hospital at this time. The change to a 48 hour deadline will help the system make the victim's right to be present much more meaningful. It also allows for a cooling down time in many cases.

We also have heard people say that SB 252 would prohibit certain people from being released on bail. This is not correct. Defendants have a constitutional right to have bail set for their release. SB 252 simply changes certain procedures for the courts to follow in setting bail. In doing so, it would protect the public and discourage bail jumping much better than does current law.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: Richard Svobodny
Richard A. Svobodny
Deputy Attorney General

Enclosures

ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8265
FAX (907) 264-8291

Doug Wooliver
Administrative Attorney

April 1, 2010

The Honorable Hollis French
Chair, Senate Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Senator French:

Following the Senate Judiciary Committee hearing on March 19th you asked me to gather statistics on the number of cases each year that would be subject to the provisions found in sections 4 and 12 of SB 252 (the governor's bail bill). Those sections establish a rebuttable presumption that for certain offenders "no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the victim, other persons, or the community."

Section 4 of the bill applies this rebuttable presumption to those charged with certain offenses and those with certain criminal histories. Section 12 applies this presumption to all those who appear in court on a petition to revoke probation. Here is a breakdown of the number of defendants who fell into each of the section 4 categories in FY 09.

(A) Number of people charged with an unclassified felony, a class A felony, or a sexual felony: **602** (See attached for charge specific breakdown.)

(B) Number of people charged with a felony (other than a felony listed in section (A) above) who were convicted of a felony in this state or a similar offense in another jurisdiction, and less than five years have elapsed between the date of the person's unconditional discharge on the immediately preceding offense and the commission of the present offense: **1,403**.

Note, because the court system's computer system tracks only state cases, this number does not include those who would be subject to the presumption because of a prior conviction from another jurisdiction.

(C) Number of people charged with an offense committed while the person was on release under AS 12.30 for a charge or conviction of another offense: **1,505**

(D) Number of people charged with a crime of domestic violence and who have been convicted in the previous five years of a crime involving domestic violence in this state or a similar offense in another jurisdiction: **919**

Note, as with subsection (B) above, this number does not include those who would be subject to the presumption because of a prior conviction from another jurisdiction.

(E) Number of persons arrested in connection with an accusation that the person committed a felony outside the state or is a fugitive from justice from another jurisdiction, and the court is considering release under AS 12.30: **96**

Section 12 applies the rebuttable presumption to all those who appear in court on a petition to revoke probation. In FY 09 there were **between 18,000 and 19,000** such petitions.

It is important to note that there is overlap between the various categories of offenders subject to the rebuttable presumption. For example, a person who commits a felony and who has a prior felony conviction within the stated number of years would also likely be subject to a petition to revoke probation. For this reason we cannot simply add up all the categories to arrive at the number of people subject to the presumption each year. For purposes of the court system's fiscal note, I used the most conservative estimate of 18,000 cases a year, which is the low-end number for the number of people in court on a petition to revoke probation. This necessarily undercounts the number of cases, but assures that the note does not double-count any cases.

I hope that this answers your question. Please let me know if I can provide any additional information.

Sincerely,

Doug Wooliver
Administrative Attorney
Alaska Court System

Alaska Court System

Cases/Charges Filed for Specified Action Codes

CourtView Locations

FY09

Charge Description	# of Cases Charged
AS11.41.100: Murder 1	4
AS11.41.100(a)(1)(A): Murder 1-Intent To Cause Death	26
AS11.41.100(a)(2): Murder 1- Repeat Phys Injury To Child	1
AS11.41.100(att): Attempted Murder 1	10
AS11.41.110: Murder 2	1
AS11.41.110(a)(1): Murder 2-Intend Serious Injury	13
AS11.41.110(a)(2): Murder 2-Extreme Indifference	7
AS11.41.110(a)(3): Murder 2-Felony Murder	8
AS11.41.120: Manslaughter	1
AS11.41.120(a)(1): Manslaughter -Death Not Murder 1 Or 2	7
AS11.41.120(a)(1): Manslaughter	1
AS11.41.160: Manslaughter of Unborn Child	1
AS11.41.200: Assault 1	18
AS11.41.200(a)(1): Assault 1- Serious Injury, Weapon	101
AS11.41.200(a)(2): Assault 1- Serious Injury, Intent	17
AS11.41.200(a)(3): Assault 1- Serious Injury, Extreme Indif	5
AS11.41.200(a)(4): Assault 1- Serious Injury, Weap, Repeat	1
AS11.41.280(a)(2): Assault Unborn Child 1 - w/ intent	1
AS11.41.300(a): Kidnapping	10
AS11.41.300(a)(1)(B): Kidnapping- Use Victim As Shield/Hostage	1
AS11.41.300(a)(1)(C): Kidnapping- Injury Or Sexual Assault	31
AS11.41.300(a)(1)(c): Kidnapping	2
AS11.41.300(a)(1)(E): Kidnapping- To Commit Felony Or Escape	4
AS11.41.300(a)(1)(e): Kidnapping	1
AS11.41.300(a)(2)(B): Kidnapping- Risk Of Serious Injury	4
AS11.41.410: Sexual Assault 1	2
AS11.41.410(a)(1): Sex Assault 1- Penetrate w/o Consent	57
AS11.41.410(a)(2): Sex Assault 1- Att. Penetrate, Injure	1
AS11.41.420: Sexual Assault 2	3
AS11.41.420(a)(1): Sex Assault 2- Contact w/o Consent	48
AS11.41.420(a)(3): Sex Assault 2- Penetrate Incap Victim	26
AS11.41.425: Sexual Assault 3	2
AS11.41.425(a)(1)(A): Sex Assault 3- Contact w/ Ment Incapable	1
AS11.41.425(a)(1)(B): Sex Assault 3- Contact w/ Incapacitated	6
AS11.41.425(a)(1)(C): Sex Assault 3- Contact w/ Unaware Victim	2
AS11.41.434(a)(1): Sex Abuse Minor 1- Penetrate Vic Undr 13	28
AS11.41.434(a)(2): Sex Abuse Minor 1-Penetr Own Chld Undr 18	8
AS11.41.434(a)(3)(A): Sex Abuse Minor 1-Penetr Undr 16, Hshold	4
AS11.41.434(a)(3)(B): Sex Abuse Minor 1-Auth Fig Penetr Undr 16	3
AS11.41.436: Sexual Abuse Of Minor 2	4
AS11.41.436(a)(1): Sex Abuse Minor 2- Penetrate, Vic 13-15	37
AS11.41.436(a)(2): Sex Abuse Minor 2-Contact, Vict Undr 13	29
AS11.41.436(a)(3): Sex Abuse Minor 2- Contact, By Parent	8
AS11.41.436(a)(5)(A): Sex Abuse Minor 2-Contact Undr 16, Hshld	2
AS11.41.436(a)(5)(B): Sex Abuse Minor 2-Auth Fig Cntact Undr 16	1
AS11.41.436(a)(6): Sex Abuse Minor 2-Auth Fig 18 yrs+	2
AS11.41.438: Sexual Abuse of Minor 3	11
AS11.41.450(a)(1): Incest- Penetr Ancestor Or Descendant	3

Printed 3/2/2010 at 8:28 am

Alaska Court System

Cases/Charges Filed for Specified Action Codes

CourtView Locations

FY09

Charge Description	# of Cases Charged
AS11.41.450(a)(1): Incest	2
AS11.41.450(a)(2): Incest- Penetr Brother Or Sister	4
AS11.41.450(a)(3): Incest- Penetr Uncle, Aunt, Neph Or Niece	1
AS11.41.452(d): Online Enticement of a Minor	1
AS11.41.455(a)(7): Exploit Minor-Make Porn, Sado/Masochism	1
AS11.41.455(b): Exploit Minor-Make Porn, Parent Allows	1
AS11.41.458: Indecent Exposure 1	1
AS11.41.458(a)(1): Indecent Exp 1-vic under 16, masturbate	2
AS11.41.500: Robbery 1	9
AS11.41.500(a)(1): Robbery 1- Armed w/ Deadly Weapon	70
AS11.41.500(a)(2): Robbery 1- Use Weapon	9
AS11.41.500(a)(3): Robbery 1- Cause/ Attempt Serious Injury	18
AS11.46.400: Arson 1- Danger Of Serious Injury	8
AS11.56.300: Escape 1	1
AS11.61.190(a)(1): Misc/Weapons 1- Involving Drug Crime	3
AS11.61.190(a)(2): Misc/Weapons 1- From Vehicle	10
AS11.71.010: Misconduct- Controlled Substance 1	1
AS11.71.010(a)(1): Cntrld Substc 1-Deliv 1A To Minor	2
AS11.71.010(a)(2): Cntrld Substc 1-Dliv II/IIIA To Minr, Age Diff 3+	1
AS11.71.020: Misconduct-Controlled Substance 2	20
AS11.71.020(a)(1): Cntrld Substc 2- Manuf/Deliv IA	80
AS11.71.020(a)(2): Cntrld Substc 2- Manuf Meth	1
AS11.71.020(a)(2)(A): MICS 2- Manuf Meth	2
AS11.71.020(a)(3): MICS 2- Poss Precursor, Intnd Make Meth	3
AS11.71.020(a)(4): MICS 2- Poss Chem, Intnd Make Meth	1
AS11.71.020(a)(4)(A): MICS 2- Poss Chem, Intnd Make Meth	2
AS11.71.020(a)(6)(B): Cntrld Substc 2 - Deliver Listed Chem	1

Total number of cases: 610

NOTE: One case could have more then one charge but is only counted once in this total.

Total Number of Charges: 1374

End of Report

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MEMORANDUM

STATE OF ALASKA

Department of Law - Criminal Division

To: Senate Judiciary Committee

Date: March 1, 2010

Thru: Richard Svobodny, Deputy Attorney General
Anne Carpeneti, Assistant Attorney General

From: Susan S. McLean SSMc
Director, Criminal Division

Subject: **Other State Rules - First Appearance After Arrest**

General Considerations

The Fourth Amendment requires that a person must be released from custody after 48 hours if a court has not determined that there is probable cause for the arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44, 57-59, 111 S.Ct. 1661, 1670-1671 (1991). Violation of the rule is but one factor to consider in determining whether to suppress a defendant's in-custody statements.

- Since probable cause (and the amount of bail) must be determined before an arrest warrant issues, a probable cause determination only applies to warrantless arrests.
- Since probable cause may be determined on the basis of affidavits and sworn testimony after a warrantless arrest, the defendant's presence is not required at a probable cause hearing.
- Many states require appearance before a magistrate without unnecessary delay, but most courts have not defined "without unnecessary delay" as a specific amount of time, and determine meaning on a case by case basis.

Only 3 of the 24 states which set specific time limits mandate appearance within 24 actual hours of arrest.

Summary - First Appearance Following Warrantless Arrest, By Total Number of States

3 states - 24 hours, calculated including weekends and holidays (AK, FL, MD)
1 state - 24 hours, weekends and holidays *may* be included or excluded (WA)
6 states - 24 hours, calculated *excluding* weekends and holidays (AZ, CT, DE, ID, MA, NH)

1 state - 36 hours, calculated *excluding* day of arrest, Sundays and holidays (MN)

7 states- 48 hours, including weekends and holidays (AL, AR, GA, HI, MS, NE, TX)
1 state - 48 hours, *excluding* Sunday, holiday, and days when court not in session (CA)
1 state - 48 hours, *excluding* Saturday, Sunday and holidays (ME)
1 state - 48 hours if 1st appearance is combined w/prob. cause hearing (court decision) (WI)

2 states - 72 hours, including weekends and holidays (NJ, WY)
1 state - 72 hours, *excluding* Saturday, Sunday and holidays (LA)
1 state - 72 hours is "without delay", if probable cause w/in 48 hours (court decision) (TN)
21 states - "without unnecessary delay" (CO, IL, IA, KS, KY, MI, MT, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, UT, VT, WV)

2 states - "forthwith" (SC, VA)

1 state - "promptly" (repealed a 24- hour rule in 1995) (IN)

1 state - person must be released if not "charged" within 20 hours, but no provision for first appearance (MO)

State Time Limits for Initial Appearance Before Magistrate

State	Time Limit	Authority	Statutory language/construction
Alabama	48 hours - Warrantless arrest 72 hours - Arrest w/ warrant	Ala. R. Crim. P. 4.3(a)(1)(iii) Ala. R. Crim. P. 4.3(b)(2)(i)	
Alaska	24 hours, including weekends and holidays	Alaska R. Crim. P. 5(a)(1)	
Arizona	24 hours, excluding Sat., Sun and holidays	Ariz. R. Crim. P. 4.1(b) and Ariz. R. Crim. P. 1.3	*See, State v. Watkins,* 2008 WL 3171651 * 3 (Ariz. App. Aug.5, 2008) (Sat. Sun. and legal holiday excluded from calculation of 24 hrs; citing Rules 4.1(b) and 1.3))
Arkansas	48 hours Case law suggests that exception may exist for weekends and holidays	Ark. R. Crim. P. 4.1(e)	*See, Larson v. Dorney,*__ F.Supp.__, Slip. Op. 2009WL 903392 *4 (W.D. Ark, April 1, 2009)(delay between arrest on Good Friday and appearance on Monday was "as promptly as calendar would allow")
California	48 hours, excluding Sundays and holidays. If 48 hours expires when court is not in session, then next judicial day.	CA Penal Code § 825(a)(1) CA Penal Code § 825(a)(2)	
Colorado	without unnecessary delay	CRSA. § 16-2-112 Colo. R. Crim. P. 5	
Connecticut	24 hours, excluding Sat., Sun. and holidays	CRS 54-1(g) Conn. Practice Book R. 37-1	Statutory language "promptly before the court sitting next regularly" means the next court day, excluding weekends and holidays. *State v. Pirowski,* 11 Conn. App. 238,240, 526 A.2d 562 (1996)
Delaware	24 hours, excluding Sundays and holidays	11 Del. C. § 1909	
Florida	24 hours, including weekends and holidays	Fla. R. Crim. P 3.130	
Georgia	48 hours –warrantless arrest 72 hours – arrest with warrant	Ga. Uniform St. Ct. R. 26.1 Ga. St § 17-4-62; Ga. St § 117-4-26	
Hawaii	48 hours	H.R.S. 803-9(5)	
Idaho	24 hours, excluding Sat., Sun. and holidays	I.C.R, Rule 5(b)	
Illinois	without unnecessary delay	I.L.C.S. § 109-1	*See, People v. Willis,* 831 N.E.2d, 531, 538 (Ill., 2005) Ill Court cites *McLaughlin* as requiring 48 hours, but delay is only one factor to be examined in deciding whether confession is voluntary. Court has not otherwise defined "unnecessary delay".

Indiana	" promptly" 24 hr. rule repealed, 1995 Ct. decision implies that more than 48 hours can pass before initial appearance before magistrate	Ind. Code § 35-33-7-1	*See, State v. Larson*, 776 N.W.2d, 254, 258 (Ind. 2009) – probable cause must be determined with 48 hours, but can be based on hearsay and written testimony. "Arrested person has no right to be physically present at probable cause hearing." Ind. law does not provide for a specific period of time in defining how "promptly" a person is brought before magistrate
Iowa	without unnecessary delay	I.C.A. 804.22	
Kansas	without unnecessary delay	KSA 2003 Supp. 22- 2901	*See, State v. Carrow*, 2006 WL 399251 *4 (Kan. App., Feb. 17, 2006) - cites *McLaughlin* as defining "without unreasonable delay" to mean that period of delay "cannot be longer than 48 hours, excluding weekends and holidays"
Kentucky	without unnecessary delay	Ky. R. Crim. P. 3.02(2)	
Louisiana	72 hours excluding Sat., Sun, holidays 48 hours probable cause hearing, which is not adversarial and conducted without presence of defendant	LSA – C.Cr. P. Art. 230-1(A) LSA –C. Cr. P. Art. 230.2(A)	
Maine	48 hours, excluding Sat., Sun and holidays	Me. R. Crim. P. 5(a)	
Maryland	24 hours, including weekends and holidays	Md. Rule 4-212(e) and (f)	Although statute does not specifically state "including weekends", it is clear from case law. *See, e.g., Odum v. State*, 846 A. 2d 145 (Md. App. 2004)
Massachusetts	24 hours, excluding weekends and holidays (see judicial interpretation re probable cause determination)	Mass. R. Crim. P. 7	"accused shall be brought before court then in session, and, if not at its next session". Language at the court's "next session" suggests that if an accused is arrested on Friday, the next session would be a regular court day. *See, Jenkins v. Chief Justice of Dist. Court Dept.*, 619 N.E.2d 324, 337,339 (Mass, 1993) holding that probable cause must be determined within 24 hours but that the determination may be made ex parte upon written documents.
Michigan	without unnecessary delay	M.C.L.A. § 764.13	
Minnesota	36 hours, excluding day of arrest, Sun. and holidays	49 M.S.A. R. Crim. P. 4.02(5)	

Mississippi	without unnecessary delay, within 48 hours	M.C.A. 99-3-17 Uniform Cnty and Cir R 6.03	
Missouri	None – must be charged within 20 hours, but no requirement of personal appearance	V.Ann.Mo.C. Art. 544.170	All persons who are arrested without warrant shall be released if not charged and held by warrant within 20 hours of arrest
Montana	without unnecessary delay	MCA 46-7-101	*See, St. v. Brown*, 933 P.2d 672, 675-676 (Mont. 1999) acknowledging *McLaughlin* 48 hour time limit for probable cause determination, and holding that to be one factor in deciding voluntariness of confession.
Nebraska	48 hours	Neb. Crim. Rule 5.1(b)(1)	
Nevada	without unnecessary delay -warrantless arrest 72 hours- arrest with warrant	N.R.S. 171-1771 N.R.S. 171-178	*See, Powell v. State*, 930 P.2d 1123 (Nev. 1997), acknowledging that *McLaughlin* requires probable cause hearing within 48 hours
New Hampshire	24 hours, excluding Sat., Sun. and holidays	N.R.S. § 594:20(a)	
New Jersey	72 hours, provided that complaint showing probable cause is filed within 12 hours of arrest	N.J. Crim. Rules 3:4-1 and 3:4-2	
New Mexico	without unnecessary delay	NMSA § 31-1-5	
New York	without unnecessary delay	McKinney's CPL § 140.20 sub1	
North Carolina	without unnecessary delay	N.C.G.S.A. § 15A-511	
North Dakota	without unnecessary delay	N.D.C.C. 2906-25 N.D. Crim. Rule 5(a)	
Ohio	without unnecessary delay	O.R.C. § 29.35.05 Ohio Crim. Rule 4(e)	
Oklahoma	without unnecessary delay	22 Okl. Stat. Ann. § 181	*See, Black v. State, 871 P.2d 35, 39 (Okl.Cr.*1994).Citing *McLaughlin*, court recognized that delay longer than 48 hours in taking defendant to probable cause hearing is unreasonable.
Oregon	without unnecessary delay		
Pennsylvania	without unnecessary delay	Pa.R.Crim.P. 519	
Rhode Island	without unnecessary delay (unless charged w/ offense under RI Gen Law. 12.13.1.1*)	Super. R. Crim. P., Rule 5 Dist. R. Crim. P., Rule 9	*Unless charged w/ offense under RI Gen Laws, 12.13.1.1 (charges carrying life sentence or firearm offenses committed by persons previously convicted of offense carrying life sentence), in which case 48 hrs., excluding Sat., Sun. and holidays
South Carolina	Shall be forthwith carried before a magistrate and a warrant of arrest procured	S.C. Code 1976§ 22-5-200	

South Dakota	without unnecessary delay	SDCL § 23A-4-1	*State v. Larson*, 776 N.W. 2d 254, 258 (S.D., 2009) persons arrested without warrant are constitutionally entitled to probable cause determination within 24 hours.
Tennessee	"without unnecessary delay" – Judicially defined – 72 hours for appearance before magistrate 48 hrs for probable cause, but hearing unnecessary	Tenn. R. Crim. P. 5(a)	Due process is violated if probable cause is not determined within 48 hours, but a full adversarial hearing is not necessary. If an individual is not brought before a magistrate within 72 hours there has been an unnecessary delay within the definition of Tenn. R. Crim. P. 5.1. *State v. Carter*, 16 SW 762, 766 (Tenn. 2000)
Texas	48 hours	V.Ann. Tex. C.C.P. Art 14.06	
Utah	without unnecessary delay- 48 hours probable cause, but arrestee need not be present	U.C.A. 1953 § 77-723 Utah Criminal Rule 7	
Vermont	without unnecessary delay	Vt. R. Crim. P. 3(g)	
Virginia	"forthwith"	Va. Code Ann. § 19.2-82	Accused and officer appear together "forwith" for probable cause hearing. Does not apply to arrests with warrant
Washington	(Warrantless arrest only) 24 hours, including weekends and holidays 48 hours prob. cause, but hearing not required	Wash. Cr.RLJ 3.2.1 (c) Wash. Cr.RLJ 3.2.1(a)	"must be brought before a court of limited jurisdiction as soon as practicable after the detention is commenced, but in any event before the close of business on the next court day." Sat, Sun and holidays may be considered court days
West Virginia	Without unnecessary delay	W.Va. Code Sex. 62-1-5 W.Va. R. Crim. P. 5	
Wisconsin	Within a reasonable time Judicial definition - 48 hours implicitly the reasonable time	W.S.A. § 970.01	If the initial appearance also serves as the *Riverside* probable-cause hearing it must be held within 48 hours barring extraordinary circumstances. In cases where a defendant's *Riverside (v. McLaughlin)* determination was properly made in a proceeding prior to the initial appearance, court looks at the individual circumstances of the case to determine a "reasonable time" from the defendant's arrest *State v. Evans*, 522 N.W. 2d, 554, 563 (Wis. App., 1994) (Held: 4 days over a weekend not unreasonable)
Wyoming	without unnecessary delay and in no event more than 72 hours	W. R Crim P. 5(a)	

Cindy Smith

From: Jeffrey A. Mittman [jmittman@akclu.org]
Sent: Monday, February 22, 2010 1:49 PM
To: Cindy Smith
Subject: Additional Concerns Re: SB 252

Further Concerns Re: SB 252

1. **Petitions for Review of Bail Conditions Are Needlessly Encumbered by This Bill**

Section Three proposes a series of limitations on how and when the accused can challenge the terms of his release. The access of detained individuals to the court to contest the conditions of release and the amount of bail required is hampered by the bill. The constitutional rule is that "[i]n our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

The rule proposed by SB 252, Sec. 3, subsection (d), would improperly hamper access to the courts. The bill proposes that, after bail is initially set, the defendant can only have his bail reviewed once as a matter of right. For subsequent review, the court cannot even hear a petition for bail review unless the defendant states in his application that new evidence will be presented, the court receives a report relating to criminal history and bail history for the defendant (a step over which the defendant has no control), the prosecutor gets 48 hours notice of the hearing, and more than seven days have passed since the last bail hearing. These procedures unreasonably encumber a defendant's right to be released before trial.

2. **Section Ten Unlawfully Restricts the Rights of Prisoners Held Awaiting Sentence or Appeal**

Section Ten of the bill proposes to absolutely prohibit the granting of bail to those awaiting sentence or appeal for a class A, class B, unclassified, or sexual felony. The courts have addressed the rights of prisoners awaiting sentence or appeal previously and found that, while these prisoners have diminished interests in liberty, the freedom of these individuals should not be lightly infringed. In *Walker v. State*, the opinion mentions that a defendant convicted of rape and awaiting sentencing had been ruled by the federal district court to be entitled at least to a bail hearing under the principle of Equal Protection. 652 P.2d 88, 90 (Alaska 1982).

Notwithstanding the constitutional issues at stake and the instructions of the courts, the proposed bill would absolutely deny a bail hearing to the defendant in *Walker*, who had been ordered to receive a bail hearing by the federal district court. Completely precluding any hearing for these defendants leaves no room for an exceptional case, even one who has demonstrated his innocence. Were this bill enacted, a judge would have no power to release defendant who had been convicted of a serious felony but for whom subsequent DNA testing had convincingly proved his innocence. A demonstrably innocent defendant who had filed an appeal or application for post-conviction relief would have to sit in jail until the matter is actually heard and decided.

February 15, 2010 .

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STUDENT ADVISORS

The Honorable Hollis French
Chair, Senate Judiciary Committee
Alaska State Senate
State Capitol, Room 417
Juneau, AK 99801-1182

Re: Senate Bill 252
Constitutional Issues

Chair French:

Thank you for the opportunity to submit written testimony regarding Senate Bill 252. The American Civil Liberties Union of Alaska ("ACLU) represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. From that perspective, we have several concerns with the proposed legislation.

Section 4 Unconstitutional Restrictions on Pre-Trial Release

Section Four of the Bill proposes a new section AS 12.20.011 with a myriad of constitutional infirmities.

The Alaska Constitution states that "an accused is entitled . . . to be released on bail, except for capital offenses when the proof is evident or the presumption great." Alaska Const., Art. I, Sec. 11. Subsection (d) of Section 4 of the Bill, however, proposes that for a wide group of defendants the court should presume, subject to rebuttal by the defendant, that no amount of bail and no conditions of release will ensure the appearance of the defendant and protect the victim and the public. The language used for the presumption, that "no condition or combination of conditions will reasonably assure" public safety or the defendant's appearance, is a phrase used to describe the

basis by which a judge can deny bail entirely to a defendant. *See, e.g.*, 18 U.S.C.A. § 3142(e)(1); Pa. Const. Art. 1, § 14.

While the proposed new statutory language does not specifically state that those who cannot be safely released shall be held without bail, the language leaves no clear alternative. Thus it proposes to impermissibly negate the dictates of the Alaska Constitution and to deny bail entirely to many defendants, while imposing on them the burden to refute the denial of bail. The categories of defendants to whom this denial would apply includes those arrested for class A or unclassified felonies, any sexual felony, anyone previously convicted of a felony except if the complete term (including any parole or probation term) had terminated more than five years ago, anyone also under charge in another case, anyone arrested for a domestic violence charge who had previously been convicted of a domestic violence charge within the last five years, or anyone arrested "in connection with" an allegation of commission of an offense outside the state or being a fugitive from justice in another state.

The Alaska Supreme Court has clearly and unequivocally held that the outright denial of bail violates the Alaska Constitution. *Martin v. State*, 517 P.2d 1389 (Alaska 1974) (holding that the refusal of bail to a person arrested on a charge of forgery who had three outstanding cases of forgery against him violated both Alaska statutes and Article I, Section 11 of the Alaska Constitution). In fact, the *Martin* court discussed a very similar argument by the Department of Law in these terms:

> "The State urges that these amendments [to the bail statutes] permit the detention of defendants without bail when the judicial officer determines that the defendant 'will pose a danger to other persons and the community.' . . . The legislature could not, of course, infringe upon the constitutional right of bail. . . . *[A] legislative enactment expressly permitting the detention of persons without right to bail would be unconstitutional unless a constitutional amendment were adopted.*" *Martin*, 517 P.2d at 1396-97 (emphasis added).

Should the plain language of Article I, Section 11 be insufficient to inform the State that pretrial bail is a right not subject revocation by the legislature or the courts, the history of the enactment of the bail clauses to the Alaska Constitution should make clear that any and all defendants should receive a bail hearing. Victor Fischer, delegate to the Constitutional Convention, commented during the convention that the phrase "when the proof is evident and the presumption great" had been enacted in Alaska, as in other states, to show that even defendants in capital offenses should generally be eligible for bail: "The actual determination of when a person is released on bail, if charged with a capital offense, is still up to the judge." 2 Proceedings of the Alaska Constitutional Convention 1344-45 (Jan. 6, 1956) *cited in State v. Wassillie*, 606 P.2d 1279, 1282 (Alaska 1980).

If the Constitutional Convention drafted Article I, Section 11 with the intent that even those charged with capital cases should receive a bail hearing, then the Governor's bill that defendants

charged with felonies should be presumed not to be eligible for bail must surely violate the terms of the bail clauses of the Alaska Constitution. The proposed amendments in Section 4 of H.B. 324 do not pass constitutional review, as they contradict both the language of Article I, Section 11, which vests all defendants except those in capital cases with the right to bail, and the Supreme Court's analysis in *Martin*.

Even were a finding that "no condition or combination of conditions" support release somehow constitutional, the burden-shifting provision of the statute is inappropriate in the context of a bail hearing conducted within hours of arrest. These hearings may be conducted in the absence of counsel; even where the defendant obtains counsel within a few hours of arrest, defense counsel will not likely be capable of carrying the burden to show that the defendant is not a danger and not likely to fail to appear. *See Stack v. Boyle*, 342 U.S. 1, 11 (1951) (stating that an initial bail hearing "must be done in haste – the defendant may be taken by surprise, counsel has just been engaged, or for other reasons the bail is fixed without that full inquiry and consideration which the matter deserves," Jackson, J., concurring). Bearing that burden would require witnesses and documentation on the defense side, resources likely impossible for even a privately retained counsel.

The ACLU of Alaska requests that this Committee delete or appropriately revise these clearly unconstitutional provisions in SB 252.

Section 4 Improper Proposed Expansion of Court Authority

The primary purpose of bail is to ensure the appearance of the accused. A judge may consider public safety or the safety of individuals in setting conditions for release. However, beyond specific findings relating to an individual defendant and specific reasons for concern that he may fail to appear or endanger others, a judge does not have more interest in supervising an arrestee, who is presumed innocent, than he does over a member of the general public. *U.S. v. Scott*, 450 F.3d 863, 874 (9th Cir. 2006).

Thus, certain provision in Section Four, subsection (b) of S.B. 252 violate the constitutional protections regarding granting of bail. Subsection (b)(9) permitting a judge to "require the person to maintain employment, or if unemployed, actively seek employment" has no bearing on either the likelihood of the individual to appear in court nor on any danger posed to the victim or the public. Pretrial supervision is not a period of "pre-probation" when the State may broadly supervise an accused. The State's legitimate interests are limited to ensuring public safety and ensuring the appearance of the accused. These kinds of provisions infringe on the right of the defendant to be considered an innocent person. Excessive bail conditions, unjustified by traditional state interests, resemble probationary supervision and thus constitute unconstitutional punishment prior to adjudication.

While other provisions in subsection (b) could have conceivable use in specific individual cases, the long list of bail conditions set forth essentially invites judges to overuse them. Prohibitions

on the use of alcohol and entry to licensed premises, for instance, are currently imposed excessively and frequently without the individualized inquiry required in *Scott*. Overuse of alcohol-related restrictions for Alaska Native defendants has been a basis of criticism for ethnic disparities in the criminal justice system. Instead of minimizing these existing disparities, S.B. 252 would institutionalize them.

Another area of particular concern in the enumerated bail conditions are two provisions relating to health care, subsections (b)(15) and (b)(16) which purport to permit a judge to require a defendant to adhere to courses of psychiatric and medical treatment and to compel a defendant to take prescription medications. The right to bodily privacy is an integral part of the right to privacy under the Alaska Constitution. Allowing the criminal justice system to shortcut the elaborate existing framework by which a person may be committed to psychiatric care would present serious constitutional problems. For instance, in a commitment proceeding, the individual has a right to notice of what treatment specifically has been proposed and then may line up appropriate experts to contest the treatment plan. Under this statute, the defendant has no notice of such a request, no opportunity to bring appropriate experts to court, and thus no way to contest whether the proposed plan of treatment is proper or not. The bill also invites an infringement of the right to privacy in one's medical information and records, since a judge must naturally inquire into the current medical and psychiatric treatment of the accused in order to ensure that the orders are carried out. In order to make sense, the provisions relating to medical care presuppose exposure of the accused's sensitive medical information in open court.

Again, given these important constitutional interests, the ACLU recommends the Committee delete or revise Section 4, subsection (b) of SB 252.

Section One's Proposed Addition of AS Sec. 11.56.730
Offends the Due Process Clause of the Alaska Constitution

Section One of S.B. 252 proposes creation of the offense of "failure to appear," and requires the state to show no mental state other than the knowledge that one should have been in court. Thus, a person could be convicted of a serious felony for inadvertently or accidentally failing to appear.

Generally, the criminal law requires "not only the doing of some act by the person to be held liable, but also the existence of a guilty mind *during the commission of the act." Speidel v. State*, 460 P.2d 77, 80 (Alaska 1969) (emphasis added). The Alaska courts have held that, for major felonies, a mental state requirement is mandatory, while some ***minor*** offenses, such as hunting or public health related offenses may be strict liability offenses without a mental state requirement. *Speidel*, 460 P.2d 77 (holding that the statute declaring the failure to return a car to be a crime, regardless of mental state, violated due process); *see also State v. Guest*, 583 P.2d 836 (Alaska 1978); *State v. Fremgen*, 914 P.2d 1244 (Alaska 1996). In some cases, the courts have avoided declaring a statute unconstitutional by creating a mental state requirement where a statute has no provision for mental state. *Kimoktoak v. State*, 584 P.2d 25 (Alaska 1978); *Alex v. State*, 484

P.2d 677 (Alaska 1971). However, given the explicit statement that no mental state is required in Section One, the courts would not be able to avoid the constitutional conflict and must rule the statute unconstitutional.

On a policy basis, the legislature should consider the impact of S.B. 252 on the prison population of the state. The ACLU of Alaska's recent review of the prison system showed that over the past seven years the population of prisoners in custody for most types of crimes (e.g., property offenses, offenses against the person, sex offenses) has remained largely stable. The expansion of the prison population from 2002 to 2008 was due exclusively to the *tripling* of the number of prisoners incarcerated for two types of offenses: for violations of probation and parole and for public order and administration offenses. Public order and administration offenses include victimless offenses relating to criminal justice administration, and the largest group of these offenders consists of those serving time for failure to appear in court. The state can hardly argue in the face of a tripling of the number of offenders incarcerated on those types of offenses that the judiciary has been too lenient on those who fail to appear. Passing this bill will ensure an even greater expansion in the Alaska prison population as a result of more prosecutions and more convictions for failures to appear.

The legislature should also take note that the equivalent federal rule, as well as many state rules, requires a showing that the defendant "deliberately" or "willfully" missed court. *Hutchison v. State*, 27 P.3d 774, 777-79 (Alaska App. 2001) (noting that the federal bail statute, 18 U.S.C. § 3150, as well as Connecticut, California, and Illinois statutes, require a showing of "willful" failure to appear). Given that the federal court system and several large state court systems do not find themselves facing large numbers of non-appearing defendants, even when only "willful" failures to appear are prosecuted, the current, stricter Alaska standard of "knowing" failure to appear should adequately ensure appearance of defendants.

The legislature should also consider the potential negative effects of this policy on judicial efficiency. As the law stands now, a defendant who misses court through neglect or confusion has a strong interest in appearing in court immediately upon realizing the mistake to have his bench warrant lifted, since that response will tend to show an innocent mental state and a sincere desire to participate in the court process. Under the proposed bill, a defendant who misses court through neglect or confusion will face the same penalty for turning himself in the next day as if he disappears for the next six months. Creating a stiffer penalty and eliminating any meaningful defense will encourage those who do miss court to absent themselves from court indefinitely. No policy or penalty is ever going to prevent neglect, mistake, and confusion. A flexible, and in some cases forgiving, policy will serve judicial efficiency best.

Problematic Extension of Time for Bail Hearing

Section Three proposes to extend the window of detention prior to a bail hearing to 48 hours. Under current Alaska law, a defendant must be brought before a judicial officer within 24 hours.

Under *Gerstein v. Pugh*, a probable cause hearing must be held without unreasonable delay. 420 U.S. 103 (1975).

After a standard of 24 hours was adopted by most states and most circuits, a narrowly divided US Supreme Court stated that the initial appearance must be made only within 48 hours. *Riverside v. McLaughlin*, 500 U.S. 44 (1991). However, *Riverside* does not bind the states in their interpretation of their own constitutions. In one accounting of state responses to *Gerstein*, most states had concluded that 24 hours was the appropriate term under the case, and only seven states explicitly permitted more than 24 hours prior to an initial hearing. *Jenkins v. Chief Justice of Dist. Court Dept.*, 619 N.E.2d 324, 333-34 (Mass. 1993).

Since Alaska has guaranteed a 24-hour window for initial appearances for ***18 years*** since the *Riverside* decision, the state courts may be hard pressed to see why a 48-hour window would not likely permit "unreasonable delay." The Alaska courts have not yet had a chance to rule on the dimensions of the "speedy trial" provision of Article I, section 11 as it relates to initial appearances, since Rule 5 has long guaranteed a 24-hour window of appearance. The Supreme Court could very well decide that the state constitutional provisions relating to speedy trial and due process require a 24-hour window prior to initial appearance, just as the Massachusetts Supreme Court did in *Jenkins*.

Given that the currently existing rules of criminal procedure already provide an exception for defendants arrested far from urban centers and allow the prosecution to request a delay to gather more information where necessary for a bail hearing, the state's success over the last 18 years in providing a hearing within 24 hours strongly suggests that a delay of more than 24 hours would represent unnecessary delay, making the statute unconstitutional.

Unconstitutional Imposition of Warrantless Search

Section Four's proposed addition of A.S. Sex.12.30.016 seeks to allow unconstitutional warrantless searches. Subsections (b)(2). (c)(2). Compared to probationers and parolees, the rights of pretrial defendants against unreasonable search and seizure are strong.

While comparatively little case law exists in Alaska courts, a recent Ninth Circuit case strongly endorsed the rights of pretrial defendants against warrantless searches. In *United States v. Scott*, the defendant had been arrested on drug charges and his release was conditioned on his "consent" to suspicionless search of his home and random drug tests. 450 F.3d 863 (9th Cir. 2006). After a positive urine test for methamphetamine, officers searched his home and found a shotgun. *Id.* at 866. The Ninth Circuit held that his consent was not valid, as he would have been placed in custody if he had declined. *Id.* at 870. Most importantly, the court said: "if a defendant is to be released subject to bail conditions that will help protect the community from the risk of crimes he might commit while on bail, the conditions must be justified by a showing that defendant poses a heightened risk of misbehaving while on bail. The government cannot, as it is

trying to do in this case, short-circuit the process by claiming that the arrest itself is sufficient to establish that the conditions are required." *Id.* at 874.

Creating a blanket rule that a court may impose bail conditions that violate rights against unreasonable search without requiring any kind of individualized finding would violate the rule enunciated in *Scott*. A provision that states that such conditions may only be imposed after a written finding of the reasons particular to the individual defendant as to why such bail conditions are necessary may render this section constitutional.

Overly Broad Imposition of Third Party Custodians

Section 5 of the Bill unconstitutionally proposes to limit a pre-trial defendant's liberty. A pretrial defendant enjoys a right to be considered innocent; he also enjoys a default right to his liberty. *Stack v. Boyle*, 342 U.S. 1. ("This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."). No showing of proof, no adversarial proceeding is required for the filing of a complaint. As such, the court should require a showing from the prosecution to impose a condition of bail on the accused. Yet the third-party custodian provision imposes no restraint on the court's authority.

Contrast, for instance, the language from Section 5, "a judicial officer may appoint a third-party custodian if the officer finds that the appointment will, singly or in combination with other conditions, reasonably assure the person's appearance and the safety of the victim, other persons, and the community" to the language from Section 4, "the officer shall impose *the least restrictive condition* or conditions that will reasonably assure the person's appearance." The term "least restrictive," or any sense that a bail condition should be "necessary" rather than simply the court's preference, is missing from Section 5.

Arguably, the imposition of a third party custodian requirement would enhance the likelihood of *any* defendant's appearance in court. However, the courts are not free to impose any quantity of bail they like or to impose any conditions that seem like a good idea. Such conditions may be imposed only when found to be necessary.

The legislature should note that in a recent Alaska Judicial Council survey on the criminal justice system, excessive and arbitrary use of the third-party custodian requirement was one of the most frequent complaints. The original purpose of the third-party requirement – to ensure that impoverished defendants incapable of making cash bail could be released in a manner that assured community safety and court appearance – has been almost totally lost. A third-party custodian is now often imposed as a matter of course, rather than after specific findings, and in addition to, not in lieu of, cash bail. To prevent more abuse, a court should be required to make specific, written findings as to why a third-party custodian is necessary.

Conclusion

We hope that the Judiciary Committee will note these are just some of the constitutional infirmities in Senate Bill 252.

While the ACLU of Alaska supports appropriate revisions to the criminal justice system to address the special circumstances of our State, and evolving needs, this Bill is not well-crafted to vindicate the state's purposes.

The sections we have identified present substantial Constitutional problems and will likely entangle the state in litigation, should S.B. 252 pass as currently written.

Thank you again for the opportunity to share our concerns. And please feel free to contact the undersigned should you require any additional information.
Sincerely,

Jeffrey Mittman
Executive Director
ACLU of Alaska

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TITLE 18 > PART II > CHAPTER 207 > § 3142

§ 3142. Release or detention of a defendant pending trial

(a) In General.— Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be—

(1) released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;

(2) released on a condition or combination of conditions under subsection (c) of this section;

(3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or

(4) detained under subsection (e) of this section.

(b) Release on Personal Recognizance or Unsecured Appearance Bond.— The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a), unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c) Release on Conditions.—

(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—

(A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a); and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—

(i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) maintain employment, or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on personal associations, place of abode, or travel;

(v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(vii) comply with a specified curfew;

(viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

(x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;

(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;

(xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

In any case that involves a minor victim under section 1201, 1591, 2241, 2242, 2244 (a)(1), 2245, 2251, 2251A, 2252 (a)(1), 2252 (a)(2), 2252 (a)(3), 2252A (a)(1), 2252A (a)(2), 2252A (a)(3), 2252A (a)(4), 2260, 2421,

2422, 2423, or 2425 of this title, or a failure to register offense under section 2250 of this title, any release order shall contain, at a minimum, a condition of electronic monitoring and each of the conditions specified at subparagraphs (iv), (v), (vi), (vii), and (viii).

(2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

(3) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(d) Temporary Detention To Permit Revocation of Conditional Release, Deportation, or Exclusion.— If the judicial officer determines that—

(1) such person—

(A) is, and was at the time the offense was committed, on—

(i) release pending trial for a felony under Federal, State, or local law;

(ii) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under Federal, State, or local law; or

(iii) probation or parole for any offense under Federal, State, or local law; or

(B) is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(20)); and

(2) such person may flee or pose a danger to any other person or the community;

such judicial officer shall order the detention of such person, for a period of not more than ten days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the Government to notify the appropriate court, probation or parole official, or State or local law enforcement official, or the appropriate official of the Immigration and Naturalization Service. If the official fails or declines to take such person into custody during that period, such person shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings. If temporary detention is sought under paragraph (1)(B) of this subsection, such person has the burden of proving to the court such person's United States citizenship or lawful admission for permanent residence.

(e) Detention.—

(1) If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

(2) In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—

(A) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;

(B) the offense described in subparagraph (A) was committed while the person was on release pending trial for a Federal, State, or local offense; and

(C) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in subparagraph (A), whichever is later.

(3) Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed—

(A) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(B) an offense under section 924 (c), 956 (a), or 2332b of this title;

(C) an offense listed in section 2332b (g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed;

(D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or

(E) an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244 (a)(1), 2245, 2251, 2251A, 2252 (a)(1), 2252 (a)(2), 2252 (a)(3), 2252A (a)(1), 2252A (a)(2), 2252A (a)(3), 2252A (a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.

(f) Detention Hearing.— The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community—

(1) upon motion of the attorney for the Government, in a case that involves—

(A) a crime of violence, a violation of section 1591, or an offense listed in section 2332b (g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;

(B) an offense for which the maximum sentence is life imprisonment or death;

(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in

subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or

(E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921), or any other dangerous weapon, or involves a failure to register under section 2250 of title 18, United States Code; or

(2) upon motion of the attorney for the Government or upon the judicial officer's own motion in a case, that involves—

(A) a serious risk that such person will flee; or

(B) a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the Government may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, such person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

(g) Factors To Be Considered.— The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including—

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

(h) Contents of Release Order.— In a release order issued under subsection (b) or (c) of this section, the judicial officer shall—

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) advise the person of—

(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

(C) sections 1503 of this title (relating to intimidation of witnesses, jurors, and officers of the court), 1510 (relating to obstruction of criminal investigations), 1512 (tampering with a witness, victim, or an informant), and 1513 (retaliating against a witness, victim, or an informant).

(i) Contents of Detention Order.— In a detention order issued under subsection (e) of this section, the judicial officer shall—

(1) include written findings of fact and a written statement of the reasons for the detention;

(2) direct that the person be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) direct that, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the

extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

(j) Presumption of Innocence.— Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

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Martin v. State
517 P.2d 1389
Alaska 1974.
January 02, 1974

Term

517 P.2d 1389, 75 A.L.R.3d 941

Supreme Court of Alaska.
Max Ray MARTIN et al., Appellants,
v.
STATE of Alaska, Appellee.

No. 1785.
Jan. 2, 1974.

Herbert D. Soll, Public Defender, Larry A. Jordan, Asst. Public Defender, anchorage, for appellants.

John E. Havelock, Atty. Gen., Juneau, Seaborn J. Buckalew, Jr., Dist. Atty., Anchorage, Stephen G. Dunning, Asst. Dist. Atty., Anchorage, for appellee.

Before RABINOWITZ, C. J., and CONNOR, ERWIN, BOOCHEVER and FITZGERALD, JJ.

OPINION

FITZGERALD, Justice.

These cases come to us as a consolidated appeal seeking declarations of the rights of the defendant in criminal proceedings to bail under the constitution and laws of Alaska and the constitution of the United states. Although the factual circumstances of each case are somewhat different, all three cases challenge the concept of preventive detention.

On June 7, 1972, appellant Richard Snyder was arraigned in the superior court on a charge of forgery. At the time of this arraignment, Snyder was free on bail following three indictments issued previously on other charges.[FN1]

> FN1. The appellant was charged in a four-count federal indictment for conspiracy, robbery, and possession of firearms by a convicted felon, a one-count Alaska indictment for burglary not in a dwelling, and a nine-count Alaska indictment for burglary not in a dwelling. Both state indictments postdated the alleged date for commission of the

forgery.

At his arraignment and at a later hearing for plea, Snyder requested the court to set bail on the forgery charge. The trial court refused to set bail finding that Snyder was 'a danger to society.' On August 10, 1972, a notice of appeal was filed on the decision denying bail. However, on November 9, 1972, the court on the motion of the prosecutor dismissed the forgery charge against Snyder.[FN2]

FN2. On September 14, 1972, Snyder filed a motion pro se with this court requesting release on his own recognizance. By order dated November 17, 1972, Justice Boochever denied the motion on the basis that the intervening dismissal of charges rendered the question moot.

Appellant Max Martin was arraigned August 3, 1972 in the superior court on a petition to revoke probation. Almost two years earlier, Martin had been convicted of larceny in a building. For that offense he received a five-year sentence, but four years were suspended upon conditions of probation.

At his arraignment and at a hearing four days later, Martin requested the court to set bail for his release pending the revocation hearing. The court refused to set bail, reasoning that there was a high probability of truth in the allegations, and that it was within the court's discretion to deny bail after conviction.

Notice of appeal from the denial of bail was filed on August 10, 1972. On September 18, 1972, Martin's probation was revoked, and he was ordered to serve the remaining four years on his larceny conviction.

Appellant Aloyisus Fabian was arraigned in the superior court on May 18, 1972, on a charge of burglary not in a dwelling. Following arraignment, he was released on his own recognizance to participate in the Salvation Army alcoholic rehabilitation program. On May 25, 1972, the state moved that Fabian's recognizance release be revoked, and that bail be set at $500 because he was no longer participating in the Salvation Army program. Fabian, through his counsel, admitted violating the conditions of his release but requested to be released again on recognizance, contending that his financial status would make any bail amount prohibitive.

Rejecting the suggestion that Fabian reenroll at the Salvation Army, the court offered to release him to the custody of the Anchorage Native Program for Alcoholic and Drug Abuse. Fabian's counsel agreed to attempt to enroll him in the native program, and the appellant was incarcerated in the meantime. Attempts to enroll him in the native program failed. Since his counsel did not reapply for bail, the appellant remained in jail until his trial.

Notice of appeal from the ruling of the superior court was filed August 10, 1972. On October 3, 1972, Fabian appeared in superior court and was convicted upon his plea of guilty and was

sentenced to a term of one year of confinement.

The appellants claim a substantive right to bail arising from the Alaska Bail Reform Act,[FN3] from Article I, sections 11 and 12 of the Alaska Constitution, and from the eighth amendment of the United States Constitution.

FN3. AS 12.30.010 et seq.

We cannot ignore, however, the preliminary procedural difficulties which these cases present. In each case before us, it is argued that the issues arising on appellant's application for bail have been mooted by either a subsequent dismissal, a conviction, or a revocation of probation. An application for review of an order of the trial court denying bail should be promptly filed. The Alaska procedures for review of a denial for bail are designed to ensure speedy consideration at the appellate level. [FN4] Although in this appeal the slower appellate process was utilized, we undertake to consider the substantive claims raised by appellants because they involve important recurring issues of law which may be capable of evading review. [FN5]

FN4. See App.R. 23, 24. The need for rapid re-review of bail orders is also reflected in the Alaska Bail Reform Act of 1966, AS 12.30.030:'(a) A person who remains in custody after a review provided for in s 20 (f) of this chapter may move the court having original jurisdiction over the offense to amend the order. The motion shall be determined promptly.(b) When a court denies a motion under (a) of this section or conditions of release have been imposed by the court having original jurisdiction over the offense, an appeal may be taken to the court having appellate jurisdiction over the court denying the motion or imposing the conditions subject to the rules of the Supreme Court of Alaska, and the District Court Rules of Criminal Procedure. The order of the lower court shall be affirmed unless it is found that the lower court abused its discretion. If it is held that the lower court did abuse its discretion, the appellate court may modify, vacate, set aside, reverse, remand the action for further proceeding, or remand the action directing entry of the appropriate order, which may include ordering the person to be released under s 20(a) of this chapter. The appeal shall be determined promptly.'

FN5. See Doe v. State, 487 P.2d 47 (Alaska 1971).

Appellants would have us interpret the eighth amendment of the federal constitution to create a right to bail.[FN6] The eighth amendment provides in pertinent part: 'Excessive bails shall not be required . . ..' Appellants' argument raises two questions for consideration: 1) whether the fourteenth amendment due process clause[FN7] incorporates[FN8] the excessive bail provision of the eighth amendment; 2) whether the excessive bail provision includes the unqualified right to bail.

FN6. U.S.Const. amend. VIII.

FN7. U.S.Const. amend. XIV, s 1.

FN8. For literature on the application of the federal bill of rights to the states through the fourteenth amendment see Emerson, Haber & Dorsen, Political and Civil Rights In The United States 1379-80 (3d ed. 1967). See also Countryman, The Role of a Bill of Rights in a Modern State Constitution, Why a State Bill of Rights?, 45 Wash.L.Rev. 453, 454-474 (1970).

As to the first question, the United States Supreme Court has not ruled on whether the eighth amendment bail provision applies to the states through the fourteenth amendment.[FN9] The most recent discussion on this subject by the Supreme Court occurred in Schilb v. Kuebel, 404 U.S. 357, 92 S.Ct. 479, 30 L.Ed.2d 502, reh. denied, 405 U.S. 948, 92 S.Ct. 930, 30 L.Ed.2d 818 (1971). In Schilb the issue before the Supreme Court related to the constitutionality of Illinois' bail statutes which permitted a defendant in some instances to post 10% of the bail directly to the court, of which the state retained 10% of the posted security as administrative 'bail bond costs.' Justice Blackmun, in the course of defining the issue before the court, stated:

FN9. In Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962), the Supreme Court held that a California statute, which made addiction to the use of narcotics a criminal offense, inflicted a cruel and unusual punishment in violation of the eighth and fourteenth amendments. The court has yet to rule whether the provision against excessive bail is similarly incorporated by the due process clause of the fourteenth amendment.

'Bail, of course, is basic to our system of law . . . and the Eighth Amendment's proscription of excessive bail has been assumed to have application to the States through the Fourteenth Amendment. . . . But we are not at all concerned here with any fundamental right to bail or with any Eighth Amendment-Fourteenth Amendment question of bail excessiveness.' 404 U.S. at 365, 92 S.Ct. at 484, 30 L.Ed.2d at 511 (citations omitted).

The question of incorporation by the fourteenth amendment would seem to await a more definitive answer in future adjudication.

There remains a substantial controversy over the eighth amendment's inclusion of an unqualified right to bail.[FN10] Much of the discussion on the issues appears prompted by the District of Columbia Court Reform and Criminal Procedure Act of 1970. The Act allows courts of the District to detain a defendant without bail for up to 60 days prior to trial if the court concludes

that the defendant's release would constitute a danger to the community. D.C.Code Ann. ss 23-1321 to 23-1332 (1973).

FN10. For a discussion of this controversy see Foote, The Coming Constitutional Crisis in Bail (pts. 1-2), 113 U.Pa.L.Rev. 959, 1125 (1965); Meyer, Constitutionality of Pretrial Detention, 60 Geo.L.J. 1140 (1972); Mitchell, Bail Reform and the Constitutionality of Pretrial Detention, 55 Va.L.Rev. 1223 (1969); Tribe, an Ounce of Detention: Preventive Justice in the World of John Mitchell, 56 Va.L.Rev. 371 (1970).

Perhaps the most widely cited case for supporting a right to bail under the eighth amendment is Stack v. Boyle, 342 U.S. 1, 72 S.Ct. 1, 96 L.Ed. 3 (1951). [FN11] Stack, however, is not convincing authority for supporting an unconditional eighth amendment right to bail. Although the opinion speaks to the right of release before trial, this discussion relates to federal statutes providing a right to bail following arrest for a noncapital offense. [FN12] Once this statutory right to bail is recognized, then the eighth amendment excessive bail provision assures a reasonable bail.

FN11. In Stack, twelve petitioners were charged with violating the Smith Act, 18 U.S.C. ss 371, 385 (1970). Bail was first set for each defendant in varying amounts ranging from $2,500 to $100,000. Subsequently, bail was uniformly fixed at $50,000. In an effort to reduce bail, petitioners presented uncontroverted evidence concerning financial resources, family relationships, prior criminal records and other information. The government, on the other hand, presented evidence showing that four persons previously convicted under the Smith Act had forfeited bail. In vacating the lower court order denying petitioners' writs of habeas corpus, the Supreme Court held that the lower court had not followed proper criteria delineated in the Federal Rules of Criminal Procedure in fixing a reasonable bail.

FN12. It is clear from the opinion that this right to bail referred to the Federal Judiciary Act of 1789, 1 Stat. 73, 91 and Federal Rules of Criminal Procedure, Rule 46(a)(1), not the eighth amendment.

In Carlson v. Landon, 342 U.S. 524, 72 S.Ct. 525, 96 L.Ed. 547 (1952) the Supreme Court in a case involving the deportation of certain aliens classified as dangerous held that in such circumstances, the eighth amendment did not require the petitioners to be released on bail.

'The bail clause was lifted with slight changes from the English Bill of Rights Act. In England that clause has never been thought to accord a right to bail in All cases, but merely to provide that bail shall not be excessive in those cases where it is proper to

grant bail. When this clause was carried over into our Bill of Rights, nothing was said that indicated any different concept.' 342 U.S. at 545, 72 S.Ct. at 536, 96 L.Ed. at 563 (footnotes omitted).

Carlson, however, is a special case involving the Internal Security Act of 1950, 8 U.S.C. s 137 (1970).

It is, however, not necessary in this appeal to decide whether appellants were entitled to bail under the eighth amendment to the United States Constitution.

Article I, s 11 of the Alaska Constitution provides:

'In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of twelve, except that the legislature may provide for a jury of not more than twelve nor less than six in courts not of record. The accused is entitled to be informed of the nature and cause of the accusation; to be released on bail, except for capital offenses when the proof is evident or the presumption great; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.' (emphasis supplied)

Article I, section 11 was originally introduced as section 12 of Committee Proposal No. 7, offered by the Committee on the Preamble and Bill of Rights to the Alaska Constitutional Convention in December, 1955.[FN13] Section 12 of the committee proposal read in part:

FN13. 6 Alaska Constitutional Convention, Minutes, Appendix V. at 65 (1963) (hereinafter cited as Minutes).

'The accused is also entitled to be informed of the nature and cause of the accusation; to be released on bail, except for capital offenses . . ..'

The commentary attached to the proposal indicated that section 12 was intended to give defendants 'the opportunity to be released on bail except in capital offenses.'[FN14] When the committee's proposal was discussed on the Floor of the convention, Delegate Victor Fischer introduced an amendment to qualify the right to bail in cases involving capital offenses by adding the words 'when the proof is evident or the presumption great.'[FN15] The delegate's comments on this amendment clearly indicate the guarantee of a right to bail:

FN14. Minutes, supra, Appendix V, at 72.

FN15. 2 Minutes, supra, at 1344.

'The language in the Federal Constitution reads generally to the effect that excessive bail shall not be required. A number of states have changed that language to provide more or less the language we have, that the accused may be released on bail

except for capital offenses. But in practically every case where this new language is used, the words, 'when proof is evident and the presumption great' and that is a necessary protection for the accused and we shall follow the majority of the states in this case. It has proven a desirable practice. The actual determination of when a person is released on bail, if charged with a capital offense, is still up to the judge.'[FN16]

FN16. 2 Minutes, supra, at 1344-345. See American Law Institute, Code of Criminal Procedure 338-41 (1930) which indicates that 40 States had similar constitutional provisions providing for the right to bail except in capital offenses. See also Application of Corbo, 54 N.J.Super. 575, 149 A.2d 828, 833 (1959).

Our study of Article I, section 11 thus compels a conclusion that the Alaska Constitution without doubt guarantees to every accused person the right to be released on bail except for capital offenses[FN17] where the proof is evident or the presumption great.[FN18] Some jurisdictions with similar bail provisions [FN19] have created an implied limitation on this constitutional right. But in Alaska such an implied limitation would necessarily contravene both the plain language of this constitutional provision and its intended purpose as stated at the constitutional convention.

FN17. Sections 66-16-43 and 66-16-44, ACLA 1949, which provided for the death penalty were repealed by the territorial legislature in 1957. Ch. 132, SLA 1957. Repeal, of course, does not preclude the legislature from ever establishing capital offenses, but since there are no capital offenses in Alaska at this time, every criminal offense carries the right to bail.

FN18. 'The early common law did not permit bail in felony cases; later on bail was permitted before trial, but not during trial. When bail was permitted, it was a matter of discretion with the court, not a matter of right. . . .Most states have limited the judicial discretion of the common law by guaranteeing, by constitutional or statutory provision, that all persons shall be bailable by sufficient sureties except in certain cases.' 8 Am.Jur.2d Bail and Recognizance ss 22, 23, at 796-797 (1963) (footnotes omitted).

FN19. See, e. g., State v. Johnson, 61 N.J. 351, 294 A.2d 245, 250 (1972). New Jersey has a similar constitutional bail provision to that of Alaska. There the court said in part:'Expressed in pragmatic terms this right to bail means that the accused has the right to pretrial liberty on such bond in such amount as in the judgment of the trial court under the circumstances of the case will insure his appearance at the trial. If, however, the court is satisfied from the evidence presented on the application for bail that regardless of the amount of bail fixed, the accused if released will probably flee to avoid trial, bail may be

denied.'

In Reeves v. State, 411 P.2d 212 (Alaska 1966), we held that indigent defendants did not have an absolute right to be released on personal recognizance prior to trial. In Reeves, the defendant was charged in a four count indictment of serious offenses, including first degree murder, burglary and robbery. The trial court first set bail at $50,000, which was later reduced to $10,000. On appeal, the issue was limited to a claim that all indigent defendants were entitled to pretrial release as a matter of right. We rejected this contention as unsound and approved the rationale of Pilkinton v. Circuit Court, 324 F.2d 45 (8th Cir. 1963).[FN20] Reeves, however, as was pointed out in Doe v. State, 487 P.2d 47 (Alaska 1971), should not be taken as denying the right to bail provided under Article I, section 11.

FN20. Pilkinton provided that a state may require bail in some amount and that the eighth amendment excessive bail provision does not provide a right of pretrial release if the defendant is unable to post bail.

Doe v. State was a delinquency proceeding involving a child. His attorney requested a continuance on a hearing. The court continued the case briefly but ordered the child detained during the interim. In considering the child's right to remain free pending an adjudication, this court discussed the right to bail as it is expressly provided in the Alaska Constitution:

'Under the Alaska Constitution, all persons accused of a criminal offense are entitled to be released on bail except for capital offenses where the proof is evident or the presumption great.' 487 P.2d at 51 (footnote omitted).

Apart from Article I, section 11, one additional provision of the Alaska Constitution has to do with bail. Article I, section 12 of the Alaska Constitution provides in part:

'Excessive bail shall not be required, not excessive fines imposed, nor cruel and unusual punishments inflicted.'

This section was originally section 9 of Committee Proposal No. 7 introduced by the Committee on the Preamble and Bill of Rights to the Alaska Constitutional Convention in December, 1955. [FN21]

FN21. The commentary to the proposal indicated that section 9 was identical with the excessive bail provision of the eighth amendment to the United States Constitution. 6 Minutes, supra, Appendix V, at 72.

It is not necessary to determine whether or not Article I, section 12 of the Alaska Constitution guarantees a right to bail and, indeed, such an interpretation would be superfluous in view of the right to bail provision found in Article I, section 11. It is enough to say that the excessive bail provision insures the fixing of a reasonable bail and is to be considered in conjunction with

the right to bail provision of Article I, section 11.

We note that California's constitutional provisions for bail are substantially identical with those of Alaska. The Supreme Court of California, applying that state's constitutional provisions, recently rejected the so-called 'public safety' exception for bail:

'Our constitutional language expressly providing that all persons shall be bailable except for a capital offense was consciously added to the 'no excessive bail' language adopted from the Eighth Amendment in order to make clear that, unlike the federal rule, all except the one class of defendants were to be bailable. As pertinent statutory provisions may not be read to impose greater limits on the right to bail as guaranteed by the California Constitution, there is no validity in the argument that there is an implied 'public safety' exception in statutory or other provisions guaranteeing the right to bail and we hold that such an exception does not exist in view of the clear direction of article I, section 6. 'If the constitutional guaranties are wrong, let the people change them-not judges or legislators."

In re Underwood, 9 Cal.3d 345, 508 P.2d 721 (1973).[FN22]

FN22. In his dissent Justice Burke suggests that since the Constitution of California recognizes the inalienable right of all men 'to enjoy and defend their life and liberty, and to protect their property, and to pursue and obtain safety and happiness', the courts should exercise an inherent power to achieve a suitable balance between society's rights and the defendant's right to bail. This suggestion rests wholly on the questionable assumption that man's inalienable rights are incompatible with the constitutional right of an accused to bail.An additional argument for the 'public safety' exception advocated by the dissent is that courts may accomplish the same result when the judge fixes an amount of bail which the particular defendant is unable to furnish. According to Justice Burke, this merely evades the issue and does indirectly what may not be done directly, and moreover violates the prohibition against excessive bail. Such an argument furnishes little support for the central thesis in Justice Burke's contentions. To the extent it suggests that difficulty in application of a constitutional principle provides justification for its rejection, the argument itself evades the issue.

In addition to the constitutional guarantee of bail, a right to bail is found in the Alaska statutes. AS 12.30.010 provides that

The defendant in a criminal proceeding is entitled to be admitted to bail before conviction as a matter of right.

This section was part of the original Alaska Bail Reform Act [FN23] and has remained unchanged. In 1966 AS 12.30.020(a) and (b), read as follows:

FN23. SLA 1966, Ch. 20, s 1.

'(a) A person charged with an offense shall, at his first appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required.

(b) If a judicial officer determined under (a) of this section that the release of a person will not reasonably assure the appearance of the person, the judicial officer may

(1) place the person in the custody of a designated person or organization agreeing to supervise him;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) require the person to return to custody after daylight hours on designated conditions;

(4) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security, a sum not to exceed 10 per cent of the amount of the bond; the deposit to be returned upon the performance of the condition of release;

(5) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash; or

(6) impose any other condition considered reasonably necessary to assure the defendant's appearance as required.' (emphasis added)

Since both sections, AS 12.30.010 and AS 12.30.020, were part of the Alaska Bail Reform Act Section 12.30.020 must be taken to recognize and to implement the right to bail afforded by AS 12.30.010.

Subsection (a) of AS 12.30.020 requires a defendant to be released on his personal recognizance or upon the execution of an unsecured appearance bond 'unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required.' The 'unless' clause relates only to denial of personal recognizance or an unsecured appearance bond and not to the right of bail. Subsection (b) provides that in the event the judicial officer should determine that a personal recognizance release or an unsecured appearance bond would not reasonably assure the appearance of a defendant, the judicial officer could impose other requirements to assure the presence of the defendant. Section (b)(6) authorizes a judicial officer to impose any other reasonable conditions to assure the defendant's appearance. But this may not be interpreted so as to empower a judicial officer to absolutely deny the right to bail. Such a construction would not only be inconsistent with the basic purpose of the Bail Reform Act but would be unconstitutional under Article I, section 11 of the Alaska Constitution.

In 1967 the Alaska legislature amended AS 12.30.020 by Ch. 112, SLA 1967. The 'unless' clause of subsection (a) was amended to read 'unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required, or will pose a danger to other persons and the community.' Subsection (b)(6) was amended as follows:

'If a judicial officer determines under (a) of this section that the release of a person will not reasonably assure the appearance of the person, or will pose a danger to other persons and the community, the judicial officer may . . .

(6) Impose any other condition considered reasonably necessary to assure the defendant's appearance as required and the safety of other persons and the community.'

The State urges that these amendments permit the detention of defendants without bail when the judicial officer determines that the defendant 'will pose a danger to other persons and the community.' To support this argument the State refers to the Judiciary Committee Report on House Bill No. 166:

'This bill provides that a judge in determining the amount of bail to be posted for release of an individual accused but not yet tried may consider the amount necessary to guarantee his appearance for trial and also the safety of other persons and the community. The concept of the safety of other persons and the community is a new matter. This reason may be used to set higher bail or even to refuse bail.' 1967 Alaska H.R. Jour. 339.

The Committee's intent seemingly was to permit a judicial officer to consider 'danger to the community' as a factor in setting bail. The legislature could not, of course, infringe upon the constitutional right of bail.

Thus the amendment to subsection (a) of AS 12.30.020 operates to add another factor to be considered in determining whether an accused person is entitled to be released on personal recognizance or on an unsecured appearance bond. This amendment does not amount to a repeal of the right to bail found in AS 12.30.010. In like manner, the amendment to paragraph (b)(6) of AS 12.30.020 added another factor to consider in determining whether additional conditions should be imposed on a defendant. Neither provision may be read as empowering a judicial officer to deny bail. In reaching this construction, we consider it significant that the legislature did not undertake to amend AS 12.30.010 which we have noted remains as in the original Alaska Bail Reform Act and expressly provides for right to bail. Although the trial court may not deny bail to an accused, the trial judge can consider danger to the community as a factor in assessing the amount of bail or fixing the terms of a conditional release. [FN24] We hold therefore that the 1967 amendments, Ch. 112, SLA 1967, to the Bail Reform Act do not permit the detention of persons without bail. Moreover, a legislative enactment expressly permitting the detention of persons without right to bail would be unconstitutional unless a constitutional amendment were adopted.[FN25]

FN24. Other factors to take under consideration are enumerated in AS 12.30.020(c).'In determining the conditions of release under (b) of this section the judicial officer shall take into account(1) the nature and circumstances of the offense charged,(2) the weight of the evidence against the person,(3) the person's family ties,(4) the person's employment,(5) the person's financial resources,(6) the person's character and mental condition,(7) the length of the person's residence in the community,(8) the person's record of convictions,(9) the person's record of appearance at court proceedings,(10) the flight of the accused to avoid prosecution or his failure to appear at court proceedings.

FN25. Note, Preventive Detention, 79 Harv.L.Rev. 1489, 1500 (1966). 'In those states (which guarantee the right to bail in noncapital cases), denial of bail in a noncapital case for preventive purposes, no matter how great the dangers posed by release, would be permissible only by constitutional amendment.' (footnote omitted)

It follows that the trial court erred in refusing to grant the right to bail to appellant Richard Snyder afforded by Article I, section 11 of the Alaska Constitution any by the Alaska Bail Reform Act.

It is true unfortunately that crimes including those involving assaults, robbery and the theft of property are all too commonplace. Public safety has become a matter of the most serious concern to all law-abiding citizens. But alternatives other than preventive detention of an accused must be examined in the efforts to achieve reasonable and adequate public safety. [FN26]

FN26. Criminal Rule 45 requires a trial within four months from the 'date the defendant is arrested, initially arraigned, or from the date the charge (complaint, indictment, or information) is served upon the defendant, whichever is first.' This rule is intended to make effective the right of the accused to a speedy trial as well as bringing about a prompt disposition permitting incarceration of a dangerous offender hopefully for rehabilitation. In recognition of this policy, trial courts should grant continuances of criminal trial sparingly and only when necessary.

In the case of appellant Aloyisus Fabian, the trial judge offered to release the defendant to the custody of the Anchorage Native Program for Alcoholic and Drug Abuse. However, efforts to enroll Fabian in the program failed. He remained in jail because his counsel, for reasons unexplained, failed to reapply for bail. In this instance the trial judge afforded an opportunity for defendant to be released. Under these circumstances, the trial court did not deny Fabian his right to bail.

The case of Max Ray Martin presents different considerations. Article I, section 11, as we have said, guarantees the accused in a criminal prosecution the right to bail. However, a probation revocation hearing is not a criminal prosecution looking toward an adjudication of guilt or innocence.[FN27] Although this court in Hoffman v. State, 404 P.2d 644 (Alaska 1965), required the appointment of counsel to indigent probationers in a revocation hearing, that decision rested on a statutory interpretation of AS 12.55.110[FN28] consistent with the equal protection clauses of both the Federal and Alaska Constitutions. Hoffman does not hold that probation revocation hearings are to be equated to a criminal prosecution.[FN29]

FN27. Trumbly v. State, Opinion No. 957, 515 P.2d 707 (1973). Gagnon v. Scarpelli, 411 U.S. 778, 414, 93 S.Ct. 1756, 1759, 36 L.Ed.2d 656, 651-662 (1973) (Probation revocation, like parole revocation, is not a stage of a criminal prosecution, but does result in a loss of liberty.' (footnote omitted)). Cf., Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972).

FN28. AS 12.55.110 governs revocation of probation proceedings.

FN29. Efforts to broadly interpret Hoffman as eliminating the technical classifications between administrative and criminal proceedings for purposes of the double jeopardy clause, were rejected by this court in Alex v. State, 484 P.2d 677 (Alaska 1971). We rejected this argument by noting that Hoffman only involved an equal protection analysis, not the expansion of any substantive rights as claimed by the defendant.

We do not interpret Article I, section 11 of the Alaska Constitution to extend the right of bail to probation revocation proceedings. While the Alaska Constitution and statutes insure to the accused in all criminal prosecutions a right to bail, Martin was not the accused in a criminal prosecution at the time he requested bail from the trial court.[FN30]

FN30. Cf. In re Law, 10 Cal.3d 21, 109 Cal.Rptr. 573, 513 P.2d 621 (1973) (where the California Supreme Court denied a parolee's right to bail pending a hearing investigating alleged violations of parole).

Nor do we find that appellant was entitled to bail under the Alaska Bail Act. His reliance on AS 12.30.010 is misplaced, because the right to bail under this statute is guaranteed prior to conviction. When a defendant reaches the status of a probationer, he can no longer claim the right to bail protected by AS 12.30.010. Nor can he claim bail under the probation statutes,[FN31] since they fail to mention bail, and AS 12.30.040, which provides for release after trial is limited in application to convicted persons awaiting sentence or whose

appeal is pending.

FN31. AS 12.55.080 and AS 12.55.110.

While we hold that appellant Max Ray Martin was neither entitled to bail under the Alaska Constitution nor the Alaska Bail Act, we suggest bail should be withheld pending revocation proceedings only in unusual cases. Trial judges have wide latitude in imposing suitable conditions for prehearing release, other than the denial of bail. The denial of bail may constitute a needless disruption of the probation process negating the program's objectives of rehabilitation and eventual integration into society. Furthermore, the recent expansion in the area of probationer's rights by the United States Supreme Court in Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973) suggests the granting of bail. In Gagnon, the Court, inter alia, required as a matter of due process that a probationer be afforded a prompt preliminary hearing to determine whether probable cause exists to believe a violation of probation has occurred. Following this preliminary hearing, a final hearing must be allowed prior to an ultimate determination concerning the revocation of probation.

The Gagnon due process requirements were adopted by this court in Trumbly v. State, Opinion No. 957, 515 P.2d 707 (1973). Both Trumbly and Gagnon evinced a concern for considering the rehabilitative treatment afforded by probation as a factor in determining whether probationary status should be revoked. As this court stated in Trumbly,

'The requirement that probation revocation follow after a showing of 'good cause' requires the trial judge to find that continuation of probationary status would be at odds with the need to protect society and society's interest in the probationer's rehabilitation. Revocation should follow violation of a condition of probation when that violation indicates that the corrective aims of probation cannot be achieved.' Trumbly v. State, Opinion No. 957, 515 P.2d 707 (1973) (footnotes omitted).

In Martin's case, there has been no showing that there was abuse of the trial judge's discretion in refusing to allow Martin's release on bail pending a revocation hearing.[FN32]

FN32. We note that federal probationers are by court rule provided with an opportunity for release pending a hearing. Federal Rule of Criminal Procedure 32(f).

We conclude that appellant Richard Snyder was entitled to bail. The appeals of Aloyisus Stephan Fabian and Max Ray Martin are dismissed.

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SENATE BILL 252
Sectional Analysis

Section 1 of the bill moves the crime of failure to appear at a court appearance from Title 12 to Title 11. The proposed law is similar to current law with one exception -- it provides that if a person knows that he or she is required to appear, the prosecution does not have to prove an additional culpable mental state regarding the conduct of not appearing. It also provides an affirmative defense that the defendant, due to unforeseeable circumstances outside his or her control, was prevented from appearing at the hearing, and that the defendant notified the court orally and in writing immediately upon being able to make the contact.

The penalties are the same as under current law, except that the bill adopts a violation for failure to appear in connection with a violation.

Section 2 includes a conforming amendment to AS 12.25.030(b). It changes the standard for a law enforcement officer to make an arrest without a warrant in certain cases from "reasonable cause" to "probable cause". The standard in AS 12.25.030(b) would then be the same as in AS 12.25.030(a). Reasonable cause and probable cause are similar.

Section 2 also allows a law enforcement officer to arrest a person for violation of conditions of release if the officer has probable cause to believe the person has violated conditions in connection with release under AS 12.30. Law enforcement supports this change because it avoids, for example, an officer having to get an arrest warrant for a person if the person is ordered not to drink alcohol and is found intoxicated.

Section 3 adopts a new section, AS 12.20.006, that describes release procedures for a person charged with a crime. Although the procedures are similar to those provided under various sections of existing law, there are a few differences, which include:

- Before the third and subsequent bail hearings, current law and the bill require that certain prerequisites are met – such as seven days elapsing between bail hearings unless certain other factors are present. Current law requires 48 hours notice to the prosecuting authority, and the bill requires the same notice, but it also requires 48 hours notice to any surety involved so that the surety has an opportunity to attend the hearing.

- The bill specifically requires the person being released to sign a release agreement that describes the terms of the release and includes the person's promise to abide by the terms.

- The bill eliminates a provision in current law that allows a judicial officer to change, add to, or eliminate conditions of release at any time. The law already provides a process for asking the court to change conditions, and allowing a change at any time,

without following the required procedures, has the potential of being unfair to the defendant, the prosecuting authority, or to the victim.

Section 4 revises the law addressing release before trial of a person charged with a crime. Proposed AS 12.30.011 adopts standards and conditions for release in general, and AS 12.30.016 adopts standards and conditions for release for specific crimes.

Proposed **AS 12.30.011** first adopts conditions that must he imposed on all persons released pending trial. They are very general – including a requirement that the person obey all laws, appear in court when ordered, and keep in contact with the person's attorney.

- Subsection (b) provides conditions that a court may impose on a person charged with a crime if, in the court's discretion the condition will reasonably assure the person's appearance and the safety of the victim, other persons, and the community. Many of these conditions are in current law. Others are included in federal bail law. Several were suggested by a retired judge who is doing contract work for the court system. There is also a general authorization for additional reasonable conditions.

- Subsection (c) describes the various circumstances that the court should consider in deciding what conditions are reasonable to impose on the person. These are similar to current law.

- Subsection (d) provides the evidentiary burdens that a court must apply in making a decision about the release of a person. Generally, the burden of proof is on the prosecuting authority to establish that particular conditions are reasonable to assure the defendant's appearance and the safety of the victim and others. However, the bill proposes a rebuttable presumption, that may be overcome by a preponderance of evidence, that no condition or combination of conditions will assure the defendant's appearance or the safety of the victim or others if (1) the defendant is charged with an unclassified felony, a class A felony, or a sexual felony; (2) the person is charged with a felony, has a previous conviction for felony, and less that five years have elapsed since his or her unconditional release for the prior conviction; (3) the offense was committed while the defendant was on release for another offense; or (4) the charge is for a crime involving domestic violence, and the defendant has been convicted within the previous five years of a crime involving domestic violence.

Proposed **AS 12.30.016** adopts conditions that may be imposed in particular cases. These conditions are in addition to the general conditions authorized under AS 12.30.011(a) and (b). Most of these additional conditions are found in current law.

- Subsection (b) provides additional conditions that may be imposed on persons charged with Title 04 violations such as selling alcohol without a license or bootlegging, and with drunk driving and refusal to submit to a breath test. These conditions include, for

example, a judicial officer ordering a person to submit to a breath test when requested to do so by a law enforcement officer.

- Subsection (c) provides additional conditions that may be imposed on a person charged with violation of the drug laws, and include, for example, prohibiting the person from entering or remaining in a place where a controlled substance is being used, manufactured, grown, or distributed.

- Subsection (d) is a provision that was enacted in 2006, that adopts a mandatory requirement of $250,000 cash bond for a person charged with manufacturing methamphetamine, unless the defendant proves to the court that his or her role was only as an aider or abettor and that the defendant did not stand to gain financially from the offense.

- Subsection (e) adopts specific conditions for a person charged with stalking that is not a crime involving domestic violence. The conditions are similar to those in current law.

- Subsection (f) adopts specific conditions that a court may impose on a person charged with a sex offense. The conditions are similar to current law, except that it adds a condition that the court may order the defendant to have no contact with person under 18 years of age, except for contact made during the normal course of business in a public place. It requires the court, as does current law, to assure that the victim has been notified of the hearing or reasonable efforts to do so have been made, and to consider the victim's comments in making a release decision.

Section 5 adopts standards for the appointment of a third-party custodian for a person released before trial. It requires a court to obtain information about the proposed custodian including the person's ties to the community and his or her relationship with the defendant. It also sets minimum standards for custodians such as requiring the person to be physically able to perform the duties of custodian, and requires the person to agree to report immediately if the defendant has violated conditions. The bill also prohibits a person from acting as third-party custodian under certain circumstances, such as if the person may be called as a witness in the case, or the person has recent charges or a conviction for violating the law.

Section 6 amends the statute addressing the general release conditions of a person charged with a crime involving domestic violence by conforming it to the language used in the newly adopted sections of the bill. It does not include a substantive change.

Section 7 amends the law that prohibits a court from allowing a person charged with a crime involving domestic violence from returning to the residence of the victim or to the residence of a person who has a protective order directed at the defendant. This prohibition was found to violate equal protection of the law in *Williams v. State*, 151 P.3d 460 (Alaska App. 2006). This se0ction is in response to *Williams*, and would overturn it to the extent that it would prohibit a person from returning to the residence of the victim unless certain conditions were

met. These include requiring that 20 days have elapsed since the arrest, the victim or petitioner consents to the return, the defendant does not have a prior conviction for a domestic violence crime against a person, and the defendant establish by clear and convincing evidence that the return to the residence does not pose a danger to the victim or petitioner.

Section 8 rewrites the provision addressing appeal from conditions of release. Current law and the bill provide specific procedures for requesting the court to change conditions of release. The bill does not reenact the provision in current law that allows the court from hearing at any time a motion to amend the release order. Rather, the bill requires the person to follow the procedures adopted for asking the court to amend conditions.

The appeal procedure from the trial court's bail decision is similar in the bill to current law. The standard for review is the same as current law – the appellate court shall affirm the lower court unless it finds that the lower court abused its discretion. The bill allows the appellate court to modify the order, remand the case for further proceedings, or to direct the entry of an appropriate release order. This is also similar to current law.

Section 9 adds a new section addressing the temporary release of a person for an emergency such as the death of a family member. It is similar to current law under AS 12.30.010(a).

Section 10 addresses the release of persons who have been found guilty but not yet sentenced or whose conviction is being appealed. It allows release under the general provisions of AS 12.30, but it requires the person seeking release to establish by clear and convincing evidence that the release sought will reasonably assure the person's appearance and the safety of the victim, other persons, and the community.

Under current law certain defendants may not be released after being found guilty, including a person convicted of an unclassified or class A felony. The current statute also prohibits release of persons convicted of class B or C felonies if they have a previous conviction for certain serious felonies. This later category was found by the court of appeals to violate the constitutional guarantee of equal protection of law. *Bourdon v. State*, 28 P. 3d 319 (Alaska App. 2001). The bill would prohibit release of a person found guilty of all sexual felonies, and a person found guilty of a class B or C felony who has been convicted of a felony in the prior 10 years. It avoids the problem in *Bourdon* by applying the prohibition to all persons convicted of class B or C felonies who have a prior conviction of a felony in the previous 10 years.

Section 11 makes clarifying changes to the law for the retention or release of a material witness who is not expected to respond to a subpoena to appear. The bill does not change the substance of current law to a great degree. It does, however, specify that the court may order a material witness who is not expected to respond to a subpoena to be arrested and released under the bail law. As does current law, it allows a material witness to be detained for enough time to take a deposition and then released, unless justice requires the person be personally present at trial.

Section 12 specifies that a person who is in custody in connection with a petition to revoke probation does not have a right to release under AS 12.30. This is the same as current law. *Burt v. State*, 823 P.2d 14 (Alaska App. 1991). However, a probationer may request release under AS 12.30. The bill provides that the probationer must establish by clear and convincing evidence that conditions on his or her release will reasonably assure the appearance of the probationer and the safety of the victim, other persons, and the community.

Section 13 is a conforming amendment to current law.

Section 14 provides that for purposes of the bail statutes, a conviction occurs at the time a person is found guilty, either by verdict of by plea.

Section 15 adds definitions to in the bill.

Sections 16 – 18 are conforming amendments.

Section 19 provides that service of domestic violence protective orders on respondents need not by made by law enforcement officers if the respondent has already been served with the protective order on the record in court.

Sections 20 and 21 amend Rule 5, Alaska Rules of Criminal Procedure. Current law requires a person who has been arrested to be brought before a judicial officer within 24 hours of being arrested. The bill changes this from 24 hours to 48 hours. Although the preferred procedure is to have persons arrested be brought as soon as possible before a judicial officer, the change in the deadline will give prosecutors and the police more time to gather information to provide the court in making a release decision, and allow more time to locate and inform the victim of the right to be present at release procedures.

Sections 22 and 23 are conforming amendments.

Section 24 amends Rule 41(c), Alaska Rules of Criminal Procedure, by providing that a court may not change or add to a bond requirement without the agreement of the surety.

Section 25 is a conforming amendment.

Section 26 amends Rule 603(b), Alaska Rules of Appellate Procedure, to clarify that release of a person whose conviction is being appealed may be allowed as provided by the provisions of AS 12.30.

Sections 27 – 29 include the repealers, the applicability sections, and the effective date provision.

RELEASE BEFORE TRIAL AND AFTER CONVICTION
Sectional Analysis of Proposed Legislation

- **Section 1** of the bill moves the crime of failure to appear at a court appearance from Title 12 to Title 11. The proposed law is similar to current law with one exception -- it provides that if a person knows that he or she is required to appear, the prosecution does not have to prove an additional culpable mental state regarding the conduct of not appearing. It also provides an affirmative defense that the defendant, due to unforeseeable circumstances outside his or her control, was prevented from appearing at the hearing, and that the defendant notified the court orally and in writing immediately upon being able to make the contact.

  The penalties are the same as under current law, except that the bill adopts a violation for failure to appear in connection with a violation.

- **Section 2** includes a conforming amendment to AS 12.25.030(b). It also changes the standard for a law enforcement officer to make an arrest without a warrant in certain cases from "reasonable cause" to "probable cause". The standard in AS 12.25.030(b) would then be the same as in subsection AS 12.25.030(a). Reasonable cause and probable cause are similar.

  Section 2 also allows a law enforcement officer to arrest a person for violation of conditions of release if the officer has probable cause to believe the person has violated conditions in connection with release under AS 12.30. Law enforcement supports this change because it avoids, for example, an officer having to get an arrest warrant for a person if the person's custodian reports that the person has violated his or her release conditions.

- **Section 3** adopts a new section that describes release procedures for a person charged with a crime. Although the procedures are similar to those provided under various sections of existing law, there are a few differences, which include:

  - Before the third and subsequent bail hearings, current law and the bill require that certain prerequisites are met – such as seven days elapsing between bail hearings unless certain other factors are present. Current law requires 48 hours notice to the prosecuting authority, and the bill requires the same notice, but it also requires 48 hours notice to any surety involved so that the surety has an opportunity to attend the hearing.

  - The bill specifically requires the person being released to sign a release agreement that describes the terms of the release and includes the person's promise to abide by the terms.

- The bill eliminates a provision in current law that allows a judicial officer to change, add to, or eliminate conditions of release at any time. The law already provides a process for asking the court to change conditions, and allowing a change at any time, without following the required procedures, has the potential of being unfair to the defendant, the prosecuting authority, or to the victim.

- **Section 4** rewrites the law addressing release before trial of a person charged with a crime. Proposed AS 12.30.011 adopts standards and conditions for release in general, and AS 12.30.016 adopts standards and conditions for release for specific crimes.

  - Proposed **AS 12.30.011** first adopts conditions that must he imposed on all persons released pending trial. They are very general – including a requirement that the person obey all laws, appear in court when ordered, and keep in contact with the person's attorney.

    1. Subsection (b) provides conditions that a court may impose on a person charged with a crime if, in the court's discretion the condition will reasonably assure the person's appearance and the safety of the victim, other persons, and the community. Many of these conditions are in current law. Others are included in federal bail law. Several were suggested by a retired judge who is doing contract work for the court system. There is also a general authorization for additional reasonable conditions.

    2. Subsection (c) describes the various circumstances that the court should consider in deciding what conditions are reasonable to impose on the person. These are similar to current law.

    3. Subsection (d) provides the evidentiary burdens that a court must apply in making a decision about the release of a person. Generally, the burden of proof is on the prosecuting authority to establish that particular conditions are reasonable to assure the defendant's appearance and the safety of the victim and others. However, the bill proposes a rebuttable presumption, that may be overcome by a preponderance of evidence, that no condition or combination of conditions will assure the defendant's appearance or the safety of the victim or others if (1) the defendant is charged with an unclassified felony, a class A felony, or a sexual felony; (2) the person is charged with a felony, has a previous conviction for felony, and less that five years have elapsed since his or her unconditional release for

the prior conviction; (3) the offense was committed while the defendant was on release for another offense; or (4) the charge is for a crime involving domestic violence, and the defendant has been convicted within the previous five years of a crime involving domestic violence.

- Proposed **AS 12.30.016** adopts conditions that may be imposed in particular cases. These conditions are in addition to the general conditions authorized under AS 12.30.011(a) and (b). Most of these additional conditions are found in current law.

  1. Subsection (b) provides additional conditions that may be imposed on persons charged with Title 04 violations such as selling alcohol without a license or bootlegging, and with drunk driving and refusal to submit to a breath test. These conditions include, for example, a judicial officer ordering a person to submit to a breath test when requested to do so by a law enforcement officer.

  2. Subsection (c) provides additional conditions that may be imposed on a person charged with violation of the drug laws, and include, for example, prohibiting the person from entering or remaining in a place where a controlled substance is being used, manufactured, grown, or distributed.

  3. Subsection (d) is a provision that was enacted in 2006, that adopts a mandatory requirement of $250,000 cash bond for a person charged with manufacturing methamphetamine, unless the defendant proves to the court that his or her role was only as an aider or abettor and that the defendant did not stand to gain financially from the offense.

  4. Subsection (e) adopts specific conditions for a person charged with stalking that is not a crime involving domestic violence. The conditions are similar to those in current law.

  5. Subsection (f) adopts specific conditions that a court may impose on a person charged with a sex offense. The conditions are similar to current law, except that it adds a condition that the court may order the defendant to have no contact with person under 18 years of age, except for contact made during the normal course of business in a public place. It requires the court, as does current law, to assure that the victims has been notified of the hearing or reasonable efforts to do so have been

made, and to consider the victim's comments in making a release decision.

- **Section 5** adopts standards for the appointment of a third-party custodian for a person released before trial. It requires a court to obtain information about the proposed custodian including the person's ties to the community and his or her relationship with the defendant. It also sets minimum standards for custodians such as requiring the person to be physically able to perform the duties of custodian, and requires the person to agree to report immediately if the defendant has violated conditions. The bill also prohibits a person from acting as third-party custodian under certain circumstances, such as if the person may be called as a witness in the case, or the person has recent charges or a conviction for violating the law.

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- **Section 7** amends the law that prohibits a court from allowing a person charged with a crime involving domestic violence from returning to the residence of the victim or to the residence of a person who has a protective order directed at the defendant. This prohibition was found to violate equal protection of the law in *Williams v. State*, 151 P.3d 460 (Alaska App. 2006). This section is in response to *Williams*, and would overturn it to the extent that it would prohibit a person from returning to the residence of the victim unless certain conditions were met. These include requiring that 20 days have elapsed since the arrest, the victim or petitioner consents to the return, the defendant does not have a prior conviction for a domestic violence crime against a person, and the defendant establish by clear and convincing evidence that the return to the residence does not pose a danger to the victim or petitioner.

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- **Section 12** specifies that a person who is in custody in connection with a petition to revoke probation does not have a right to release under AS 12.30. This is the same as current law. *Burt v. State*, 823 P.2d 14 (Alaska App. 1991). However, a probationer may request release under AS 12.30. The bill provides that the probationer must establish by clear and convincing evidence that conditions on his or her release will reasonably assure the appearance of the probationer and the safety of the victim, other persons, and the community.

- **Section 13** is a conforming amendment to current law.

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- **Sections 27 – 29** include the repealers, the applicability sections, and the effective date provision.

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

SEAN PARNELL, GOVERNOR

Mailing: PO Box 110300
Juneau, AK 99811-0300
Physical: 123 4th Street, Ste 717
Juneau, AK 99801
Phone: (907) 465-3428
Fax: (907) 465-4043

February 3, 2010

Senator Hollis French
Chair, Senate Judiciary Committee
Alaska State Capitol, Room 417
Juneau, Alaska 99801

Re: Senate Bill 252 – Bail Reform

Dear Senator French:

I am writing to respectfully request that you schedule Senate Bill 252 for a hearing in the Senate Judiciary Committee at your earliest convenience. SB 252 is one of several bills that the Governor has introduced to confront and help reduce the alarming and discouraging rate of sex offenses and crimes involving domestic violence in our state. This bill specifically relates to bail including bail in sex and domestic violence offenses.

This bill makes several important changes in Alaska's law relating to bail. In 1966 the Alaska Legislature enacted the Alaska Bail Act modeled after SB 1357, 89 Congress First Session. There have been only piecemeal revisions to this nearly 50 year old law. In 1984, the Federal government revised their bail statutes. This bill requires a person charged with a serious sex offense to prove that release conditions before trial will protect the victim and the public. It adopts standards for persons who may be appointed as third party custodians for the person released on bail. The bail prohibits a person found guilty of a serious sex offense from being released before sentencing or during an appeal of a conviction. It protects victims of domestic violence by setting standards that the court must find before allowing a perpetrator of domestic violence to return to the victims' residence. Additionally, it allows more time between a defendant's arrest and first appearance in court so that the police can investigate more fully, so that the prosecutor can make informed charging decision, present of better information and bail arguments in court and more time to contact the victim so he or she can appear at the bail hearing.

A sectional analysis is attached that describes each provision of the bill.

Thank you for your consideration of this request.

Sincerely,

Daniel S. Sullivan
Attorney General

DSS:ADC: sf

2187

SB 257

Senator Dennis Egan

Senate Bill 257

Youth Court Funding

Youth Courts are one of Alaska's most effective crime prevention programs. For more than 20 years, youth courts have boasted an eight percent recidivism rate – dramatically lower than the traditional juvenile justice system. Youth courts save our state money, and deliver on the constitution's promise of a trial by one's peers. SB 257 provides a stable source of state investment.

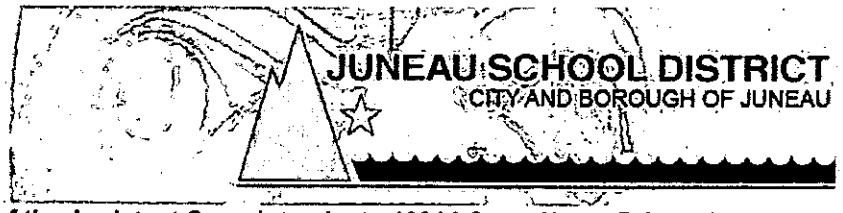
Alaska has one of the strongest Youth Court statutes in the United States. It allows nonprofit and municipal youth courts to handle cases in which youths are accused of misdemeanors, violations, and alcohol crimes. A minor accused of breaking the law is tried, represented, and adjudicated by the minor's peers, with assistance and oversight from volunteer attorneys.

A comprehensive mix of state support, municipal grants, private sector funds, volunteers and federal money keep Alaska's youth courts functioning. SB 257 designates a source for state dollars to go to youth courts: criminal fines. Today, criminal fines are spent on the general administration of state government. SB 257 would require government to account separately for these fines, and allow the legislature to appropriate up to 25 percent of the funds to support youth courts.

Alaska's 12 youth courts operate in communities from Ketchikan to Nome. Alaska's youth courts are tailored to their local communities. Some only sentence youths who have admitted guilt. Others take cases from shortly after arrest through jury trials. But all Alaska Youth Courts relieve a tremendous burden from the traditional juvenile justice system. By providing significant attention to even the smallest infractions, young offenders are held accountable in a meaningful way. By diverting minor offenses, youth courts free highly trained youth corrections staff at the Department of Health & Social Services to focus valuable time and energy on turning around the hard cases.

Youth courts provide a valuable service to Alaskan and are a wise investment. Using criminal fines to pay for crime prevention makes sense.

ALASKA SENATE
STATE CAPITOL • JUNEAU, ALASKA 99801-1182 • (907) 465-4947 • FAX (907) 465-2108



Office of the Assistant Superintendent • 10014 Crazy Horse Drive • Juneau, Alaska 99801 • (907) 523-1704

To whom it may concern:

I am writing in support of legislation that would provide sustainable funding for youth court programs in Juneau and other communities in Alaska. For over a decade Juneau Youth Court has provided a vital and important service to the City and Borough of Juneau.

Juneau Youth Court is a diversion program that removes young people who are first time offenders from the traditional juvenile justice system and handles the case in a court of peers. The program works with families to ensure that teens are held accountable for their actions and that consequences are constructive and tailored to the individual youth thereby benefiting both the young person and the community at large. Last year Juneau Youth Court ordered over 600 hours of community work service that were completed at Zach Gordon Youth Center, the American Red Cross, Meals on Wheels, the Glory Hole, the Salvation Army, and at schools throughout Juneau School District.

On average Juneau Youth Court serves 50 youth each year handling referrals from both District Court and Juvenile Justice Probation Officers. This frees up the court and probation officers to handle more serious offenders and helps to reduce their large caseloads. Youth Courts have the additional advantage of educating the youth who volunteer for the program. Youth Court advocates reap the benefits of learning about the legal system, performing meaningful community service, and gaining the opportunity to help their peers.

Juneau Youth Court operates on a very small budget of $35,000 per year with one part time paid staff person, two dozen volunteer student advocates, a community advisory board including representatives from the Police Department, the Division of Juvenile Justice, the legal community, and community partners. The program offers an important service to the community at a very low cost.

Juneau Youth Court is just one example of a successful diversion program known as youth court. Around the state Youth Courts are doing important work for Alaska by addressing juvenile crime in its earliest stage. I strongly urge you to support legislation that would provide sustainable funding to support these community-based programs.

Sincerely,

Laury Scandling

JUNEAU
YOUTH COURT
Restorative Justice

Juneau Douglas High School
10014 Crazy Horse Drive
Juneau, AK 99801

Phone: 523-1594
Fax: 523-1616

juneauyouthcourt@jsd.k12.ak.us

February 12, 2010

The Juneau Youth Court Community Advisory Board supports House Bill 331 and Senate Bill 257, *"an Act relating to funding for youth courts; and relating to accounting for criminal fines"*. This legislation would appropriate 25 percent of the court fines imposed under AS 12.55.035 to established and operating youth courts. Federal funding will not be available after this year and the future of the Alaska Youth courts depend upon state and local ownership.

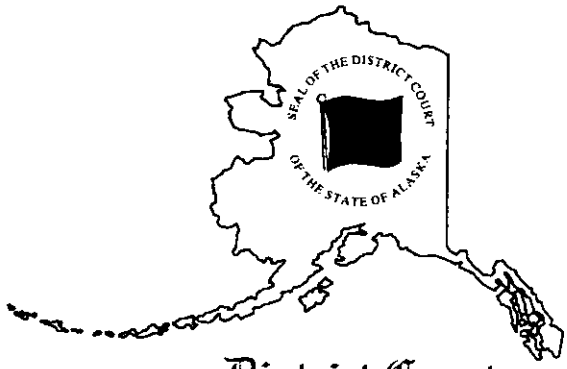
A recent study shows Alaska Youth Courts to be among the most effective in the nation. According to the Urban Institute's Evaluation of Teen Courts Project, which was based on four teen court programs studied in four different states (Alaska, Maryland, Arizona, and Missouri), the six-month recidivism figures among the programs ranged from 6 percent to 9 percent. Alaska's recidivism rate was the lowest of these four states, and compared to the recidivism rate of 18 percent for the regular juvenile justice system, shows that youth who go through youth courts are significantly less inclined to re-offend within the following year.

The primary function of youth court programs is to determine a fair and restorative sentence for young offenders. Youth courts are programs in which youth sentence their peers for minor delinquent and status offenses and other problem behaviors. According to the National Youth Court Database, in 1994 there were only 78 youth court programs in operation; as of October, 2006, there were over 1127 youth court programs in operation in 49 states and the District of Columbia.

The Alaska Youth Courts is a vital form of community justice and reweaves the fabric of community by forging a partnership between local governmental entities, the private sector, and community groups to facilitate the performance by private citizens of the functions that were once performed by the extended family, neighborhood, and school.

Sincerely,

Cindy L. Cashen
President
Juneau Youth Court Community Advisory Board



District Court

State of Alaska

FIRST JUDICIAL DISTRICT

KEITH B. LEVY
Judge

P.O. BOX 114100
JUNEAU, ALASKA 99811-4100

(907) 463-4730
FAX (907) 463-3788

Juneau Youth Court/JDHS
10014 Crazy Horse Drive
Juneau, AK 99801
Attn: Beth Leban-Coordinator

Tuesday, January 26, 2010

Dear Beth:

I am writing to express my appreciation for the work done by the Juneau Youth Court. The Youth Court is an integral sentencing option for students under the age of 18 who are charged with consuming or possessing alcohol for the first time.

As you know, students who choose the Youth Court option are given the opportunity to have their District Court case dismissed if they successfully complete the Youth Court requirements. For some, this brief involvement in the criminal justice system is a turning point. Those who choose Youth Court and succeed are far less likely to return to District Court on other criminal charges. The students benefit because they end up with no conviction on their record. And the community benefits because the Youth Court graduates are contributing to the community rather than causing harm to themselves and others.

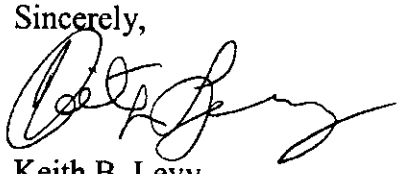
The Youth Court is the only diversion program available in District Court to enable individuals to have their cases dismissed without resulting in a criminal record. The trust the program has earned from both the District Court and the prosecution is a testament to the value and integrity of the program.

I appreciate that you or another representative of the Youth Court always attends the arraignment hearings for minor consuming. The information you provide to the students about Youth Court is invaluable and helps them understand their options in the justice system.

Finally, the Youth Court program provides an opportunity for students to be judged by their peers. I believe this is valuable because the students in the program have far more information about the defendants than is provided to me in formal sentencing proceedings. The Youth Court is able to impose consequences that are more meaningful than the limited options I have when sentencing.

Thanks again for the important service the Youth Court provides to the community.

Sincerely,



Keith B. Levy

Mary P. Treiber
MAGISTRATE

Alaska Court System

415 Main Street
Ketchikan, AK 99901
(907) 225-3195; FAX (907) 225-7849

February 5, 2010

Margaret McCloy
Executive Director
Ketchikan Youth Court
2417 Tongass Avenue, Suite 215
Ketchikan, AK 99901

Dear Ms. McCloy:

As the Magistrate for the Ketchikan Trial Courts, I am the judicial officer who most frequently deals with school age teenagers charged by the State of Alaska and the City of Ketchikan with violations of laws or ordinances prohibiting possession or consumption of alcohol by minors, establishing curfews, and prohibiting possession or use of tobacco products by minors. The existence of and the programs offered by the Ketchikan Youth Court provide me with a meaningful sentencing alternative in dealing with these cases.

The KYC process teaches teens referred by the court to KYC about the court process itself, and provides a group of same-age and same-interests teens for these youthful defendants to work with. The resolution of cases through KYC requires engagement of both the defendant and that teen's parents, ultimately strengthening the family abilities to deal with problems a defendant is having as expressed through these quasi-criminal charges. The Court System sees fewer recidivists among those teens who are referred to and who successfully complete the KYC program.

KYC has added the Prime for Life alcohol information classes, and has agreed to make the class available to teens other than those actively participating in the full KYC program. This is a good program, and adds significantly to the resources available within Ketchikan.

I fully support Ketchikan Youth Court.

Sincerely,

Mary P. Treiber
Magistrate

SB 260

26-LS1359\R.1
Kane
3/2/10

AMENDMENT

OFFERED IN THE SENATE BY SENATOR FRENCH

TO: SB 260

Page 1, line 9, following "**cooperative**":

Insert "**, except that electronic transmission may not be the only allowed option for voting**"

Page 2, line 18, following "**cooperative**":

Insert "**, except that electronic transmission may not be the only allowed option for voting**"

Page 3, line 3, following "**cooperative**":

Insert "**, except that electronic transmission may not be the only allowed option for voting**"

2196

Homer Electric Association, Inc.

Corporate Office

Central Peninsula Service Center

February 25, 2010

Senator Linda Menard
Alaska State Legislature
State Capitol Room 9
Juneau, Alaska 99801

RE: Support for Senate Bill 260 – Permitting Electronic Voting for Cooperatives

Honorable Senator Menard:

Homer Electric Association, Inc. (HEA) would like to join several other cooperatives in support of SB 260. The ability for cooperatives to use the Internet to improve member participation is a worthwhile goal.

HEA appreciates that the language in SB 260 is not mandatory, but rather provides the option to institute electronic voting should our members decide to move in that direction. Member participation is crucial to the success of our cooperative and it is possible that allowing electronic voting will improve the ability of our members to cast their vote during elections.

I urge support of this bill and its passage from your committee at the earliest time.

If you have any questions, please feel free to contact me at any time.

Sincerely,

Bradley P. Janorschke
General Manager

Alaska State Legislature

Senator Linda Menard, Chair
State Capitol, Room 9
Juneau, Alaska 99801
Phone: (907) 465-6600
Fax: (907) 465-3805

Committee Members:
Senator Albert Kookesh
Senator Hollis French
Senator Joe Paskvan
Senator Kevin Meyer

Senate State Affairs Committee

SPONSOR STATEMENT: Senate Bill 260

Senate Bill 260 puts in statute the ability for telephone or electric cooperatives to allow members to vote by electronic transmission as specified by the coop's by-laws.

Currently, coop members may only vote in person or via the postal service. This method, however, is outdated and could be having a negative impact on member participation in elections and other important matters.

By allowing telephone and electric coops to permit voting via electronic transmission approved in its by-laws, the Legislature will make it so common 21st century practices may be applied to important public involvement matters.

There is a zero fiscal note with this bill, and coops in every corner of Alaska will be enthused the Legislature has had the foresight to pass legislation important to their public process. This bill does not make electronic transmission voting mandatory, and cooperatives choose whether they want to partake or not.

Already, however, Matanuska Telephone Association (MTA) members have voted to adopt a new bylaw allowing electronic transmission voting. All MTA, and other coops, need is for the Legislature amends the statute to allow these coops to do so.

Please help me in facilitating the quick passage of SB 260.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 16, 2010

SUBJECT: Sectional summary of SB 260 (Work Order No. 26-LS1359\R)

TO: Senator Linda Menard
Chair of the Senate State Affairs Committee
Attn: Michael Rovito

FROM: Brian J. Kane BJK
Legislative Counsel

You have requested a sectional summary of SB 260, a bill relating to electronic voting procedures for electric and telephone cooperatives.

Please note that a sectional summary of a bill is not an authoritative interpretation of a bill. The bill itself is the best statement of its contents.

Section 1 of the bill allows for members of electric or telephone cooperatives to vote on matters by electronic transmission if the bylaws so provide.

Section 2 of the bill adds an electronic transmission option for determining a record date for notice to members of an electric or telephone cooperative.

Section 3 of the bill adds electronic transmission to the prohibited means of voting for a member or district delegate at a meeting and allows for voting for the district directors by electronic transmission.

Section 4 of the bill allows for electronic voting as an option for voting on an amendment to the articles of incorporation for an electric or telephone cooperative.

Section 5 of the bill provides for an immediate effective date.

BJK:plm
10-074.plm

CHUGACH
POWERING ALASKA'S FUTURE

February 15, 2010

Senator Linda Menard, Chair
Senate State Affairs Committee
State Capitol, Room 9
Juneau, Alaska 99801

Dear Senator Menard:

I am writing to express Chugach Electric Association's support for SB 260. Chugach is very much in favor of AS 10.25 being changed to allow cooperatives the option of electronic voting in their co-op elections.

As drafted, SB 260 makes electronic transmission of a ballot optional for those cooperatives whose members vote to change their bylaws to permit it. Chugach agrees making this voting method optional and member driven is the right approach. It is also important to note the bill allows each cooperative to determine voting procedures that are appropriate for their organization, thereby providing the flexibility for each co-op to decide how best to implement electronic voting. Once again, we think that is the right way to proceed. We understand that not all cooperatives might want to offer electronic voting, and those that do, might want to limit the means of transmission in order to ensure a secure and efficient election process.

Electronic voting is a choice that we believe many members will appreciate. Chugach members already voted several years ago to change the bylaws to permit electronic voting when state law is changed.

Chugach urges legislative support of SB 260.

Sincerely,

Bradley W. Evans
Chief Executive Officer

Sent Via Email: Sen.Linda.Menard@legis.state.ak.us
Sent Via Fax: 907.465.3805

February 12, 2010

Honorable Linda Menard
Alaska State Capitol, Room #9
Juneau, AK 99801

RE: SB 260 – Electric/Telephone Cooperatives Voting

Dear Senator Menard:

I'm writing to ask for your support on SB 260 "An Act relating to electronic voting procedures for electric and telephone cooperatives: and providing for an effective date".

As you know, the internet has changed forever the way we communicate and do business. Alaskans have more than embraced this new world and currently lead the country as the most Internet-connected state in America. Matanuska Telephone Association (MTA) is very proud of the work we have done, to bring the future to those we serve, by building a state-of-the-art telecommunications network capable of providing a high speed broadband connection to 98% of our member/owners.

Given this connectivity and the efficiency and effectiveness it can bring, MTA proactively presented to its membership in 2007 a proposed bylaw change to allow electronic voting and to send and receive documents electronically. In the balloting process, we explained that before implementation could take place, the Alaska Legislature would need to amend State cooperative law to allow for electronic voting. Our membership voted overwhelmingly to adopt the new bylaw allowing electronic voting, as determined by MTA's Board of Directors.

It goes without saying that electronic voting can be faster and more efficient for MTA and its members. It will also save considerable postage costs, make counting votes in our elections more efficient and help reduce wasted paper. But, more importantly, MTA believes this method of balloting promotes members ability to have every option available to them to participate in their cooperative elections.

On behalf of MTA's membership and our Board, I ask for your support of the Senate Bill 260 to allow electronic voting for our members.

Thank you for your consideration.

Sincerely,

Greg Berberich
Chief Executive Officer

Matanuska Telephone Association Inc.
1740 South Chugach Street
Palmer, Alaska 99645

907.745.3211
800.478.3211 (in Alaska)

www.mtasolutions.com

Local
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Alaska Power Association
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Anchorage, Alaska 99503-6650
907-561-6103
Fax: 907-561-5547
www.alaskapower.org

February 12, 2010

Senator Linda Menard, Chair
Senate State Affairs Committee
Alaska State Legislature
Capitol Building Room 9
Juneau, Alaska 99801

Re: Support for SB 260: Permitting Electronic Voting for Cooperatives

Dear Senator Menard:

Alaska Power Association supports Senate Bill 260, electronic voting for electric and telephone cooperatives. Alaska Power Association is the statewide trade association for the electric utilities that supply power to more than a half-million Alaskans in communities from Barrow to Unalaska and down the Inside Passage.

Member representation through the exercise of voting rights is a cornerstone of the principles of cooperatives. Voting is permitted under the cooperative statute in person and by U.S. mail if the cooperative's bylaws allow it. The Internet has made it possible for secure and private activity to be conducted via electronic means.

Alaska Power Association urges and supports amendments to the Alaska Statutes that would allow cooperative members to exercise their voting rights via the Internet if their bylaws so allow.

We urge support of this bill and its passage from your committee at the earliest time.

Sincerely,

Marilyn Leland
Executive Director

February 10, 2010

Mr. Michael Rovito
Office of Sen. Linda Menard
Capitol Building Room 9
Juneau, Alaska 99801

Re: Support for SB 260 – Permitting Electronic Voting for Cooperatives

Dear Mr. Rovito,

Please convey to Sen. Menard and the Senate State Affairs Committee Alaska Village Electric Cooperative's strongest support for SB 260.

The language in SB 260 is not mandatory, but rather permissive, allowing cooperatives that have been so directed by their members, through their bylaws, to institute electronic voting on matters that may come before the membership.

In this modern age, where communication via the postal service has become almost archaic, it is only logical that the communication channels that are most used by most individuals should be permitted for the conduct of commerce. Indeed, it is now impossible to deal with some state agencies, such as APOC, by any other method, since it is simply not allowed!

I urge support of this bill and its passage from your committee at the earliest time.

Yours sincerely,

Meera Kohler
President and CEO

4831 EAGLE STREET • ANCHORAGE, ALASKA • PHONE (907) 561-1818 • FAX 907 562 4086

GVEA
Golden Valley Electric Association
PO Box 71249, Fairbanks, AK 99707-1249 • (907) 452-1151 • www.gvea.com
Your Exclusive Energy Cooperative

February 16, 2010

The Honorable Linda Menard
Chair, Senate Affairs Committee
Alaska State Legislature
State Capitol, Room 9
Juneau, Alaska 99801

Subject: Support for SB 260 – permitting electronic voting for cooperatives

Honorable Menard:

Golden Valley Electric Association, Inc. supports Senate Bill 260. Golden Valley is in favor of AS 10.25 being changed to allow cooperatives the option of electronic voting in their co-op elections.

Currently, Golden Valley is in the process of conducting a membership bylaw election which will amend our bylaws to permit electronic voting. Allowing this option acknowledges that the Internet has become a universal platform for sharing information. It offers co-op members a choice in submitting their ballot. Electronic submission will also save on cooperative mailing & handling costs.

Using the Internet as a universal medium to conduct business does not preclude our traditional means of operating and communicating with our members, but offers an additional option. I look forward to your support of this bill and its passage from your committee. If you have any questions, please feel free to contact me.

Sincerely,

Brian Newton
President and CEO

MEA

February 17, 2010

Via Facsimile No. 465-3805 and First Class Mail

Senator Linda Menard
Chair, Senate State Affairs
State Capitol
Juneau AK 99801

Dear Senator Menard:

Thank you for the opportunity to provide a letter of support for **SB 260, Electric and Telephone Cooperatives' Voting.**

Matanuska Electric Association, Inc. (MEA) is the oldest and second largest electric utility cooperative in the state. MEA serves more than 54,000 customers in the Matanuska-Susitna Valley and Chugiak-Eagle River areas of Alaska.

MEA supports SB 260 which specifies in state law that telephone and electric co-ops would be permitted to provide for electronic voting in their elections. MEA is currently working on a bylaw amendment to allow electronic voting, as well as analyzing the internal processes and procedures required to implement an electronic voting system.

While this bill will not require co-ops to provide electronic voting procedures, it will permit co-ops to voluntarily implement such procedures. It is important for each co-op to individually determine if electronic elections are practical and beneficial to their membership.

If you would like more information from MEA, please contact me directly at (907) 761-9212.

Sincerely,

Evan J. Griffith
MEA General Manager

Senator Linda Menard

Session
State Capitol, Room 9
Juneau, Alaska 99801
Phone: (907) 465-6600
Fax: (907) 465-3805

Interim
600 E. Railroad Ave.
Wasilla, Alaska 99654
Phone: (907) 376-3370
Fax: (907) 376-3157

Alaska State Legislature

To: Senator Hollis French
Senate Judiciary Committee

From: Senator Linda Menard

Date: February 18, 2010

Re: Request for hearing of SB 260

Honorable Senator Hollis French

I respectfully request a hearing of Senate Bill No. 260 before the Senate Judiciary Committee.

Senate Bill 260 is an act relating to electronic voting procedures for electric and telephone cooperatives.

Thank you for your consideration.

Senator_Linda_Menard@legis.state.ak.us

SB

265

AMENDMENT

OFFERED IN THE SENATE

TO: SB 265

French

Page 3, line 27, through page 4, line 1:

Delete all material and insert:

"* **Sec. 6.** AS 08.48.341(10) is amended to read:

(10) "limited liability partnership" means **a limited liability partnership or a foreign limited liability partnership, as those terms are defined in AS 32.06.995** [AN ORGANIZATION REGISTERED UNDER AS 32.05.415 OR A FOREIGN LIMITED LIABILITY PARTNERSHIP; IN THIS PARAGRAPH, "FOREIGN LIMITED LIABILITY PARTNERSHIP" HAS THE MEANING GIVEN IN AS 32.05.990];"

AMENDMENT

OFFERED IN THE SENATE

TO: SB 265

Page 3, line 27, through page 4, line 1:

Delete all material and insert:

"* **Sec. 6.** AS 08.48.341(10) is amended to read:

(10) "limited liability partnership" means **a limited liability partnership or a foreign limited liability partnership, as those terms are defined in AS 32.06.995** [AN ORGANIZATION REGISTERED UNDER AS 32.05.415 OR A FOREIGN LIMITED LIABILITY PARTNERSHIP; IN THIS PARAGRAPH, "FOREIGN LIMITED LIABILITY PARTNERSHIP" HAS THE MEANING GIVEN IN AS 32.05.990];"

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MEMORANDUM March 1, 2010

SUBJECT: Sectional Summary of the 2010 Revisor's Bill
(CSSB 265(JUD); Work Order No. 26-LS1220\P)

TO: Senator Charlie Huggins
Chair of the Senate Rules Committee
Attn: Deborah Grundmann

FROM: Kathryn L. Kurtz KK
Assistant Revisor

This is a sectional summary of the 2010 revisor's bill. The bill is prepared under AS 01.05.036, which provides, in part, that the Legislative Affairs Agency, working in cooperation with the Revisor of Statutes

> . . . shall make recommendations to the legislative council concerning deficiencies, conflicts, or obsolete provisions in and the need for reorganization or revision of the statutes, and, at the direction of the legislative council, shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state. . . .

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Sections that delete, repeal, or update obsolete provisions: 12, 21, 22

Sections that correct errors or oversights: 1, 4, 5, 10, 11, 16, 17, 27

Sections that improve the form or substance of the law: 2, 3, 6 - 9, 13 - 15, 18 - 20, 23 - 26, 28

Bill section 1. Amends the definition of "public aircraft" in AS 02.15.260(15). This definition was originally adopted in sec. 1, ch. 123, SLA 1949, prior to statehood. In the session laws, the definition read:

> "Public Aircraft" means an aircraft used exclusively in the governmental service with reference to the United States, and the Territorial Government.

However, in the first revised statutes published in 1962, the definition, then AS 02.15.270(12), read as it does now:

> (15) "public aircraft" means an aircraft used exclusively in the governmental service of the United States and the state government;

The changes in the definition, necessitated by the transition to statehood, presumably occurred in the course of the bulk formal revision of the statutes, adopted as the law of Alaska in 1963. *See* AS 01.05.006.

In its original form, the definition referred to both the government of the United States and the territorial government. The "with reference to" phrasing would have included an aircraft used in the service of either governmental entity. The wording of the revised version retains the "and" used in the original, but does not include the "with reference to" phrasing, suggesting that a particular aircraft would need to be used in both federal and state governmental service to fall within the definition. This seems inconsistent with the original definition, which appeared to be disjunctive. Also, the disjunctive form is more consistent with the definition of "civil aircraft" in AS 02.15.260(8), which reads

> (8) "civil aircraft" means any aircraft other than a public aircraft;

Together, it seems clear that these definitions were intended to cover all aircraft. To include an aircraft used only in the service of the state government and not the federal government in the definition of "civil aircraft" would require a strained reading of that definition. For these reasons, the conjunction "and" is replaced with "or" in this section.

Bill section 2. Amends the spanned reference to the Alaska Public Records Act in AS 06.55.407(a) to include the new short title section (added in 2008).

Bill section 3. This section amends a reference to unsworn falsification in AS 06.60.580 to specify unsworn falsification *in the second degree.*

From the revision of the criminal code in 1978 until 2006, the crime of unsworn falsification, a class A misdemeanor, was codified at AS 11.56.210. In 2006, the legislature enacted AS 11.56.205, making unsworn falsification on a permanent fund dividend application a class C felony. Unsworn falsification in other contexts, still

punishable under AS 11.56.210, became unsworn falsification in the second degree. In the 2006 bill, most statutory references to "unsworn falsification" were amended to read "unsworn falsification in the second degree."

AS 06.60.580 was enacted in 2007 with a reference to "unsworn falsification" that did not specify degree. Because the section relates to claims from the originator surety fund, AS 11.56.205 has no relevance here. The amendment adds the words "in the second degree" to correct an oversight.

Bill section 4. This section deletes the phrase "the supervision required by AS 08.04.023" in AS 08.04.450. This phrase is a non sequitur because AS 08.04.023 does not contain any supervision requirement; it is extraneous and without legal effect. Inclusion of the phrase was a drafting error made by the legal services division.

Bill section 5. Changes "planning" to "planing" in AS 08.32.110(a). Although an Internet search reveals references to both "root planning" and "root planing," it appears that "root planing" is the more common usage for the therapy for periodontal disease performed by dental hygienists, and the word "planing" does some more accurately descriptive of the procedure, which involves smoothing the surface of a tooth's root. Also, the term "root planing" is used by the Alaska Department of Health and Social Services[1] and the American Dental Association.[2]

Bill section 6. Amends the definition of "limited liability partnership" in AS 08.48.341(10), the definition for statutes relating to the professional registration of architects, engineers, and land surveyors.

In 2000, the legislature passed an act adding limited liability companies and limited liability partnerships to the organizations that may practice architecture, engineering, and surveying. It included a new section defining the term "limited liability partnership" with reference to AS 32.05.415 and 32.05.990. That Act, ch. 38, SLA 2000, took effect August 9, 2000. During the same session, the legislature also passed an act repealing AS 32.05, the Uniform Partnership Act, and replacing it with a new version of that Act. The new provisions in that Act, ch. 115, SLA 2000, took effect January 1, 2001. The repeal of AS 32.05 took effect January 1, 2004.

---

[1] BJ Whistler, Alaska Oral Health Plan: 2008 - 2012, Section of Women's Children's and Family Health, Division of Public Health, Alaska Department of Health and Social Services, 2007, at http://www.hss.state.ak.us/dph/wcfh/Oralhealth/docs/Oral-Health-Plan.pdf, accessed January 8, 2010, at p. 13.

[2] "Treating Periodontal Disease. Scaling and Root Planing. Journal of the American Dental Association, vol. 134, February 2003 at 259, at http://www.ada.org/prof/resources/pubs/jada/patient/patient_23.pdf, accessed January 8, 2010.

Chapter 115, the Act enacting the new Uniform Partnership Act, did not make conforming changes to AS 08, as amended by chapter 38. As a result, since the repeal of AS 32.05 in 2004, the definition in AS 08.48.341(10) has pointed to two statutes that no longer exist. The changes made in this section direct the reader to the definitions in the new Uniform Partnership Act, which, under sec. 10, ch. 115, SLA 2000, has applied to all limited liability partnerships since January 1, 2004.

Bill section 7. Inserts the word "has" at the beginning of AS 08.65.140(d)(14) to improve the readability of the paragraph, and for consistency with the remainder of the subsection.

Bill section 8. Amends AS 12.55.035(c) by deleting "greater" (the comparative form of the adjective) and inserting "greatest" (the superlative form). This change is suggested because the comparative is generally used for comparing two things and the superlative is used for comparing three or more things. Since the rest of the sentence asks the reader to choose among three options, the superlative form is preferable here.

Bill section 9. Amends the spanned reference to the Alaska Public Records Act in AS 12.65.140(b) to include the new short title section (added in 2008).

Bill section 10. Amends AS 13.26.344(j) to add a missing part of the verb. This change makes the provision parallel to other subsections of AS 13.26.344.

Bill section 11. Changes a reference to a federal regulation in AS 13.27.030, part of the Uniform Adult Guardianship and Protective Proceedings Act enacted in 2008. The statute now refers to "protected health information as defined in 45 CFR 164.504." However, that section of the CFR does not include a definition of the term "protected health information." The term is defined for purposes of 45 CFR 164.504 and the rest of subchapter C, subtitle A, title 45 in 45 CFR 160.103.

Alaska's statute used the reference included in the model act. Through the attorney general's office, we have received confirmation from the National Conference of Commissioners on Uniform State Laws that the cite in section 105 of the model act was erroneous, and that the correct cite is 45 CFR 160.103. This corrects the error.

Bill section 12. Amends AS 14.43.930(e)(2) to reflect the current name of the Northwest Association of Accredited Schools, which was formerly the Northwest Association of Schools and Colleges. The Association changed its name in 2004.

Bill section 13. Amends the spanned reference to the Alaska Public Records Act in AS 17.37.010(a) to include the new short title section (added in 2008).

Bill section 14. Amends the spanned reference to the Alaska Public Records Act in AS 18.65.087(e) to include the new short title section (added in 2008).

Bill section 15. Codifies at AS 26.23.240 a short title for AS 26.23.010 - 26.23.240 and 26.23.900 -- the "Alaska Disaster Act." This term has frequently been used by the Attorney General as a shorthand reference to AS 26.23 (see Op. Atty Gen. file nos. 883-03-0070 (June 2, 2003), 663-93-0425 (July 8, 1993), and 663-92-0494 (January 13, 1993) for example). The term was employed by the Alaska Supreme Court in *City of Seward v. Afognak Logging*, 31 P.3d 780, 785 (Alaska 2001).

The phrase "Alaska Disaster Act" was used as a chapter heading when AS 26.23 was originally enacted, in sec. 3, ch. 104, SLA 1977. In 1990, two sections were added to the chapter: AS 26.23.300, creating a disaster relief fund, and AS 26.23.400, creating a fuel emergency fund. Each of these was created as a new article, and the definitions section, formerly AS 26.23.230, was renumbered as AS 26.23.900. In 2002, the Emergency Management Assistance Compact was enacted (AS 26.23.135 - AS 26.23.136), replacing the former Interstate Civil Defense and Disaster Compact, which was repealed. "Alaska Disaster Act" has been retained as the article title for Article 1 of AS 26.23.

In codifying the short title, the question arises whether it should apply only to the sections enacted in 1977, or to the 1990 additions as well. The drafting manual advises that a short title "should be used only with a bill that contains a cohesive body of proposed law dealing comprehensively with a particular subject." Manual at 23. For the sake of consistency with the existing article heading and usage by the Alaska Supreme Court and the Attorney General, the revisor's bill applies the short title only to Article 1 of AS 26.23 and the definitions section, AS 26.23.900, which was part of the original material designated as the Alaska Disaster Act in the 1977 legislation.

Bill section 16. Amends AS 29.65.050(b) to conform the usage to the term defined in AS 29.65.130(10) -- "vacant, unappropriated, unreserved land." Since the subsection in which the phrase "land that was vacant, unappropriated, or unreserved" was adopted in the same 1985 revision of the municipal code as the definition in AS 29.65.130(10), it is assumed that the inconsistency is a drafting error or oversight.

Bill section 17. Amends AS 29.65.060(a). Currently, the statute reads "vacant, unappropriated, *or* unreserved land as defined in this chapter" (emphasis added). The "or" is deleted to conform the usage with the phrase that is actually defined in the chapter.

Bill section 18. Amends AS 34.45.320(b) to specify unsworn falsification in the second degree (under AS 11.56.210), which is generally applicable, as opposed to unsworn falsification in the first degree (under AS 11.56.205), which relates only to permanent fund dividend applications.

AS 34.45.280(b) specifies that reports of abandoned personal property are to be made on a form which gives notice that statements on the form are made under penalty of unsworn falsification. Since this section relates to reports of unclaimed property rather than permanent fund dividend applications, unsworn falsification in the second degree under AS 11.56.210 is clearly the applicable statute. This section predates the 2006 changes to

the law of unsworn falsification, and it is not clear why the reference was not changed in the 2006 bill. Although the general reference may suffice -- "under penalty of unsworn falsification" is not wrong, it is merely imprecise -- a reference that includes "in the second degree" is more accurate here. For further explanation, see the discussion in bill sec. 3, above.

Bill section 19. Amends AS 34.45.380(a) to specify unsworn falsification in the second degree (under AS 11.56.210), which is generally applicable, as opposed to unsworn falsification in the first degree (under AS 11.56.205), which relates only to permanent fund dividend applications. See bill sec. 18, above; the only difference is that AS 34.45.380(a) relates to abandoned property claim forms (rather than report forms).

Bill section 20. Amends the spanned reference to the Alaska Public Records Act in AS 40.25.220 to include the new short title section (added in 2008).

Bill section 21. Amends AS 41.21.506(b)(2) to remove an exception added in sec. 2, ch. 61, SLA 2009 relating to AS 16.40.260 and 16.40.270 on the date that those two sections are repealed. The repeal will take effect January 1, 2011, under sec. 8, ch. 70, SLA 2004 as amended by sec. 3, ch. 61, SLA 2009, unless that section is further amended.

Bill section 22. Corrects a reference to the United States Code in AS 42.40.430. In 2002, 40 U.S.C. 471 was renumbered as 40 U.S.C. 401 in a general revision of federal laws relating to public property. According to the statement of purpose for the revision Act, P.L. 107-217, sec 5(b)(1), "[t]his Act makes no substantive change in existing law and may not be construed as making a substantive change in existing law."

Bill section 23. Amends the spanned reference to the Alaska Public Records Act in AS 43.05.455(d) to include the new short title section (added in 2008).

Bill section 24. Amends the spanned reference to the Alaska Public Records Act in AS 43.05.475(b) to include the new short title section (added in 2008).

Bill section 25. Adds a short title at AS 44.62.319 for AS 44.62.310 - 44.62.312, which is commonly referred to as "the open meetings act." *See for example Abood v. League of Women Voters*, 743 P.2d 833 (Alaska 1987), *Hickel v. Southeast Conference,* 846 P.2d 38 (Alaska 1992), *Griswold v. City of Homer*, 55 P.3d 64 (Alaska 2002), and 1995 Op. (Inf.) Atty Gen. Alas. 317, file no. 663-95-0524 (August 21, 1995).

Bill section 26. In AS 46.14.500(c), changes a parenthetical reference to the Clean Air Act to make the form similar to that used for other United States Code citations cited in the Alaska Statutes.

Bill section 27. Moves the phrase "the facility may" in AS 47.30.695 from the introductory text into the text of paragraph (1). This is necessary because the phrase "the

facility may" cannot be applied to paragraph (2), since paragraphs (1) and (2) are disjunctive ("or" is the conjunction), and (2) has a different verb phrase ("the treating physician may").

Bill section 28. Instructs the revisor to conform references to the Open Meetings Act to reflect the short title codified in sec. 25 of the bill.

Bill section 29. Makes the effective date for sec. 21 of the Act conditional; this section should only take effect if the sections referred to are actually repealed.

Bill section 30. Provides an effective date for sec. 21, if sec. 21 takes effect under sec. 29.

Bill section 31. Provides an effective date for the remaining sections of the bill.

KLK:plm
10-115.plm

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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STATE OF ALASKA

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 1, 2010

SUBJECT: 2010 Revisor's Bill (CSSB 265(JUD) Work Order No. 26-LS1220\P)

TO: Senator Charlie Huggins
Chair of the Senate Rules Committee
Attn: Deborah Grundmann

FROM: Kathryn L. Kurtz KK
Assistant Revisor

Enclosed is a sectional summary for CSSB 265(JUD), the 2010 revisor's bill, which has passed out of the House Judiciary Committee. Would you please schedule this bill for the floor? Thank you for your consideration. Please give me a call at 465-6663 if you have any questions.

KLK:plm
10-114.plm

Enclosure

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 16, 2010

SUBJECT: Sectional Summary of the 2010 Revisor's Bill (SB 265; Work Order No. 26-LS1220\S)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Kathryn L. Kurtz KK
Assistant Revisor

This is a sectional summary of the 2010 revisor's bill. The bill is prepared under AS 01.05.036, which provides, in part, that the Legislative Affairs Agency, working in cooperation with the Revisor of Statutes

> . . . shall make recommendations to the legislative council concerning deficiencies, conflicts, or obsolete provisions in and the need for reorganization or revision of the statutes, and, at the direction of the legislative council, shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state. . . .

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Sections that delete, repeal, or update obsolete provisions: 12, 21, 22

Sections that correct errors or oversights: 1, 4, 5, 10, 11, 16, 17, 27

Sections that improve the form or substance of the law: 2, 3, 6 - 9, 13 - 15, 18 - 20, 23 - 26, 28

Bill section 1. Amends the definition of "public aircraft" in AS 02.15.260(15). This definition was originally adopted in sec. 1, ch. 123, SLA 1949, prior to statehood. In the session laws, the definition read:

> "Public Aircraft" means an aircraft used exclusively in the governmental service with reference to the United States, and the Territorial Government.

However, in the first revised statutes published in 1962, the definition, then AS 02.15.270(12), read as it does now:

> (15) "public aircraft" means an aircraft used exclusively in the governmental service of the United States and the state government;

The changes in the definition, necessitated by the transition to statehood, presumably occurred in the course of the bulk formal revision of the statutes, adopted as the law of Alaska in 1963. *See* AS 01.05.006.

In its original form, the definition referred to both the government of the United States and the territorial government. The "with reference to" phrasing would have included an aircraft used in the service of either governmental entity. The wording of the revised version retains the "and" used in the original, but does not include the "with reference to" phrasing, suggesting that a particular aircraft would need to be used in both federal and state governmental service to fall within the definition. This seems inconsistent with the original definition, which appeared to be disjunctive. Also, the disjunctive form is more consistent with the definition of "civil aircraft" in AS 02.15.260(8), which reads

> (8) "civil aircraft" means any aircraft other than a public aircraft;

Together, it seems clear that these definitions were intended to cover all aircraft. To include an aircraft used only in the service of the state government and not the federal government in the definition of "civil aircraft" would require a strained reading of that definition. For these reasons, the conjunction "and" is replaced with "or" in this section.

Bill section 2. Amends the spanned reference to the Alaska Public Records Act in AS 06.55.407(a) to include the new short title section (added in 2008).

Bill section 3. This section amends a reference to unsworn falsification in AS 06.60.580 to specify unsworn falsification *in the second degree.*

From the revision of the criminal code in 1978 until 2006, the crime of unsworn falsification, a class A misdemeanor, was codified at AS 11.56.210. In 2006, the legislature enacted AS 11.56.205, making unsworn falsification on a permanent fund dividend application a class C felony. Unsworn falsification in other contexts, still punishable under AS 11.56.210, became unsworn falsification in the second degree. In

the 2006 bill, most statutory references to "unsworn falsification" were amended to read "unsworn falsification in the second degree."

AS 06.60.580 was enacted in 2007 with a reference to "unsworn falsification" that did not specify degree. Because the section relates to claims from the originator surety fund, AS 11.56.205 has no relevance here. The amendment adds the words "in the second degree" to correct an oversight.

Bill section 4. This section deletes the phrase "the supervision required by AS 08.04.023" in AS 08.04.450. This phrase is a non sequitur because AS 08.04.023 does not contain any supervision requirement; it is extraneous and without legal effect. Inclusion of the phrase was a drafting error made by the legal services division.

Bill section 5. Changes "planning" to "planing" in AS 08.32.110(a). Although an Internet search reveals references to both "root planning" and "root planing," it appears that "root planing" is the more common usage for the therapy for periodontal disease performed by dental hygienists, and the word "planing" does some more accurately descriptive of the procedure, which involves smoothing the surface of a tooth's root. Also, the term "root planing" is used by the Alaska Department of Health and Social Services[1] and the American Dental Association.[2]

Bill section 6. Amends the definition of "limited liability partnership" in AS 08.48.341(10), the definition for statutes relating to the professional registration of architects, engineers, and land surveyors.

In 2000, the legislature passed an act adding limited liability companies and limited liability partnerships to the organizations that may practice architecture, engineering, and surveying. It included a new section defining the term "limited liability partnership" with reference to AS 32.05.415 and 32.05.990. That Act, ch. 38, SLA 2000, took effect August 9, 2000. During the same session, the legislature also passed an act repealing AS 32.05, the Uniform Partnership Act, and replacing it with a new version of that Act. The new provisions in that Act, ch. 115, SLA 2000, took effect January 1, 2001. The repeal of AS 32.05 took effect January 1, 2004.

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[1] BJ Whistler, Alaska Oral Health Plan: 2008 - 2012, Section of Women's Children's and Family Health, Division of Public Health, Alaska Department of Health and Social Services, 2007, at http://www.hss.state.ak.us/dph/wcfh/Oralhealth/docs/Oral-Health-Plan.pdf, accessed January 8, 2010, at p. 13.

[2] "Treating Periodontal Disease. Scaling and Root Planing. Journal of the American Dental Association, vol. 134, February 2003 at 259, at http://www.ada.org/prof/resources/pubs/jada/patient/patient_23.pdf, accessed January 8, 2010.

Chapter 115, the Act enacting the new Uniform Partnership Act, did not make conforming changes to AS 08, as amended by chapter 38. As a result, since the repeal of AS 32.05 in 2004, the definition in AS 08.48.341(10) has pointed to two statutes that no longer exist. The changes made in this section direct the reader to the definitions in the new Uniform Partnership Act, which, under sec. 10, ch. 115, SLA 2000, has applied to all limited liability partnerships since January 1, 2004.

Bill section 7. Inserts the word "has" at the beginning of AS 08.65.140(d)(14) to improve the readability of the paragraph, and for consistency with the remainder of the subsection.

Bill section 8. Amends AS 12.55.035(c) by deleting "greater" (the comparative form of the adjective) and inserting "greatest" (the superlative form). This change is suggested because the comparative is generally used for comparing two things and the superlative is used for comparing three or more things. Since the rest of the sentence asks the reader to choose among three options, the superlative form is preferable here.

Bill section 9. Amends the spanned reference to the Alaska Public Records Act in AS 12.65.140(b) to include the new short title section (added in 2008).

Bill section 10. Amends AS 13.26.344(j) to add a missing part of the verb. This change makes the provision parallel to other subsections of AS 13.26.344.

Bill section 11. Changes a reference to a federal regulation in AS 13.27.030, part of the Uniform Adult Guardianship and Protective Proceedings Act enacted in 2008. The statute now refers to "protected health information as defined in 45 CFR 164.504." However, that section of the CFR does not include a definition of the term "protected health information." The term is defined for purposes of 45 CFR 164.504 and the rest of subchapter C, subtitle A, title 45 in 45 CFR 160.103.

Alaska's statute used the reference included in the model act. Through the attorney general's office, we have received confirmation from the National Conference of Commissioners on Uniform State Laws that the cite in section 105 of the model act was erroneous, and that the correct cite is 45 CFR 160.103. This corrects the error.

Bill section 12. Amends AS 14.43.930(e)(2) to reflect the current name of the Northwest Association of Accredited Schools, which was formerly the Northwest Association of Schools and Colleges. The Association changed its name in 2004.

Bill section 13. Amends the spanned reference to the Alaska Public Records Act in AS 17.37.010(a) to include the new short title section (added in 2008).

Bill section 14. Amends the spanned reference to the Alaska Public Records Act in AS 18.65.087(e) to include the new short title section (added in 2008).

Bill section 15. Codifies at AS 26.23.240 a short title for AS 26.23.010 - 26.23.240 and 26.23.900 -- the "Alaska Disaster Act." This term has frequently been used by the Attorney General as a shorthand reference to AS 26.23 (see Op. Atty Gen. file nos. 883-03-0070 (June 2, 2003), 663-93-0425 (July 8, 1993), and 663-92-0494 (January 13, 1993) for example). The term was employed by the Alaska Supreme Court in *City of Seward v. Afognak Logging*, 31 P.3d 780, 785 (Alaska 2001).

The phrase "Alaska Disaster Act" was used as a chapter heading when AS 26.23 was originally enacted, in sec. 3, ch. 104, SLA 1977. In 1990, two sections were added to the chapter: AS 26.23.300, creating a disaster relief fund, and AS 26.23.400, creating a fuel emergency fund. Each of these was created as a new article, and the definitions section, formerly AS 26.23.230, was renumbered as AS 26.23.900. In 2002, the Emergency Management Assistance Compact was enacted (AS 26.23.135 - AS 26.23.136), replacing the former Interstate Civil Defense and Disaster Compact, which was repealed. "Alaska Disaster Act" has been retained as the article title for Article 1 of AS 26.23.

In codifying the short title, the question arises whether it should apply only to the sections enacted in 1977, or to the 1990 additions as well. The drafting manual advises that a short title "should be used only with a bill that contains a cohesive body of proposed law dealing comprehensively with a particular subject." Manual at 23. For the sake of consistency with the existing article heading and usage by the Alaska Supreme Court and the Attorney General, the revisor's bill applies the short title only to Article 1 of AS 26.23 and the definitions section, AS 26.23.900, which was part of the original material designated as the Alaska Disaster Act in the 1977 legislation.

Bill section 16. Amends AS 29.65.050(b) to conform the usage to the term defined in AS 29.65.130(10) -- "vacant, unappropriated, unreserved land." Since the subsection in which the phrase "land that was vacant, unappropriated, or unreserved" was adopted in the same 1985 revision of the municipal code as the definition in AS 29.65.130(10), it is assumed that the inconsistency is a drafting error or oversight.

Bill section 17. Amends AS 29.65.060(a). Currently, the statute reads "vacant, unappropriated, *or* unreserved land as defined in this chapter" (emphasis added). The "or" is deleted to conform the usage with the phrase that is actually defined in the chapter.

Bill section 18. Amends AS 34.45.320(b) to specify unsworn falsification in the second degree (under AS 11.56.210), which is generally applicable, as opposed to unsworn falsification in the first degree (under AS 11.56.205), which relates only to permanent fund dividend applications.

AS 34.45.280(b) specifies that reports of abandoned personal property are to be made on a form which gives notice that statements on the form are made under penalty of unsworn falsification. Since this section relates to reports of unclaimed property rather than permanent fund dividend applications, unsworn falsification in the second degree under AS 11.56.210 is clearly the applicable statute. This section predates the 2006 changes to

the law of unsworn falsification, and it is not clear why the reference was not changed in the 2006 bill. Although the general reference may suffice -- "under penalty of unsworn falsification" is not wrong, it is merely imprecise -- a reference that includes "in the second degree" is more accurate here. For further explanation, see the discussion in bill sec. 3, above.

Bill section 19. Amends AS 34.45.380(a) to specify unsworn falsification in the second degree (under AS 11.56.210), which is generally applicable, as opposed to unsworn falsification in the first degree (under AS 11.56.205), which relates only to permanent fund dividend applications. See bill sec. 18, above; the only difference is that AS 34.45.380(a) relates to abandoned property claim forms (rather than report forms).

Bill section 20. Amends the spanned reference to the Alaska Public Records Act in AS 40.25.220 to include the new short title section (added in 2008).

Bill section 21. Amends AS 41.21.506(b)(2) to remove an exception added in sec. 2, ch. 61, SLA 2009 relating to AS 16.40.260 and 16.40.270 on the date that those two sections are repealed. The repeal will take effect January 1, 2011, under sec. 8, ch. 70, SLA 2004 as amended by sec. 3, ch. 61, SLA 2009, unless that section is further amended.

Bill section 22. Corrects a reference to the United States Code in AS 42.40.430. In 2002, 40 U.S.C. 471 was renumbered as 40 U.S.C. 401 in a general revision of federal laws relating to public property. According to the statement of purpose for the revision Act, P.L. 107-217, sec 5(b)(1), "[t]his Act makes no substantive change in existing law and may not be construed as making a substantive change in existing law."

Bill section 23. Amends the spanned reference to the Alaska Public Records Act in AS 43.05.455(d) to include the new short title section (added in 2008).

Bill section 24. Amends the spanned reference to the Alaska Public Records Act in AS 43.05.475(b) to include the new short title section (added in 2008).

Bill section 25. Adds a short title at AS 44.62.319 for AS 44.62.310 - 44.62.312, which is commonly referred to as "the open meetings act." *See for example Abood v. League of Women Voters*, 743 P.2d 833 (Alaska 1987), *Hickel v. Southeast Conference,* 846 P.2d 38 (Alaska 1992), *Griswold v. City of Homer*, 55 P.3d 64 (Alaska 2002), and 1995 Op. (Inf.) Atty Gen. Alas. 317, file no. 663-95-0524 (August 21, 1995).

Bill section 26. In AS 46.14.500(c), changes a parenthetical reference to the Clean Air Act to make the form similar to that used for other United States Code citations cited in the Alaska Statutes.

Bill section 27. Moves the phrase "the facility may" in AS 47.30.695 from the introductory text into the text of paragraph (1). This is necessary because the phrase "the

facility may" cannot be applied to paragraph (2), since paragraphs (1) and (2) are disjunctive ("or" is the conjunction), and (2) has a different verb phrase ("the treating physician may").

Bill section 28. Instructs the revisor to conform references to the Open Meetings Act to reflect the short title codified in sec. 25 of the bill.

Bill section 29. Makes the effective date for sec. 21 of the Act conditional; this section should only take effect if the sections referred to are actually repealed.

Bill section 30. Provides an effective date for sec. 21, if sec. 21 takes effect under sec. 29.

Bill section 31. Provides an effective date for the remaining sections of the bill.

KLK:ljw
10-097.ljw

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

SEAN PARNELL, GOVERNOR

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February 18, 2010

Senator Hollis French, Chair
Senate Judiciary Committee
State Capitol, Room 417
Juneau, AK 99801-1182

Re: SB 265 - 2010 Revisor's Bill

Dear Senator French:

The Department of Law has reviewed SB 265, the 2010 revisor's bill.

The bill presents no legal issues and makes important technical improvements to the law.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: Deborah E. Behr
Deborah E. Behr
Chief Assistant Attorney General

DSS:DEB:pav

cc: Kathryn Kurtz, Assistant Revisor of Statutes
Jerry Gallagher, Legislative Director, Office of the Governor
Mike Ford, Assistant Attorney General

SB 277

CIRI

March 18, 2010

The Honorable Lesil McGuire
Alaska State Senate
Alaska State Capitol, Room 125
Juneau, Alaska 99801

Dear Senator McGuire:

I appreciate the opportunity to respond to the criticisms and concerns raised in its letter dated March 8, 2010, by the Alaska Power Authority (APA) regarding Senate Bill 277, on behalf of Cook Inlet Region, Inc. (CIRI) as a potential independent power producer (IPP). While I will respond in a point-by-point fashion I will start with a higher level response that the APA's criticisms are generally a misunderstanding of the relationship between IPPs and their regulated public utility customers.

The APA fundamentally misunderstands the respective roles of an IPP and its utility customers, and the resulting relationship. Unlike a regulated public utility that has a certificated, monopoly service area granted by the Regulatory Commission of Alaska (RCA), an IPP has only wholesale customers obtained by arms-length commercial negotiations. The resulting differences are profound.

The essence of the issue is that Alaska has very few for-profit entities involved in the development and operation of electric power projects, and even fewer IPPs. The emergence of IPPs developing renewable energy projects has raised the possibility of a different model of developing projects in Alaska. Most of the comments in the APA's letter either result from a misunderstanding of the relationship between IPPs and their public utility customers or reflect an apparent mistrust of anything that is not a cooperative or municipally-owned public utility. We believe that the exemption proposed by SB 277 encourages and supports negotiated and commercially-reasonable relationships between IPPs and public utilities, and, as such, is good public policy.

I will now address the specific, numbered concerns raised in the APA's letter.

General Concerns

1. The exemption proposed by SB 277 is necessary.

   Obtaining a Qualified Facility designation under federal law does not simply provide an exemption from state regulation. A QF designation also provides the IPP with a default option of putting power onto public utilities in a non-consensual

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manner by selling to the utilities at avoided cost. CIRI does not believe that it would be appropriate or desirable to enter a market as small as Alaska's Railbelt in a non-consensual manner, even if it is possible under federal law. Moreover, the promise of renewable energy is to decouple the cost of power from the cost of fuel over time ultimately making renewable power cheaper than its fuel-fired alternative. Selling renewable power at avoided cost does not pass this promise on to the ultimate ratepayer. Perversely, selling renewable power at avoided cost allows an IPP to keep that benefit as profit, something you would think the APA would not suggest as its preferred public policy.

The option of applying to the RCA for a regulatory exemption is also an undesirable and impractical option for several reasons. The RCA has shown itself to be a slow, expensive and unpredictable regulatory body. Unlike public utilities who can recover the expense of their RCA practice in their respective rate bases and who have a state-sponsored monopoly against which to pursue project development, IPPs often have limited market windows in which to put together all of the necessary pieces to successfully develop private power projects, including successful negotiation of one or more power purchase agreements. The uncertainty, delay and expense of asking for a project exemption from the RCA layers an additional and significant project risk on private project development.

More importantly and fundamentally, however, the RCA has shown itself to be a partial and biased forum in which to seek the exemption from regulation for a project sponsored by a private, for-profit project proponent. A sitting RCA commissioner has privately questioned CIRI's motives in supporting SB 277 and has surmised that CIRI's motivation is trying to obtain out-sized returns—implying that being a for-profit entity makes CIRI an untrustworthy project proponent. Similarly, staff for the RCA has publicly testified in a prior Senate committee hearing on SB 277 that exempting a private, for-profit project from direct regulatory oversight could never be in the public interest, or words to that effect. These recent public and private sentiments demonstrate that the RCA is a potentially biased body from which a fair and impartial hearing cannot be obtained by a private, for-profit project proponent.

For these reasons, neither the federal QF nor the state RCA processes provides a reasonable and acceptable manner in which to exempt a IPP-sponsored renewable energy project from RCA regulation.

2. The fact that the RCA cannot second-guess the results of a commercial, arms-length negotiation between an IPP and a public utility is precisely the reason the exemption proposed by SB 277 is necessary. It is the public utility's job to ensure that the contract's rates, terms and conditions of service are fair and commercially reasonable. And it is a role that the public utilities are capable of fulfilling. It is unnecessary and unfair for an IPP, who bears all of the project development risk, to

have to negotiate a commercial PPA with one or more utilities and then start over with a regulatory process in the RCA that can take up to 18 months to complete.

It is also inappropriate to suggest that the RCA, and thereby any other interested party because of the public nature of RCA proceedings, must have access to all documents and costs of a project in order to satisfy the public interest. Again, the role of validating costs and justifying returns is best handled in a commercial negotiation. The second guessing and potential gaming of comments and motives in the RCA process only serves to drive up delay, expense and risk after the conclusion of negotiations between the IPP and the public utilities.

3. The RCA is not a necessary forum in which to adjudicate disputes between an IPP and public utility. There are numerous alternative dispute resolution methods, such as mediation and arbitration, that can provide for timely and expert adjudication of disputes short of filing lawsuits in court.

4. The "obligation to serve" is inappropriate to apply to a IPP-sponsored project because it is a concept that derives from the monopoly service territory granted to public utilities. Suggesting that a private project should have an "obligation to serve" shows that the APA fundamentally does not understand the relationship between an IPP and its public utility customers.

   Taking the APA's suggestion that IPP-sponsored projects should have an obligation to serve at its literal face-value would mean that the project could not refuse to provide service to any inter-connected public utility. How would this work? Does this mean that the IPP would have an obligation to serve any interested public utility but would not have any contract negotiation mechanism to arrive at a workable relationship? Obviously, this would not work.

5. The financial fitness of an IPP is a matter that should be addressed by the purchasing public utility. If that utility does not believe that the IPP is sufficiently capable of developing and operating the project for any reason—financial, technical or operational—then that utility can refuse to purchase the project's power. Layering the RCA over the top of this process implies that the public utilities are incapable of protecting themselves through due diligence and contract negotiations. Moreover, the APA's reference to the "fit, willing and able" standard again misapplies the public utility, monopoly standard of operation to the IPP concept. The "fit, willing and able" standard applies to public utilities because of their state-granted monopoly service territories. Implicit under that standard is a public utility's capacity and competence to determine the fitness of and negotiate the commercial purchase of power generated by others, including IPPs. It is surprising that the APA would suggest that its own membership (comprised of public utilities) is incapable of performing one of the core competencies within their own respective certifications as public utilities.

The suggestion that the RCA provides additional comfort in a bankruptcy situation is a red herring. The bankruptcy statutes provide for the bankruptcy court and bankruptcy trustee to protect the public interest. To suggest otherwise is simply a scare tactic intended to illicit the fear of the lights going dark because of the financial insolvency of an IPP. This is not a realistic scenario. The APA's motives are further illustrated by the suggestion that developing a project in a subsidiary entity is inappropriate—"owner" is not a dirty word when it describes a subsidiary entity used to develop and own a project and to suggest otherwise is simply an indirect way to slander private, for-profit entities.

6. The APA's suggestion that the affected utilities must be able to comment on a PPA post-negotiation is precisely why the exemption proposed by SB 277 is necessary and appropriate. Allowing a utility that has negotiated a PPA to later come back through the regulatory process to renegotiate the contract suggests that bad-faith negotiations and gaming are an appropriate business practice. We do not agree. To suggest that other non-contracting utilities have some basis for reviewing and commenting on PPAs to which they are not a party is to invite the sort of regulatory busy-body filings that drive up the cost, delay and uncertainty of the RCA process.

Specific Concerns

1. The 65 megawatt size limit is not too large. The APA suggests that a 500 kilowatt limit is appropriate. While we agree that a .5 megawatt facility should be exempted, we believe that larger facilities should be exempted as well. IPPs need a predictable and fair process to negotiate for the commercial sales of their project power. Without predictability and fairness, the status quo—no IPPs on the Railbelt and no large commercial-scale renewable projects will likely persist.

2. The APA's suggestion that an IPP could cherry pick other non-electric utilities as customers is unrealistic. How would an IPP deliver the power to its non-electric utility customer without negotiating a transmission agreement with the existing electric utility? And how would the IPP deliver firm power (as opposed to the intermittent power produced by renewable power sources) without negotiating a firming agreement with the electric utility? These points illustrate the APA's principal concern: competition. CIRI believes that the discipline, efficiency and market competition demanded of IPPs, as for-profit enterprises, bring benefits to the cost of power and ultimately to the ratepayer. The APA obviously disagrees and prefers non-competitive, government-sponsored monopolies.

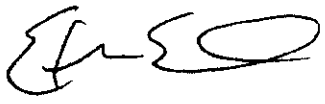
3. The APA again raises the "obligation to serve" notion addressed above. I will not address it again.

4. This point is a permutation of the "obligation to serve" point again. But it also raises for the first time the possibility of an IPP owning a regulated entity. The RCA already possesses the ability to look through ownership structures to sister and parent companies of regulated utilities. Thus, the RCA already possesses the authority and tools to address this potential issue.

5. This point highlights an APA inconsistency. In the General Concerns point number one, the APA suggests that an IPP can get certified as a Qualified Facility under federal law in arguing that SB 277 is unnecessary. In this point, it decries the "contentious experiences" of utilities who had to deal with developers who were attempting to force them to purchase power in a non-consensual manner—a veiled reference to the very QF program it suggests above as an available alternative. As stated above, we agree that non-consensual power sales are not in the ultimate interest of Alaska's public utilities. The exemption proposed by SB 277 fosters negotiated and consensual power sales between IPPs and incumbent utilities. This is exactly the point.

Sincerely,

Cook Inlet Region, Inc.



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March 8, 2010

Senator Lesil McGuire
Alaska State Legislature
120 4th Street, State Capitol, Room 125
Juneau, AK 99801-1182

Re:: Senate Bill 277

Dear Senator McGuire:

The Alaska Power Association (APA) and its members have not yet had the opportunity to fully explore all of the potential impacts of the March 2, 2010, committee substitute for Senate Bill 277. However, based on its preliminary review, APA is concerned about the potential ramifications of this bill. At this point, APA cannot support SB 277 because of those concerns, but welcomes any opportunity to discuss those concerns with you or your staff. APA's concerns are summarized below:

General Concerns Regarding Statutory Exemption:

1. The exemption from RCA certification and regulation provided for in the bill may be unnecessary for the following reasons: First, under federal law, most renewable energy resource electric generation facilities that propose to sell power only to another electric utility can already become exempt from state regulation by becoming a "qualifying facility" ("QF"). *See* 18 C.F.R. § 292.602(c); 18 C.F.R. § 292.601(a), (b). Such facilities include all QFs that are a cogeneration facility, a geothermal or biomass small power production facility, or any other small power production facility (including hydroelectric, solar, and wind-power facilities) having a capacity of 30 megawatts (MW) or less. In general, all of the types of renewable energy resources facilities referenced in the bill would be eligible to become a QF. Such a facility can become a QF through a simple self-certification with FERC.

Second, regardless of whether a renewable energy resource facility is exempt as a QF, the facility can also become exempt from RCA certification and regulation through a petition to the Regulatory Commission of Alaska (RCA) that demonstrates that the exemption is "in the public interest." *See* AS 42.05.711(d). In 2009, two small hydroelectric facilities obtained public interest exemptions from the RCA based on the facility's generation source and small size, the fact that the facility would sell power only to an electric utility, and the cost and burden of certification and regulation. *See* RCA Order Nos. U-08-102(2) and U-08-132(2) (attached).

2. The proposed statutory exemption would impair the RCA's ability to ensure that the facility's rates, terms, and conditions of service are just, reasonable, and non-discriminatory, particularly when the facility sells power to multiple electric utilities. Although the RCA would have to approve the purchasing utility's entering into a power purchase agreement with the facility, that so-called "indirect regulation" of the exempt facility would not give the RCA full access to the facility's cost and financial information.

3. The proposed statutory exemption would divest the RCA of jurisdiction to adjudicate complaints by the purchasing electric utility against the facility for failing to provide adequate, non-discriminatory service. In addition, if the facility were regulated and a dispute arose regarding a rate issue or service issue that the facility and the purchasing electric utility did not clearly contemplate in their long-term power purchase agreement, the RCA would have jurisdiction to resolve that dispute. Without RCA jurisdiction, the purchasing electric utility would be limited to filing a lawsuit in court to address those types of issues, which involves significantly more cost and delay (and less adjudicator expertise over the subject matter) than a complaint filed with the RCA.

4. RCA certification of a renewable resources facility imposes an "obligation to serve," which ensures that the facility cannot unreasonably refuse to provide service to a particular customer. The broad exemption proposed under the bill would preclude the RCA from enforcing such an obligation, thus allowing the facility to discriminate among potential power purchasers.

5. If a renewable resources facility is certificated and regulated by the RCA and the facility seeks bankruptcy protection, the RCA generally would have standing in the bankruptcy proceeding to help ensure that the public interest is protected. That measure of protection would not exist if the facility is categorically exempt from RCA jurisdiction by statute. That issue can be significant because a renewable energy resources facility may be (and likely will be) owned by a subsidiary corporation or subsidiary limited liability company in such a way that the

effective, ultimate "owner" of the facility is shielded from all liability for the debts and obligations of the facility. That is one of the reasons that the RCA carefully considers whether the legal owner of a proposed public utility is, in fact, "fit, willing, and able" to provide public utility service when the RCA decides whether to certificate the utility, or when the RCA decides whether to grant a public interest exemption from regulation. Under the broad exemption provided for in the bill, the RCA would lack jurisdiction to review such matters, particularly after the purchasing electric utility obtains RCA approval of the power purchase agreement.

6. The proposed statutory exemption would preclude affected electric utilities from having input regarding whether the exemption of a particular facility is justified. The existing RCA public interest exemption process allows utility input and public input and allows the RCA to determine on a case-by-case basis whether the facts and circumstances justify exemption for a particular facility. Related to that, until a power purchase agreement and the associated rates, terms, and conditions of service are negotiated regarding a particular facility, the utilities that are intended to purchase power from the facility may not have enough information to know whether an exemption from RCA certification and regulation is justified. The broad statutory exemption provided for in the bill would preclude affected electric utilities from making that determination when the facts and circumstances associated with a particular facility are known.

7. There has not been adequate time for APA and its members to fully explore all of the unintended consequences of the type of broad, absolute exemption provided for in the bill.

More Specific Concerns Regarding SB 277:

1. The bill's 65 MW size restriction appears to be too high. The potential justification for exemption from RCA certification and regulation is very different if the exemption applies to a small 500 kilowatt (kW) renewable resources facility as opposed to a large 65 MW facility.

2. The bill would exempt a facility that sells its output to *any type* of regulated public utility, not just to a regulated *electric* public utility. That would allow the exempt facility to compete against the local electric utility for firm electric sales to non-electric utilities that are within the local electric utility's certificated service area.

3. The bill would exempt a facility that sells its output to *multiple* regulated electric utilities. Sales to multiple electric utilities raise concerns about preventing the facility from discriminating among customers with respect to rates, terms, or conditions of service.

4. The bill would exempt a facility even if it is closely affiliated with a regulated electric utility to which it sells power. That raises additional concerns about the potential for discriminatory preferences among the electric utilities that purchase power from the facility.

5. The bill would exempt cogeneration facilities because "renewable energy resources" under AS 42.45.045(l) include "wasteheat recovery." Electric utilities have had contentious experiences with developers attempting to force the utility into uneconomic power purchases from proposed cogeneration plants.

Again, APA and its members have had only a limited amount of time to attempt to review the potential ramifications and unintended consequences of SB 277. APA and its members will continue their review of the bill and may have other concerns as they review it in greater detail. In the meantime, APA stands ready to discuss its concerns with you or your staff whenever is convenient for you. We suggest you initiate a meeting with all interested parties as soon as possible so that we can have a discussion of all the issues.

Sincerely,

Marilyn Leland
Executive Director

ALASKA STATE LEGISLATURE

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Senate Committee on World Trade, Technology and Innovations

Co-Chair
Senate Resources Committee

Member
Senate Judiciary Committee

SENATOR LESIL MCGUIRE

Sponsor Statement for Senate Bill 277

"An Act exempting from regulation by the Regulatory Commission of Alaska and by municipalities generators of electricity from renewable energy resources that sell electricity to regulated utilities."

The electric demand of the relatively small and dispersed population in Alaska has traditionally been served by regulated utilities. The Regulatory Commission of Alaska (RCA) is charged with certifying utilities, regulating their rates, resolving disputes and protecting consumers. Throughout most of the State, electric utilities are not-for-profit and/or member owned cooperatives that serve a defined geographic area and customer base. Regulation of these utilities, given their monopoly status may certainly be appropriate.

However, regulation can pose obstacles to investment. In many states, the generation of electricity has been deregulated in order to provide an avenue for private sector investment in the sector. In a traditionally regulated model, the investment risk is born by ratepayers where in a deregulated environment the risk is born by investors. In markets that have been deregulated, investment in renewable energy is significantly higher than in strictly regulated markets. A study by the U.S. Energy Information Administration shows that the annual growth of renewable penetration in restructured electricity markets is 11.3% while it is a mere .6% in highly regulated markets. Recognizing the regulatory impediment to the development of renewables, the Federal government has provided avenues for renewable generators to escape state regulation through an application to the Federal Energy Regulatory Commission.

Senate Bill 277 attempts to find a middle ground between a thoroughly deregulated market and the highly regulated environment in Alaska. SB 277 exempts renewable generation from RCA regulation only if the power is sold to a regulated utility. This compromise maintains RCA oversight over the power sales agreements and thereby provides a layer of protection to ratepayers. SB 277 opens Alaska's electricity market to private sector investment in renewables and will encourage investment in a cleaner energy future for Alaska.

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Changes to SB 277 in CS SB 277: 26-LS1353\P

The changes to SB 277 in CSSB 277 are found in section 3 of the bill. The following changes were made to limit the exemption from RCA regulation provided by section 3. More broadly the exemption has been limited to the plant rather than the person. Specifically, the following limits apply in the P version:

1. The plant must be placed in service before January 1, 2016.
2. The plant may not generate more than 65 megawatts of electricity.
3. The person that owns the plant does not receive tax credits related to electricity generation or grants for the generation from the state.

LEGAL SERVICES

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MEMORANDUM February 12, 2010

SUBJECT: Definition of "public" in AS 42.05
(Work Order No. 26-LS1353\E)

TO: Senator Lesil McGuire
Attn: Mike Pawlowski

FROM: Brian J. Kane BJK
Legislative Counsel

You have asked the following: For the definition of "public" or "general public"[1] found at AS 42.05.990(3), does that definition include all three subparagraphs, (A), (B), and (C), so that all three must be satisfied to mean "public"? Or, are (A), (B), and (C) three different options for the meaning of "public," as in (A) or (B) or (C)?

Generally speaking, "and" should be used as a conjunctive and "or" as a disjunctive. Under ordinary circumstances, the literal meaning of the words "and" and "or" should be applied unless the literal meaning makes the statute inoperable or it becomes questionable. *Sutherland Statutory Construction*, sec. 21:14 (7th ed.). In the case at hand, though, it seems that using the word "and" as a conjunctive brings the subparagraphs in the definition into conflict. Assuming that all three things are required for the definition of "public," then you have a scenario where there is (1) a group of 10 or more customers, (2) one or more customers, and (3) a utility purchasing the product. If all three of these are a part of "public," then it is quite difficult to think of a situation where this definition would actually apply. On the one hand you are dealing with customers purchasing from a utility, and on the other hand you have a utility purchasing

---

[1] In full, AS 42.05.990(3) reads: (3) "public" or "general public" means

> (A) a group of 10 or more customers that purchase the service or commodity furnished by a public utility;
>
> (B) one or more customers that purchase electrical service for use within an area that is certificated to and presently or formerly served by an electric utility if the total annual compensation that the electrical utility receives for sales of electricity exceeds $50,000; and
>
> (C) a utility purchasing the product or service or paying for the transmission of electric energy, natural or manufactured gas, or petroleum products that are re-sold to a person or group included in (A) or (B) of this paragraph or that are used to produce the service or commodity sold to the public by the utility.

electricity to sell to a customer. These cannot both occur at once in order to fulfill the definition. Using the term "and" as a conjunctive appears to make this definition inoperable, as best I can surmise. Therefore, it appears that the second option for the definition that is offered is the correct interpretation for the definition of "public."Hence, the term "public" means (A), or it means (B), or it means (C).

In relation to the definition for "public utility" -- which has the line "furnishing, by generation, transmission, or distribution, electrical service *to the public* for compensation" -- you can, assuming that "and" is disjunctive, read "public" to mean any one of the three options available in (A), (B), or (C), which offers a more expansive inclusion into this section than a reading requiring all three paragraphs to be met.

The definition in question was amended in 1990.[2] Prior to 1990, the definition read as follows

> (3) "public" or "general public" means
>
> (A) any group of 10 or more customers that purchase the service or commodity furnished by a public utility as defined in (4) of this section; and
>
> (B) any utility purchasing the product or service or paying for the transmission of electric energy, natural or manufactured gas, or petroleum products which are re-sold to a group included in (A) of this paragraph or which are used to produce the service or commodity sold to the public by the utility.

With only two parts to the definition, it seems clearer that "public" either means what is described in (A) or it means what is described in (B). To fall under the definition of public, there does not have to be a scenario where there is a group of 10 or more customers *and* any utility purchasing the product. If that was the proper reading, then finding an entity that met that criteria would be very difficult. The change in the definition that occurred in 1990 added one more subparagraph to the definition (now (B)). Adding this third subparagraph did not change the definition to mean that the term "public" had to include all three paragraphs to be considered "public."

In conclusion, it appears that the term "public" can have the meaning listed in AS 42.05.990(3)(A) or (3)(B) or (3)(C) -- it does not have to meet all three at once. However, amending the definition to change the "and" to an "or" would relieve the definition of controversy.

If I may be of further assistance, please advise.

BJK:ljw
10-087.ljw

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[2] The amending language an be found at sec. 4, ch. 140, SLA 1990.

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MEMORANDUM February 16, 2010

SUBJECT: Independent power producer (Work Order No. 26-LS1353\E)

TO: Senator Lesil McGuire
Attn: Mike Pawlowski

FROM: Brian J. Kane BJK
Legislative Counsel

As a follow-up to the memorandum I sent to your office on February 12, 2010, you have asked: If an independent power producer sells to less than 10 customers, would it be a utility and therefore subject to regulation under AS 42.05?

Assuming that the definition of "public" or "general public" in AS 42.05.990(3) is being read as (A) or (B) or (C), then the answer to your question is that it is possible the independent power producer described could be subject to regulation. AS 42.05.990(3) has an option for the definition of "public" that reads:

> (B) one or more customers that purchase electrical service for use within an area that is certificated to and presently or formerly served by an electric utility if the total annual compensation that the electrical utility receives for sales of electricity exceeds $50,000;

If an independent power producer has one or more customers but fewer than 10 *and* meets the other requirements of the definition in (B) -- namely receiving sales of electricity that exceed $50,000 -- then the independent power producer would be regulated under AS 42.05 since it sells to the "public." However, if the producer sells to fewer than 10 customers and does not exceed the $50,000 sales mark, then that producer is not subject to regulation under AS 42.05, as the producer would not be selling to the public, which is a requirement of AS 42.05.990(4)(A) to be a public utility.

BJK:ljw
10-101.ljw

Applicable RCA Statutes

Sec. 42.05.175. Timelines for issuance of final orders.

(a) The commission shall issue a final order not later than 180 days after a complete application is filed for an application

(1) for a certificate of public convenience and necessity;

(2) to amend a certificate of public convenience and necessity;

(3) to transfer a certificate of public convenience and necessity; and

(4) to acquire a controlling interest in a certificated public utility.

(b) Notwithstanding a suspension ordered under AS 42.05.421 , the commission shall issue a final order not later than 270 days after a complete tariff filing is made for a tariff filing that does not change the utility's revenue requirement or rate design.

(c) Notwithstanding a suspension ordered under AS 42.05.421 , the commission shall issue a final order not later than 450 days after a complete tariff filing is made for a tariff filing that changes the utility's revenue requirement or rate design.

(d) The commission shall issue a final order not later than 365 days after a complete formal complaint is filed against a utility or, when the commission initiates a formal investigation of a utility without the filing of a complete formal complaint, not later than 365 days after the order initiating the formal investigation is issued.

(e) The commission shall issue a final order in a rule-making proceeding not later than 730 days after a complete petition for adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290 is filed or, when the commission initiates a rule-making docket, not later than 730 days after the order initiating the proceeding is issued.

(f) The commission may extend a timeline required under this section if all parties of record consent to the extension or if, for one time only, before the timeline expires, the

(1) commission reasonably finds that good cause exists to extend the timeline;

(2) commission issues a written order extending the timeline and setting out its findings regarding good cause; and

(3) extension of time is 90 days or less.

(g) The commission shall file quarterly reports with the Legislative Budget and Audit Committee identifying all extensions ordered under (f) of this section during the previous quarter and including copies of the written orders issued under (f)(2) of this section.

(h) If the commission does not issue and serve a final order regarding an application or suspended tariff under section (a), (b), or (c) of this section within the applicable timeline specified, and if the commission does not extend the timeline in accordance with (f) of this section, the application or suspended tariff filing shall be considered approved and shall go into effect immediately.

(i) In adjudicated docket matters that come before the commission under state law or federal law and are not subject to a timeline under federal law or (a) - (e) of this section, the commission shall issue a final order not later than 180 days after the filing of an initiating petition. If the matter is commenced on the commission's own motion, the commission shall issue a final order not later than 365 days after the issuance of an order opening the docket. This subsection does not apply to a complaint against a utility, a petition to revoke a certificate of public convenience and necessity, or a functionally equivalent filing.

(j) If the commission does not issue and serve a final order governed by (i) of this section within the applicable timeline specified, including any extension granted by the commission in accordance with (f) of this section, the initiating petition shall be considered approved and shall take effect immediately, or, if the matter was commenced by the commission, the docket shall be closed with no action taken.

(k) If proceedings subject to different timelines under this section are consolidated or if a single proceeding implicates more than one timeline, the latest applicable deadline for the issuance of a final order shall apply.

(l) The commission may not evade the requirement of this section by terminating a proceeding in a docket and opening a proceeding in another docket on substantially the same matter.

(m) For purposes of this section, "final order" means a dispositive administrative order that resolves all matters at issue and that may be the basis for a petition for reconsideration or request for judicial review.

(n) For purposes of this section, an application, tariff filing, formal complaint, or petition is complete if it complies with the filing, format, and content requirements established by statute, regulation, and forms adopted by the commission under regulation.

Article 02. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Sec. 42.05.221. Certificates required.

(a) A public utility may not operate and receive compensation for providing a commodity or service without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require or will require the service. Where a public utility provides more than one type of utility service, a separate certificate of convenience and necessity is required for each type. A certificate must describe the nature and extent of the authority granted in it, including, as appropriate for the services involved, a description of the authorized area and scope of operations of the public utility.

(b) All certificates of convenience and necessity issued to a public utility before July 1, 1970, remain in effect but they are subject to modification where there are areas of conflict with public utilities that have not previously been required to have a certificate or where there is a substantial change in circumstances.

(c) A certificate shall be issued to a public utility that was not required to have one before July 1, 1970, and that is required to have one after that date, if it appears to the commission that the utility was actually operating in good faith on that date. Such a certificate is subject to modification where there are areas of conflict with other public utilities or where there has been a substantial change in circumstances.

(d) In an area where the commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the commission shall take appropriate action to eliminate the competition and any undesirable duplication of facilities. This appropriate action may include, but is not limited to, ordering the competing utilities to enter into a contract that, among other things, would:

(1) delineate the service area boundaries of each in those areas of competition;

(2) eliminate existing duplication and paralleling to the fullest reasonable extent;

(3) preclude future duplication and paralleling;

(4) provide for the exchange of customers and facilities for the purposes of providing better public service and of eliminating duplication and paralleling; and

(5) provide such other mutually equitable arrangements as would be in the public interest.

(e) If the commission employs professional consultants to assist it in administering this section, it may apportion the expenses relating to their employment among the competing utilities.

(f) *[Repealed, Sec. 12 ch 136 SLA 1980].*

Sec. 42.05.230. [Repealed, Sec. 5 ch 113 SLA 1970].

Repealed or Renumbered

Sec. 42.05.231. Application.

Application for a certificate shall be in writing and shall be in the form and contain the information required by the commission by regulation.

Sec. 42.05.240. [Repealed, Sec. 5 ch 113 SLA 1970].

Repealed or Renumbered

Sec. 42.05.241. Conditions of issuance.

A certificate may not be issued unless the commission finds that the applicant is fit, willing, and able to provide the utility services applied for and that the services are required for the convenience and necessity of the public. The commission may issue a certificate granting an application in whole or in part and attach to the grant of it the terms and conditions it considers necessary to protect and promote the public interest including the condition that the applicant may or shall serve an area or provide a necessary service not contemplated by the applicant. The commission may, for good cause, deny an application with or without prejudice.

Sec. 42.05.250. [Repealed, Sec. 5 ch 113 SLA 1970].

Repealed or Renumbered

Sec. 42.05.251. Use of streets in municipalities.

Public utilities have the right to a permit to use public streets, alleys, and other public ways of a municipality upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the municipality requires. The fee may not exceed the actual cost to the municipality of the utility's use of the public way and of administering the permit program. A dispute as to whether fees, terms, conditions, or exceptions are reasonable shall be decided by the commission. The commission may require a utility to add the amount of any permit fee paid as a pro rata surcharge to its bills for service rendered at locations within the boundaries of any municipality that requires payment of a permit fee.

Sec. 42.05.253. Public utility regulatory cost charge. [Repealed, Sec. 36 ch 2 FSSLA 1992].

Repealed or Renumbered

Sec. 42.05.254. Public utility regulatory cost charge.

(a) A regulated public utility operating in the state shall pay to the commission an annual regulatory cost charge in an amount not to exceed the maximum percentage of adjusted gross

revenue that applies to the utility sector of which the utility is a part. The regulatory cost charges that the commission expects to collect from all regulated utilities may not exceed the sum of the following percentages of the total adjusted gross revenue of all regulated public utilities derived from operations in the state: (1) not more than .7 percent to fund the operations of the commission, and (2) not more than .17 percent to fund operations of the public advocacy function under AS 42.04.070 (c) and AS 44.23.020(e) within the Department of Law. An exempt utility shall pay the actual cost of services provided to it by the commission.

(b) The commission shall by regulation establish a method to determine annually the amount of the regulatory cost charge for a public utility. If the amount the commission expects to collect under (a) of this section and under AS 42.06.286 (a) exceeds the authorized budgets of the commission and the Department of Law public advocacy function under AS 42.04.070 (c) and AS 44.23.020 (e), the commission shall, by order, reduce the percentages determined under (h) of this section so that the total amount of the fees collected approximately equals the authorized budgets of the commission and the Department of Law public advocacy function under AS 42.04.070 (c) and AS 44.23.020 (e) for the fiscal year.

(c) In determining the amount of the regulatory cost charge imposed under (a) of this section,

(1) a utility selling utility services at wholesale shall modify its gross revenue by deducting payments it receives for wholesale sales;

(2) a local exchange telephone utility shall modify its gross revenue by deducting payments received from other carriers for settlements or access charges;

(3) an electric utility shall reduce its gross revenue by subtracting the cost of power; in this paragraph, "cost of power" means the costs of generation and purchased power reported to the commission.

(d) The commission shall calculate the total regulatory cost charges to be levied against all regulated electric utilities under this section. The commission shall allocate the total amount among the regulated electric utilities by using an equal charge per kilowatt hour sold at retail.

(e) The commission shall administer the charge imposed under this section. The Department of Revenue shall collect and enforce the charge imposed under this section. The Department of Administration shall identify the amount of the operating budgets of the commission and the Department of Law public advocacy function under AS 42.04.070(c) and AS 44.23.020 (e) that lapse into the general fund each year. The legislature may appropriate an amount equal to the lapsed amount to the commission and to the Department of Law public advocacy function under AS 42.04.070 (c) and AS 44.23.020 (e) for operating costs for the next fiscal year. If the legislature does so, the commission shall reduce the total regulatory cost charge collected for that fiscal year by a comparable amount.

(f) The commission shall allow a public utility to recover all payments made to the commission under this section. The commission may not require a public utility to file a rate case in order to be eligible to recover the regulatory cost charge.

(g) The commission may adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to administer this section, including requirements and procedures for reporting information and making quarterly payments. The Department of Revenue may adopt regulations under AS 44.62 (Administrative Procedure Act) for investigating the accuracy of filed information, and for collecting required payments.

(h) The commission shall by regulation establish a method to determine annually the maximum percentage of adjusted gross revenue that will apply to each regulated public utility sector and the maximum percentage of gross revenue that will apply to the regulated pipeline carrier sector. Other than the cost of services provided to exempt utilities, the method established shall allocate the commission's costs, and the Department of Law's certified costs of its public advocacy function under AS 42.04.070 (c) and AS 44.23.020 (e), among the regulated public utility sectors and the regulated pipeline carrier sector based on the relative amount of the commission's annual costs and the Department of Law's certified costs that is attributable to regulating each sector. For purposes of this subsection, the Department of Law shall annually certify to the commission the costs of its public advocacy function under AS 42.04.070 (c) and AS 44.23.020 (e).

(i) In this section,

(1) "adjusted gross revenue" means the gross revenue of a utility as modified under (c) of this section, if appropriate.

(2) "exempt utility" means a public utility that is certificated by the commission under AS 42.05.221 - 42.05.281 but, in accordance with AS 42.05.711 , is exempt from other regulatory requirements of this chapter;

(3) "gross revenue" means the total operating revenue from intrastate services, as shown in a utility's annual report required by the commission by regulation;

(4) "regulated utility" means a public utility that is certificated by the commission under AS 42.05.221 - 42.05.281 and that is subject to the other regulatory requirements of this chapter;

(5) "wholesale sales" means sales to another utility for resale under circumstances that make revenue from the resale subject to the regulatory cost charge imposed under this section.

Sec. 42.05.260. [Repealed, Sec. 5 ch 113 SLA 1970].

Repealed or Renumbered

Sec. 42.05.261. Discontinuance, suspension, or abandonment of certificated service.

(a) Except as otherwise provided in this section, a public utility may not discontinue or abandon a service for which a certificate has been issued by the commission unless upon the application of the public utility and if, after notice and opportunity for hearing, the commission finds that the continued service is not required by public convenience and necessity. Any interested person may file with the commission a protest or memorandum of opposition to or in support of discontinuance or abandonment. The commission may authorize temporary suspension of a service or of part of a service.

(b) Upon complaint or upon its own motion, the commission may reinvestigate a previously authorized discontinuance, abandonment, or suspension of a service of an operating public utility. If, after providing notice and an opportunity for a hearing, the commission finds that the public convenience and necessity require the service to be resumed, it may order the public utility to again provide the service.

Sec. 42.05.270. [Repealed, Sec. 5 ch 113 SLA 1970].

Repealed or Renumbered

Sec. 42.05.271. Modification, suspension, or revocation of certificates.

Upon complaint or upon its own motion the commission, after notice and opportunity for hearing and for good cause shown, may amend, modify, suspend, or revoke a certificate, in whole or in part. Good cause for amendment, modification, suspension, or revocation of a certificate includes

(1) the requirements of public convenience and necessity;

(2) misrepresentation of a material fact in obtaining the certificate;

(3) unauthorized discontinuance or abandonment of all or part of a public utility's service;

(4) wilful failure to comply with the provisions of this chapter or the regulations or orders of the commission; or

(5) wilful failure to comply with a term, condition, or limitation of the certificate.

Sec. 42.05.280. [Repealed, Sec. 5 ch 113 SLA 1970].

Repealed or Renumbered

Sec. 42.05.281. Transfer of certificate.

A certificate may not be sold or leased, rented, transferred or inherited without the prior approval of the commission.

Sec. 42.05.290. [Repealed, 5 ch 113 SLA 1970].

Sec. 42.05.421. Suspension of tariff filing.

(a) When a tariff filing is made containing a new or revised rate, classification, rule, regulation, practice, or condition of service the commission may, either upon written complaint or upon its own motion, after reasonable notice, conduct a hearing to determine the reasonableness and propriety of the filing. Pending the hearing the commission may, by order stating the reasons for its action, suspend the operation of the tariff filing. For a tariff filing that does not change the utility's revenue requirement or rate design, the suspension may last for a period not longer than six months beyond the effective date established in the tariff filing unless the commission extends the period for good cause. For a tariff filing that changes the utility's revenue requirement or rate design, the suspension may last, unless the commission extends the period for good cause, for a period not longer than

(1) six months before an interim rate equal to the requested rate goes into effect and not longer than 12 months before a permanent rate goes into effect if the annual gross revenues of the utility making the filing are more than $3,000,000; and

(2) 150 days before an interim rate equal to the requested new rate goes into effect and not longer than one year before a permanent rate goes into effect if the annual gross revenues of the utility making the filing are $3,000,000 or less.

(b) An order suspending a tariff filing may be vacated if, after investigation, the commission finds that it is in all respects proper. Otherwise the commission shall hold a hearing on the suspended filing and issue its order, before the end of the suspension period, granting, denying or modifying the suspended tariff in whole or in part.

(c) In the case of a proposed increased rate, the commission may by order require the interested public utility or utilities to place in escrow in a financial institution approved by the commission and keep accurate account of all amounts received by reason of the increase, specifying by whom and in whose behalf the amounts are paid. Upon completion of the hearing and decision the commission may by order require the public utility to refund to the persons in whose behalf the amounts were paid, that portion of the increased rates which was found to be unreasonable or unlawful. Funds may not be released from escrow without the commission's prior written consent and the escrow agent shall be so instructed by the utility, in writing, with a copy to the commission. The utility may, at its expense, substitute a bond in lieu of the escrow requirement.

(d) One who initiates a change in existing tariffs shall bear the burden to prove the reasonableness of the change.

Sec. 42.05.430. [Repealed, Sec. 5 ch 113 SLA 1970].

Repealed or Renumbered

Sec. 42.05.431. Power of commission to fix rates.

(a) When the commission, after an investigation and hearing, finds that a rate demanded, observed, charged, or collected by a public utility for a service subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order. A municipality may covenant with bond purchasers regarding rates of a municipally owned utility, and the covenant is valid and enforceable and is considered to be a contract with the holders from time to time of the bonds. The financial covenants contained in mortgages and other debt instruments of cooperative utilities organized under AS 10.25 are also valid and enforceable, and rates set by the commission must be adequate to meet those covenants. However, a cooperative utility that is negotiating to enter a mortgage or other debt instrument that provides for a times-interest-earned ratio (TIER) greater than the ratio the commission most recently approved for that cooperative shall submit the mortgage or debt instrument to the commission before the instrument takes effect. The commission may disapprove the instrument within 60 days after its submission. If the commission has not acted within 60 days, the instrument is considered to be approved.

(b) A wholesale power agreement between public utilities is subject to advance approval of the commission. After a wholesale power agreement is in effect, the commission may not invalidate any purchase or sale obligation under the agreement. However, if the commission finds that rates set in accordance with the agreement are not just and reasonable, the commission may order the parties to negotiate an amendment to the agreement and if the parties fail to agree, to use the dispute resolution procedures contained in the contract.

(c) Notwithstanding (b) of this section,

(1) a wholesale agreement for the sale of power from a project licensed by the Federal Energy Regulatory Commission on or before January 1, 1987, and related contracts for the wheeling, storage, regeneration, or wholesale repurchase of power purchased under the agreement, entered into between the Alaska Energy Authority and one or more other public utilities or among the utilities after October 31, 1987, and before January 1, 1988, and amendments to the wholesale agreement or related contract, and the wholesale agreement or related contract assigned by the Alaska Energy Authority to a joint action agency formed under AS 42.45.310 that purchases the project from the Alaska Energy Authority, are not subject to review or approval by the commission until all long-term debt incurred for the project is retired, or, for a wholesale agreement or related contract assigned to a joint action agency formed under AS 42.45.310 , until all long-term debt incurred to pay the purchase price to the Alaska Energy Authority is retired; and

(2) a wholesale agreement or related contract described in (1) of this subsection may contain a covenant for the public utility to establish, charge, and collect rates sufficient to meet its obligations under the contract; the rate covenant is valid and enforceable.

(d) Meetings between the Alaska Energy Authority and public utilities concerning a wholesale agreement for the sale of power or other matter exempted from review of the commission under (c) of this section must comply with AS 44.62.310 .

(e) Validated costs incurred by a utility in connection with the related contracts described in (c)(1) of this section must be allowed in the rates charged by the utility. In this subsection, "validated costs" are the actual costs that a utility uses, under the formula set out in related contracts described in (c) of this section, to establish rates, charges for services and rights, and the payment of charges for services and rights. This subsection does not grant the commission jurisdiction to alter or amend the formula set out in those related contracts.

(f) In the establishment of rates of a utility furnishing solid waste material collection and disposal service, the commission shall permit recovery of reasonable, net capital and operating costs relating to solid waste recovery and recycling services after considering the utility's recovery of revenue associated with the service.

(g) In the establishment of rates under this chapter, the commission shall promote cost-effective solid waste recovery and recycling services.

(h) When setting or reviewing rates for a public utility that sends or receives power over the power transmission interties between Fairbanks and Healy or between Anchorage and the Kenai Peninsula, the commission shall consider those costs that have not been directly assigned to other individual generating utilities by the utility responsible for the construction of the intertie to have been incurred for the system existing on August 11, 1993.

Sec. 42.05.440. [Repealed, Sec. 5 ch 113 SLA 1970].

Repealed or Renumbered

Miscellaneous Provisions

Sec. 42.05.691. Utility classes.

The commission may by regulation provide for the classification of public utilities based upon differences in annual revenue, assets, nature of ownership, and other appropriate distinctions and as between these classifications, by regulation, provide for different reporting, accounting, and other regulatory requirements.

Sec. 42.05.711. Exemptions.

(a) The provisions of this chapter do not apply to a person who furnishes water, gas or petroleum or petroleum products by tank, wagon, or similar conveyance, unless the person is thereby supplying water, gas, petroleum or petroleum products to a public utility in which the person has an "affiliated interest".

(b) Except as otherwise provided in this subsection and in (o) of this section, public utilities owned and operated by a political subdivision of the state, or electric operating entities established as the instrumentality of two or more public utilities owned and operated by political subdivisions of the state, are exempt from this chapter, other than AS 42.05.221 - 42.05.281 and 42.05.385. However,

(1) the governing body of a political subdivision may elect to be subject to this chapter; and

(2) a utility or electric operating entity that is owned and operated by a political subdivision and that directly competes with another utility or electric operating entity is subject to this chapter and any other utility or electric operating entity owned and operated by the political subdivision is also subject to this chapter; this paragraph does not apply to a utility or electric operating entity owned and operated by a political subdivision that competes with a telecommunications utility.

(c) The ownership in whole or part, of the corporate stock of a public utility does not make the owner a public utility.

(d) The commission may exempt a utility, a class of utilities, or a utility service from all or a portion of this chapter if the commission finds that the exemption is in the public interest.

(e) Notwithstanding any other provisions of this chapter, any electric or telephone utility that does not gross $50,000 annually is exempt from regulation under this chapter unless the subscribers petition the commission for regulation under AS 42.05.712 (h).

(f) Notwithstanding any other provisions of this chapter, an electric or telephone utility that does not gross $500,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 under the procedure described in AS 42.05.712 .

(g) A utility, other than a telephone or electric utility, that does not gross $150,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 under the procedure described in AS 42.05.712 .

(h) A cooperative organized under AS 10.25 may elect to be exempt from the provisions of this chapter, other than AS 42.05.221 - 42.05.281, under the procedure described in AS 42.05.712 .

(i) A utility that furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of $300,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 - 42.05.281, unless the subscribers petition the commission for regulation under AS 42.05.712 (h). Notwithstanding AS 42.05.712 (b) and (g), if subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation, the utility is subject to the provisions of this chapter.

(j) The provisions of this chapter do not apply to sales, exchanges, or gifts of energy to an electric utility certificated under this chapter when the energy which is the subject of the sale, exchange, or gift is waste heat, electricity, or other energy which is surplus or the by-product of an industrial process. In an area in which no electric utility is certificated for service, energy provided by sale, exchange, or gift may be provided to any utility which is certificated for service to that area. A contract for the sale, exchange, or gift of energy exempt under this subsection does not make the supplier a public utility and does not transfer the responsibility to provide utility services from a certificated utility to any other person.

(k) A utility that furnishes cable television service is exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 unless the subscribers petition the commission for regulation under the procedure described in AS 42.05.712 .

(l) A person, utility, joint action agency established under AS 42.45.310, or cooperative that is exempt from regulation under (a), (d) - (k), or (o) of this section is not subject to regulation by a municipality under AS 29.35.060 and 29.35.070.

(m) The collection and disposal, under AS 29.35.050 (c), by a municipality of waste material deposited at an intermediate transfer site is exempt from this chapter.

(n) Except as provided by AS 42.06.370 (c), the provisions of this chapter do not apply to a person who owns or operates a natural gas pipeline as a North Slope natural gas pipeline carrier, as that term is defined in AS 42.06.630 .

(o) A joint action agency established under AS 42.45.310 is exempt from regulation under this chapter, including the requirement to obtain a certificate of public convenience and necessity under AS 42.05.221, for the operation of, sale of power from, and other activities related to the power project the joint action agency purchases from the Alaska Energy Authority until the wholesale agreement and any related contract assigned by the authority becomes subject to review or approval by the commission under AS 42.05.431 . The exemption provided by this subsection extends to repairs and improvements to the power project the joint action agency

purchases from the authority but does not extend to any other power project or other activity of the joint action agency.

(p) A regional solid waste management authority established under AS 29.35.800 - 29.35.925 is exempt from regulation under this chapter, except that a solid waste management authority is subject to this chapter if it directly competes with a utility subject to this chapter.

Article 10. GENERAL PROVISIONS

Sec. 42.05.990. Definitions.

In this chapter

(1) "affiliated interest" includes:

(A) a person owning or holding directly or indirectly five percent or more of the voting securities of a public utility engaged in intrastate business in this state;

(B) a person, other than those specified in (A) of this paragraph, in a chain of successive ownership of five percent or more of voting securities, the chain beginning with the holder of the voting securities of such public utility;

(C) a corporation five percent or more of whose voting securities are owned by a person owning five percent or more of the voting securities of the public utility or by a person in such a chain of successive ownership of five percent or more of the voting securities;

(D) a corporation five percent or more of whose voting securities are owned or held by a public utility;

(E) a person with whom the public utility has a management or service contract;

(F) a person who is an officer or director of such a public utility or of a corporation in a chain of successive ownership of five percent or more of voting securities;

(G) a corporation which has one or more officers or directors in common with a public utility;

(H) a person or corporation who or which the commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of a utility in conjunction with one or more other corporations or persons with whom they are related by ownership or blood, or by action in concert, that together they are affiliated with the utility within the meaning of this section even though none of them alone is so affiliated; or

(I) a person or corporation who or which the commission determines as a matter of fact after investigation and hearing actually is exercising substantial influence over the policies and actions of a utility even though such influence is not based upon stockholdings, stockholders, officers or directors to the extent specified in this section;

(2) "commission" means the Regulatory Commission of Alaska;

(3) "public" or "general public" means

(A) a group of 10 or more customers that purchase the service or commodity furnished by a public utility;

(B) one or more customers that purchase electrical service for use within an area that is certificated to and presently or formerly served by an electric utility if the total annual compensation that the electrical utility receives for sales of electricity exceeds $50,000; and

(C) a utility purchasing the product or service or paying for the transmission of electric energy, natural or manufactured gas, or petroleum products that are re-sold to a person or group included in (A) or (B) of this paragraph or that are used to produce the service or commodity sold to the public by the utility;

(4) "public utility" or "utility" includes every corporation whether public, cooperative, or otherwise, company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant, pipeline, or system for

(A) furnishing, by generation, transmission, or distribution, electrical service to the public for compensation;

(B) furnishing telecommunications service to the public for compensation;

(C) furnishing water, steam, or sewer service to the public for compensation;

(D) furnishing by transmission or distribution of natural or manufactured gas to the public for compensation;

(E) furnishing for distribution or by distribution petroleum or petroleum products to the public for compensation when the consumer has no alternative in the choice of supplier of a comparable product and service at an equal or lesser price;

(F) furnishing collection and disposal service of garbage, refuse, trash, or other waste material to the public for compensation;

(5) "rate" includes each rate, toll, fare, rental, charge, or other form of compensation demanded, observed, charged, or collected by a public utility for its services;

(6) "service" means, unless the context indicates otherwise, every commodity, product, use, facility, convenience, or other form of service that is offered for and provided by a public utility for the convenience and necessity of the public;

(7) "tariff" means a rate, charge, toll, rule, or regulation of a utility relating to services furnished by the utility to the general public for compensation and every map, page, adoption notice, instrument, or other document filed with the commission setting out the terms and conditions under which utility services are offered to the public and instruments of concurrence and all other documents and data setting out the terms of a utility's business relations with another utility insofar as they affect the general public either directly or indirectly;

(8) "telecommunications" means the transmission and reception of messages, impressions, pictures, and signals by means of electricity, electromagnetic waves, and any other kind of energy, force variations, or impulses whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points.

What is a Qualifying Facility?

(Note: Some of the links on this page are to external sites and you will be leaving FERC's website)

The Public Utility Regulatory Policies Act of 1978 (PURPA) was implemented to encourage, among other things,

1. the conservation of electric energy,
2. increased efficiency in the use of facilities and resources by electric utilities,
3. equitable retail rates for electric consumers,
4. expeditious development of hydroelectric potential at existing small dams, and
5. conservation of natural gas while ensuring that rates to natural gas consumers are equitable.

One of the ways PURPA set out to accomplish its goals was through the establishment of a new class of generating facilities which would receive special rate and regulatory treatment. Generating facilities in this group are known as qualifying facilities (QFs), and fall into two categories: qualifying small power production facilities and qualifying cogeneration facilities.

A **small power production facility** is a generating facility of 80 MW or less whose primary energy source is renewable (hydro, wind or solar), biomass, waste, or geothermal resources. There are some limited exceptions to the 80 MW size limit that apply to certain facilities certified prior to 1995 and designated under section 3(17)(E) of the Federal Power Act (FPA) (16 U.S.C. § 796(17)(E)), which have no size limitation. In order to be considered a qualifying small power production facility, a facility must meet all of the requirements of 18 C.F.R. §§ 292.203(a), 292.203(c) and 292.204 for size and fuel use, and be certified as a QF pursuant to 18 C.F.R. § 292.207.

A **cogeneration facility** is a generating facility that sequentially produces electricity and another form of useful thermal energy (such as heat or steam) in a way that is more efficient than the separate production of both forms of energy. For example, in addition to the production of electricity, large cogeneration facilities might provide steam for industrial uses in facilities such as paper mills, refineries, or factories, or for HVAC applications in commercial or residential buildings. Smaller cogeneration facilities might provide hot water for domestic heating or other useful applications. In order to be considered a qualifying cogeneration facility, a facility must meet all of the requirements of 18 C.F.R. §§ 292.203(b) and 292.205 for operation, efficiency and use of energy output, and be certified as a QF pursuant to 18 C.F.R. § 292.207. There is no size limitation for qualifying cogeneration facilities.

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What Are the Benefits of QF Status?

QFs may enjoy certain benefits under Federal, State and local laws. The benefits that are conferred upon QFs by Federal law generally fall into three categories: (1) the right to sell energy or capacity to a utility, (2) the right to purchase certain services from utilities, and (3) relief from certain regulatory burdens.

Right to Sell QF Energy or Capacity to a Utility

QFs have the right to sell energy and capacity to a utility (see 18 C.F.R. § 304), provided the purchasing utility has not been relieved from its QF purchase obligation (see 18 C.F.R. § 309-311). With limited exceptions, QFs generally have the option of selling to a utility either at the utility's avoided cost or at a negotiated rate. Avoided cost is the incremental cost to an electric utility of electric energy or capacity which, but for the purchase from the QF, such utility would generate itself or purchase from another source (see 18 C.F.R. § 292.101(b)(6)). QFs also generally have the option to sell energy either "as-available" (i.e., as the QF determines such energy to be available for such purchases) or as part of a legally enforceable obligation for delivery of energy or capacity over a specified term.

Right to Purchase Certain Services from Utilities

QFs have the right to purchase supplementary power, back-up power, maintenance power, and interruptible power at rates which are just and reasonable, based on accurate data and consistent system-wide costing principles, and that apply to the utility's other customers with similar load or cost-related characteristics (see 18 C.F.R. § 292.305), provided the selling utility has not been relieved from its QF sales obligation (see 18 C.F.R. § 312 - 313). QFs also have the right to interconnect with a utility by paying a nondiscriminatory interconnection fee approved by the State regulatory authority or a nonregulated electric utility (see 18 C.F.R. § 292.306).

Relief from Regulatory Burdens

The following categories of QFs are exempt from the Public Utility Holding Company Act of 2005 (PUHCA) (see 18 C.F.R. § 292.602):

- Cogeneration facilities of any size;
- Small power production facilities 30 MW or smaller;
- Geothermal and biomass small power production facilities of any size; and
- Small power production facilities of any size that are designated as "eligible" under section 3(17)(E) of the Federal Power Act (FPA).

The following categories of QFs are exempt from State laws and regulations respecting the rates and financial and organizational aspects of utilities (see 18 C.F.R. § 292.602):

- Cogeneration facilities of any size;
- Small power production facilities 30 MW or smaller;
- Geothermal and biomass small power production facilities of any size; and
- Small power production facilities of any size that are designated as "eligible" under section 3(17)(E) of the FPA.

The following categories of QFs are largely exempt from most sections (not including sections 205, 206 and certain other sections) of the FPA (see 18 C.F.R. § 292.601):

- Cogeneration facilities of any size;
- Small power production facilities 30 MW or smaller;
- Geothermal small power production facilities of any size; and
- Small power production facilities of any size that are designated as "eligible" under section 3(17)(E) of the FPA.

Energy and capacity sales made by the following categories of QFs are exempt from scrutiny under sections 205 and 206 of the FPA (see 18 C.F.R. § 292.601):

- QFs 20 MW or smaller;

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- QFs making sales pursuant to a contract executed on or before March 17, 2006; and
- QFs making sales pursuant to a state regulatory authority's implementation of section 210 of PURPA.

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How to Obtain QF Status for Your Facility

An owner or operator of a generating facility may obtain QF status by either submitting a self-certification or applying for and obtaining a Commission certification of QF status. The choice of whether to certify a facility through a self-certification or Commission certification is up to the applicant. In some instances, negotiations with a lender or utility purchaser may proceed more smoothly if the facility has been certified by the Commission.

A completed Form No. 556 must be submitted with each self-certification or application for Commission certification of QF status. Most types of QF filings also have an associated notice requirement; see the Commission's QF Notice Requirements website for more information.

There are two methods of making QF filings:

- eFiling
- By Mail

All QF self-certifications and applications for Commission certifications may be filed electronically, and applicants are strongly encouraged to use the electronic filing process. By filing electronically, you will reduce your filing burden, save paper resources, save postage or courier charges, help keep Commission expenses to a minimum, and receive a much faster confirmation (via an email containing the docket number assigned to your facility) that the Commission has received your filing.

When prompted, select one of the following filing types, as appropriate, from the Electric menu:

- (Fee) Application for Commission Cert. as Cogeneration QF
- (Fee) Application for Commission Cert. as Small Power QF
- Self-Certification Notice (QF, EG, FC)
- Self-Recertification of Qualifying Facility (QF)
- Supplemental Information or Request (use this selection if you are supplementing or correcting a filing, whether on your own initiative, or at the request of Commission staff)

If you are required to pay a fee, you will be prompted to submit your fee electronically during the electronic filing process. You can pay via credit card or electronic debit from a bank account. If you are eFiling an application which requires you to submit a draft *Federal Register* notice (see Notice Requirements page for information), you must upload your draft notice in a word processing format (DOC, RTF, WPD, etc.) during the eFiling process.

To file a hardcopy of your self-certification or application for Commission certification, make sure the filing is completed and signed, and send the filing (including original and 14 copies of the Form No. 556 and any required attachments) and a check for the filing fee (if applicable) to the Secretary at the address listed in the Contact Us - Official Communication section.

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Self-Certification

A self-certification of QF status under 18 C.F.R. § 292.207(a) must include the following:

- A completed Form No. 556.
- If the self-certification is for a "new cogeneration facility" (as defined below), then the public will be given notice of the filing through an announcement in the *Federal Register*. Thus, self-certifications of "new cogeneration facilities" must be accompanied by a draft notice suitable for publication in the *Federal Register*. See the Commission's QF Notice Requirements page for more information. A "new cogeneration facility" is a cogeneration facility that was either not certified as a QF on or before August 8, 2005, or that had not filed a notice of self-certification, self-recertification or an application for Commission certification or Commission recertification as a qualifying cogeneration facility on or before February 1, 2006.

There is no fee for filing a self-certification.

Applicants will be notified of their docket number either by email (if their application is eFiled) or by U.S. mail (if their application is filed in hardcopy format). Keep this number for future reference. You will receive no other document from the Commission for self-certifications.

Applicants for self-certification who have not yet received their docket number from the Secretary can locate their filed documents and find their docket number by performing a New Dockets Search in eLibrary.

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Application for Commission Certification

An application for Commission certification of QF status under 18 C.F.R. § 292.207(b) must include the following:

- A completed Form No. 556.
- For all applications for Commission certification, the public is given notice through an announcement in the *Federal Register* of the filing of applications for Commission certification. Thus, applications for Commission certification must be accompanied by a draft notice suitable for publication in the *Federal Register*. See the Commission's QF Notice Requirements page for more information.
- A check for the filing fee made payable to the Treasurer of the United States. Please visit our Filing Fees page for the most current filing fee. A filing date will not be assigned to an application unless it is accompanied by the proper fee.

After submitting an application, applicants can locate documents related to their application and find their docket number by performing a New Dockets Search in eLibrary.

Within 90 days of the filing of an application, the Commission will either inform the applicant that the filing is deficient, issue an order granting or denying the application, or act to postpone the date for issuing an order. Under 18 C.F.R., 292.207(b)(3), if the Commission has not acted upon the application within 90 days of the filing date, it shall be deemed granted.

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Title 18: Conservation of Power and Water Resources

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

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Subpart C—Arrangements Between Electric Utilities and Qualifying Cogeneration and Small Power Production Facilities Under Section 210 of the Public Utility Regulatory Policies Act of 1978

Authority: Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 *et seq.* Federal Power Act, 16 U.S.C. 792 *et seq.*, Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, E.O. 12009, 42 FR 46267.

Source: Order 69, 45 FR 12234, Feb. 25, 1980, unless otherwise noted.

§ 292.301 Scope.

(a) *Applicability.* This subpart applies to the regulation of sales and purchases between qualifying facilities and electric utilities.

(b) *Negotiated rates or terms.* Nothing in this subpart:

(1) Limits the authority of any electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by this subpart; or

(2) Affects the validity of any contract entered into between a qualifying facility and an electric utility for any purchase.

§ 292.302 Availability of electric utility system cost data.

(a) *Applicability.* (1) Except as provided in paragraph (a)(2) of this section, paragraph (b) applies to each electric utility, in any calendar year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

(2) Each utility having total sales of electric energy for purposes other than resale of less than one billion kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding year, shall not be subject to the provisions of this section until June 30, 1982.

(b) *General rule.* To make available data from which avoided costs may be derived, not later than November 1, 1980, June 30, 1982, and not less often than every two years thereafter, each regulated electric utility described in paragraph (a) of this section shall provide to its State regulatory authority, and shall maintain for public inspection, and each nonregulated electric utility described in paragraph (a) of this section shall maintain for public inspection, the following data:

(1) The estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of not more than 100 megawatts for systems with peak demand of 1000 megawatts or more, and in blocks equivalent to not more than 10 percent of the system peak demand for systems of less than 1000 megawatts. The avoided costs shall be stated on a cents per kilowatt-hour basis, during daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next 5 years;

(2) The electric utility's plan for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding 10 years; and

(3) The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases.

(c) *Special rule for small electric utilities.* (1) Each electric utility (other than any electric utility to which paragraph (b) of this section applies) shall, upon request:

(i) Provide comparable data to that required under paragraph (b) of this section to enable qualifying facilities to estimate the electric utility's avoided costs for periods described in paragraph (b) of this section; or

(ii) With regard to an electric utility which is legally obligated to obtain all its requirements for electric energy and capacity from another electric utility, provide the data of its supplying utility and the rates at which it currently purchases such energy and capacity.

(2) If any such electric utility fails to provide such information on request, the qualifying facility may apply to the State regulatory authority (which has ratemaking authority over the electric utility) or the Commission for an order requiring that the information be provided.

(d) *Substitution of alternative method.* (1) After public notice in the area served by the electric utility, and after opportunity for public comment, any State regulatory authority may require (with respect to any electric utility over which it has ratemaking authority), or any non-regulated electric utility may provide, data different than those which are otherwise required by this section if it determines that avoided costs can be derived from such data.

(2) Any State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated utility which requires such different data shall notify the Commission within 30 days of making such determination.

(e) *State Review.* (1) Any data submitted by an electric utility under this section shall be subject to review by the State regulatory authority which has ratemaking authority over such electric utility.

(2) In any such review, the electric utility has the burden of coming forward with justification for its data.

[45 FR 12234, Feb. 25, 1980; 45 FR 24126, Apr. 9, 1980]

§ 292.303 Electric utility obligations under this subpart.

(a) *Obligation to purchase from qualifying facilities.* Each electric utility shall purchase, in accordance with §292.304, unless exempted by §292.309 and §292.310, any energy and capacity which is made available from a qualifying facility:

(1) Directly to the electric utility; or

(2) Indirectly to the electric utility in accordance with paragraph (d) of this section.

(b) *Obligation to sell to qualifying facilities.* Each electric utility shall sell to any qualifying facility, in accordance with §292.305, unless exempted by §292.312, energy and capacity requested by the qualifying facility.

(c) *Obligation to interconnect.* (1) Subject to paragraph (c)(2) of this section, any electric utility shall make such interconnection costs with any qualifying facility as may be necessary to accomplish purchases or sales under this subpart. The obligation to pay for any interconnection shall be determined in accordance with §292.306.

(2) No electric utility is required to interconnect with any qualifying facility if, solely by reason of purchases or sales over the interconnection, the electric utility would become subject to regulation as a public utility under part II of the Federal Power Act.

(d) *Transmission to other electric utilities.* If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which such energy or capacity is transmitted shall purchase such energy or capacity under this subpart as if the qualifying facility were supplying energy or capacity directly to such electric utility. The rate for purchase by the electric utility to which such energy is transmitted shall be adjusted up or down to reflect line losses pursuant to §292.304(e)(4) and shall not include any charges for transmission.

(e) *Parallel operation.* Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with any applicable standards established in accordance with §292.308.

[Order 688, 71 FR 64372, Nov. 1, 2006; 71 FR 75662, Dec. 18, 2006]

§ 292.304 Rates for purchases.

(a) *Rates for purchases.* (1) Rates for purchases shall:

(i) Be just and reasonable to the electric consumer of the electric utility and in the public interest; and

(ii) Not discriminate against qualifying cogeneration and small power production facilities.

(2) Nothing in this subpart requires any electric utility to pay more than the avoided costs for purchases.

(b) *Relationship to avoided costs.* (1) For purposes of this paragraph, "new capacity" means any purchase from capacity of a qualifying facility, construction of which was commenced on or after November 9, 1978.

(2) Subject to paragraph (b)(3) of this section, a rate for purchases satisfies the requirements of paragraph (a) of this section if the rate equals the avoided costs determined after consideration of the factors set forth in paragraph (e) of this section

(3) A rate for purchases (other than from new capacity) may be less than the avoided cost if the State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or the nonregulated electric utility determines that a lower rate is consistent with paragraph (a) of this section, and is sufficient to encourage cogeneration and small power production.

(4) Rates for purchases from new capacity shall be in accordance with paragraph (b)(2) of this section, regardless of whether the electric utility making such purchases is simultaneously making sales to the qualifying facility.

(5) In the case in which the rates for purchases are based upon estimates of avoided costs over the specific term of the contract or other legally enforceable obligation, the rates for such purchases do not violate this subpart if the rates for such purchases differ from avoided costs at the time of delivery.

(c) *Standard rates for purchases.* (1) There shall be put into effect (with respect to each electric utility) standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less.

(2) There may be put into effect standard rates for purchases from qualifying facilities with a design capacity of more than 100 kilowatts.

(3) The standard rates for purchases under this paragraph:

(i) Shall be consistent with paragraphs (a) and (e) of this section; and

(ii) May differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies.

(d) *Purchases "as available" or pursuant to a legally enforceable obligation.* Each qualifying facility shall have the option either:

(1) To provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or

(2) To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for such purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:

(i) The avoided costs calculated at the time of delivery; or

(ii) The avoided costs calculated at the time the obligation is incurred.

(e) *Factors affecting rates for purchases.* In determining avoided costs, the following factors shall, to the extent practicable, be taken into account:

(1) The data provided pursuant to §292.302(b), (c), or (d), including State review of any such data;

(2) The availability of capacity or energy from a qualifying facility during the system daily and seasonal peak periods, including:

(i) The ability of the utility to dispatch the qualifying facility;

(ii) The expected or demonstrated reliability of the qualifying facility;

(iii) The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for non-compliance;

(iv) The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;

(v) The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;

(vi) The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system; and

(vii) The smaller capacity increments and the shorter lead times available with additions of capacity from qualifying facilities; and

(3) The relationship of the availability of energy or capacity from the qualifying facility as derived in paragraph (e)(2) of this section, to the ability of the electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and

(4) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility, if the purchasing electric utility generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity.

(f) *Periods during which purchases not required.* (1) Any electric utility which gives notice pursuant to paragraph (f)(2) of this section will not be required to purchase electric energy or capacity during any period during which, due to

operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases, but instead generated an equivalent amount of energy itself.

(2) Any electric utility seeking to invoke paragraph (f)(1) of this section must notify, in accordance with applicable State law or regulation, each affected qualifying facility in time for the qualifying facility to cease the delivery of energy or capacity to the electric utility.

(3) Any electric utility which fails to comply with the provisions of paragraph (f)(2) of this section will be required to pay the same rate for such purchase of energy or capacity as would be required had the period described in paragraph (f)(1) of this section not occurred.

(4) A claim by an electric utility that such a period has occurred or will occur is subject to such verification by its State regulatory authority as the State regulatory authority determines necessary or appropriate, either before or after the occurrence.

§ 292.305 Rates for sales.

(a) *General rules.* (1) Rates for sales:

(i) Shall be just and reasonable and in the public interest; and

(ii) Shall not discriminate against any qualifying facility in comparison to rates for sales to other customers served by the electric utility.

(2) Rates for sales which are based on accurate data and consistent systemwide costing principles shall not be considered to discriminate against any qualifying facility to the extent that such rates apply to the utility's other customers with similar load or other cost-related characteristics.

(b) *Additional services to be provided to qualifying facilities.* (1) Upon request of a qualifying facility, each electric utility shall provide:

(i) Supplementary power;

(ii) Back-up power;

(iii) Maintenance power; and

(iv) Interruptible power.

(2) The State regulatory authority (with respect to any electric utility over which it has ratemaking authority) and the Commission (with respect to any nonregulated electric utility) may waive any requirement of paragraph (b)(1) of this section if, after notice in the area served by the electric utility and after opportunity for public comment, the electric utility demonstrates and the State regulatory authority or the Commission, as the case may be, finds that compliance with such requirement will:

(i) Impair the electric utility's ability to render adequate service to its customers; or

(ii) Place an undue burden on the electric utility.

(c) *Rates for sales of back-up and maintenance power.* The rate for sales of back-up power or maintenance power:

(1) Shall not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on an electric utility's system will occur simultaneously, or during the system peak, or both; and

(2) Shall take into account the extent to which scheduled outages of the qualifying facilities can be usefully coordinated with scheduled outages of the utility's facilities.

§ 292.306 Interconnection costs.

(a) *Obligation to pay.* Each qualifying facility shall be obligated to pay any interconnection costs which the State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated electric utility may assess against the qualifying facility on a nondiscriminatory basis with respect to other customers with similar load characteristics.

(b) *Reimbursement of interconnection costs.* Each State regulatory authority (with respect to any electric utility over which it has ratemaking authority) and nonregulated utility shall determine the manner for payments of interconnection costs, which may include reimbursement over a reasonable period of time.

§ 292.307 System emergencies.

(a) *Qualifying facility obligation to provide power during system emergencies.* A qualifying facility shall be required to provide energy or capacity to an electric utility during a system emergency only to the extent:

(1) Provided by agreement between such qualifying facility and electric utility; or

(2) Ordered under section 202(c) of the Federal Power Act.

(b) *Discontinuance of purchases and sales during system emergencies.* During any system emergency, an electric utility may discontinue:

(1) Purchases from a qualifying facility if such purchases would contribute to such emergency; and

(2) Sales to a qualifying facility, provided that such discontinuance is on a nondiscriminatory basis.

§ 292.308 Standards for operating reliability.

Any State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated electric utility may establish reasonable standards to ensure system safety and reliability of interconnected operations. Such standards may be recommended by any electric utility, any qualifying facility, or any other person. If any State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated electric utility establishes such standards, it shall specify the need for such standards on the basis of system safety and reliability.

§ 292.309 Termination of obligation to purchase from qualifying facilities.

(a) After August 8, 2005, an electric utility shall not be required, under this part, to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility if the Commission finds that the qualifying cogeneration facility or qualifying small power facility production has nondiscriminatory access to:

(1)(i) Independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and

(ii) Wholesale markets for long-term sales of capacity and electric energy; or

(2)(i) Transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and

(ii) Competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or

(3) Wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in paragraphs (a)(1) and (a)(2) of this section.

(b) For purposes of §292.309(a), a renewal of a contract that expires by its own terms is a "new contract or obligation" without a continuing obligation to purchase under an expired contract.

(c) For purposes of §292.309(a)(1), (2) and (3), with the exception of paragraph (d) of this section, there is a rebuttable presumption that a qualifying facility has nondiscriminatory access to the market if it is eligible for service under a Commission-approved open access transmission tariff or Commission-filed reciprocity tariff, and Commission-approved interconnection rules. If the Commission determines that a market meets the criteria of §292.309(a)(1), (2) or (3), and if a qualifying facility in the relevant market is eligible for service under a Commission-approved open access transmission tariff or Commission-filed reciprocity tariff, a qualifying facility may seek to rebut the presumption of access to the market by demonstrating, *inter alia,* that it does not have access to the market because of operational characteristics or transmission constraints.

(d)(1) For purposes of §292.309(a)(1), (2), and (3), there is a rebuttable presumption that a qualifying facility with a capacity at or below 20 megawatts does not have nondiscriminatory access to the market.

(2) For purposes of implementing paragraph (d)(1) of this section, the Commission will not be bound by the one-mile standard set forth in §292.204(a)(2).

(e) Midwest Independent Transmission System Operator (Midwest ISO), PJM Interconnection, L.L.C. (PJM), ISO New England, Inc. (ISO–NE), and New York Independent System Operator (NYISO) qualify as markets described in §292.309(a)(1)(i) and (ii), and there is a rebuttable presumption that qualifying facilities with a capacity greater than 20 megawatts have nondiscriminatory access to those markets through Commission-approved open access transmission tariffs and interconnection rules, and that electric utilities that are members of such regional transmission organizations or independent system operators (RTO/ISOs) should be relieved of the obligation to purchase electric energy from the qualifying facilities. A qualifying facility may seek to rebut this presumption by demonstrating, *inter alia,* that:

(1) The qualifying facility has certain operational characteristics that effectively prevent the qualifying facility's participation in a market; or

(2) The qualifying facility lacks access to markets due to transmission constraints. The qualifying facility may show that it is located in an area where persistent transmission constraints in effect cause the qualifying facility not to have access to markets outside a persistently congested area to sell the qualifying facility output or capacity.

(f) The Electric Reliability Council of Texas (ERCOT) qualifies as a market described in §292.309(a)(3), and there is a rebuttable presumption that qualifying facilities with a capacity greater than 20 megawatts have nondiscriminatory access to that market through Public Utility Commission of Texas (PUCT) approved open access protocols, and that electric utilities that operate within ERCOT should be relieved of the obligation to purchase electric energy from the qualifying facilities. A qualifying facility may seek to rebut this presumption by demonstrating, *inter alia,* that:

(1) The qualifying facility has certain operational characteristics that effectively prevent the qualifying facility's participation in a market; or

(2) The qualifying facility lacks access to markets due to transmission constraints. The qualifying facility may show that it is located in an area where persistent transmission constraints in effect cause the qualifying facility not to have access to markets outside a persistently congested area to sell the qualifying facility output or capacity.

(g) The California Independent System Operator and Southwest Power Pool, Inc. satisfy the criteria of §292.309(a)(2)(i).

(h) No electric utility shall be required, under this part, to enter into a new contract or obligation to purchase from or sell electric energy to a facility that is not an existing qualifying cogeneration facility unless the facility meets the criteria for new qualifying cogeneration facilities established by the Commission in §292.205.

(i) For purposes of §292.309(h), an "existing qualifying cogeneration facility" is a facility that:

(1) Was a qualifying cogeneration facility on or before August 8, 2005; or

(2) Had filed with the Commission a notice of self-certification or self-recertification, or an application for Commission certification, under §292.207 prior to February 2, 2006.

(j) For purposes of §292.309(h), a "new qualifying cogeneration facility" is a facility that satisfies the criteria for qualifying cogeneration facilities pursuant to §292.205.

[Order 688, 71 FR 64372, Nov. 1, 2006; 71 FR 75662, Dec. 18, 2006]

§ 292.310 Procedures for utilities requesting termination of obligation to purchase from qualifying facilities.

(a) An electric utility may file an application with the Commission for relief from the mandatory purchase requirement under §292.303(a) pursuant to this section on a service territory-wide basis. Such application shall set forth the factual basis upon which relief is requested and describe why the conditions set forth in §292.309(a)(1), (2) or (3) have been met. After notice, including sufficient notice to potentially affected qualifying cogeneration facilities and qualifying small power production facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the conditions set forth in §292.309(a)(1), (2) or (3) have been met.

(b) Sufficient notice shall mean that an electric utility must identify with names and addresses all potentially affected qualifying facilities in an application filed pursuant to paragraph (a).

(c) An electric utility must submit with its application for each potentially affected qualifying facility: The docket number assigned if the qualifying facility filed for self-certification or an application for Commission certification of qualifying facility status; the net capacity of the qualifying facility; the location of the qualifying facility depicted by state and county, and the name and location of the substation where the qualifying facility is interconnected; the interconnection status of each potentially affected qualifying facility including whether the qualifying facility is interconnected as an energy or a network resource; and the expiration date of the energy and/or capacity agreement between the applicant utility and each potentially affected qualifying facility. All potentially affected qualifying facilities shall include:

(1) Those qualifying facilities that have existing power purchase contracts with the applicant;

(2) Other qualifying facilities that sell their output to the applicant or that have pending self-certification or Commission certification with the Commission for qualifying facility status whereby the applicant will be the purchaser of the qualifying facility's output;

(3) Any developer of generating facilities with whom the applicant has agreed to enter into power purchase contracts, as of the date of the application filed pursuant to this section, or are in discussion, as of the date of the application filed pursuant to this section, with regard to power purchase contacts;

(4) The developers of facilities that have pending state avoided cost proceedings, as of the date of the application filed pursuant to this section; and

(5) Any other qualifying facilities that the applicant reasonably believes to be affected by its application filed pursuant to paragraph (a) of this section.

(d) The following information must be filed with an application:

(1) Identify whether applicant seeks a finding under the provisions of §292.309(a)(1), (2), or (3).

(2) A narrative setting forth the factual basis upon which relief is requested and describing why the conditions set forth in §292.309(a)(1), (2), or (3) have been met. Applicant should also state in its application whether it is relying on the findings or rebuttable presumptions contained in §292.309(e), (f) or (g). To the extent applicant seeks relief from the purchase obligation with respect to a qualifying facility 20 megawatts or smaller, and thus seeks to rebut the presumption in §292.309(d), applicant must also set forth, and submit evidence of, the factual basis supporting its contention that the qualifying facility has nondiscriminatory access to the wholesale markets which are the basis for the applicant's filing.

(3) Transmission Studies and related information, including:

(i) The applicant's long-term transmission plan, conducted by applicant, or the RTO, ISO or other relevant entity;

(ii) Transmission constraints by path, element or other level of comparable detail that have occurred and/or are known and expected to occur, and any proposed mitigation including transmission construction plans;

(iii) Levels of congestion, if available;

(iv) Relevant system impact studies for the generation interconnections, already completed;

(v) Other information pertinent to showing whether transfer capability is available; and

(vi) The appropriate link to applicant's OASIS, if any, from which a qualifying facility may obtain applicant's available transfer capability (ATC) information.

(4) Describe the process, procedures and practices that qualifying facilities interconnected to the applicant's system must follow to arrange for the transmission service to transfer power to purchasers other than the applicant. This description must include the process, procedures and practices of all distribution, transmission and regional transmission facilities necessary for qualifying facility access to the market.

(5) If qualifying facilities will be required to execute new interconnection agreements, or renegotiate existing agreements so that they can effectuate wholesale sales to third-party purchasers, explain the requirements, charges and the process to be followed. Also, explain any differences in these requirements as they apply to qualifying facilities compared to other generators, or to applicant-owned generation.

(6) Applicants seeking a Commission finding pursuant to §292.309(a)(2) or (3), except those applicants located in ERCOT, also must provide evidence of competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In demonstrating that a meaningful opportunity to sell exists, provide evidence of transactions within the relevant market. Applicants must include a list of known or potential purchasers, *e.g.* , jurisdictional and non-jurisdictional utilities as well as retail energy service providers.

(7) Signature of authorized individual evidencing the accuracy and authenticity of information provided by applicant.

(8) Person(s) to whom communications regarding the filed information may be addressed, including name, title, telephone number, and mailing address.

[Order 688, 71 FR 64372, Nov. 1, 2006, as amended by Order 688–A, 72 FR 35892, June 29, 2007]

§ 292.311 Reinstatement of obligation to purchase.

At any time after the Commission makes a finding under §§292.309 and 292.310 relieving an electric utility of its obligation to purchase electric energy, a qualifying cogeneration facility, a qualifying small power production facility, a State agency, or any other affected person may apply to the Commission for an order reinstating the electric utility's

obligation to purchase electric energy under this section. Such application shall set forth the factual basis upon which the application is based and describe why the conditions set forth in §292.309(a), (b) or (c) are no longer met. After notice, including sufficient notice to potentially affected electric utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to purchase electric energy under this section if the Commission finds that the conditions set forth in §292.309(a), (b), or (c) which relieved the obligation to purchase, are no longer met.

[Order 688, 71 FR 64372, Nov. 1, 2006]

§ 292.312 Termination of obligation to sell to qualifying facilities.

(a) Any electric utility may file an application with the Commission for relief from the mandatory obligation to sell under this section on a service territory-wide basis or a single qualifying facility basis. Such application shall set forth the factual basis upon which relief is requested and describe why the conditions set forth in paragraphs (b)(1) and (b)(2) of this section have been met. After notice, including sufficient notice to potentially affected qualifying facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the conditions set forth in paragraphs (b)(1) and (b)(2) of this section have been met.

(b) After August 8, 2005, an electric utility shall not be required to enter into a new contract or obligation to sell electric energy to a qualifying small power production facility, an existing qualifying cogeneration facility, or a new qualifying cogeneration facility if the Commission has found that;

(1) Competing retail electric suppliers are willing and able to sell and deliver electric energy to the qualifying cogeneration facility or qualifying small power production facility; and

(2) The electric utility is not required by State law to sell electric energy in its service territory.

[Order 688, 71 FR 64372, Nov. 1, 2006; 71 FR 75662, Dec. 18, 2006]

§ 292.313 Reinstatement of obligation to sell.

At any time after the Commission makes a finding under §292.312 relieving an electric utility of its obligation to sell electric energy, a qualifying cogeneration facility, a qualifying small power production facility, a State agency, or any other affected person may apply to the Commission for an order reinstating the electric utility's obligation to purchase electric energy under this section. Such application shall set forth the factual basis upon which the application is based and describe why the conditions set forth in Paragraph (b)(1) and (b)(2) of this section are no longer met. After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to sell electric energy under this section if the Commission finds that the conditions set forth in paragraphs (b)(1) and (b)(2) of this section are no longer met.

[Order 688, 71 FR 64372, Nov. 1, 2006]

§ 292.314 Existing rights and remedies.

Nothing in this section affects the rights or remedies of any party under any contract or obligation, in effect or pending approval before the appropriate State regulatory authority or non-regulated electric utility on or before August 8, 2005, to purchase electric energy or capacity from or to sell electric energy or capacity to a qualifying cogeneration facility or qualifying small power production facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

[Order 688, 71 FR 64372, Nov. 1, 2006]

e-CFR Data is current as of March 1, 2010

Title 18: Conservation of Power and Water Resources

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

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Subpart D—Implementation

Authority: Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 *et seq.*, Federal Power Act, 16 U.S.C. 792 *et seq.*, Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, E.O. 12009, 42 FR 46267.

Source: Order 69, 45 FR 12236, Feb. 25, 1980, unless otherwise noted.

§ 292.401 Implementation of certain reporting requirements.

Any electric utility which fails to comply with the requirements of §292.302(b) shall be subject to the same penalties to which it may be subjected for failure to comply with the requirements of the Commission's regulations issued under section 133 of PURPA.

[45 FR 12236, Feb. 25, 1980. Redesignated by Order 541, 57 FR 21734, May 22, 1992]

§ 292.402 Waivers.

(a) *State regulatory authority and nonregulated electric utility waivers.* Any State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated electric utility may, after public notice in the area served by the electric utility, apply for a waiver from the application of any of the requirements of subpart C (other than §292.302 thereof).

(b) *Commission action.* The Commission will grant such a wavier only if an applicant under paragraph (a) of this section demonstrates that compliance with any of the requirements of subpart C is not necessary to encourage cogeneration and small power production and is not otherwise required under section 210 of PURPA.

[45 FR 12236, Feb. 25, 1980. Redesignated by Order 541, 57 FR 21734, May 22, 1992]

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Title 18: Conservation of Power and Water Resources

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

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Subpart F—Exemption of Qualifying Small Power Production Facilities and Cogeneration Facilities from Certain Federal and State Laws and Regulations

§ 292.601 Exemption to qualifying facilities from the Federal Power Act.

(a) *Applicability.* This section applies to qualifying facilities, other than those described in paragraph (b) of this section.

(b) *Exclusion.* This section does not apply to a qualifying small power production facility with a power production capacity which exceeds 30 megawatts, if such facility uses any primary energy source other than geothermal resources.

(c) *General rule.* Any qualifying facility described in paragraph (a) of this section shall be exempt from all sections of the Federal Power Act, except:

(1) Sections 205 and 206; however, sales of energy or capacity made by qualifying facilities 20 MW or smaller, or made pursuant to a contract executed on or before March 17, 2006 or made pursuant to a state regulatory authority's implementation of section 210 the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a–1, shall be exempt from scrutiny under sections 205 and 206;

(2) Section 1–18, and 21–30;

(3) Sections 202(c), 210, 211, 212, 213, 214, 215, 220, 221 and 222;

(4) Sections 305(c); and

(5) Any necessary enforcement provision of part III of the Federal Power Act (including but not limited to sections 306, 307, 308, 309, 314, 315, 316 and 316A) with regard to the sections listed in paragraphs (c)(1), (2), (3) and (4) of this section.

(Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (1980) Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601, *et seq.,* Energy Supply and Environmental Coordination Act, 15 U.S.C. 791, *et seq.,* Federal Power Act, as amended, 16 U.S.C. 792 *et seq.,* Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.* ; E.O. 12009, 42 FR 46267)

[Order 135, 46 FR 19232, Mar. 30, 1981, as amended by Order 569, 59 FR 40470, Aug. 9, 1994; Order 671, 71 FR 7868, Feb. 15, 2006; 72 FR 29063, May 24, 2007]

§ 292.602 Exemption to qualifying facilities from the Public Utility Holding Company Act and certain State law and regulation.

(a) *Applicability.* This section applies to any qualifying facility described in §292.601(a), and to any qualifying small power production facility with a power production capacity over 30 megawatts if such facility produces electric energy solely by the use of biomass as a primary energy source.

(b) *Exemption from the Public Utility Holding Company Act of 2005.* A qualifying facility described in paragraph (a) of this section or a utility geothermal small power production facility shall be exempt from the Public Utility Holding Company Act of 2005, 42 U.S.C. 16,451–63.

(c) *Exemption from certain State laws and regulations.* (1) Any qualifying facility shall be exempted (except as provided in paragraph (b)(2)) of this section from State laws or regulations respecting:

(i) The rates of electric utilities; and

(ii) The financial and organizational regulation of electric utilities.

(2) A qualifying facility may not be exempted from State laws and regulations implementing subpart C.

(3) Upon request of a state regulatory authority or nonregulated electric utility, the Commission may consider a limitation on the exemptions specified in paragraph (b)(1) of this section.

(4) Upon request of any person, the Commission may determine whether a qualifying facility is exempt from a particular State law or regulation.

(Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (1980) Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601, *et seq.*, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791, *et seq.*, Federal Power Act, as amended, 16 U.S.C. 792 *et seq.*, Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.* ; E.O. 12009, 42 FR 46267)

[45 FR 12237, Feb. 25, 1980, as amended by Order 135, 46 FR 19232, Mar. 30, 1981; Order 671, 71 FR 7869, Feb. 15, 2006; Order 671–A, 71 FR 30589, May 30, 2006]

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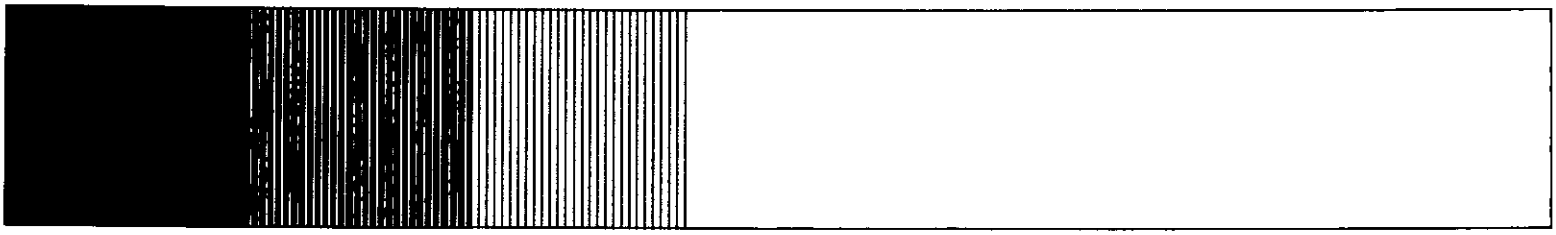
February 2008

Competitive Electricity Markets: The Benefits for Customers and the Environment



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FOREWORD

Alfred E. Kahn

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Students and serious practitioners of public utility regulation have long recognized what an imperfect institution it is. Grounded in the conception that these industries are naturally monopolistic—that is, that full achievement of their inherent economies of scale requires that they be organized as franchised monopolies—it followed that they had to be regulated in order to protect consumers from exploitation, while at the same time assuring investors recovery of their prudently (more precisely, in practice, their not-demonstrably-imprudently) incurred costs.

This essentially cost-plus system appeared to work well in electric power during the quarter century following the end of World War II, when technological progress and the progressive realization of economies of scale in generation and transmission, and the adoption of nuclear generation, converged to produce declining rates in real terms. In the decades following 1973, in contrast, two bouts of double-digit inflation in the economy at large, two quadruplings of the price of oil, sharp increases in the cost of capital—especially painful in so capital-intensive a business—and massive cost overruns in nuclear facilities all compelled dramatic rate increases throughout the 1980s, just when a slump in the real prices of oil and natural gas and the advent of combined-cycle gas generation made deregulation and competition look far more attractive to consumers than continued compliance with the historic regulatory bargain.

As this brief historical account demonstrates, the movement for deregulation in the last decades of the 20th century was clearly opportunistic—putting pressures on regulatory agencies to renege on their implicit promise to set rates sufficient to provide fair returns on invested capital—a "temptation of the kleptocrats," as I put it at the time.[1] Significantly, the pressures for deregulation were most insistent in states whose electric companies had invested heavily in nuclear plants and, at the other extreme, virtually nonexistent in states still relying heavily on coal, and particularly coal-fired generating plants that had long since been totally depreciated on the companies' books.

But, clearly, there were fundamental, not merely transient issues at stake as well. As I observed some seventeen years ago, in the context of reforming regulatory practice rather than deregulation:

> [A] consistent use of current competitive market valuations, for successful and unsuccessful investments alike, would be not only unobjectionable but desirable, because it would transfer the cost of failures, symmetrically with the profits of success, from ratepayers to investors.[2]

Manifestly, genuine deregulation would produce the same beneficent result.

Deregulation alone, however, would not take into account the especial importance, in this industry—in which only limited storage of its product is possible—of reliability of supply in the face of demand that fluctuates widely. Under regulation, this reliability was secured by requiring generators to maintain some stipulated margin of excess capacity sufficient to hold loss-of-load probabilities down to some acceptable minimum—the cost of which had to be distributed among all customer groups, since all benefited from it.

It was rarely recognized, however, that such a system was itself highly inefficient, because it failed to recognize that *individual customers* have widely differing needs for such assurances, because they differ correspondingly in the ability to adapt their consumption habits to the widely varying marginal costs. Only a system that provides customers with the choice of contracting with suppliers for such assurances as each of them requires—and its corollary, able instead to alter their consumption habits in response to changes in system marginal costs—can accomplish the purpose, on the one hand, of determining what margin of excess capacity is required in the aggregate and, second, how its costs will be distributed among customers. I commend to readers the authors' exposition of how restructured markets would, by confronting customers with prices varying hourly with contemporaneous marginal costs, give them the opportunity to react in real time, thereby giving each the opportunity to choose the level of reliability he or she wants and is willing to pay for.

Just as the move to restructuring was opportunistic, so too is the current sentiment to return to regulation a reaction to transient developments—in particular, the sharp increase in oil and gas prices—driving marginal costs above historic costs. But the choice of system should not be based, opportunistically, on transient events: the real defect of regulation is that rates set under it are based necessarily on averages—over time and among groups of customers. Ideally, the system would confront each customer with the proper price signals. And production efficiency is best realized when investors bear responsibility for investment decisions.

Policy makers confronting pressures to undo the restructuring of the electricity industry would be well advised to base their decisions on the longer-term benefits that will flow from properly implementing competitive markets, rather than on adventitious circumstances driving market prices temporarily above or below regulated rates.

Endnotes:

1. Alfred E. Kahn, *Letting Go: Deregulating the Process of Deregulation, or: Temptation of the Kleptocrats and the Political Economy of Regulatory Disingenuousness* (Institute of Public Utilities and Network Industries, Michigan State University, 1998).

2. Alfred E. Kahn, "The Changing Focus of Electric Utility Regulation," *Research in Law and Economics*, Vol. 13, p. 223 (1991)

Alfred E. Kahn

I. EXECUTIVE SUMMARY[1]

State policy makers are reviewing past decisions to promote competition in electricity markets and, in some cases, are debating whether to reverse course. Competitive electricity markets, also known as "restructured electricity markets," refer to the organization of the electric industry in states where utilities no longer have the obligation to plan and build generating capacity, and have often divested generation ownership. The purpose of this paper is to present an objective review of both traditional regulation and competitive electricity markets in order to assist policy makers as they critically assess their policy options.

The end of transition periods featuring rate caps and the onset of market-based retail rates has resulted in price increases for some states. While many have attributed these price increases to a failure of competition, the timing of the price increases is a coincidence and does not equate to causality. Electricity prices, driven by fuel costs, have risen in all states, not just those that restructured their electricity markets. As a result of these price increases, some states are examining their experiences with electric industry restructuring.

Prices derived by competitive markets and rates derived by traditional regulation[2] are fundamentally different, and will produce different outcomes. Over time, competitive markets are widely held to produce the most efficient results in our economy, providing the lowest costs to customers. Markets reward innovation—the search for and discovery, development, adoption, and commercialization of new products, services, organizational structures, processes, and procedures—that meets market demand. In a competitive environment, customers have more control over what they consume and what they pay, price levels will encourage more efficient use of energy, and market prices will encourage more demand response. Economists and experienced regulators, as well as national electricity policy, favor reliance on competitive markets when workable competition is feasible. It is important to evaluate the attributes of the competitive and cost-based regulatory models, and to critically analyze the strengths and weaknesses of each.

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[1] This white paper was prepared primarily by Eugene T. Meehan, a Senior Vice President at NERA, with Wayne P. Olson, a Senior Consultant at NERA. We thank Joshua Rogers for his research and editorial help. The opinions expressed herein are solely attributable to the authors and do not necessarily present a view of the firm or of other NERA professionals.

[2] Traditionally regulated utilities have an obligation to serve under traditional cost-of-service regulation, and to make and implement long-term generation plans in order to provide efficient, safe, adequate, and reliable service over time. It is important to note that even in restructured states, where such a model has been abandoned, there are many residual elements of traditional regulation. Transmission and distribution delivery service prices are regulated, and while customers receive a market-based generation price, the market procurement method is regulated.

Competition facilitates the most efficient means of production. Competitive market pricing provides significant benefits not found under traditional regulatory pricing. Among these benefits are the following:

- Market-based price signals are transparent and can stimulate appropriate infrastructure investment, energy conservation, and demand response.
- Competition provides customers with choices—i.e., customer sovereignty. Customers can exercise their own choices with respect to long-term risks, environmental concerns, and even reliability levels.
- Competitive market pricing allows sellers to tailor products and services to their customers' needs, and use demand-side solutions to avoid supply-side investment where appropriate.
- By pricing at market, prices will be similar for proximate utilities.
- Competition shifts risks from customers to investors.
- Competition produces more efficient results because the investor, not the ratepayer, assumes the generation investment risk.
- In competitive markets, poor producers fail and are acquired or replaced by those with more skill, foresight, and industry.

The electric utility industry pursued competition not for academic reasons, but because regulation was producing unacceptable outcomes, including large price differences between proximate utilities, large plant cost overruns, rate shocks and phase-ins, and customer dissatisfaction with lack of control over their electricity costs. Some innovative pricing concepts were studied, but they were rarely implemented on a large scale, and offerings were limited to a few standard tariffs. New generation built under regulation was considered too risky by both customers and investors, and power plants, particularly nuclear generators, demonstrated poor operating performance.

The differences between cost-of-service regulated rates and prices derived from competition are predictable and certain, and include the following:

- Regulated rates are founded on utilities' and regulators' judgment about the attributes of the product (e.g., reliability, environmental impacts) rather than the discipline of market forces.
- Regulated rates result in utilities and regulators imposing their choices on customers.
- Cost-based regulation makes it difficult for customers to make choices based on their own preferences and responses to market price signals.

- Cost-based regulated prices distort price signals necessary for efficient consumption, and undermine incentives for conservation and demand response. This creates a need to develop complicated and expensive conservation programs that "correct" the price signals through administrative means, when efficient results are obtained with simpler programs and market-derived prices.

Before undoing competitive markets, either intentionally or inadvertently, policy makers should consider the following facts:

- Regulated-monopoly generation imposed huge cost burdens on customers. These burdens, to which customers were exposed under the last significant non-gas capacity expansion, are what led many "high cost" states to restructure. In many states, cost-based regulation failed to produce reasonably priced electricity in the 1980s.

- States continuing with the regulated monopoly model are providing, and must continue to provide, iron-clad cost recovery guarantees for new generation investment.

- Transparent market prices derived in competitive markets are encouraging penetration of energy efficiency (conservation) and facilitating responsive consumer demand, lowering investment needs and providing environmental benefits.

- Innovations in end-use efficiency can potentially be created when customers control their own choices based on available information, and the market provides creative solutions. This can happen to the full extent only in a competitive market.

- Competitive electricity markets have led the way in developing renewable generation.

- Recent price increases are largely driven by fuel price increases, and have occurred in both competitive and traditionally regulated states.

While the promotion of competitive markets may not have been implemented perfectly, the points above suggest that customers would be better served by regulatory efforts directed at refining and improving the competitive model, rather than returning to cost-of-service regulation.

II. INTRODUCTION

Over $400 billion of electric industry infrastructure investment in generating plants will be required between 2006 and 2030.[3] Investments will be needed not only to accommodate the growth in population and the economy, but to replace aging facilities,[4] reduce emissions, fund research and development of innovative technologies, and lessen dependence on the use of liquid fuels from politically unstable foreign sources. In addition, all of these factors must be viewed in the context of heightened interest in renewable energy.[5] With such a large investment at stake, efficiency must be maximized and customers' interests must be protected. A failure to make this investment in the most efficient manner will: (1) make it difficult to ensure affordable and reliable electricity supply; (2) threaten the global competitiveness of the United States; and (3) risk having the country fall short of achieving environmental objectives.

To induce the needed investment, two economic models—that are markedly different both in terms of how they work and the incentives that they provide—can be used. The first is competition. In competitive markets, investors evaluate alternatives, make investment decisions, and place their capital at risk to market forces. Poor investment decisions lead to investor losses, even if such decisions were reasonable at the time they were made. The second model is cost-of-service regulation. In traditionally regulated markets, decisions about the type and timing of generating plant additions are generally determined by utilities, which are overseen by utility regulators. A utility builds, owns, and operates its system subject to oversight by the regulator through an open process that allows for significant input by stakeholders. While utility investors assume a limited set of investment risks, customers assume more, as they ultimately fund and support the investments through the rates they pay. Customers typically bear the risk when the selected investment incurs relatively higher costs, leading to rates that exceed market levels—so long as the utility's actions were prudent, meaning the actions were reasonable given available information.

At the national level, electricity policy is clear. Federal law provides for competition in wholesale generation markets and open access to transmission facilities. While this policy accommodates wholesale competition, it does not mandate or promote competition at the retail level. States have the choice to rely on vertically integrated utilities to plan, build, and own generating plants; to require utilities to use their monopoly position to underwrite long-term contracts that provide cost recovery without regard to how costs compare to the market in the future;[6] or, to transfer the responsibility for investment decisions and the risk of investment

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[3] "[T]otal of 258 gigawatts of new [generating] capacity is expected between 2006 and 2030, representing a total investment of approximately $412 billion (2005 dollars)," *Annual Energy Outlook* 2007, Energy Information Agency, DOE/EIA-0383, 2007.

[4] In the Northeastern US, about 41,000 megawatts of generation capacity are due to be retired, which is about one-quarter of generating plant in the region. *See*: Hugh Wynne, *U.S. Utilities: Capacity Retirements, Generation Investment and Technology Choice*, Bernstein Research, August 2006.

[5] Over the next five years, renewables comprise about 16 percent of the new generation that has been proposed; wind comprises 88 percent of proposed renewables. *See*: Dan Ford, *Just the Beginning*, Lehman Brothers (Power & Utilities), August 21, 2006, p. 8.

[6] The key phrase here is "in the future." Regulated monopolies have to reasonably plan in this day and age, but the standard by which they are judged is whether their decisions were reasonable based on what a prudent utility

decisions away from customers and on to investors by adopting a competitive model. These state decisions on whether to use cost-of-service regulation, competition, or some mix of the two are critical to achieving efficient investment, promoting environmental goals, and protecting customer interests.

Choosing between competition and cost-of-service regulation is not easy. It can be difficult to fully appreciate the consequences of these two options. Given the long-lived nature of utility assets, the choice will have long-term financial and environmental consequences for energy customers. The United States, with its federal system of government, is unique among nations in reserving this major economic choice for the individual states. Policy makers undoubtedly face difficult challenges in the current environment, with price increases largely driven by input price increases, which have little to do with whether or not there are competitive power markets in the state.

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management could have known at the time. If, in the future, the regulated utility's costs become uneconomic relative to the market price, the utility would still be able to recover its actual, prudently-incurred costs in rates.

III. THE CHOICE BETWEEN TRADITIONALLY REGULATED AND COMPETITIVE MARKETS IS CLEAR

Under competition, prices reflect the supply and demand conditions at the time, and customers have the ability to choose products and services that allow them to manage their individual electricity usage. Under cost-of-service regulation, customers enter into an ongoing long-term contract to support new generating investment through their local utilities, and have very little product choice. Prices reflect historical costs and historical investment decisions, not prevailing market prices.

Competitive market pricing provides many benefits not found under traditional regulatory pricing. First, because investors are compensated based on the market and not cost, they bear the risks and rewards of generation investment. Second, price signals are more accurate within competitive markets, and can stimulate appropriate infrastructure investment, energy conservation, and demand response. Markets use these price signals to evaluate solutions to current and future energy challenges. Third, competitive market pricing allows sellers to tailor products and services to their customers' needs, and use their ability to respond to prices in a way to avoid new investments where appropriate. Lastly, by pricing at market, prices will be similar for proximate utilities. Consequently, industries located in different utility territories will not be subject to arbitrary cost disadvantages relative to competitors, a balance that represents a change from cost-of-service regulation. Under the latter, if one utility decided to build a nuclear plant that resulted in a large but prudent cost overrun, while the neighboring utility decided on a coal plant that was built within budget, rates for the two utilities could differ sharply. This is not typical of functioning markets, and it is difficult for customers, particularly industrial competitors, to accept such arbitrary pricing.

Regulated prices are based on cost of service, and to the extent that different utilities make different investment decisions, prices for proximate utilities may be very different. Throughout the 1980s and 1990s, regulated prices were far above market. Once gas prices declined and technology developments in combined cycle generation lowered cost and heat rates, the cost of nuclear investments and Public Utility Regulatory Policies Act of 1978 (PURPA) qualifying facility (QF) contracts exceeded the cost of constructing and operating new combined cycle plants, or taking advantage of surplus capacity. Prices charged by proximate utilities differed based on the timing of their plant additions and construction cost outcomes.

Luck played a large factor in determining the rates that particular electricity customers paid. But one thing is certain: the major driver for the move to competitive electricity markets in the 1990s was the series of poor outcomes that occurred during the 1970s and 1980s, when the inclusion of "lumpy" investments in nuclear generating plants led to concerns about "rate shock," rate increase, phase-in plans, and automatic pass-through of fuel costs. Ratepayers and investors shared in the financial burden resulting from these investment decisions.[7]

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[7] The economic losses resulting from the mistakes of the 1970s and 1980s may have cost as much as $100 billion. *See*: Wald, "Nuclear Plant Drain Put at $100 Billion for U.S.," *New York Times*, February 1, 1988, p. D1. This article was cited in Richard Goldsmith, "Utility Rates and 'Takings,'" *Energy Law Journal*, Vol. 10, No. 2, 1989, p. 241.

There is little reason to believe that a return to traditional regulation would lead to prices that would be continually below or at market levels. The only assured outcome is that cost-of-service regulated prices will reflect historical costs, not the market. Regulated prices could be administratively set to be relatively stable, but this may come at the cost of consistently failing to reflect the actual costs incurred. It makes little sense to attempt to choose between a traditionally regulated and a competitive model based on expectations of future price level differences, as such a choice would be speculative.

In competitive markets, where larger customers face hourly market prices (and smaller customers may elect to do so), electricity providers in many instances offer creative packages to satisfy customers. These are tangible differences between the traditionally regulated and competitive models that are predictable and certain. It is also certain that under competition, customers will have more control over what they consume and what they pay, that price levels will become known and encourage more efficient use of energy, and market prices will encourage the development of more responsive demand. Moreover, the same benefits apply to supply as well as to demand alternatives. For example, in a traditionally regulated model, wind resources will be viable only to the extent that a utility chooses to build or buy wind. In a competitive market, wind developers will have access to regional transmission organization (RTO) transmission and integration service, and will see market incentives to develop projects that provide maximum market benefits. Correspondingly, consumers may elect to buy more energy from wind and other renewable resources.

In competitive markets, generation investment decisions are made by investors in response to customer needs. Investors bear the risk of those decisions. This is a fundamental and important difference between competitive markets and cost-of-service regulation. It is important to consider that bearing risk does not equate to simply absorbing losses. There is an upside and a downside to risk. In return for bearing losses on unsuccessful investment decisions, investors realize gains on successful investments. That is the competitive model that prevails throughout the US economy.

There are other differences between cost-of-service regulation and competition that are predictable and certain. For instance, regulation requires utilities and, in turn, regulators, to substitute their judgment about the attributes of the product (e.g., reliability, environmental impacts) for that of the market, and this makes it difficult for customers to make choices based on their own preferences. Competition gives customers greater choice and control through market-based innovation. Customers can exercise their own choices with respect to environmental attributes, long-term risks, and even reliability levels. Regulated prices also typically distort price signals that are necessary for efficient consumption, and undermine incentives for conservation and demand response. Since the mid-1970s, traditionally regulated utilities have investigated innovative pricing and demand control. Progress has been limited, as regulated tariffs are standard and creative pricing schemes reflecting individual circumstances are hard to implement.

IV. ELECTRICITY COMPETITION WAS PURSUED AS A SOLUTION TO LONG-TERM PROBLEMS

Policy makers should consider that electricity markets were restructured because regulation was producing high prices and generally unacceptable outcomes for both customers and shareholders. This section will explain the cost-of-service regulation problems that began in the mid-1970s, which include price differences between proximate utilities, plant cost overruns, rate shocks and phase-ins, PURPA excess costs, and customer dissatisfaction with the lack of control over their electricity costs. Power plants, particularly nuclear plants, demonstrated poor operating performance.[8] Demand side measures and innovative pricing were frequently discussed but rarely implemented successfully in the traditionally regulated environment. By the mid- to late-1980s, there was substantial dissatisfaction with the outcomes of the regulatory process, which led policy makers to pursue competition in the 1990s.

These well-known regulatory problems, which began in the mid-1970s, created a strong impetus for the industry to restructure. A significant component to the problems was price, which, as Professor Paul Joskow of MIT notes, "reflected the high capital costs and poor operating performance of nuclear power plants commissioned during the 1970s and 1980s, the high prices reflected in PURPA/QF contracts, and the costs of excess capacity which got rolled into regulated prices."[9] It is reasonable to assume that the same or similar problems could arise in states that revert to a system akin to traditional regulation. Problems with traditional, cost-of-service regulation of generation are still relevant in many parts of the United States.

US power systems were, for the most part, developed by vertically integrated utilities. These utilities built, owned, and operated distribution, transmission, and generation facilities. Traditionally, these utilities had exclusive service territories and the right to exclude other entities from the use of their distribution and, to a lesser extent, transmission facilities. The generation investment by these utilities was made pursuant to an obligation to serve all loads in the service territory. The legal framework provided for the right to charge rates that allowed the utility a reasonable opportunity to recover all prudent investments and costs incurred to meet that obligation, and further protected that investment with an exclusive service territory and the right to exclude others from the use of distribution facilities.

Major nuclear plant cost overruns received a large amount of press in the 1970s and 1980s. Regulators no longer wanted to deal with overseeing ratemaking issues years after an investment had been made in a plant. To cite some examples:

- In Ohio, construction of the Zimmer nuclear power plant began in 1969, with an estimated in operation date of 1975. Cincinnati Gas & Electric, Dayton Power & Light,

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[8] Statistics show that there has been substantial improvement in nuclear operating performance in recent years. This is most easily represented by the increase in average capacity factor across the US nuclear power industry. The Nuclear Energy Institute provides public access to these statistics on its website. Please *see*: http://www.nei.org/resourcesandstats/nuclear_statistics/usnuclearpowerplants/ (Accessed 11/28/07).

[9] Paul L. Joskow, *U.S Energy Policy During the 1990s*, prepared for the conference "American Economic Policy During the 1990s," sponsored by the John F. Kennedy School of Government, Harvard University, June 27 to June 30, 2001.

and Columbus and Southern Ohio Electric made up the ownership group, which predicted that the total cost of construction would be $240 million. There were massive cost overruns after construction began, and the estimated total cost rose to $3.5 billion, while the operating date became uncertain. Following allegations of mismanagement and intervention by the Nuclear Regulatory Commission, the owners announced that the plant would be converted to a coal-fired unit with an estimated completion date of 1991 at an additional cost of $1.7 billion.[10]

- In Michigan, construction of the Midland nuclear power plant was expected to be completed by 1975 at a cost of $276 million. Instead, construction of the plant was halted in 1984, after total costs had risen to $4.2 billion. In 1986, the Michigan Public Service Commission decided that the plant should be converted to a gas-fired unit, with a conversion cost of $600 million.[11]

- In New York, construction of the Nine Mile 2 plant began in 1970. The total cost for this project was initially estimated to be under $400 million, and the facility was projected to be operating by 1977. These estimates changed dramatically after construction began, with total costs reaching $3.7 billion and a completion date of 1986. The total cost of the plant after completion in 1986 was $5.4 billion, of which $4.45 billion was deemed recoverable by the New York Public Service Commission.[12]

There are many other examples of cost overruns, which led to a great deal of regulatory frustration over how to better deal with the construction and financing of generation. These frustrations stemmed from problems with nuclear power plants that experienced huge cost overruns, the aftermath of the energy crises of the 1970s, sharply reduced electricity demand growth rates, and the basic fact, that under the traditional regulatory compact, customers bore the vast majority of the risk.

In response to the regulatory issues, state regulators began to emphasize long-term "integrated resource planning" (IRP), which sought to improve on traditional *ex post* regulation by adding an *ex ante* component.[13] IRP began with the best of intentions—to do utility regulation "right," before the fact. Some regulators decided to use a forward-looking regulatory planning process in an attempt to acquire the least costly resources. At the same time, there was a redoubled emphasis on *ex post* scrutiny of the prudence of generation construction programs before new plants were allowed into the rate base.

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[10] Charles F. Phillips, Jr., *The Regulation of Public Utilities* (Arlington, VA: Public Utilities Reports, Inc., 1988), pp. 33-34.

[11] *Id.*

[12] Leonard S, Goodman, *The Process of Ratemaking* (Vienna, VA: Public Utilities Reports, Inc., 1998), pp. 866-867.

[13] Paul Joskow points out that PURPA was "accompanied by the creation of public 'integrated resource planning' (IRP) or 'least cost planning' (LCP) processes to determine 'appropriate' electric utility investment and contracting strategies which were eventually implemented with competitive bidding programs .... The rationale for and economic consequences of these programs were controversial." Joskow, *supra* note 9.

By the late 1980s, many utilities that needed new generation supply were required to procure this supply through competitive bid processes and IRPs. By 1990, 27 states had mandated or allowed the use of utility competitive bidding processes for generation resource procurement.[14] Utility participation in these bidding processes depended on state policy. In some cases, they were required to bid through an affiliate, submitting either a fixed-price bid or a proposal to build a rate-base generating facility, where the costs were not fixed. In either case, they would need to justify the selection of the winning bid to the regulator, and they were competing against non-utility providers.

Under traditional regulation, whether generation was built by the utility or by a new entrant, long-term commitments at ratepayer expense were provided to support the construction of long-term generating assets. If built by the utility, the assumption was that the asset would stay in the utility rate base until it was no longer used and useful, which could be 30-50 years. If built by an independent power producer under PURPA, with pricing based on avoided cost (the cost that the utility avoided by building the generation resource itself), the utility was frequently required to sign a long-term contract—sometimes as long as 15 to 30 years—to support the resource. Moreover, counter-party risk was not always adequately recognized, so the decisions that regulators made as part of the IRP process had major ramifications for utilities, new entrants, and electricity users over very long periods of time.

In addition to nuclear cost overruns, PURPA contracts were also burdening customers. As an example, Regulatory Research Associates notes that "[o]n March 10, 1997, NMK and 19 IPPs announced that a Master Restructuring Agreement was reached 'in principle' to restructure or terminate 44 purchased power contracts" and that "under the MRA, NMK would restructure or terminate the 44 power contracts in exchange for approximately $3.6 billion in cash and/or debt securities and 46 million common shares, representing about 25% of NMK's outstanding common shares."[15]

The experiences of the past are especially relevant today. Plant construction costs have escalated sharply as more utilities are adding generation, making it more important than ever that existing resources be used efficiently, and that demand response and energy efficiency programs be pursued when it is economical to do so. The expected cost of building a new nuclear plant, for example, is escalating as a result of "massive inflation in copper and nickel and stainless steel and concrete."[16] Part of the reason for the 25%-30% increase in the estimated cost of a coal-fired plant is the "huge price increases for the raw materials that plants are made from, including copper and nickel," as well as the cost of finishing those commodities into components.[17] Electricity prices are increasing and, just as in a competitive market, regulation does not shield

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[14] Steven Ferrey, *Law of Independent Power* (Deerfield, IL: Clark-Boardman, 1996), p. 9-3. Ferrey cites the National Independent Energy Producers, "Bidding for Power: The Emergence of Competitive Bidding in Electric Generation," March 1990, p. 11.

[15] Regulatory Research Associates, Inc., *Regulatory Focus – Niagara Mohawk Power Final Report*, April 23, 1998.

[16] *See*: Matthew L. Wald, "Costs Surge for Building Power Plants," *New York Times*, July 10, 2007.

[17] *Id.*

customers from rising input costs. Though costs may be deferred for a period of time due to the regulatory process, they will be recovered so long as they were prudently incurred.

V. COMPETITION HAS CLEAR ADVANTAGES OVER TRADITIONAL REGULATION AND HAS ALREADY BEGUN TO PROVIDE EFFICIENCY AND ENVIRONMENTAL BENEFITS

Competitive electricity markets allow consumers to choose among providers and service options. This combination of open entry for suppliers and choice for customers provides the benefits of competitive markets (e.g., efficient resource allocation, accurate price signals, and incentives for innovation) and limits competitors' ability to exercise market power. Customers are protected from open-ended commitments to pay above-market costs that would not be passed through in a competitive market. This does not mean that entry into markets will be costless or easy, but rather that all actual competitors, incumbents and new entrants alike, will have made (and potential competitors could make) the investments and commitments necessary for them to compete in the market. Under this system, customers are free to manage long-term risk, which, for example, could include entering into long-term contracts with electricity suppliers.

Under traditional regulation, vertically integrated utilities build new generating plants in order to serve customer demand. Through the regulatory least-cost planning process, utilities are given permission to pursue resource procurement strategies, which effectively commit the regulator to pass the resulting costs through to customers so long as the utility has acted prudently in incurring those costs. This type of utility regulation includes both: (1) an *ex ante* component, requiring the utility to use least-cost integrated resource planning, and to get permission from the regulator before it commits to build or purchase new generating resources; and (2) an *ex post* component, requiring the utility to ask for a rate increase that puts the new plant into the rate base, and allows it the opportunity to earn its opportunity cost of capital on that rate base. Given the utility's obligation to serve, there is a corresponding regulatory obligation to pass through prudently incurred costs to customers, regardless of what those costs would have been in a competitive market.

Table 1 includes a listing of significant differences between firms that operate in competitive and traditionally regulated models that policy makers should consider when deciding how to move forward.

Table 1: Competitive Versus Traditionally Regulated Markets

	Competition	Traditional Regulation
Funding	Company funds investments with the expectation that it will be able to charge customers prices that justify those costs.	Ratepayers fund prudently incurred investments in rate base with a virtual certainty of recovering the costs.
Price Determination	Prices set in a market by supply and demand with open-ended possibilities for pricing structures, which means choice for consumers.	Prices set based on cost with limited menu of regulated tariffs.
Market Concentration	Multiple firms compete with one another, with potential competitors providing competitive pressure as well.	Generally one firm, once with a franchise.
What Is Built	Companies, in response to customer demand, will be more likely to invest in less traditional and more energy-efficient forms of generation, including renewables.	Regulators approve what utilities build. This may or may not be the lowest cost investment, and may or may not be technologically innovative.
Capital Structure	Less use of leverage perhaps, reflecting greater investment risk, but more potential for innovative financing arrangements.	Traditional utility regulation accommodates the use of more debt, but limits innovation.
Who Bears Risk of Bad Investments?	Investors.	Consumers.
Market Activity	The competitive environment is dynamic and subject to entry and exit. This creates a powerful incentive for firms to increase operating efficiency.	Static. Subject to bureaucratic process.
Cost Allocation	Value branding. Independent power companies have a greater opportunity to market different services to different customers.	Cost averaging. Through the regulatory process, costs incurred are averaged out when determining rates, and the ratepayers that incur specific costs may not necessarily pay for them.
Keys To Success	Ability to compete on price, terms, and non-price attributes such as billing arrangements and product innovation (such as green power).	Prudence and accountability in decision making; competence working with regulatory and political policy. Ability to overcome market failures.
Vertical Integration	Greater vertical separation of regulated and competitive activities.	Typically vertically integrated, subject to an internal system of command.
Ownership And Investment	Risk and return expectations will be relatively higher. This will affect what types of entities hold ownership stakes.	Risk and return expectations will be relatively lower. This will affect what types of entities hold ownership stakes.
Marketing	Increased need for marketing, and development of innovative products. Focused on meeting individual customer needs through innovation.	Reduced need for marketing and business development. Largely focused on providing one-size-fits-all solutions for customers.
Price Stability	If price stability is desired by customers, competitive retailers will make such a product available.	The regulatory process eventually allows recovery of all prudent costs. Rates can be slow to respond to changing conditions due to regulatory lag.
Price Signals	Prices tend to reflect marginal costs, the most accurate representation of opportunity cost.	Retail prices can become distorted from marginal costs through the ratemaking process.

This table demonstrates the disparate characteristics of competitive and traditionally regulated markets. The fundamentals of a competitive market, such as having more than one supplier, feasible entry and exit, and enhanced price transparency, create these differences. These factors allow competition to spur reductions in operating expenses and increases in innovation.

Traditional regulation, although based on prudently incurred costs, can yield inefficient results, primarily due to the requirement that utility ratepayers bear the majority of risks, rather than investors.

A. Competition Shifts the Risk to Investors

One of the benefits of restructured markets is that the investment risk for generation plants is shifting from consumers to investors. For instance, after restructuring, there was a huge initial burst of merchant construction in most areas of the country which, despite leading to excess capacity, did not cost customers a dime. This was an especially pertinent topic at the time of restructuring, as there were various notable examples of major cost over-runs in plant construction, especially with nuclear facilities.

Now, with many parts of the country expressing concerns about the adequacy of generation supply, certain states are pursuing policies aimed at providing incentives to build new generation. In competitive markets, wholesale prices provide the incentives to build new infrastructure, with customers free from the obligation to fund those investments. Many traditionally regulated states have recently passed laws providing for prior review of plant—cost recovery guarantees not available to merchant generators—and construction work in progress (CWIP) in rate base.[18] For example:

- **Florida:** In June 2006, legislation that affects several aspects of the state's energy policy was enacted. Senate Bill (S.B.) 888 exempts nuclear power plants from the requirement of a competitive bid and provides for recovery of pre-construction costs and a cash return on CWIP during the construction period of a nuclear power plant. A similar bill, House Bill (H.B.) 549, was enacted on June 12, 2007. This legislation authorizes deferred accounting for the pre-construction costs of integrated gasification combined-cycle (IGCC) plants, and these costs are to accrue a carrying charge equal to the utility's AFUDC rate. All prudently incurred pre-construction costs are recoverable through the utility's capacity cost recovery clause, as is a current return on CWIP.

- **North Carolina:** Senate Bill (S.B.) 3, which was enacted on August 20, 2007, facilitates the NCUC's ability to allow a cash return on CWIP by removing statutory language that had permitted utilities to earn a cash return on CWIP only "to the extent [...] such inclusion is in the public interest and necessary to the financial stability of the utility in question." As an example, the NCUC recently approved the recovery of pre-construction development costs for the proposed Duke Energy Lee Nuclear Station, stating that "to the extent the Commission finds, in a future general rate case proceeding, the specific activities involved in, and the costs of pursuing such Development Work to be prudent and reasonable (whether or not the Lee Nuclear Station is constructed), Duke may

[18] CWIP in rate base, which provides cash before a plant operates, does not occur in competitive markets. For regulated utilities, there have been instances where commissions have allowed CWIP to be recovered when a regulated utility needs cash flow assistance or when Allowance for Funds Used During Construction (AFUDC) balances, which are "paper" earnings not "cash" earnings, grow large and become burdensome financially. Normally, however, CWIP in rate base is not allowed as the plant is not yet benefiting customers, but in order to induce utilities to build more states are formalizing CWIP allowances.

recover" the Development Work costs in rates.[19] These development costs are expected to total $125 million.

- **Nevada:** In 2004, the PUC adopted revised integrated resource planning rules that permit the Commission to approve an incentive mechanism for generation facilities designated as "critical." Under the rules, the PUC has the option to designate a project as critical if it protects reliability, promotes supply diversity, or utilizes renewable resources. For such a project, the utility may be awarded a financial incentive including: (1) an enhanced ROE on the designated critical facility over the life of the facility; (2) a cash return on CWIP associated with the facility; or (3) the deferral of costs incurred to construct the facility.

- **Wisconsin:** Through an ROE adder, the PSC generally allows a current return on 50 percent of a utility's electric and gas CWIP, except for major generation projects where the PSC generally allows a current return on 100 percent of the CWIP associated with that project.[20]

The trend is clear: the US needs to build new generating capacity, greatly increase energy efficiency, or initiate a combination of both in order to meet demand for electricity and diversify the supply mix away from old technology. Cost-of-service regulation could accomplish this, but going down that path will necessitate iron-clad cost recovery assurances for increasingly expensive generation assets.[21] Regulated entities may be volunteering to build new generation, but not without cost recovery guarantees and payments before plants are in service. While the prior building cycle proved that recovery assurances need to be provided to investors, the amount of price risk faced by consumers does not seem to have sunk in. Customers may not yet be aware of the long-term commitments that are being made on their behalf by utilities and their regulators.[22]

B. Economic Efficiency Gains

Reliance on competitive markets is based on the principle that firms with the most efficient production and the most value for consumers should and will prevail. Efficient competition leads to production at the lowest achievable costs in the long-term, which is a socially desirable outcome that results in an efficient use of society's resources. Currently, with

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[19] Regulatory Research Associates, Inc., Focus Notes, March 30, 2007. A similar approval was granted by the Ohio Public Utilities Commission to American Electric Power (AEP) in 2006, which allowed for the recovery of $24 million in pre-construction costs related to an IGCC facility. *See*: Regulatory Research Associates, Inc., Focus Notes, April 27, 2007.

[20] Regulatory Research Associates, Inc., State Commission Overviews, various dates.

[21] From May 2005 to October 2006, Duke Energy's estimate of construction costs for two new coal-fired plants at its Cliffside site went from $2 billion to $3 billion. The North Carolina Utility Commission ultimately approved a single plant for $1.8 billion, an 80 percent increase from the initial estimate—and that number is still just an estimate. Similarly, Entergy's cost to re-power its Little Gypsy site was estimated in April, 2007, to cost $1 billion; by July, 2007 this figure had increased by over 50 percent to $1.55 billion.

[22] We are not saying that such guarantees and cash flow allowances are unjustified or unnecessary. To the contrary they may be required in regulated situations. The point is that this is a major difference between the regulated and competitive solutions.

transition to competition periods beginning to end, it is too early to determine the ultimate success or failure of electricity competition—but it is possible to see some encouraging trends.

With competition, generation operators' incentives changed dramatically, leading to changes in microeconomic behaviour. Though they may not be immediately evident in prices, benefits are clear in non-price advantages such as greater service variety and the presence of a functioning market for capacity (which promotes efficient investment decisions).

Research papers that focus on measures of efficiency other than price, such as generator efficiency or operating cost reductions, offer a more complete indication of the impacts of competition in the current environment. Research has found that:

- Operating costs of generating plants in states that chose to restructure have been reduced relative to costs of generating plants in states that decided against implementing competition.[23] Plant operators affected by competition reduced labor and non-fuel expenses by about 3%-5% relative to other IOUs and 6%-12% relative to cooperatives or government-owned generation.[24] Similarly, divested generating plants and those subject to incentive regulation mechanisms improved their fuel efficiencies compared to their peers without high-powered incentives.[25]

- One of the benefits introduced by competition in generation was to improve the performance of previously existing generating assets in the face of competition. Availability, non-fuel operating costs, and heat rates improved significantly. Availability of generating capacity has increased over time in both New England and New York. Equivalent availability factors increased significantly in PJM from 1994 to 1998 and have been roughly constant since then with some year-to-year variability.[26] Relatively small efficiency gains—such as a two percent improvement in heat rates—can provide hundreds of millions of dollars of annual fuel savings.

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[23] Fabrizaio, K., N. Rose and C. Wolfram, "Do Markets Reduce Costs? Assessing the Impact of Regulatory Restructuring on US Electric Generation Efficiency," *The American Economic Review*, Vol. 97 No. 4, 2007.

[24] *Id.*

[25] Bushnell, J. and C. Wolfram, *Ownership Changes, Incentives and Plant Efficiency: The Divestiture of U.S. Electric Generating Plants*, University of California Center for the Study of Energy Markets, CSEM WP-140, March, 2004.

[26] Paul L. Joskow, "Restructuring, Competition and Regulatory Reform in the U.S. Electricity Sector," *Journal of Economic Perspectives*, 11(3): 119-138, 1997.

ISO New England, *2004 Annual Markets Report*, 2005, http://www.ksg.harvard.edu/hepg/Papers/ISONE_2004_annual_markets_report.pdf (Accessed 11/2/07).

New York ISO, *2004 State of the Markets Report*, prepared by David Patton, 2005, http://www.nyiso.com/public/webdocs/documents/market_advisor_reports/2004_patton_final_report.pdf (Accessed 11/2/07).

PJM Interconnection, *State of the Market Report 2004*, 2005, http://www.pjm.com/markets/market-monitor/downloads/mmu-reports/pjm-som-2004.pdf (Accessed 11/2/07).

Markets reward innovation—the search for and discovery, development, adoption, and commercialization of new products, services, organizational structures, processes, and procedures—that meets market demand. The role of competitors in the marketplace is to compete on the basis of price and value. While competing on the basis of price is obviously very important, successful competitors can also innovate and offer the customer something better than that offered by standard service. Some value-added services may be related to price, such as information services that improve a customer's ability to manage its energy usage. Value could also be provided in the form of green power, risk management (fixed prices for seasons or a year), bundling of services, or could take a form that is not currently anticipated.

C. Energy Efficiency and Renewables

Energy efficiency, distributed energy resources (DER) programs, and renewables (e.g., wind) all benefit from transparent markets and the competitive incentives that restructured markets provide. In a competitive situation (with an RTO or ISO), it is more likely that price signals for generation services (energy, capacity, and ancillary services) will be market based, and it is also more likely that service providers or retailers will be involved.

1. Market Transparency and Demand Response

Innovative RTO/ISO programs are providing incentives for a wide variety of needed generation and transmission-related resources. The ISO-RTO Council, made up of ISOs and RTOs serving two-thirds of the US market and half of the Canadian market, recently issued three reports documenting the success they have had in terms of managing demand response programs and encouraging renewable investment.[27] The reports note various ways in which RTOs can facilitate renewable development including clear, expeditious, and nondiscriminatory interconnection processes and market-based ancillary services.

Demand response programs that respond to real-time prices can also serve to moderate spot price spikes. Demand response programs work best in transparent markets, which eliminate the need to use an administered-type price, such as avoided cost pricing, which may give very misleading price signals. With a transparent market providing price signals, it becomes possible to fairly evaluate energy efficiency, demand response programs, and renewable resources. Furthermore, ISOs, by definition, have no stake in market outcomes. Because they own no generation, they are neutral with respect to the ownership and types of generating units that operate within their system. The same is not always true for utilities.

2. Availability of Information and Price Signals

It is imperative for potential investors in renewable sources of energy to have access to detailed pricing information so that they can judge the feasibility of their projects. In regard to this, and in support of competition, the ISO/RTO Council reported: "ISO and RTO wholesale markets provide price transparency to inform all market participants, including renewable

[27] For more information, please *see*: ISO/RTO Council, Increasing Renewable Resources, October 16, 2007; ISO/RTO Council, Progress of Organized Wholesale Electricity Markets in North America, October 16, 2007; Markets Committee of the ISO/RTO Council, Harnessing the Power of Demand, October 16, 2007.

generation owners, about the price and the value of their power."[28] In addition, the report notes: "[i]n wholesale electricity markets, developers have access to both historical data and forward price curves to estimate the future value of their generation."[29] This lies in stark contrast to projects not in ISO/RTO regions, where it is likely that the developer will negotiate price bilaterally with the utility, and will not have access to public price information.

The availability of time-based market prices and demand response capability can change the energy cost structure faced by certain utility customers during peak periods, resulting in increased consumer price responsiveness (i.e., elasticity). Thus, customers participating in demand response programs benefit from transparent market prices. Through the market process of numerous buyers and sellers making individual decisions, competitive markets allow consumer demands to be sorted out and aggregated by producers at the lowest possible cost. The price information provided by the market gives buyers and sellers the information they need to make their individual production and purchasing decisions. The Markets Committee of the ISO/RTO Council issued a positive review of ISO/RTO management of the demand response programs in the US and Canada, stating that:

> The markets these ISOs and RTOs administer, which represent approximately two-thirds of electricity demand across the United States and just over 40 percent in Canada, are playing an important and growing role in enabling demand response to reach its full potential. They provide visible price signals that will help consumers make rational decisions about expenditures on electricity in the same way they use market prices for deciding how to purchase other goods and services.[30]

Given the price signals provided by a transparent real-time spot market, demand response programs can be more effective in restructured jurisdictions. Efficiency investments are also spurred when customers see true market prices and can make decisions to use energy more efficiently based on those prices.

States with competitive markets can avoid relying heavily on administratively set credits that may not always adjust readily to reflect changes in costs. Administratively set credits have an important defect: they are *static* in nature, while wholesale power markets are inherently dynamic over time. In dynamic power markets, administratively set credits rapidly become stale and can trigger incorrect and outdated responses. One lesson from the implementation of PURPA in the 1980s is that, in the absence of market prices, setting avoided cost rates is a very difficult task to complete correctly. When wholesale market price information is readily available, these challenges are reduced.

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[28] ISO/RTO Council, *Increasing Renewable Resources*, October 16, 2007, p. 11.

[29] *Id.*

[30] Markets Committee of the ISO/RTO Council, *Harnessing the Power of Demand*, October 16, 2007, p. 1.

3. Renewable Generation Growth

The records on prices that are maintained by ISOs and RTOs can serve as valuable information to companies deciding whether or not to invest in renewable generation assets. But what has actually happened in recent times, in terms of the *growth* in generation from renewable resources in restructured vs. traditionally regulated states?

Table 2: Growth of Renewable Generation in Restructured and Traditional States 2000-2005

	Growth Rate
Restructured States	11.3%
Traditional States	0.6%

Source: EIA.

Total renewable generation increased in both markets during the period of time between 2000 and 2005. However, renewable net generation in restructured states increased by approximately 11.3 percent, while there has been an increase of less than one percent in traditionally regulated states. This is not to say that restructuring was completely responsible for the relatively larger increase in renewable net generation in restructured states. To prove this, a multitude of other variables would have to be considered, including overall trends in electricity demand, and separate state policies regarding renewables. These statistics are important, however, given the expectation that independent power providers compete based on short term marginal cost, and that renewables would therefore not be viable competitors. In addition, utilities in restructured markets are not mandated to purchase power from PURPA qualifying facilities.[31] At the very least, the growth in renewable net generation in restructured states shows that the transparent market prices, customer choice, and renewable standards that are available in restructured markets help to provide a favorable environment for renewables.

There have been many recent examples of renewables gaining a stronger foothold in restructured markets. For instance, in Maine, a proposed mountain ridge wind farm has already sold its first 10 years of renewable energy.[32] This project is expected to power 44,000 households and reduce daily air emissions in the region by 430 tons a day. Harley Lee, President of Endless Energy in Yarmouth, issued a statement that highlighted Constellation's role as a power marketer, noting that "[o]ur region has lagged behind other parts of the country in the use of

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[31] As part of the Energy Policy Act of 2005, Congress substantially narrowed the applicability and scope of QF must-buy requirements. Thus, utilities in much of the US will be relieved from the Section 210 requirements applicable to new QF facilities, with a showing that a new QF has nondiscriminatory access to competitive wholesale markets that meet the applicable standard. For utilities that cannot show that the new QF has access to competitive wholesale markets that meet the Section 1253 standard, the PURPA "must buy" requirements will continue.

[32] Donna M. Perry, "Redington Wind Farm has Deal to Sell Power," *Sun Journal*, April 6, 2006.

wind energy. A major reason has been the lack of a power marketer willing to sign long-term contracts."[33]

Other positive examples of renewable energy in restructured states include an agreement between Constellation and Horizon Wind Energy for an 18-year renewable energy power purchase agreement,[34] a contract between Epuron LLC (Conergy) and Exelon Generation for a 20-year power purchase agreement for the energy produced at a proposed 3 megawatt (MW) solar energy power station in Morrisville, Pennsylvania,[35] and the success of PECO Wind in Pennsylvania.

VI. CONCLUSION

State policy makers face a difficult situation. Restructuring transition periods have ended or are ending as prices are rising across the country. Prices have generally been rising over the past several years, regardless of market structure, primarily because of rising input fuel prices. At the same time, investment needs are growing and environmentally beneficial renewables are being mandated by legislation. Carbon emissions, which are not limited at all now, could be limited moving forward, which will further increase prices. Upward pressure on natural gas and oil prices show no signs of relenting. Even generation equipment costs are rising as the metals needed for their manufacture increase in price, and as demand drives up engineering and construction labor costs. Price increases are unpopular, and in the search for a villain, it is easy to blame competition. The facts, however, do not support the hypothesis that competition is the cause of price increases. The rise in oil and gas prices, equipment costs, impending carbon control costs, and the mandate to replace older and dirtier generation with alternative units are the primary factors behind these price increases. Both competitive and traditionally regulated states are seeing the impact of input price increases.

It is true that restructuring was misunderstood and, in many cases, unrealistic expectations may have been set. The implication that restructuring would always lead to lower prices was not accompanied by the obvious "all else being equal" or "over the long term" provisions. Abstracting from oil and gas prices, renewable mandates, equipment cost increases, and carbon reduction costs, it is likely that prices in restructured states would have declined as transition periods ended. But that did not happen, and industry structure cannot compensate for sharp increases in input prices.

In theory and in practice, restructured markets are superior in providing production efficiency incentives, in encouraging efficient demand side activity, and in encouraging investment in alternative forms of generation. We also know that in competitive markets customers bear much less risk. These factors all point to a policy that favors competition over

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[33] *Id.*

[34] Constellation Energy, *Constellation Energy to Purchase Wind Power From Horizon Wind Energy's Twin Groves II Project*, July 25, 2007, http://ir.constellation.com/phoenix.zhtml?c=112182&p=irol-newsArticle&ID=1030961&highlight= (Accessed 11/2/07).

[35] *Epuron, Exelon Join Forces on 3 MW Pennsylvania Solar Facility,* RenewableEnergyAccess.com, September 4, 2007, http://www.renewableenergyaccess.com/rea/news/story?id=49828 (Accessed 11/2/07).

cost-of-service regulation. Electricity generation is a capital intensive industry with long lead times, and the benefits of competition cannot be expected to be seen overnight.

We also know that cost-of-service regulation performed poorly during the last major generation building cycle. However, these lessons, while very relevant, may not stand out to current policy makers who were not involved in the industry in the 1970s and 1980s. Competition, with all its imperfections and transitional problems, is too often compared to an idealized version of regulation that may exist in theory but not in practice.

Before rushing to judgment on restructuring and undoing competitive markets, policy makers should consider the following facts:

- Competition and cost-of-service regulation are fundamentally different and competition will shift risk from customers to investors.

- The risks borne by customers and the outcomes they were exposed to under the last significant non-gas capacity expansion are what led states to restructure. In many states, cost-of-service regulation failed in the 1980s.

- States continuing in the cost-of-service regulated model are providing iron-clad cost recovery guarantees for new generation investment and prudence pre-approval.

- The market prices seen in competitive markets will encourage efficient penetration of energy efficiency (conservation) and facilitate demand response, lowering investment needs, and providing environmental benefits.

- Competitive markets have led the way in renewable energy development.

- Recent price increases are largely driven by input price increases, and have occurred in both competitive and traditionally regulated states.

While restructuring may not have been perfectly implemented and there will always be room for improvement, the facts above suggest that regulatory efforts would be better directed at refining and improving the competition model rather than returning to the cost-of-service regulated model.

LEGISLATIVE RESEARCH REPORT

MARCH 5, 2010

REPORT NUMBER 10.189

REGULATION OF WHOLESALE TRANSACTIONS BY INDEPENDENT POWER PRODUCERS

PREPARED FOR SENATOR LESIL MCGUIRE

BY TIM SPENGLER, LEGISLATIVE ANALYST

You asked if other states regulate wholesale electric power transactions by independent power producers (IPPs) in the same way as does Alaska.[1] Specifically, you wanted to know if other states regulate power producers who sell to one or more customers and generate more than $50,000 in income from the sale of electricity, as provided in Alaska law.[2] **Briefly, we could identify no states that regulate independent power producers in this way.**

For our review, we queried all state utility commissions, conducted a search of the Westlaw database of state statutes, and contacted national experts on the topic. None of the 24 states that responded to our query report having any regulatory language similar to that in Alaska.[3] A frequent response that we received from states was that IPPs are subject to Federal Energy Regulatory Commission (FERC) regulations but not to state regulation.[4] A number of experts we contacted point out that utilities that purchase electricity from IPPs are subject to their respective state's public utilities commission regulations. We also communicated with lead staff from the National Association of Regulatory Utility Commissioners (NARUC), the Independent Power Producers Coalition of the West (IPPC), the National Conference of State Legislatures (NCSL),

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[1] Independent power producers are entities that generate electric power for sale to utilities and end users. The producers are unaffiliated with the franchised utility in the area in which the IPP is selling power

[2] The Regulatory Commission of Alaska has statutory authority (under AS 42.05.141) to regulate every "public utility." Public utility is defined under AS 42.05.990(4) as an entity (including an individual) that furnishes electrical service to the "public" for compensation. AS 42.05.990(2)(b) defines "public" or "general public"— as "one or more customers that purchase electrical service for use within an area that is certificated to and presently or formerly served by an electric utility if the total annual compensation that the electrical utility receives for sales of electricity exceeds $50,000."

[3] Officials in the following 24 states responded to our query: Alabama, Arizona, Arkansas, Colorado, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Oregon, South Dakota, Texas, Virginia, and Washington.

[4] We spoke with FERC energy industry analyst, Saeed Farrokhpay, (916) 294-0322, who confirmed that IPPs' power transactions fall under FERC jurisdiction pertaining to rate regulation. The FERC is a federal agency, under the Department of Energy, with jurisdiction over interstate natural gas transportation and sale for resale rates, wholesale electric rates, hydroelectric licensing, oil pipeline rates, and gas pipeline certification (*http://www.ferc.gov*).

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and the Colorado Independent Energy Association.[5] None of the experts from these entities with whom we spoke were aware of regulations in other states similar to those in Alaska. A common thread of the feedback we received was that regulating wholesale transactions of independent power producers would be a duplicative procedure as the utilities to which IPPs sell their electricity are already regulated by states. Such regulations would likely act as a disincentive for IPPs—including alternative or smaller energy producers—effectively discouraging such entities from engaging in business.

Below we highlight feedback we received from eight states that you may find to be of interest.

- ***Arkansas:*** According to Dave Stanton (501-682-1792), chief administrative law judge and chief of commissioners' staff, Arkansas Public Service Commission (APSC), the APSC only regulates "public utilities" and, therefore, has no regulatory authority over independent power producers. IPPs located in Arkansas are not subject to rate regulation but are subject to state and federal environmental regulations administered by the federal EPA and the Arkansas Department of Environmental Quality.

- ***Colorado:*** Colorado Public Utilities Commission does not regulate Independent Power Producers, according to Doug Dean (303-894-2007), director of the commission. IPPs are not allowed to provide retail electric services; they only provide electricity at the wholesale level. Only the investor-owned electric utilities, cooperative electric associations, and municipal utilities are permitted to provide retail electric service in Colorado. These entities are regulated by the state.

- ***Idaho:*** The state does not regulate independent power producers, regardless of size, according to Gene Fadness (208-334-0339), executive director, Idaho Public Utilities Commission (IPUC). The IPPs come under IPUC purview only when they contract with regulated utilities.

- ***Maine:*** Evelyn deFrees (207-287-6141), public information officer with Maine's Public Utilities Commission, relates that the state does not regulate power suppliers or producers, only transmission and distribution companies. The commission does license and oversee companies that sell at the retail level; at the wholesale level, however, the sale of electricity is not state regulated but is subject to FERC jurisdiction.

- ***Minnesota:*** The Minnesota Public Utilities Commission only has ratemaking authority over entities defined as public utilities, according to Janet Gonzales (651-201-2231), energy unit manager. Public utilities are (in part) defined in

[5] We contacted the following individuals for this report: Christopher Mele, legislative director—energy, National Association of Regulatory Utility Commissioners, (202) 898-2206. NARUC is an association representing state public service commissioners who regulate utility services, such as electricity, gas, telecommunications, water, and transportation, throughout the country (*http://www.naruc.org*); Robert Kahn, executive director, Northwest and Intermountain Power Producers Coalition (NIPPC), (206) 624-1235. NIPPC's website asserts that the organization will pursue informal and formal (i.e., laws, policies, rules, and regulations) avenues and forums to encourage a competitive electric power supply marketplace in the Pacific Northwest and Intermountain West (*http://www.nippc.org*); Keith Hay, energy program director, National Conference of State Legislatures, (303) 364-7700 (*http://www.ncsl.org*); Nicholas Muller executive director, Colorado Independent Energy Association, (303) 297-1970. The CIEA attempts to save Colorado ratepayers money by promoting lower cost electricity (*http://www.ciea-colorado.org*).

Minnesota statue (§216B.02, subd. 4) in the following way: "No person shall be deemed to be a public utility if it produces or furnishes service to less than 25 persons." Minnesota does not regulate electric power providers based on revenues from electricity sales.

- ***New Jersey:*** Doyal Siddell (973-468-8515), public information officer, New Jersey Board of Public Utilities relates that power from New Jersey's independent power producers is dispatched to the state's regional transmission organization, PJM, whose rates are subject to FERC jurisdiction; the state has no jurisdiction.

- ***Oregon:*** Oregon does not regulate wholesale power transactions between independent power producers, according to Maury Galbraith (503-378-8718), electric rates and planning, Public Utilities Commission. Mr. Galbraith informs us that FERC has regulatory jurisdiction over this type of transaction across the country.

- ***South Dakota:*** John Smith (605-773-3201), general counsel, South Dakota Public Utilities Commission, informs us that their commission does not engage in utility regulation of independent power producers unless the IPPs sell to "ultimate consumers"—or, in other words, retail consumers.

We hope you find this information to be useful. Please let us know if you have questions or need additional information.

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March 8, 2010

Senator Lesil McGuire
Alaska State Legislature
120 4th Street, State Capitol, Room 125
Juneau, AK 99801-1182

Re:: Senate Bill 277

Dear Senator McGuire:

The Alaska Power Association (APA) and its members have not yet had the opportunity to fully explore all of the potential impacts of the March 2, 2010, committee substitute for Senate Bill 277. However, based on its preliminary review, APA is concerned about the potential ramifications of this bill. At this point, APA cannot support SB 277 because of those concerns, but welcomes any opportunity to discuss those concerns with you or your staff. APA's concerns are summarized below:

General Concerns Regarding Statutory Exemption:

1. The exemption from RCA certification and regulation provided for in the bill may be unnecessary for the following reasons: First, under federal law, most renewable energy resource electric generation facilities that propose to sell power only to another electric utility can already become exempt from state regulation by becoming a "qualifying facility" ("QF"). *See* 18 C.F.R. § 292.602(c); 18 C.F.R. § 292.601(a), (b). Such facilities include all QFs that are a cogeneration facility, a geothermal or biomass small power production facility, or any other small power production facility (including hydroelectric, solar, and wind-power facilities) having a capacity of 30 megawatts (MW) or less. In general, all of the types of renewable energy resources facilities referenced in the bill would be eligible to become a QF. Such a facility can become a QF through a simple self-certification with FERC.

Second, regardless of whether a renewable energy resource facility is exempt as a QF, the facility can also become exempt from RCA certification and regulation through a petition to the Regulatory Commission of Alaska (RCA) that demonstrates that the exemption is "in the public interest." *See* AS 42.05.711(d). In 2009, two small hydroelectric facilities obtained public interest exemptions from the RCA based on the facility's generation source and small size, the fact that the facility would sell power only to an electric utility, and the cost and burden of certification and regulation. *See* RCA Order Nos. U-08-102(2) and U-08-132(2) (attached).

2. The proposed statutory exemption would impair the RCA's ability to ensure that the facility's rates, terms, and conditions of service are just, reasonable, and non-discriminatory, particularly when the facility sells power to multiple electric utilities. Although the RCA would have to approve the purchasing utility's entering into a power purchase agreement with the facility, that so-called "indirect regulation" of the exempt facility would not give the RCA full access to the facility's cost and financial information.

3. The proposed statutory exemption would divest the RCA of jurisdiction to adjudicate complaints by the purchasing electric utility against the facility for failing to provide adequate, non-discriminatory service. In addition, if the facility were regulated and a dispute arose regarding a rate issue or service issue that the facility and the purchasing electric utility did not clearly contemplate in their long-term power purchase agreement, the RCA would have jurisdiction to resolve that dispute. Without RCA jurisdiction, the purchasing electric utility would be limited to filing a lawsuit in court to address those types of issues, which involves significantly more cost and delay (and less adjudicator expertise over the subject matter) than a complaint filed with the RCA.

4. RCA certification of a renewable resources facility imposes an "obligation to serve," which ensures that the facility cannot unreasonably refuse to provide service to a particular customer. The broad exemption proposed under the bill would preclude the RCA from enforcing such an obligation, thus allowing the facility to discriminate among potential power purchasers.

5. If a renewable resources facility is certificated and regulated by the RCA and the facility seeks bankruptcy protection, the RCA generally would have standing in the bankruptcy proceeding to help ensure that the public interest is protected. That measure of protection would not exist if the facility is categorically exempt from RCA jurisdiction by statute. That issue can be significant because a renewable energy resources facility may be (and likely will be) owned by a subsidiary corporation or subsidiary limited liability company in such a way that the

effective, ultimate "owner" of the facility is shielded from all liability for the debts and obligations of the facility. That is one of the reasons that the RCA carefully considers whether the legal owner of a proposed public utility is, in fact, "fit, willing, and able" to provide public utility service when the RCA decides whether to certificate the utility, or when the RCA decides whether to grant a public interest exemption from regulation. Under the broad exemption provided for in the bill, the RCA would lack jurisdiction to review such matters, particularly after the purchasing electric utility obtains RCA approval of the power purchase agreement.

6. The proposed statutory exemption would preclude affected electric utilities from having input regarding whether the exemption of a particular facility is justified. The existing RCA public interest exemption process allows utility input and public input and allows the RCA to determine on a case-by-case basis whether the facts and circumstances justify exemption for a particular facility. Related to that, until a power purchase agreement and the associated rates, terms, and conditions of service are negotiated regarding a particular facility, the utilities that are intended to purchase power from the facility may not have enough information to know whether an exemption from RCA certification and regulation is justified. The broad statutory exemption provided for in the bill would preclude affected electric utilities from making that determination when the facts and circumstances associated with a particular facility are known.

7. There has not been adequate time for APA and its members to fully explore all of the unintended consequences of the type of broad, absolute exemption provided for in the bill.

More Specific Concerns Regarding SB 277:

1. The bill's 65 MW size restriction appears to be too high. The potential justification for exemption from RCA certification and regulation is very different if the exemption applies to a small 500 kilowatt (kW) renewable resources facility as opposed to a large 65 MW facility.

2. The bill would exempt a facility that sells its output to *any type* of regulated public utility, not just to a regulated *electric* public utility. That would allow the exempt facility to compete against the local electric utility for firm electric sales to non-electric utilities that are within the local electric utility's certificated service area.

3. The bill would exempt a facility that sells its output to *multiple* regulated electric utilities. Sales to multiple electric utilities raise concerns about preventing the facility from discriminating among customers with respect to rates, terms, or conditions of service.

4. The bill would exempt a facility even if it is closely affiliated with a regulated electric utility to which it sells power. That raises additional concerns about the potential for discriminatory preferences among the electric utilities that purchase power from the facility.

5. The bill would exempt cogeneration facilities because "renewable energy resources" under AS 42.45.045(l) include "wasteheat recovery." Electric utilities have had contentious experiences with developers attempting to force the utility into uneconomic power purchases from proposed cogeneration plants.

Again, APA and its members have had only a limited amount of time to attempt to review the potential ramifications and unintended consequences of SB 277. APA and its members will continue their review of the bill and may have other concerns as they review it in greater detail. In the meantime, APA stands ready to discuss its concerns with you or your staff whenever is convenient for you. We suggest you initiate a meeting with all interested parties as soon as possible so that we can have a discussion of all the issues.

Sincerely,

Marilyn Leland
Executive Director

ALASKA STATE LEGISLATURE

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State Capitol Building, Room 125
Juneau, Alaska 99801-1182
Phone (907) 465-2995
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SENATOR LESIL MCGUIRE

Chair
Senate Special Committee on Energy
Senate Special Committee on
World Trade, Technology, and Innovations

Co-Chair
Senate Resources Committee

Member
Senate Judiciary Committee
Joint Armed Services Committee

Senator.Lesil.McGuire@legis.state.ak.us

DATE: March 3, 2010

TO: Senator Hollis French, Chair Senate Judiciary Committee

FR: Senator Lesil McGuire

RE: Request to Schedule SB 277: Public Utility Exemption: Renewable Energy

Dear Senator French,

Please schedule SB 277: Public Utility Exemption: Renewable Energy for a hearing in the Senate Judiciary Committee at your earliest convenience.

Attached is a bill packet that contains the following:

1. Sponsor Statement
2. Current Version of the Bill: CS SB 277 (26-LS1353\P)
3. Identification of Changes
4. Original Version of the Bill: SB 277 (26-LS1353\E)
5. Fiscal Notes:
   a. DCCED: Zero fiscal note /19/2010
6. Supporting Documents
   a. Legislative Legal Services: Opinions
   b. RCA Statutes
   c. FERC FAQ on Qualifying Facilities
      i. FERC Regulations on Small Power Generation
   d. NERA, Economic Consulting Report: *Competitive Electricity Markets: The Benefits for Customers and the Environment*

To Testify:

Ethan Schutt, CIRI

Michael Pawlowski in my office will be the staff contact for this bill. Her number is 465-5159. Please call if you have any questions.

SB 284

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

Senate Judiciary Committee

Sponsor Statement: Senate Bill 284 Campaign Expenditures

In the wake of the recent U.S. Supreme Court ruling, *Citizens United v. Federal Election Commission,* the Senate Judiciary Committee has worked to determine the changes to Alaska's elections laws that will be needed. Corporations and labor unions have been banned from participating in Alaska's elections prior to this ruling. This means many of Alaska's laws regarding disclosure and disclaimers simply do not apply to corporations and labor unions making independent expenditures to support or oppose specific candidates in elections.

Testimony from Legislative Legal Services attorneys and from the Alaska Department of Law indicated that changes would be needed to Alaska's campaign laws, and this bill was subsequently drafted to address the concerns raised by the attorneys and by committee members.

Senate Bill 284 amends state election laws to clarify that corporations and labor unions are covered by all applicable reporting requirements. It expands communication identification requirements to ensure accurate reporting of top contributors, to require the approval of the content by the principal officer of the corporation or union, and to require statements in each communication that its content has not been authorized or approved by the candidate. It also speeds reporting requirements for communications expenditures in the last nine days of the election so that expenditures over $250 must be reported within 24 hours.

Recent opinion surveys show broad disapproval by Americans across party lines for the decision reached by the U.S. Supreme Court. In order to retain Alaskans' trust in our system it is vital that legislation be passed this year to ensure that corporations and labor unions spending money to influence elections are at least required to disclose it in a timely fashion. I urge you to support Senate Bill 284.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 22, 2010

SUBJECT: Sectional summary of Senate Bill No. 284
(Work Order No. 26-LS1448\A)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Amends language relating to the applicability of AS 15.13 (state election campaigns) to clarify that the chapter applies to all contributions, expenditures, and communications made for the purpose of influencing the outcome of an election covered by the chapter.

Section 2. Amends language relating to the duties of the Alaska Public Offices Commission (APOC) to clarify that the commission will assist all persons to comply with the requirements of AS 15.13.

Section 3. Amends AS 15.13.040(d) to clarify that every person making an expenditure must report to the commission unless the person is exempted from reporting by another provision of the chapter.

Section 4. Adds new requirements to the expenditure report required under AS 15.13.040(d) and specifies that the report must be filed in accordance with AS 15.13.110(g).

Section 5. Amends language in AS 15.13.040(h) to clarify that the reporting requirements of AS 15.13.040(d) do not apply to an expenditure made by certain individuals acting independently of any other person.

Section 6. Amends AS 15.13.040(p) to clarify that a person who is required to disclose contributions received by that person in an expenditure report under AS 15.13.040(d) must report the true source of the contributions as the "contributor."

Section 7. Amends AS 15.13.067 to allow any person who has registered under AS 15.13.050 to make an expenditure in a state election for public office.

Section 8. Provides that no person, other an individual exempt from reporting under AS 15.13.040(h), may make an expenditure unless the source of the expenditure has been disclosed.

Section 9. Amends language in AS 15.13.084 to clarify that a person may not make an expenditure anonymously unless it is made (1) for certain communications, (2) in connection with a ballot proposition as that term is defined by AS 15.13.065(c), and (3) by an individual acting independently of any other person.

Section 10. Amends language in AS 15.13.086 to conform with changes made by sec. 7 of the bill.

Section 11. Expands the communication identification requirements of AS 15.13.090 to apply to communications made by all persons, and additionally requires a person other than a candidate, individual, or a political party to (1) identify the person's principal officer, (2) include a statement from that officer approving the communication, (3) provide the address of the person's principal place of business, (4) identify the person's five largest contributors, and (5) in an election for elective office, state that the communication is not authorized or approved by a candidate.

Section 12. Requires expenditure reports filed under AS 15.13.040(e) to be filed within 10 days of the expenditure being made, except for an expenditure that exceeds $250 and that is made within nine days of an election must be reported to APOC within 24 hours of the expenditure being made.

Section 13. Amends the language of AS 15.13. 111(a) to oblige all persons who are required to report under AS 15.13 to preserve certain records for a period of six years.

Section 14. Removes language from AS 15.13.135 that permitted only individuals, groups, or nongroup entities to make independent expenditures in support or in opposition to a candidate for public office. Adds language requiring all persons making certain independent expenditures to comply with AS 15.13.090.

Section 15. Repeals AS 15.13.140(a), a provision that provided that AS 15.13 should not be interpreted to prohibit a person from making independent expenditures in support or in opposition to a ballot proposition or question. As the chapter now reads, there is no ambiguity as to whether the chapter prohibits persons from making independent expenditures relating to a ballot proposition or question.

Section 16. Gives the Act an immediate effective date.

TLAB:ljw
10-121.ljw

Special Notices on Political Ads and Solicitations

Published in October 2006

FEDERAL ELECTION COMMISSION

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  - IRS Disclosure Requirements

Introduction

This brochure has been developed to help clarify the rules relating to the following types of special notices:

- Disclaimer notices;
- Federal election purpose notification;
- Best efforts notifications; and
- IRS disclosure notices.

Each notice may be required (as appropriate) when persons finance communications related to federal elections or solicit funds for federal political committees. [1] A section-by-section explanation of these rules is provided within.

Please be advised that this brochure is not intended to provide an exhaustive discussion regarding this area of the election law. The citations refer to the Federal Election Campaign Act (FECA), as amended by the Bipartisan Campaign Reform Act of 2002 (BCRA), Federal Election Commission Regulations (11 CFR) and Advisory Opinions (AOs). If you have any questions after reading the brochure, please contact the FEC:

Federal Election Commission
999 E Street, NW

Washington, DC 20463
(202) 694-1100 (local)
(800) 424-9530 (toll free)
(202) 219-3336 (for the hearing impaired)

Disclaimer Notices

What is a Disclaimer Notice?

For the purpose of this brochure, a "disclaimer" notice is defined as a statement placed on a public communication that identifies the person(s) who paid for the communication and, where applicable, the person(s) who authorized the communication.

When is a Disclaimer Required?

Basic Rule

Political Committees

Political committees must include a disclaimer on (1) all "public communications" (defined below), (2) bulk electronic email (defined as electronic mail with more than 500 substantially similar communications) and (3) web sites available to the general public, regardless of whether the communication expressly advocates the election or defeat of a clearly identified candidate, or solicits funds in connection with a federal election (i.e., contributions for a federal candidate or federal political committee). [2]

Individuals and Other Persons

A disclaimer must appear on any "electioneering communication" (defined below) and on any public communication by any person that expressly advocates the election or defeat of a clearly identified candidate or solicits funds in connection with a federal election.

Application

Specific examples of public communications that would require a disclaimer include:

- Public communications coordinated with a federal candidate (i.e., in-kind contributions or coordinated party expenditures) that are paid for by a political committee or that contain express advocacy or a solicitation;
- Independent expenditures;
- Electioneering communications;
- A communication that solicits funds for a federal candidate or a federal political committee or that contains express advocacy; and
- Political committees' web sites.

Definitions

Public Communications

As defined in FEC regulations, the term "public communication" includes:

- Broadcast, cable or satellite transmission;
- Newspaper;
- Magazine;
- Outdoor advertising facility (e.g., billboard);
- Mass mailing (defined as more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period);
- Telephone banks (defined as more than 500 telephone calls of an identical or substantially similar nature within any 30-day period); or
- Any other general public political advertising. General public political advertising does not include Internet ads, except for communications placed for a fee on another person's web site

11 CFR 110.11(a).

Electioneering Communications

As defined in FEC regulations, an "electioneering communication" is a broadcast, cable or satellite communication that fulfills each of the following conditions:

- Refers to a clearly identified federal candidate;
- Is publicly distributed within 30 days before a primary election or within 60 days before a general election; and
- In the case of Congressional candidates only, is "targeted to the relevant electorate"(can be received by 50,000 or more persons in the district or state the candidate seeks to represent)

11 CFR 100.29. See also Federal Register notice 2005-29 [PDF].

Independent Expenditures

An independent expenditure is an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate and is not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate, authorized committee or their agents, or a political party committee or its agents. 11 CFR 100.16.

Coordinated Party Expenditures

Coordinated party expenditures are expenditures made by national or state party committees on behalf of their nominees in connection with the general election. Such expenditures may be coordinated with the candidate, but are reported only by the party committee that makes the expenditure. These expenditures are subject to a special monetary limit. 11 CFR 110.11(d)(1).

Exempt Party Activities

State and local party committees may engage in certain candidate-support activities without making a contribution or expenditure provided specific rules are followed. These "exempt" party activities refer to the three types of communications listed below:

- Registration and get-out-the-vote drives on behalf of the Presidential ticket;
- Campaign materials distributed by volunteers on behalf of federal candidates; and
- Certain slate cards, sample ballots and palm cards listing at least 3 candidates for public office.

11 CFR 100.80, 100.87 and 100.89; 100.140, 100.147 and 100.149; and 110.11(e).

What must the Disclaimer Say?

The actual wording of the disclaimer depends on the type of communication, as explained below. In each example, it is presumed that the ad qualifies as a "public communication" in connection with a federal election.

Messages Authorized and Financed by a Candidate

On a public communication that is authorized and paid for by a candidate or his/her campaign committee, the disclaimer notice must identify who paid for the message. 11 CFR 110.11(b)(1).

Example: "Paid for by the Sheridan for Congress Committee."

Messages Authorized but Not Financed by a Candidate

On a public communication that is authorized by a candidate or his/her campaign committee, but is paid for by another person, the disclaimer notice must identify who paid for the communication and indicate that the candidate authorized the message. 11 CFR 110.11(b)(2).

Example: "Paid for by the XYZ State Party Committee and authorized by the Sheridan for Congress Committee." [3]

Messages Not Authorized by a Candidate

On a public communication that is not authorized by a candidate or his/her campaign committee, the disclaimer notice must identify who paid for the message, state that it was not authorized by any candidate or candidate's committee and list the permanent street address, telephone number or World Wide Web address of the person who paid for the communication. 11 CFR 110.11 (b)(3).

Example: "Paid for by the QRS Committee (www.QRScommittee.org) and not authorized by any candidate or candidate's committee."

Coordinated Party Expenditures

Pre-nomination Period

On a public communication that is made as a coordinated party expenditure before a nominee is chosen, the disclaimer notice must identify the committee that paid for the message, but need not state whether the communication was authorized. 11 CFR 110.11(d)(1).

Example: "Paid for by XYZ State Party Committee."

Post-nomination Period

Once a candidate has been nominated for the general election, the disclaimer notice must also state who authorized the communication.

Example: "Paid for by the XYZ State Party Committee and authorized by the Sheridan for Congress Committee."

The committee that actually makes the expenditure is considered to be the person who paid for the public communication even when the committee is acting as the designated agent of a different party committee.

Exempt Party Activities

On exempt activity communications (for example, campaign materials) the disclaimer notice must identify the committee that paid for the message. 11 CFR 110.11 (e).

Example: "Paid for by the XYZ State Party Committee."

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How and Where must the Disclaimer Appear?

In order to give the reader sufficient notice about the person(s) paying for or authorizing a public communication regardless of its medium, the disclaimer notice must be "clear and conspicuous" on the committee's communications, solicitations and response materials. The notice will not be considered to be "clear and conspicuous" if:

- It is difficult to read or hear; or
- The notification is placed where it can be easily overlooked.

11 CFR 110.11(c)(1).

Additional requirements are described below.

Printed Materials

On printed materials, the disclaimer notice must appear within a printed box set apart from the other contents in the communication. The print must be of a sufficient type-size to be clearly readable by the recipient of the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement. 11 CFR 110.11(c)(2)(i), (ii) and (iii).

Example:

> Paid for by the Save the Seahorses Committee and authorized by the McKay for Senate Committee.

As long as the disclaimer appears somewhere within the communication it does not have to appear on the front page or cover of multiple-paged documents. However, in the case of single-sided documents and billboards, the disclaimer must appear on the front. 11 CFR 110.11(c)(2)(iv).

Safe Harbor for "Clearly Readable"

The regulations contain a safe harbor that establishes a fixed, 12-point type size as a sufficient type size for disclaimer text in newspapers, magazines, flyers, signs and other printed communications that are no larger than the common poster size of 24 inches by 36 inches. 11 CFR 110.11(c)(2)(i). Please note, disclaimers for larger communications will be judged on a case by case basis.

Safe Harbor for "Reasonable Degree of Color Contrast"

The regulations additionally provide two safe harbor examples that would comply with color contrast requirement:

- The disclaimer is printed in black on a white background; or
- The degree of contrast between the background color and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication.

11 CFR 110.11(c)(2)(iii).[4]

Packaged Materials

When communications are distributed in a package or as a group, the distributing entity must evaluate each item separately in order to determine whether a disclaimer notice is required on that item. A message or ad that would require a disclaimer notice if it were distributed separately must still display the notice when it is included in a package of materials. 11 CFR 110.11(c)(2)(v). Example: A campaign poster is mailed with a campaign brochure and solicitation letter. A disclaimer notice must appear on each of these items.

Radio and Television Communications Authorized by the Candidate

Radio

A radio broadcast must include an audio statement that is spoken by the candidate. The statement must identify the candidate, and state that he or she has approved the communication. 11 CFR 110.11(c)(3)(i).

Television

Like radio broadcasts, televised communications must include an oral disclaimer spoken by the candidate in which the candidate identifies himself or herself and states that he or she has approved the communication. 11 CFR 110.11(c)(3)(ii). [5]

This disclaimer can be conveyed in one of two ways:

- A full-screen view of the candidate making the statement (11 CFR 110.11(c)(3)(ii)(A)); or
- A "clearly identifiable photographic or similar image of the candidate" that appears during the candidate's voice-over statement. (11 CFR 110.11 (c)(3)(ii)(B)).

The communication must also include a "clearly readable" written statement that appears at the end of the communication "for a period of at least four seconds" with a "reasonable degree of color contrast" between the background and the disclaimer statement. 11 CFR 110.11 (c)(3)(iii).

Radio and Television Messages Not Authorized by the Candidate

Radio

The disclaimer notice must include the name of the political committee or person responsible for the communication and any connected organization. Example, "ABC is responsible for the content of this advertising." 11 CFR 110.11(c)(4).

Television

The disclaimer described above must be conveyed by a "full-screen view of a representative of the political committee or other person making the statement," or a "voice-over" by the representative. 11 CFR 110.11(c)(4) (ii) and 2 U.S.C. §441d(d)(2).

The disclaimer statement must also appear in writing at the end of the communication in a "clearly readable manner" with a "reasonable degree of color" contrast between the background and the printed statement "for a period of at least four seconds." 11 CFR 110.11(c)(4).

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When is a Disclaimer Not Required?

Although the FEC recommends that disclaimer notices be included on all campaign materials, the notices are not required in the following situations.

Disclaimer Placement is Inconvenient

In situations where a disclaimer notice cannot be conveniently printed, the notice is not required. This provision affects items such as pens, bumper stickers, campaign pins, campaign buttons and similar small items. Further, a disclaimer notice is not required for communications using skywriting, clothing, water towers or other forms of advertisement where it would be impracticable to display the disclaimer notice. 11 CFR 110.11(f) (See also AO 2002-9)

Internal Corporate/Labor Communications

A disclaimer notice is not required for solicitations or communications made by a separate segregated fund or connected organization to its "restricted class." [6] 11 CFR 110.11(f)(2).

Materials Used for Administrative Purposes Only

A disclaimer notice is not required on checks, receipts or similar items of minimal value that do not include a political message and are used only for administrative purposes. 11 CFR 110.11(f)(1)(iii).

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Additional Statements Required in Fundraising Solicitations

Federal Election Purpose Notification

In order to deposit undesignated contributions into its federal account, a federal committee must inform donors that their contributions will be used in connection with federal elections or that they are subject to the limits and prohibitions of the Act. The committee may satisfy this requirement by including that information in its solicitation materials. 11 CFR 102.5(a)(2)(ii) and (iii).

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"Best Efforts" Notification

Under the Act and FEC regulations, political committees must report the name, address, occupation and employer of any individual who contributes more than $200 in a calendar year (or in an election cycle, in the case of an authorized committee) (11 CFR 104.3(a)(4)). Committees must make their "best efforts" to obtain and report this information.

To satisfy the "best efforts" requirement, a political committee must include a statement on its solicitations explaining that it is required to make its best efforts to obtain and report contributor information. This statement is referred to as the "best efforts" notification; two examples are listed below:

- Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 in a calendar year, or
- To comply with Federal law, we must use our best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 per calendar year.

If the committee does not receive the required contributor information, it must make a follow-up request within 30 days. Any contributor information provided or otherwise available to the committee must be disclosed on FEC reports. In some cases, it may be necessary for the committee to amend previous reports. 11 CFR 104.7.

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IRS Disclosure Requirements

Under the Internal Revenue Service Code (26 U.S.C. §6113), certain tax-exempt organizations that are not eligible to receive tax deductible charitable contributions, and whose gross annual receipts normally exceed $100,000, must disclose in an "express statement (in a conspicuous and easily recognizable format)" that contributions to the organization are not deductible for Federal income tax purposes as charitable contributions. For more information, contact the IRS at (800) 829-3676, (202) 622-7352.

Safe Harbor for "Format of Disclosure Statement"

Print Medium

In the case of a solicitation by mail, leaflet, or advertisement in a newspaper, magazine or other print medium, the following four requirements are met;

- The solicitation includes whichever of the following statements the organization deems appropriate:
  - "Contributions or gifts to [name of organization] are not deductible as charitable contributions for Federal income tax purposes,"
  - "Contributions or gifts to [name of organization] are not tax deductible," or
  - "Contributions or gifts to [name of organization] are not tax deductible as charitable contributions";
- The statement is in at least the same size type as the primary message stated in the body of the letter, leaflet or ad;
- The statement is included on the message side of any card or tear off section that the contributor returns with the contribution; and
- The statement is either the first sentence in a paragraph or itself constitutes a paragraph.

Telephone

In the case of solicitation by telephone the following three requirements are met:

- The solicitation includes whichever of the following statements the organization deems appropriate:
  - "Contributions or gifts to [name of organization] are not deductible as charitable contributions for Federal income tax purposes,"
  - "Contributions or gifts to [name of organization] are not tax deductible," or
  - "Contributions or gifts to [name of organization] are not tax deductible as charitable contributions";
- The statement is made in close proximity to the request for contributions, during the same telephone call, by the telephone solicitor; and
- Any written confirmation or billing sent to a person pledging to contribute during the telephone solicitation complies with the requirements under Print Medium Solicitations.

Television

In the case of solicitation by television the following two requirements are met:

- The solicitation includes whichever the following statements the organization deems appropriate:
  - "Contributions or gifts to [name of organization] are not deductible as charitable contributions for Federal income tax purposes,"
  - "Contributions or gifts to [name of organization] are not tax deductible," or
  - "Contributions or gifts to [name of organization] are not tax deductible as charitable contributions";
- If the statement is spoken, it is in close proximity to the request for contributions; if the statement appears on the television screen, it is in large easily

readable type appearing on the screen for at least five seconds.

Radio

In the case of a solicitation by radio the following two requirements are met:

- The solicitation includes whichever of the following statements the organization deems appropriate:
  - "Contributions or gifts to [name of organization] are not deductible as charitable contributions for Federal income tax purposes,"
  - "Contributions or gifts to [name of organization] are not tax deductible," or
  - "Contributions or gifts to [name of organization] are not tax deductible as charitable contributions";
- The statement is made in close proximity to the request for contributions during the same radio solicitation announcement.

These safe harbors will remain in effect until further notice from the IRS. Please refer to the IRS by phone at (800) 829-3676, (202) 622-7352 for changes to these safe harbors and with any questions you might have pertaining to the safe harbors.

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FOOTNOTES:

1 This brochure serves as the small entity compliance guide to Commission regulations regarding Communications and Solicitations, as required by section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

2 The FEC recommends placing disclaimer notices on all campaign materials.

3 Please note that for communications listing several candidates, the disclaimer notice may state that the message was authorized by the candidates identified in the message or, if only certain candidates have authorized it, by those candidates identified with an asterisk (AO 2004-37)

4 These examples do not constitute the only ways to satisfy the color contrast requirement.

5 For additional information on broadcast advertising (e.g., radio, TV), please contact the Federal Communications Commission at (202) 418-1440 or (202) 418-7096 (for cable broadcasts).

6 The restricted class includes the executive and administrative personnel of the organization, its

stockholders, or its members (noncorporate), and their families. See 11 CFR 114.1(j). See also 11 CFR 114.5 (g) (1) and (2); 114.7 (a) and (c).

This publication provides guidance on certain aspects of federal campaign finance law. This publication is not intended to replace the law or to change its meaning, nor does this publication create or confer any rights for or on any person or bind the Federal Election Commission (Commission) or the public. The reader is encouraged also to consult the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 et seq.), Commission regulations (Title 11 of the Code of Federal Regulations), Commission advisory opinions, and applicable court decisions. For further information, please contact:

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Citizens United v. Federal Election Commission

The Impacts--and Lack Thereof--on State Campaign Finance Law

by Denise Roth Barber, March 02, 2010

Revised: March 2, 2010: The "Citizens United v FEC" ruling by the U.S. Supreme Court has no effect on campaign limits in place at the state and federal levels but may effectively overturn laws in 24 states that ban or restrict corporations from funding advocation for or against state candidates. In the 22 states that prohibit corporations from giving to candidates, individuals contributed about half of the money raised by candidates and non-individuals provided less than one-fourth. The reverse is true in the 28 states that allow corporate giving.

This publication was made possible by grants from:

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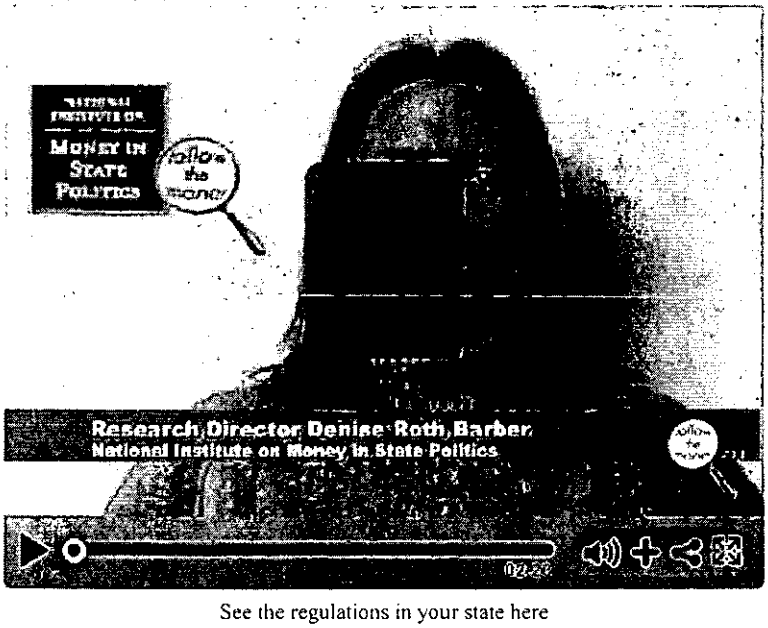
From the Research Room



See the regulations in your state here

Tutorial: Contributions vs. Independent Expenditures

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Continue reading: Citizens United v. Federal Election Commission — Citizens United v. Federal Election Commission -REVISED

http://www.followthemoney.org/press/ReportView.phtml?r=414

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Commission Statement on Citizens United v. FEC

On February 5, 2010, the Commission announced that, due to the Supreme Court's decision in *Citizens United v. FEC*, it will no longer enforce statutory and regulatory provisions prohibiting corporations and labor unions from making either independent expenditures or electioneering communications. The Commission also announced several actions it is taking to fully implement the *Citizens United* decision.

In *Citizens United v. FEC*, issued on January 21, 2010, the Supreme Court held that the prohibitions in the Federal Election Campaign Act (the Act) against corporate spending on independent expenditures or electioneering communications are unconstitutional. The Supreme Court upheld statutory provisions that require political ads to contain disclaimers and be reported to the Commission. Provisions addressed by the decision are described below:

- The Court struck down 2 U.S.C. §441b, which prohibits, in part, corporations and labor organizations from making electioneering communications and from making independent expenditures—communications to the general public that expressly advocate

(continued on page 2)

Cao v. FEC

On January 27, 2010, the U.S. District Court for the Eastern District of Louisiana granted in part and denied in part the motion of Louisiana Congressman Anh "Joseph" Cao, the Republican National Committee (RNC) and the Republican Party of Louisiana (LA-GOP, formerly "RPL") (collectively, the Plaintiffs) to certify to the Fifth Circuit Court of Appeals challenges to the constitutionality of the coordinated party expenditure limits and party contribution limits. The court certified questions regarding whether the Plaintiffs had sufficient injury to create a constitutional case, whether certain coordinated expenditure and contribution limits as applied to coordinated communications violate the Plaintiffs' First Amendment rights and whether the $5,000 limit on contributions from political parties to candidate campaigns violates a political party's First Amendment rights because it is the same limit as for political action committees and the limit is not adjusted for inflation. The district court denied certification and granted summary judgment in favor of the FEC on all of Plaintiffs' other claims.

(continued on page 3)

Comm[illegible]

(continued from page 1)

the election or defeat of clearly identified federal candidates;
- The Court upheld 2 U.S.C. §441d, which requires that political advertising consisting of independent expenditures or electioneering communications contain a disclaimer clearly stating who paid for such communication; and
- The Court upheld 2 U.S.C. §434, which requires certain information about electioneering communications and independent expenditures, and the contributions received for such spending, to be disclosed to the Commission and to be made public.

The Commission is taking the following steps to conform to the Supreme Court's decision:

- The Commission will no longer enforce the statutory provisions or its regulations prohibiting corporations and labor organizations from making independent expenditures and electioneering communications;
- The Commission is reviewing all pending enforcement matters to determine which matters may be affected by the *Citizens United* decision and will no longer pursue claims involving violations of the invalidated provisions. In addition, the Commission will no longer pursue information requests or audit issues with respect to the invalidated provisions; and
- The Commission is considering the effect of the *Citizens United* decision on its ongoing litigation.

The Commission intends to initiate a rulemaking to implement the *Citizens United* opinion. It is reviewing the regulations affected by the invalidated provisions, including but not necessarily limited to the following:

- 11 CFR 114.2(b)(2) and (3), which implement the Act's prohibition on corporate and labor organization independent expenditures and electioneering communications;
- 11 CFR 114.4, which restricts the types of communications corporations and labor organizations may make to those not within their restricted class;
- 11 CFR 114.10, which permits certain qualified nonprofit corporations to use their treasury funds to make independent expenditures and electioneering communications under certain conditions;
- 11 CFR 114.14, which places restrictions on the use of corporate and labor union funds for electioneering communications; and
- 11 CFR 114.15, which the Commission adopted to implement the Supreme Court's decision in *Wisconsin Right to Life, Inc. v. FEC*.

The Commission is also considering the effect of *Citizens United* on the ongoing Coordinated Communications rulemaking. 74 FR 53893 (Oct. 21, 2009). The Commission also issued a Supplemental Notice of Proposed Rulemaking (SNPRM) regarding issues presented by *Citizens United*. See page 7 for more information. The additional comment period closed on February 24, 2010. The Commission intends to hold a hearing on the Coordinated Communications rulemaking on March 2 and 3, 2010. The text of the SNPRM is available at [illegible].fec.gov/[illegible]/2009/no-[illegible].pdf.

Revisions to Commission reporting requirements, forms, instructions and electronic software may be required.

Corporations and labor organizations that intend to finance independent expenditures or electioneering communications should:

- Include disclaimers on their communications, consistent with FEC regulations at 11 CFR 110.11;
- Disclose independent expenditures on FEC Form 5, consistent with FEC regulations at 11 CFR 109.10; and
- Disclose electioneering communications on FEC Form 9, consistent with FEC regulations at 11 CFR 104.20.

The Commission notes that the prohibitions on corporations or labor organizations making contributions contained in 2 U.S.C. §441b remain in effect.

The full text of the Commission's statement is available at http://www.[illegible]2010/20100205[illegible].pdf.

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(continued from page 1)

Background

On December 4, 2008, the Plaintiffs filed an amended complaint in the U.S. District Court for the Eastern District of Louisiana challenging the constitutionality of the party expenditure provision limits at 2 U.S.C. §§441a(d)(2)-(3) as applied to their planned coordinated party expenditures. The Plaintiffs alleged that the party expenditure provision of the Federal Election Campaign Act (the Act) and the $5,000 contribution limit at 2 U.S.C. §441a(a)(2)(A) are unconstitutional as applied to party coordinated expenditures that are not "unambiguously campaign related" (*Buckley v Valeo*, 424 U.S. 1, 81 (1976)) or "functionally identical to contributions" (*FEC v. Colo. Rep. Fed. Campaign Comm.*, 533 U.S. 431, 468 n.2 (2001)) ("*Colorado II*"). In addition, the Plaintiffs argued that the application of multiple coordinated expenditure limits for the same office is unconstitutional because it is ineffectual in preventing corruption and that the base amounts are too low. The Plaintiffs also challenged the constitutionality of the $5,000 contribution limit on the grounds that the same limits apply to parties as to political action committees, and argued that the limit is too low and not indexed for inflation. The original complaint was filed by the Plaintiffs on November 13, 2008.

Under the Act, a national party committee and state party committees may make expenditures in connection with the general election campaigns of federal candidates that are coordinated with these candidates. 11 CFR 109.30. Coordinated party expenditures do not count against the contribution limits, but are subject to a separate set of limits. 11 CFR 109.32.

The Act provides a formula for calculating coordinated party expenditure limits. For House candidates, the coordinated party expenditure limit is $10,000 increased by the Cost of Living Adjustment (COLA) or, in states with only one representative, the same as the Senate limit. For Senate candidates, the coordinated party expenditure limit is the greater of the number of the state voting age population multiplied by two cents and increased by the COLA, or $20,000 increased by the COLA. For Presidential candidates, the coordinated party expenditure limit is the number of the national voting age population multiplied by two cents and increased by the COLA. 11 CFR 109.32.

District Court Decision

The district court granted in part the Plaintiffs' Motion to Certify. Four questions were found non-frivolous and certified to *en banc* Fifth Circuit Court of Appeals. The defendant's Motion for Summary Judgment was granted for all issues not certified to the Fifth Circuit.

Standing. The court found non-frivolous the question whether Plaintiffs had alleged sufficient injury to create a constitutional "case or controversy" within the judicial power of Article III. However, the court held that LA-GOP does not have standing to bring a Motion to Certify under §437h of the Act, as LA-GOP is neither a national committee of a political party nor an individual eligible to vote for President.

Unambiguously Campaign Related. The court found frivolous the Plaintiffs' arguments that several provisions of the Act are vague, overbroad or beyond Congress' authority to regulate because they allegedly restrict speech that is not "unambiguously campaign related." The provisions challenged under that theory were those that limit expenditures "in connection" with a candidate's campaign (§§441a(d)(2-3)), limit to $5,000 contributions from multicandidate political committees to any candidate (§441a(a)(2)(A)) and define expenditures "made in cooperation, consultation or concert" with a candidate as contributions (§441a(a)(7)(B)(i)).

Own Speech. The court found non-frivolous the Plaintiffs' argument that coordinated expenditures

(continued on page 4)

Visit the FEC's Redesigned Web Site

FEC staff recently completed a significant upgrade of the Commission's web site, www.fec.gov. The redesigned site offers a wealth of information in a simple, clearly-organized format. Features include cascading menus that improve navigation and interactive pages that allow users to tailor content to their specific needs. Noteworthy among the new features is a search engine. This tool allows visitors to immediately access all pages on the site that contain a desired word or phrase. Another new feature, the Commission Calendar, helps users keep track of reporting deadlines, upcoming conferences and workshops, Commission meetings, comment deadlines and more.

The site also offers a robust new enforcement section that includes the Enforcement Query System, information on closed MURs, the Alternative Dispute Resolution and Administrative Fine programs and—for the first time—access to final audit reports issued by the Commission.

The Commission encourages the regulated community and the public to make use of this dynamic and interactive site by visiting [illegible].

2330

Cindy Smith

From: mdfrank@gci.net on behalf of Diane Frank [mdfrank@gci.net]
Sent: Monday, March 01, 2010 9:20 PM
To: Cindy Smith
Subject: Re: SB284 campaign expenditures
Attachments: SB 284 comments.pdf; ATT00001.htm

Cindy,

Attached are my preliminary comments on the bill. Thank you for considering them.

Mike Frank

SENTATE BILL NO. 284 COMMENTS

Section 3. Section 3, amending AS 15.13.040(d), would require a "full report of *expenditures.*" However, Section 4, amended AS 15.13.040(e), would require more than just a report of "expenditures." This minor inconsistency should be corrected so that it is clear that more than just a report of expenditures will be required.

Section 4. As I understand Section 4, the bill proposes to amend current law to require corporations, unions and the like which make expenditures both report both the source of contributions and the amount of the expenditures. This is similar to a proposal made by the Brennan Center for Justice (see http://www.brennancenter.org) and U.S. Senator Charles Schumer for federal elections.

What is missing from Section 4 and which is in Senator Schumer's bill, however, is a requirement that the person making expenditures keep a separate account for monies that the person intends to use to make such expenditures. This separate account requirement would enhance the ability of the State to audit corporate, union and NGO accounts to ensure there are no reporting violations.

Moreover, monies used for electioneering should *not* be treated as a deductible operating expense for tax purposes. An separate account requirement would segregate those funds so that federal, State or local taxing authorities can ensure that, to the extent allowed by current or future changes in tax codes concerning the deductibility of electioneering expenses, political expenditures are not illegally deducted as operating expenses.

In Section 4 an amended AS 15.13.040(e)(3) would require that the report provide "the name of the candidate or the title of the ballot proposition or question *supported or opposed* by each expenditure and whether the expenditure is made to *support or oppose* the candidate or ballot proposition or question... ." This support or oppose language may be problematical. For example, suppose an advertisement states "Candidate X supports free abortions for teenagers. Call candidate X and tell him you disagree with his position." Is that advertisement supporting or opposing candidate X? The example shows how easily the support or oppose language might be evaded. It might be better if the reporting requirement was triggered whenever the expenditure merely mentioned the candidate's name or the title of office up for election.

A similar problem relates to the proposed amendatory language in a new AS 15.13.040(e)(5), to wit, "the aggregate amount of all contributions made to the person, if any, *for the purpose of influencing* the outcome of an election... ." How is the State to determine if the person making the expenditure had the requisite "purpose" or intent, i.e., the requisite *mens rea*? This will be very hard to determine. It might be better to say something like "the aggregate amount of all contributions made to the person, if any, and

which contributions are either authorized by the contributor or otherwise which may be used by the person to make expenditures concerning an election."

Section 14. This Section would amend AS 15.13.135(a) to delete the following language (in caps in the text of the bill): "ONLY AN INDIVIDUAL, GROUP, OR NONGROUP ENTITY MAY MAKE AN INDEPENDENT EXPENDITURE SUPPORTING OR OPPOSING A CANDIDATE FOR ELECTION TO PUBLIC OFFICE." I presume this deletion is intended to make AS 15.13.135(a) consistent with the holding in *Citizens United*. I urge that this deletion not be made.

AS 15.13.135(a) became law in response to a 1995 initiative, which I authored, intended to reform Alaska's campaign finance laws. The initiative secured a place on the ballot but was taken off the ballot by Lieutenant Governor Fran Ulmer after she determined that the Legislature had passed a law substantially similar. A key provision of the initiative and new law was a ban on independent expenditures by corporations and unions in candidate (as opposed to ballot proposition) elections. *Citizens United* held that such a ban is unconstitutional, and therefore until the holding of that case is altered, the first sentence of the current AS 15.13.135(a) may, of course, not be enforced.

Citizens United, however, was a very sharply divided, extremely controversial, 5-4 decision. A change in the composition of the United States Supreme Court could easily change the holding of that case. Given the public anger about the decision and plans to challenge the decision already afoot, that change could happen in the very near future. If in the meantime, however, AS 15.13.135(a)'s ban on corporate and union independent expenditures is eliminated, a favorable change in the decision will have no impact in Alaska. If the holding of *Citizens United* is overturned, enacting a new ban would become necessary. That seems unlikely to happen unless the public forces a vote on it via the lengthy and expensive initiative process. Thus, I urge that no change be made to the first sentence of AS 15.13.135(a).

If, however, the conflict with the holding of *Citizens United* must be addressed, I suggest an amendment adding this or a similar phrase to the first sentence at the end of the sentence: "except to the extent such independent expenditures are otherwise authorized by federal law or the Alaska Constitution."

Notice and Consent. The holding of *Citizens United* was in part based on the First Amendment right of association. But ordinarily, corporate shareholders, and union and NGO members do not associate with the corporation, union or NGO in order to pursue political ends. Shareholder and member assets should not, therefore, be used for political purposes without their consent. (I should note that the majority in *Citizens United* specifically remarked that "corporate democracy" could provide a remedy for shareholders who do not want their funds used for electioneering purposes.)

Entities intending to make independent expenditures in candidate elections should be required to notify their shareholders or members and give them an opportunity to voice their objections, either by selling their shares, resigning their membership, or otherwise

exercising whatever rights of protest they may have within the entity. This notice should be required well in advance of the election (say, 90 days). It should include adequate detail concerning the name of the candidates, the entity's intentions with respect to its advocacy concerning the candidates, and other details reasonably necessary to inform the shareholders and members. I urge that notice and consent requirements be added to SB 284.

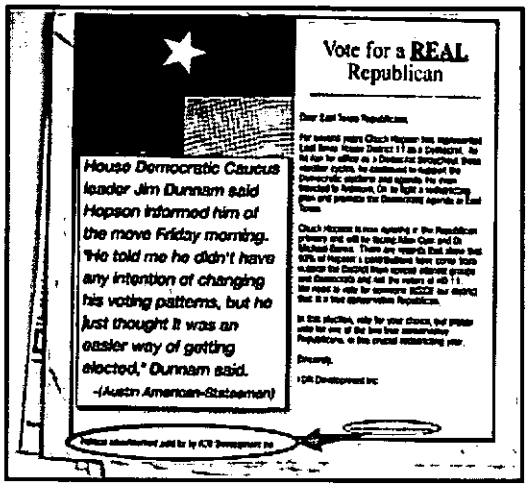
For more about the notice and consent issue, see the Brennan Center Ciara Torres-Spelliscy, *Corporate Campaign Spending: Giving Shareholder's A Voice* (Brennan Center for Justice, 1/27/2010), available at http://www.brennancenter.org/content/resource/corporate_campaign_spending_giving_shareholders_a_voice/.

Thank you for considering my comments.

THE TEXAS TRIBUNE

The First Corporate Ad

by Ross Ramsey
March 22, 2010



The KDR Development Inc. advertisement that ran in the Panola Watchman

The first political ads bought by a corporation in Texas appeared in East Texas newspapers just weeks after the U.S. Supreme Court effectively ended the state's ban on that kind of spending.

The ads appear to mark the first instance of a corporation directly playing in a Texas election since the nation's highest court lifted a century-old ban on political spending by corporations and labor unions. That January ruling — in *Citizens United v. Federal Election Commission* — doesn't affect contributions to candidates, which remain restricted. But it does mean corporations and unions can spend money as they wish on politics and run all the ads they want, so long as they don't coordinate their efforts, messages and plans with the campaigns they're promoting or with other third-party groups that have similar political interests.

The ads in the *Jacksonville Daily Progress*, the *Tyler Morning Telegram* and the *Panola Watchman* took issue with the Republican bona fides of state Rep. Chuck Hopson of Jacksonville, a Democratic incumbent who jumped to the GOP in November and ran in a three-way race in the Republican primary this month. He got 61 percent of the vote, easily besting Michael Banks and Allan Cain.

The newspaper ads ran in Jacksonville and Tyler on the Sunday before the election and a week earlier in Panola, and they urged voters to choose anyone but Hopson. They were paid for by KDR Development Inc., a real estate company whose president, Republican Larry Durrett, lost to Hopson in 2006, when Hopson was still a Democrat. Durrett is also the president of Southern Multifoods, a Jacksonville-based company with dozens of franchised Taco Bell, KFC, Pizza Hut, A&W and Long John Silvers restaurants. The two companies are closely related, sharing addresses, officers and directors.

"I think we're on solid legal ground," Durrett said in an interview. "We checked it out every way from Sunday."

At least one paper — the *Longview News-Journal* — had reservations. "The disclaimer wasn't complete, and then we saw that it was a corporate ad," said Alan Todd, the paper's advertising director. "When we questioned it, [the buyer] pulled the ad."

Durrett wanted to run ads against Hopson and had been reading and hearing about the Supreme Court ruling on corporate politicking. He checked with a lawyer in Tyler, who sent him to a specialist in Austin, did "a significant amount of discussion about this," and then went to the papers with the ads. "My businesses do better under conservative people and not under people who aren't," he said. "There are an awful lot of folks on the Republican side of the House who aren't all that conservative, and that's an irritant." He felt the other two candidates were more conservative than Hopson.

He used corporate money for a simple reason. "You take the money out of the pocket that's got some money in there," he said.

Durrett doesn't consider Hopson's win a complete loss for his side: "If you continue to point out that people aren't as conservative as you are, it moves them to the right."

The ad has a quote on one side, and the copy on the other is standard fare for a House race, written in the form of a letter.

The quote, from the *Austin American-Statesman*: "House Democratic Caucus leader Jim Dunnam said Hopson informed him of the move Friday morning. 'He told me he didn't have any intention of changing his voting patterns, but he just thought it was an easier way of getting elected,' Dunnam said."

The letter:

> Dear East Texas Republicans,
>
> For several years Chuck Hopson has represented East Texas House District 11 as a Democrat. As he ran for office as a Democrat throughout these election cycles, he continued to support the Democratic platform and

> agenda. He even traveled to Ardmore, OK to fight a redistricting plan and promote the Democratic agenda in East Texas.
>
> Chuck Hopson is now running in the Republican primary and will be facing Allan Cain and Dr. Michael Banks. There are records that show that 90% of Hopson's contributions have come from outside the District from special interest groups and Democrats and not the voters of HD 11. We need to vote for someone INSIDE our district that is a true conservative Republican.
>
> In this election, vote for your choice, but please vote for one of the two true conservative Republicans, in this crucial redistricting year.
>
> Sincerely,
>
> KDR Development Inc

Before the Supreme Court ruling, that would have been an illegal ad in Texas, purely based on the corporate funding. So long as KDR didn't work with the campaigns or with anyone else on the copy, it now appears to be the sort of direct corporate expenditure the Supremes are protecting.

"It raised some issues with us, and I asked some people in the organization to look at it," said Amy Miller, publisher of the *Daily Progress*. In the end, the paper decided to accept the ad: "It's a pre-paid political ad, and I didn't see anything wrong with it."

The ad does bear some similarities to printed mailers sent by others. Cain, for instance, used that same quote from Dunnam in a mailer that also carried the "Hopson is not conservative" theme. Former state Sen. Drew Nixon, R-Carthage, paid for ads in the race, too, using that Dunnam quote again and a chart very similar to that used in Cain's flyer. Signed by three of the four GOP county chairs in the district, it was more direct in its hit on the party-switcher: "Make no mistake, Chuck Hopson is a Democrat."

But as long as the corporation wasn't in league with anyone else, they appear to be the first example of what might be possible under the court's ruling. The Texas Ethics Commission, which regulates these things, is still working on a full opinion of this new world of campaign finance. The agency posted its first impression online right after the court issued its ruling:

> "... We believe the Texas Legislature intended laws under our jurisdiction to prohibit political expenditures by corporations to the full extent allowed by the Constitution, as interpreted by the United States Supreme Court. In light of the recently issued United States Supreme Court ruling in Citizens United v. Federal Election Commission, it is our position that corporations are allowed to make all types of direct campaign expenditures ... It is also our

> position that corporations are still prohibited from making political contributions unless specifically allowed..."

TEC now has a draft opinion in circulation — not yet voted out by its board — that goes further: "For the reasons stated in Citizens United, we cannot ... prohibit a corporation or labor organization from making a direct campaign expenditure or ... prohibit an individual or other association from making a direct campaign expenditure."

They can still block corporations and labor organizations from making contributions to candidates, but they can't do anything if those outfits want to spend money for or against the candidates' knowledge.

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Phone: 907-465-4931
Fax: 907-465-4316

# of Pages (including cover): 1

Re DRAFT CS for HB 409 Version E

3/9/10 HB 409 Version E passed out of the House State Affairs Committee this morning amended. Please draft a CS with the following amendments. We request that this be in draft form only at this time so we can review amendments before ordering a final.

Conceptual Amendment #1 (Seaton) (this was the tabled R.3b amendment and it is a conceptual amendment because we are amending from the R version to the E version) Page 6 Line 13 after the word "made." *Delete* the rest of **Line 13 thru 17.**

Amendment #2 (Lynn)
26-LS1495\E.1

p. 4, Sect 7 - indep ~~[illegible]~~

Amendment #3 (Lynn)
26-LS1495\E.2

p. 4, Sect 8 - foreign

Amendment #4 (Lynn)
26-LS1495\E.3
Withdrawn

3/09/10 Fax to Legal
Draft new HSTA CS to HB 409 Version E

Amendment #5 as amended (Gruenberg)
26-LS1495\E.3

Conceptual Amendment #1 to Amendment #5 (Gruenberg)
Line 17 after the word "person's" use the short version of the corporate name
Line 19 after the word "top" *add* **"3"**

p. 6, line 20
p. 7, line 8(d), line 28(f)

Conforming Conceptual Amendment #6 (Seaton)
identifying the top **3** as opposed to "5" top contributors under the disclaimer section

p. 6, line 20

Amendment #7 as amended (Petersen)
26-LS1495\E.5

p. 7, line 19-27 (e)

Amendment #1 to Amendment #7 (Gruenberg)
Page 1 Line 10 after the word "person" *delete* the rest of **line 10 up to and including the word "person." on line 13.**

Amendment #8 (Petersen)
26-LS1495\E.6
Withdrawn

Conceptual Amendment #9 (Johnson)
Page 4 of the CS Version E Line 18 after the word "(1) anonymously," *delete* the rest of **Line 18 thru Line 27**

Friendly Amendment #1 to Conceptual Amendment #9 (Gruenberg)
Add a severability clause to every portion of the bill. That if any provision in the bill is declared unconstitutional that it will not affect the rest of the bill.

SUMMARY OF CITIZENS UNITED LEGISLATION

Introduced by Senator Charles E. Schumer & Congressman Chris Van Hollen

1. PREVENT FOREIGN INFLUENCE IN U.S. ELECTIONS

- The legislation prevents foreign governments, foreign companies and foreign nationals from influencing U.S. elections by banning corporations from spending money on U.S. elections if:

    - They have a foreign ownership of 20% or more;
    - A majority of their board of directors is foreign principals; or
    - Their U.S. operations, or their decision-making with respect to political activities, falls under the direction or control of a foreign entity, including a foreign government.

2. BAN PAY-TO-PLAY

- **Prevent Government Contractors from Spending Money on Elections.** Government contractors would be barred from making political expenditures.

- **Prevent Corporate Beneficiaries of TARP from Spending Money on Elections.** Corporations that received bailout funding from the federal government should not be permitted to use taxpayer money for political expenditures.

3. ENHANCE DISCLAIMERS TO IDENTIFY SPONSORS OF ADS

- **Require Corporate CEO's To Identify that they are Behind Political Ads.** If a corporation spends on a political ad, the CEO will be required to appear on camera to say that he or she "approves this message," just like candidates have to do now.

- **For Shadow Groups, Require Top Corporate Donors To Appear in Political Ads They Funded.** In order to prevent individuals and corporations from funneling money through shell groups in order to mask their activities, the legislation will include the following requirements:

    - The top funder of the advertisement must also record a stand-by-your-ad disclaimer.

    - The top five contributors to an organization for political purposes that purchases advertising will be listed on the screen at the end of advertisement.

4. ENHANCE REQUIREMENTS FOR DISCLOSURE OF POLITICAL EXPENDITURES

- The legislation ensures that the public will have full and timely disclosure of campaign-related expenditures made by corporations and labor organizations. The legislation imposes disclosure requirements that will mitigate the ability of corporate spenders to mask their electioneering activities through the use of intermediaries.

i. SETTING UP 'PAPER TRAILS' WITH THE FEC

- The legislation would require corporations, labor unions, and organizations organized under 501(c) 4, 5, or 6 laws—as well as 527 organizations—to, for the first time, establish separate "political broadcast spending" accounts to receive and disperse political expenditures.

- All funds received into these "political activities" accounts must be publicly reported to the FEC. The following information must also be disclosed:

    - Name of the individual who controls the account
    - Name of donors and transferors
    - Date of each donation and transfer in excess of $10,000,
    - Election or name of the candidate if the donation or transfer was so designated.

- All funds disbursed from the "political activities" accounts must be publicly reported to the FEC with the following information:

    - Name of the person making the disbursement
    - Amount of each disbursement of more than $ 200 during the required period, the election to which the disbursement is made
    - Independent Expenditure-related candidate and whether the expenditure is directed in support of or opposition to the candidate
    - Electioneering Communication-related candidate who is the subject of the communication and whether the candidate is being supported or opposed through the expenditure.
    - Certification by the CEO or the head of the entity responsible, that the independent expenditure or electioneering communication is not made in coordination with a candidate, candidate committee or party committee.

- All funds transferred from the "political activities" account for the purpose of a political expenditure, or that is not restricted for use for a political expenditure, must be publicly reported to the FEC with the following information:

    - Name of the transferor
    - Name of the recipient
    - Date and amount of the funds transferred
    - Whether the transferred funds are intended for use in a particular election or directed to a particular candidate and, if so, disclose the election and/or candidate.

ii. PROVIDING NOTICE TO SHAREHOLDERS DIRECTLY AND THROUGH SEC FILINGS

- All political expenditures made by a corporation should be disclosed within 24 hours on the corporation's website with a clear link on the homepage; disclosed to shareholders directly on a quarterly basis; and comprehensively disclosed within the corporation's annual report.

iii. REQUIRING LOBBYISTS TO DISCLOSE THEIR ACTIVITIES

- All registrants under the Lobbying Disclosure Act must disclose the following information:
    - Every campaign expenditure in excess of $1000
    - Date it was received
    - Recipient
    - Name of each "covered candidate" or political party expressly identified in any electioneering communication
    - Running total of the political expenditures.

5. PROVIDE LOWEST UNIT RATE FOR CANDIDATES AND PARTIES

- If a corporation buys airtime to run ads on broadcast, cable, or satellite television that support or oppose a candidate, then that candidate and political party or political party committee is allowed to receive the lowest unit rate for that media market.

- The broadcaster must also ensure that the candidate or political entity has reasonable access to airtime. This ensures that candidates and parties are not forced to run their

advertisements at, say, 2:00 am when no one is watching, or be blocked from purchasing any advertising time at all.

6. PREVENT CORPORATIONS FROM COORDINATING THEIR ACTIVITIES WITH CANDIDATES AND PARTIES

- The legislation ensures that corporations and others are not allowed to coordinate campaign-related expenditures with candidates and parties in violation of rules that require these expenditures to be independent.

    - Current FEC rules bar corporations and unions from coordinate with candidates and parties about most ads distributed within 90 days of a House or Senate primary election or within 90 days of the general election. For Presidential contests, current FEC rules allow coordination on ads referencing a presidential candidate 120 days before a state's Presidential primary election and continuing in that state through the general election.

    - This legislation would do the following:
        - For House and Senate races, the legislation would ban coordination between a corporation or union and the candidate on ads referencing a Congressional candidate within 90 days of the *primary* through the *general* election.
        - For all federal elections, at any time before the 90- or 120-day window opens, it would ban coordination of ads between a corporation or union and the candidate when they promote, support, attack or oppose a candidate.

RCW 42.17.120

Identification of contributions and communications.

No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment.

[1975 1st ex.s. c 294 § 8; 1973 c 1 § 12 (Initiative Measure No. 276, approved November 7, 1972).]

RCW 42.17.510

Identification of sponsor — Exemptions.

(1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name for the sponsor of electioneering communications, independent expenditures, or political advertising shall be unlawful. For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.

(2) In addition to the materials required by subsection (1) of this section, except as specifically addressed in subsections (4) and (5) of this section, all political advertising undertaken as an independent expenditure by a person or entity other than a party organization, and all electioneering communications, must include the following statement as part of the communication "NOTICE TO VOTERS (Required by law): This advertisement is not authorized or approved by any candidate. It is paid for by (name, address, city, state)." If the advertisement undertaken as an independent expenditure or electioneering communication is undertaken by a nonindividual other than a party organization, then the following notation must also be included: "Top Five Contributors," followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period before the date of the advertisement or communication.

(3) The statements and listings of contributors required by subsections (1) and (2) of this section shall:

(a) Appear on the first page or fold of the written advertisement or communication in at least ten-point type, or in type at least ten percent of the largest size type used in a written advertisement or communication directed at more than one voter, such as a billboard or poster, whichever is larger;

(b) Not be subject to the half-tone or screening process; and

(c) Be set apart from any other printed matter.

(4) In an independent expenditure or electioneering communication transmitted via television or other medium that includes a visual image, the following statement must either be clearly spoken, or appear in print and be visible for at least four seconds, appear in letters greater than four percent of the visual screen height, and have a reasonable color contrast with the background: "No candidate authorized this ad. Paid for by (name, city, state)." If the advertisement or communication is undertaken by a nonindividual other than a party organization, then the following notation must also be included: "Top Five Contributors" followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period before the date of the advertisement. Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.

(5) The following statement shall be clearly spoken in an independent expenditure or electioneering communication transmitted by a method that does not include a visual image: "No candidate authorized this ad. Paid for by (name, city, state)." If the independent expenditure or electioneering communication is undertaken by a

nonindividual other than a party organization, then the following statement must also be included: "Top Five Contributors" followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period before the date of the advertisement. Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.

(6) Political yard signs are exempt from the requirement of subsections (1) and (2) of this section that the name and address of the sponsor of political advertising be listed on the advertising. In addition, the public disclosure commission shall, by rule, exempt from the identification requirements of subsections (1) and (2) of this section forms of political advertising such as campaign buttons, balloons, pens, pencils, sky-writing, inscriptions, and other forms of advertising where identification is impractical.

(7) For the purposes of this section, "yard sign" means any outdoor sign with dimensions no greater than eight feet by four feet.

[2005 c 445 § 9; 1995 c 397 § 19; 1993 c 2 § 22 (Initiative Measure No. 134, approved November 3, 1992); 1984 c 216 § 1.]

Sec. ⏭15.13.010⏮. Applicability.

(a) This chapter applies

(1) in every election for governor, lieutenant governor, a member of the state legislature, a delegate to a constitutional convention, or judge seeking judicial retention;

(2) to every candidate for election to a municipal office in a municipality with a population of more than 1,000 inhabitants according to the latest United States census figures or estimates of population certified as correct for administrative purposes by the Department of Commerce, Community, and Economic Development unless the municipality has exempted itself from the provisions of this chapter; a municipality may exempt its elected municipal officers from the requirements of this chapter if a majority of the voters voting on the question at a regular election, as defined by AS 29.71.800 (20), or a special municipality-wide election called for that purpose, votes to exempt its elected municipal officers from the requirements of this chapter; the question of exemption from the requirements of this chapter may be submitted by the governing body by ordinance or by initiative election.

(b) Except as otherwise provided, this chapter applies to contributions, expenditures and communications made by a candidate, group, nongroup entity, municipality or individual for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate.

(c) This chapter does not prohibit a municipality from regulating by ordinance election campaign contributions and expenditures in municipal elections, or from regulating those campaign contributions and expenditures more strictly than provided in this chapter.

(d) This chapter does not limit the authority of a person to make contributions to influence the outcome of a voter proposition submitted to the public for a vote at a municipal election. In this subsection, in addition to its meaning under AS 15.13.065 (c), "proposition" means a municipal reclassification, proposal to adopt or amend a home rule charter, a unification proposal, a boundary change proposal, or the approval of an ordinance when approval by public vote is a requirement for the ordinance.

Sec. 15.13.030. Duties of the commission.

The commission shall

(1) develop and provide all forms for the reports and statements required to be made under this chapter, AS 24.45, and AS 39.50;

(2) prepare and publish a manual setting out uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter and otherwise assist candidates, groups, and individuals in complying with the requirements of this chapter;

(3) receive and hold open for public inspection reports and statements required to be made under this chapter and, upon request, furnish copies at cost to interested persons;

(4) compile and maintain a current list of all filed reports and statements;

(5) prepare a summary of each report filed under AS 15.13.110 and make copies of this summary available to interested persons at their actual cost;

(6) notify, by registered or certified mail, all persons who are delinquent in filing reports and statements required to be made under this chapter;

(7) examine, investigate, and compare all reports, statements, and actions required by this chapter, AS 24.45, and AS 39.50;

(8) prepare and publish a biennial report concerning the activities of the commission, the effectiveness of this chapter, its enforcement by the attorney general's office, and recommendations and proposals for change; the commission shall notify the legislature that the report is available;

(9) adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50, and this chapter, subject to the provisions of AS 44.62 (Administrative Procedure Act); and

(10) consider a written request for an advisory opinion concerning the application of this chapter, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50.

Sec. 15.13.040. Contributions, expenditures, and supplying of services to be reported.

(a) Except as provided in (g) and (l) of this section, each candidate shall make a full report, upon a form prescribed by the commission,

(1) listing

(A) the date and amount of all expenditures made by the candidate;

(B) the total amount of all contributions, including all funds contributed by the candidate;

(C) the name, address, date, and amount contributed by each contributor; and

(D) for contributions in excess of $50 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

(2) filed in accordance with AS 15.13.110 and certified correct by the candidate or campaign treasurer.

(b) Each group shall make a full report upon a form prescribed by the commission, listing

(1) the name and address of each officer and director;

(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of $100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; for purposes of this paragraph, "contributor" means the true source of the funds, property, or services being contributed; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred, or authorized by it.

(c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer.

(d) Every individual, person, nongroup entity, or group making an expenditure shall make a full report of expenditures, upon a form prescribed by the commission, unless exempt from reporting.

(e) The report required under (d) of this section must contain the name, address, principal occupation, and employer of the individual filing the report, and an itemized list of expenditures. The report shall be filed with the commission no later than 10 days after the expenditure is made.

(f) During each year in which an election occurs, all businesses, persons, or groups that furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. Records of provision of services, facilities, or supplies shall be available for inspection by the commission.

(g) The provisions of (a) and (l) of this section do not apply to a delegate to a constitutional convention, a judge seeking judicial retention, or a candidate for election to a municipal office under AS ⏩15.13.010 ⏪, if that delegate, judge, or candidate

(1) indicates, on a form prescribed by the commission, an intent not to raise and not to expend more than $5,000 in seeking election to office, including both the primary and general elections;

(2) accepts contributions totaling not more than $5,000 in seeking election to office, including both the primary and general elections; and

(3) makes expenditures totaling not more than $5,000 in seeking election to office, including both the primary and general elections.

(h) The provisions of (d) of this section do not apply to one or more expenditures made by an individual acting independently of any group or nongroup entity and independently of any other individual if the expenditures

(1) cumulatively do not exceed $500 during a calendar year; and

(2) are made only for billboards, signs, or printed material concerning a ballot proposition as that term is defined by AS 15.13.065(c).

(i) The permission of the owner of real or personal property to post political signs, including bumper stickers, or to use space for an event or to store campaign-related materials is not considered to be a contribution to a candidate under this chapter unless the owner customarily charges a fee or receives payment for that activity. The fact that the owner customarily charges a fee or receives payment for posting signs that are not political signs is not determinative of whether the owner customarily does so for political signs.

(j) Except as provided in (l) of this section, each nongroup entity shall make a full report in accordance with AS 15.13.110 upon a form prescribed by the commission and certified by the nongroup entity's treasurer, listing

(1) the name and address of each officer and director of the nongroup entity;

(2) the aggregate amount of all contributions made to the nongroup entity for the purpose of influencing the outcome of an election;

(3) for all contributions described in (2) of this subsection, the name, address, date, and amount contributed by each contributor and, for all contributions described in (2) of this subsection in excess of $250 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

(4) the date and amount of all contributions made by the nongroup entity, and, except as provided for certain independent expenditures in AS 15.13.135 (a), all expenditures made, incurred, or authorized by the nongroup entity, for the purpose of influencing the outcome of an election; a nongroup entity shall report contributions made to a different nongroup entity for the purpose of influencing the outcome of an election and expenditures made on behalf of a different nongroup entity for the purpose of influencing the outcome of an election as soon as the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election reach $500 in a year and for all subsequent contributions and expenditures to that nongroup entity in a year whenever the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election that have not been reported under this paragraph reach $500.

(k) Every individual, person, nongroup entity, or group contributing a total of $500 or more to a group organized for the principal purpose of influencing the outcome of a proposition shall report the contribution or contributions on a form prescribed by the commission not later than 30 days after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that group by that individual, person, nongroup entity, or group during the calendar year.

(l) Notwithstanding (a), (b), and (j) of this section, for any fund-raising activity in which contributions are in amounts or values that do not exceed $50 a person, the candidate, group, or nongroup entity shall report contributions and expenditures and supplying of services under this subsection as follows:

(1) a report under this subsection must

(A) describe the fund-raising activity;

(B) include the number of persons making contributions and the total proceeds from the activity;

(C) report all contributions made for the fund-raising activity that do not exceed $50 a person in amount or value; if a contribution for the fund-raising activity exceeds $50, the contribution shall be reported under (a), (b), and (j) of this section;

(2) for purposes of this subsection,

(A) "contribution" means a cash donation, a purchase such as the purchase of a ticket, the purchase of goods or services offered for sale at a fund-raising activity, or a donation of goods or services for the fund-raising activity;

(B) "fund-raising activity" means an activity, event, or sale of goods undertaken by a candidate, group, or nongroup entity in which contributions are $50 a person or less in amount or value.

(m) Information required under this chapter shall be submitted to the commission electronically, except that the following information may be submitted in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the commission or on forms provided by the commission:

(1) information submitted by

(A) a candidate for election to a borough or city office of mayor, membership on a borough assembly, city council, or school board, or any state office, who meets the requirements of (g)(1) - (3) of this section; or

(B) a candidate for municipal office for a municipality with a population of less than 15,000; in this subparagraph, "municipal office" means the office of an elected borough or city

(i) mayor; or

(ii) assembly, council, or school board member;

(2) any information if the commission determines that circumstances warrant an exception to the electronic submission requirement.

(n) The commission shall print the forms to be provided under this chapter so that the front and back of each page have the same orientation when the page is rotated on the vertical axis of the page.

(o) Information required by this chapter that is submitted to the commission on paper and not electronically shall be electronically scanned and published on the Internet by the commission, in a format accessible to the general public, within two working days after the commission receives the information.

(p) For purposes of (b) and (j) of this section, "contributor" means the true source of the funds, property, or services being contributed.

Sec. 15.13.067. Who may make expenditures.

Only the following may make an expenditure in an election for candidates for elective office:

(1) the candidate;

(2) an individual;

(3) a group that has registered under AS 15.13.050 ; and

(4) a nongroup entity that has registered under AS 15.13.050 .

Sec. 15.13.082. Limitations on expenditures.

(a) A candidate or group may not make an expenditure in cash that exceeds $100 unless the candidate, or the campaign treasurer or deputy campaign treasurer, obtains a written receipt from the person to whom the expenditure is made.

(b) A candidate, group, or nongroup entity may not make an expenditure unless the source of the expenditure has been disclosed as required by this chapter.

(c) If a candidate receives a contribution in the form of cash, check, money order, or other negotiable instrument and is subject to being reported to the commission under this chapter, the candidate may neither expend the contribution nor, in the case of a negotiable instrument, convert it to cash unless the candidate, campaign treasurer, or deputy campaign treasurer first records the following information for disclosure to the commission:

(1) the name, address, principal occupation, and employer of the contributor; and

(2) the date and amount of the contribution.

Sec. 15.13.084. Prohibited expenditures.

A person may not make an expenditure

(1) anonymously, unless the expenditure is

(A) paid for by an individual acting independently of any group or nongroup entity and independently of any other individual;

(B) made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065 (c); and

(C) made for

(i) a billboard or sign; or

(ii) printed material, other than an advertisement made in a newspaper or other periodical;

(2) using a fictitious name or using the name of another.

Sec. 15.13.086. Authorized makers of expenditures.

An expenditure

(1) authorized by or in behalf of a candidate may be made only by

(A) the candidate; or

(B) the candidate's campaign treasurer or a deputy campaign treasurer;

(2) authorized by AS 15.13.067 (3) by or in behalf of a group may be made only by the group's campaign treasurer.

Sec. 15.13.090. Identification of communication.

(a) All communications shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group, nongroup entity, or individual paying for the communication. In addition, candidates and groups may identify the name of their campaign chairperson.

(b) The provisions of (a) of this section do not apply when the communication

(1) is paid for by an individual acting independently of any group or nongroup entity and independently of any other individual;

(2) is made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065 (c); and

(3) is made for

(A) a billboard or sign; or

(B) printed material other than an advertisement made in a newspaper or other periodical.

Sec. 15.13.110. Filing of reports.

(a) Each candidate, group, and nongroup entity shall make a full report in accordance with AS 15.13.040 for the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report. If the report is a first report, it must cover the period from the beginning of the campaign to the date three days before the due date of the report. If the report is a report due February 15, it must cover the period beginning on the last day covered by the most recent previous report or on the day that the campaign started, whichever is later, and ending on February 1 of that year. The report shall be filed

(1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;

(2) one week before the election;

(3) 105 days after a special election; and

(4) February 15 for expenditures made and contributions received that were not reported previously, including, if applicable, all amounts expended from a public office expense term account established under AS 15.13.116(a)(8) and all amounts expended from a municipal office account under AS 15.13.116 (a)(9), or when expenditures were not made or contributions were not received during the previous year.

(b) Each contribution that exceeds $250 and that is made within nine days of the election shall be reported to the commission by date, amount, and contributor within 24 hours of receipt by the candidate, group, campaign treasurer, or deputy campaign treasurer. Each contribution to a nongroup entity for the purpose of influencing the outcome of an election that exceeds $250 and that is made within nine days of the election shall be reported to the commission by date, amount, and contributor within 24 hours of receipt by the nongroup entity.

(c) All reports required by this chapter shall be filed with the commission's central office and shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

(d) *[Repealed, Sec. 35 ch 126 SLA 1994].*

(e) A group formed to sponsor an initiative, a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section.

(f) During the year in which the election is scheduled, each of the following shall file the campaign disclosure reports in the manner and at the times required by this section:

(1) a person who, under the regulations adopted by the commission to implement AS 15.13.100, indicates an intention to become a candidate for elective state executive or legislative office;

(2) a person who has filed a nominating petition under AS 15.25.140 - 15.25.200 to become a candidate at the general election for elective state executive or legislative office;

(3) a person who campaigns as a write-in candidate for elective state executive or legislative office at the general election; and

(4) a group or nongroup entity that receives contributions or makes expenditures on behalf of or in opposition to a person described in (1) - (3) of this subsection, except as provided for certain independent expenditures by nongroup entities in AS 15.13.135 (a).

Sec. 15.13.111. Preservation of records.

(a) Each candidate, group, nongroup entity, or person required to report under this chapter shall preserve all records necessary to substantiate information required to be reported under this chapter for a period of six years from the date of the election for which the information was required to be reported, unless the records have been submitted to the commission under (c) of this section.

(b) Information preserved under (a) of this section must be made available for inspection by the commission.

(c) A candidate for state elected office who was not elected or a person who has left state elected office may submit the records required to be preserved under (a) of this section to the commission electronically. Records submitted under this subsection shall be preserved by the commission for a period of six years from the date of the election for which the information was required to be reported.

Sec. 15.13.135. Independent expenditures for or against candidates.

(a) Only an individual, group, or nongroup entity may make an independent expenditure supporting or opposing a candidate for election to public office. An independent expenditure supporting or opposing a candidate for election to public office, except an independent expenditure made by a nongroup entity with an annual operating budget of $250 or less, shall be reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other requirements of this chapter.

(b) An individual, group, or nongroup entity who makes independent expenditures for a mass mailing, for distribution of campaign literature of any sort, for a television, radio, newspaper, or magazine advertisement, or any other communication that supports or opposes a candidate for election to public office

(1) shall comply with AS 15.13.090 ; and

(2) shall place the following statement in the mailing, literature, advertisement, or other communication so that it is readily and easily discernible:

This NOTICE TO VOTERS is required by Alaska law. (I/we) certify that this (mailing/literature/advertisement) is not authorized, paid for, or approved by the candidate.

Sec. 15.13.140. Independent expenditures for or against ballot proposition or question.

(a) This chapter does not prohibit a person from making independent expenditures in support of or in opposition to a ballot proposition or question.

(b) An independent expenditure for or against a ballot proposition or question

(1) shall be reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other requirements of this chapter; and

(2) may not be made if the expenditure is prohibited by AS 15.13.145 .

Sec.15.13.400. Definitions

In this chapter,

(1) "candidate"

(A) means an individual who files for election to the state legislature, for governor, for lieutenant governor, for municipal office, for retention in judicial office, or for constitutional convention delegate, or who campaigns as a write-in candidate for any of these offices; and

(B) when used in a provision of this chapter that limits or prohibits the donation, solicitation, or acceptance of campaign contributions, or limits or prohibits an expenditure, includes

(i) a candidate's campaign treasurer and a deputy campaign treasurer;

(ii) a member of the candidate's immediate family;

(iii) a person acting as agent for the candidate;

(iv) the candidate's campaign committee; and

(v) a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of the candidate;

(2) "commission" means the Alaska Public Offices Commission;

(3) "communication" means an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing $500 or less and those that do not directly or indirectly identify a candidate or proposition, as that term is defined in AS 15.13.065(c);

(4) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made and that is made for the purpose of influencing the nomination or election of a candidate, and in AS ⏩15.13.010⏪ (b) for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that are rendered to the candidate or political party;

(B) does not include

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;

(ii) ordinary hospitality in a home;

(iii) two or fewer mass mailings before each election by each political party describing the party's slate of candidates for election, which may include photographs, biographies, and information about the party's candidates;

(iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;

(v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party;

(5) "electioneering communication" means a communication that

(A) directly or indirectly identifies a candidate;

(B) addresses an issue of national, state, or local political importance and attributes a position on that issue to the candidate identified; and

(C) occurs within the 30 days preceding a general or municipal election;

(6) "expenditure"

(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or political party of compensation for the personal services of another person that are rendered to a candidate or political party; or

(iv) influencing the outcome of a ballot proposition or question;

(B) does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(C) includes an express communication and an electioneering communication, but does not include an issues communication;

(7) "express communication" means a communication that, when read as a whole and with limited reference to outside events, is susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate;

(8) "group" means

(A) every state and regional executive committee of a political party; and

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070 , whether or not control of the group has been disclaimed by the candidate;

(9) "immediate family" means the spouse, parents, children, including a stepchild and an adoptive child, and siblings of an individual;

(10) "independent expenditure" means an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate's campaign treasurer or deputy campaign treasurer, or another person acting as a principal or agent of the candidate;

(11) "individual" means a natural person;

(12) "issues communication" means a communication that

(A) directly or indirectly identifies a candidate; and

(B) addresses an issue of national, state, or local political importance and does not support or oppose a candidate for election to public office.

(13) "nongroup entity" means a person, other than an individual, that takes action the major purpose of which is to influence the outcome of an election, and that

(A) cannot participate in business activities;

(B) does not have shareholders who have a claim on corporate earnings; and

(C) is independent from the influence of business corporations.

(14) "person" has the meaning given in AS 01.10.060 , and includes a labor union, nongroup entity, and a group;

(15) "political party" means any group that is a political party under AS 15.60.010 and any subordinate unit of that group if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, house district, or precinct;

(16) "publicly funded entity" means a person, other than an individual, that receives half or more of the money on which it operates during a calendar year from government, including a public corporation.

Chapter 15.15. ELECTIONS AND BALLOTS

NCSL
National Conference of State Legislatures

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Legislatures & Elections » Elections & Campaigns » Citizens United and the States

Go 19607

Life After *Citizens United*

Updated March 1, 2010

The U.S. Supreme Court's January 21, 2010, ruling in Citizens United v. FEC is certain to have a profound effect on the laws governing corporate political activity in nearly half the states. The court ruled that the federal government may not prohibit direct corporate and union spending in advertising for candidate elections. While the ruling does not directly affect state laws, there are at least 23 states that currently prohibit or restrict corporate and union spending on candidate elections. It is very likely that these states will act to either repeal or re-write these laws, or face legal challenge under the new standard set by *Citizens United*. Furthermore, it is likely that states will elect not to enforce these laws from this point forward, which will radically change the political landscape as we head into the 2010 elections. It is important to note that the *Citizens United* decision does not strike down bans on corporate and union contributions to candidates, which currently exist in 23 states. Only the ban on direct corporate and union spending on campaign advertising is addressed by this decision.

States Respond to Citizens United

Connecticut, North Dakota, Ohio, Pennsylvania -- legislators and state officials are reviewing the case and have not yet decided how to proceed.

Alaska -- The Attorney General issued an opinion on February 22, stating that Alaska's ban on corporate and union independent expenditures are likely unconstitutional in view of *Citizens United*. These bills include HB 358, HB 401, HB 409, and SB 284. All would include independent expenditures by corporations and unions in the current disclosure requirements, and clarify attirbution requirements for advertisements.

Arizona - SB 1444, introduced on February 16, 2010, would require corporations and labor unions that make independent expenditures in candidate campaigns to register and file disclosure reports. HB 2788 is a companion bill.

Colorado governor Bill Ritter has asked the state's supreme court to evaluate the constitutionality of two provisions of the state's constitution that appear to be directly affected by Citizens United. Also, the state Republican Party has announced its intention to file suit against Colorado's law. It is possible that the suit could challenge a broader scope of the law than the two sections that are affected by Citizens United.

Iowa -- the director of the Ethics and Campaign Disclosure Board has sent an e-mail to legislators telling them that Citizens United effectively overturns Iowa law. SF 2354, introduced on February 15, 2010, requires corporations to obtain permission from a majority of their shareholders prior to making an independent expenditure, requires corporations to report their independent expenditures to the Ethics and Campaign Finance Disclosure Board, prohibits coordination between candidates and corporations, and requires certain attributions on corporate-funded advertisements.

Maryland -- HB 616, introduced on February 3, 2010, would require stockholder approval and public disclosure of corporate independent expenditures in excess of $10,000. HB 690 and SB 691 would prohibit government contractors from making independent expenditures. HB 986 and SB 570 would require board of director and stockholder approval for corporate independent expenditures, and would prohibit the distribution of material that is not true. HB 1029 and SB 543 would establish disclosure requirements for corporate independent expenditures. SB 601 would prohibit corporate contributions to candidates and corporate-funded independent expenditures. HB 1225 would require that corporate-sponsored ads include an attribution statement.

Michigan -- the secretary of state has posted SF a detailed description of how Citizens United affects the state, including an FAQ section.

Minnesota -- SF 2353, introduced on February 4, 2010, would repeal the ban on independent expenditures by corporations.

Montana -- the attorney general has said the state's ban on corporate expenditures will stay in place until it is challenged.

North Carolina -- the executive director of the State Board of elections has said that the law appears to be unenforceable, but they are still working to understand the full meaning of the decision.

Oklahoma -- the Ethics Commission is working on amendments to change and remove the relevant portions of state rules.

South Dakota - SB 165, which was deferred to the 41st legislative day (effectively killing the bill) on February 10, 2010, would have prohibited corporations from making political expenditures without shareholder approval.

Tennessee -- HB 3587 and SB 3118, introduced on January 27, 2010, and HB 3626 and SB 3303, introduced on January 28, would establish disclosure and attribution requirements for corporate-funded independent expenditures. HB 3182 and SB 3198 (introduced on January 27, 2010), HB 3714 and SB 3664 (iintroduced on January 28), HB 3715 and SB 3633 (introduced on January 28), and SB 3797 (introduced on January 28) would prohibit foreign corporations from using funds to aid either in the election or defeat of any candidate for office. Companion bills HB 3713 and SB 3672, and SB 3798, all introduced January 28, would create a Class B misdemeanor for the use of corporate funds to aid in the election or defeat of a judicial candidate.

West Virginia - HB 4647, introduced on February 22, 2010, repeals the ban on corporate express advocacy and applies detailed disclosure requirements for money spent by corporations on political advertising.

Wisconsin -- the Senate passed SB 43 just two days before the release of the Citizens United decision. This bill would ban corporate and union funding of electioneering bans and require greater disclosure. The bill's sponsors say they are hoping to salvage the disclosure portions of the bill. Also, the Government Accountability Board is considering rules that would require greater disclosure. SB 540, introduced February 17, 2010, repeals Wisconsin's ban on corporate independent expenditures. It also requires a corporation to file documentation of a vote of shareholders taken within the past two years approving campaign expenditures before making such an expenditure.

Wyoming -- HB 68, which would repeal the ban on independent expenditures by corporations, is pending in the Legislature.

State Bans on the Use of Corporate and Union Treasury Funds for Campaign Advertising

State	Summary of Ban & Cite
Alabama	Corporations cannot fund ads directly under their own name, but must pay for them thru a PAC; corporations cannot contribute to a PAC (NOTE: this opinion applied specifically to spending on ads for/against referenda; not entirely clear that it applies to ads for/against candidates too) (AG Opinion 82-088; conversation with SOS staff on 1/25/10) (§10-2A-70 and 10-2A-70.1)
Alaska	Only an individual, group, or nongroup entity may make an independent expenditure supporting or opposing a candidate (the definitions of these terms exclude corporations and unions) (§15.13.067, 15.13.135)
Arizona	It shall be unlawful for any corporation, organized or doing business in this state, to make any contribution of money or anything of value for the purpose of influencing any election or official action. (Const. Art. 14, §18) It is unlawful for a corporation, a limited liability company, or a labor organization to make any contribution of money or anything of value for the purpose of influencing an election (§16-919) State law has a specific list of corporate expenditures that are not considered to be political contributions prohibited by law, and advertising for/against candidates is not included in this list (§16-920)
Colorado	It shall be unlawful for a corporation or labor organization to make contributions to a candidate committee or a political party, and to make expenditures expressly advocating the election or defeat of a candidate; except that a corporation or labor organization may establish a political committee or small donor committee which may accept contributions or dues from employees, officeholders, shareholders, or members. (Const. Art. XXVIII, §3(4)) Notwithstanding any section to the contrary, it shall be unlawful for a corporation or labor organization to provide funding for an electioneering communication; except that any political committee or small donor committee established by such corporation or labor organization may provide funding for an electioneering communication. (Const. Art. XXVII, §6(2))

Connecticut	No business entity shall make any contributions or expenditures to, or for the benefit of, any candidate's campaign for election to any public office or position subject to this chapter or for nomination at a primary for any such office or position, or to promote the defeat of any candidate for any such office or position. (§9-613)
Iowa	It is unlawful for an insurance company, savings and loan association, bank, credit union, or corporation to contribute any money, property, labor, or thing of value, directly or indirectly, to a committee, or to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office (§68A.503)
Kentucky	No corporation organized or authorized to do business in this state or in another state shall, by itself or by or through an officer, agent, attorney, or employee, subscribe, give, procure or furnish, or afterwards reimburse or compensate in any way any person who has subscribed, given, procured, or furnished, any money, privilege, favor, or other thing of value to any political or quasi-political organization, or any officer or member thereof, to be used by such organization for the purpose of aiding, assisting, or advancing any candidate for public office in this state in any way whatever. (§121.035)
Massachusetts	No corporation carrying on the business of a bank, trust, surety indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, or water company, no company having the right to take land by eminent domain or to exercise franchises in public ways, granted by the commonwealth or by any county, city or town, no trustee or trustees owning or holding the majority of the stock of such a corporation, no business corporation incorporated under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party. (Ch. 55 §8)
Michigan	A corporation, joint stock company, domestic dependent sovereign, or labor organization shall not make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of a contribution pursuant to section 4(3)(a). (§169.254)
Minnesota	A corporation may not make an independent expenditure or offer or agree to make an independent expenditure to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "independent expenditure" means an expenditure that is not made with the authorization or expressed or implied consent of, or in cooperation or concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate. (§221B.15(3))
Montana	A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party. (§13-35-227)
North Carolina	No prohibited source may make any disbursement for the costs of producing or airing any electioneering

	communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing or airing any electioneering communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. (§163-278.82) The term "prohibited source" means any corporation, insurance company, labor union, or professional association. (§163-278.80(4)) ...it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or indirectly: (1) To make any contribution to a candidate or political committee or to make any expenditure to support or oppose the nomination or election of a clearly identified candidate (§163-278.19(a)(1))
North Dakota	A corporation, cooperative corporation, limited liability company, or association may not make a direct contribution to aid any candidate for public office or for nomination to public office. (§16.1-08.1-03.3)
Ohio	No corporation, no nonprofit corporation, and no labor organization, directly or indirectly, shall pay or use, or offer, advise, consent, or agree to pay or use, the organization's money or property for or in aid of or opposition to a political party, a candidate for election or nomination to public office, a political action committee including a political action committee of the corporation or labor organization, a legislative campaign fund, or any organization that supports or opposes any such candidate, or for any partisan political purpose.. (§3599.03) No person shall make, during the thirty days preceding a primary election or during the thirty days preceding a general election, any broadcast, cable, or satellite communication that refers to a clearly identified candidate using any contributions received from a corporation or labor organization. (§3517.1011(H))
Oklahoma	A corporation or labor organization shall not make a contribution or an expenditure or an independent expenditure to, or for the benefit of, a candidate or committee in connection with an election or for any electioneering communication. (Tit. 74, Ch. 62, §257:10-1 -2(d)(2))
Pennsylvania	It is unlawful for any National or State bank, or any corporation, incorporated under the laws of this or any other state or any foreign country or any unincorporated association, except those corporations formed primarily for political purposes or as a political committee, to make a contribution or expenditure in connection with the election of any candidate or for any political purpose whatever except in connection with any question to be voted on by the electors of this Commonwealth. (Section 1633 25 P.S. §3253)
Rhode Island	It shall be unlawful for any corporation, whether profit or non-profit, domestic corporation or foreign corporation or other business entity to make any campaign contribution or expenditure to or for any candidate, political action committee, or political party committee, or for any candidate, political action committee, or political party

	committee to accept any campaign contribution or expenditure from a corporation or other business entity. (§17-25-10.1(h))
South Dakota	No organization may make a contribution to a candidate committee, political action committee, or political party or make an independent expenditure expressly advocating the election or defeat of a candidate. (§12-27-18) "Organization," any business corporation, limited liability company, nonprofit corporation, limited liability partnership, limited partnership, partnership, cooperative, trust, business trust, association, club, labor union, collective bargaining organization, local, state, or national organization to which a labor organization pays membership or per capita fees, based upon its affiliation and membership, trade or professional association that receives its funds from membership dues or service fees, whether organized inside or outside the state, any entity organized in a corporate form under federal law or the laws of this state, or any group of persons acting in concert which is not defined as a political committee or political party in this chapter (§12-27-1(16))
Tennessee	It is unlawful for the executive officers or other representatives of any corporation doing business within this state, to use any of the funds, moneys, or credits of the corporation for the purpose of aiding either in the election or defeat in any primary or final election, of any candidate for office, national, state, county, or municipal, or in any way contributing to the campaign fund of any political party, for any purpose whatever. (§2-19-132(a))
Texas	A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by this subchapter. (Elec. Code §253.094)
West Virginia	Notwithstanding any provision of section two-b of this article, no officer, agent or person acting on behalf of any corporation, whether incorporated under the laws of this or any other state or of a foreign country, may pay, give, lend or authorize to be paid, given or lent any money or other thing of value belonging to the corporation for the purpose of expressly advocating the election or defeat of a clearly identified candidate for state, district, county or municipal office, to any candidate, financial agent, political committee or other person. No person may solicit or receive any payment, contribution or other thing from any corporation or from any officer, agent or other person acting on behalf of the corporation. (§3-8-8)
Wisconsin	No foreign or domestic corporation, or association may make any contribution or disbursement, directly or indirectly, either independently or through any political party, committee, group, candidate or individual for any purpose other than to promote or defeat a referendum. (§11.38)
Wyoming	Except as otherwise provided in this section, no organization of any kind including a corporation, partnership, trade union, professional association or civic, fraternal or religious group or other profit or nonprofit entity except a political party, political action committee or candidate's campaign committee organized under W.S. 22-25-101, directly or indirectly through any officer, member, director or employee, shall contribute funds, other items of value or election assistance to aid, promote or prevent the nomination or election of any candidate or group of

	candidates or to aid or promote the interests, success or defeat of any political party. (§22-25-102)

Source: National Conference of State Legislatures, January 2010

For More Information

For more information on campaign finance laws in the states, visit NCSL's Campaign Finance page or contact Jennie Drage Bowser in NCSL's Denver office at 303-364-7700.

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The Washington Post

Poll: Large majority opposes Supreme Court's decision on campaign financing

Washington Post Staff Writer
By Dan Eggen
Wednesday, February 17, 2010; 4:38 PM

Americans of both parties overwhelmingly oppose a Supreme Court ruling that allows corporations and unions to spend as much as they want on political campaigns, and most favor new limits on such spending, according to a new Washington Post-ABC News poll.

Eight in 10 poll respondents say they oppose the high court's Jan. 21 decision to allow unfettered corporate political spending, with 65 percent "strongly" opposed. Nearly as many backed congressional action to curb the ruling, with 72 percent in favor of reinstating limits.

The poll reveals relatively little difference of opinion on the issue among Democrats (85 percent opposed to the ruling), Republicans (76 percent) and independents (81 percent).

The results suggest a strong reservoir of bipartisan support on the issue for President Obama and congressional Democrats, who are in the midst of crafting legislation aimed at limiting the impact of the high court's decision.

"If there's one thing that Americans from the left, right and center can all agree on, it's that they don't want more special interests in our politics," Sen. Charles Schumer (D-N.Y.), who is spearheading the legislative effort, said in a statement after the poll was released Wednesday.

"We hope we can get strong and quick bipartisan support for our legislation, which passes constitutional muster but will still effectively limit the influence of special interests."

Under legislation being drafted by Schumer and Rep. Chris Van Hollen (D-Md.), companies with foreign ownership or federal contracting ties would be limited in their ability to spend corporate money on elections.

The lawmakers also want to require companies to inform shareholders about political spending; to mandate special

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Outside editorials

Freedom of speech: Who's paying for it?

The following editorial appeared in the Philadelphia Inquirer:

A proposal that would make it easier to find out who is paying for political ads in federal elections is needed after the damage caused by a recent Supreme Court ruling.

The measure from Democrats would require corporations, unions, and advocacy groups, now freed from restrictions against spending on individual races, to stand up for their ads by clearly identifying who paid for them.

Groups running ads for or against a candidate would be required to report their donors to the Federal Election Commission. They'd also need to identify the top five donors in the advertising. And, in some cases, a corporate CEO would have to appear on camera to say that he or she approves "this message," just as candidates do.

These proposed rules could be, and should be, in place in time for the general election this year.

This action is a necessary response to the Supreme Court's 5-4 ruling last month that allows corporations to spend money directly on political campaigns to advocate for or against specific candidates. Election-law loopholes that existed before the ruling would enable corporations now to fund campaign ads without disclosing who paid for them.

The impact of the court's decision isn't hard to imagine. The future could look a lot more like the current mysterious TV ad urging Sens. Bob Casey, D-Pa., and Arlen Specter, D-Pa., to vote against a bill that would regulate financial institutions.

This scare tactic calls the legislation a "new $4 trillion bailout for banks," although the bill is actually an attempt to reform Wall Street and create a new agency to protect consumers of financial products.

The ad was funded by something called the "Committee for Truth in Politics," a shadowy group that refuses to disclose any details of its spending to the FEC. It was created by a Republican operative in North Carolina. But it's impossible to tell from the ad itself who is paying for it, let alone for viewers to evaluate its substance.

The Supreme Court has allowed third parties to virtually take over individual elections with unlimited spending. The unfortunate fact is that there's very little Congress can do to control the new flood of money that corporations and unions can pour into campaigns.

But lawmakers can at least require these players to disclose their activities fully. That will help audiences judge for themselves the motivations behind such advertising.

Legislation sponsored by Sen. Charles Schumer, D-N.Y., and Rep. Chris Van Hollen, D-Md., would require corporations to disclose political expenditures on their Web sites within 24 hours, and to inform shareholders quarterly.

There should be bipartisan support for their proposal. A new Washington Post-ABC News poll found that 85 percent of Democrats and 76 percent of Republicans oppose the Supreme Court's decision, and 72 percent of those polled favor new campaign-finance limits.

The court undermined decades of sensible election law, and the damage can't be easily undone. Greater transparency is the minimum required to start picking up the pieces of this harmful ruling.

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Our view: Full disclosure

Lawmakers offer swift response to Supreme Court ruling

(02/20/10 18:21:43)

On Thursday, Jan. 21, the United States Supreme Court ruled that corporations and unions can spend freely to support or oppose a candidate for federal office right up to Election Day. On Friday, Feb. 19, lawmakers in the Alaska Legislature proposed bills that would require strict disclosure and disclaimer statements on such advertising.

Well done.

Sen. Hollis French, Rep. Les Gara and Rep. Scott Kawasaki led the way with this rapid response to the court's decision in Citizens United v. Federal Elections Commission. They're also backing a long-term response aimed at overturning the court's decision. That legislation would deny the status of personhood to corporations for the purpose of influencing elections. First, the rapid response.

STAND UP AND BE COUNTED

Identical bills in the House and Senate would require all "persons," the legal standing of corporations affirmed by the court's decision, to disclose in detail to the Alaska Public Offices Commission all contributions and expenditures on behalf of or against a candidate, a full list of the corporate officers and directors if applicable and the name of the ballot measure or candidate addressed.

In addition, any campaign advertising would have to include the "person's" principal officer and title, the address of the business and the names of the "person's" top five contributors to the campaign.

The disclaimer would have to make clear to anyone reading, hearing or viewing a campaign ad that the candidate in question does not authorize or endorse the ad.

These laws would become effective in Alaska immediately upon passage -- if they're passed this session, we'd keep any corporate and union spending right out in the light for the 2010 primary and general elections.

Disclosure must be an absolute in Alaska politics. We've had experience of bogus front groups masking large amounts of money aimed to help or hurt candidates and ballot initiatives. While the court's ruling left federal disclosure rules intact, it

left Alaska open to nondisclosure because we didn't allow corporations to directly support or oppose candidates; hence we had no disclosure rules in place when the justices opened the door to corporate giving.

The message and the law needs to be strong and clear: If you want to participate in Alaska campaign politics, stand up and be counted -- by name, by number, by affiliation and by amount. We want to know who you are, how many you are, who you're with and how much you're contributing.

That way we can figure out where your interests lie -- and where the candidate you're backing may stand.

If you want anonymity, stay out of the game. Alaska politics should be secret in one place -- the voting booth.

These disclosure and disclaimer bills, Senate Bill 284 and House Bill 358, deserve expedited committee hearings and swift passage. They'll keep Alaska politics open and the political players out front where they belong.

TAKING ON THE COURT

The same lawmakers are backing short bills (Senate Bill 285, House Bill 359) that say simply that corporations are not persons when it comes to election spending. The aim here is to restore the authority of the federal government and the states to place limits on corporate power over elections and candidates.

The reason is simple. The largest corporations have enormous resources. And the plain truth -- the "common sense" referred to by Justice John Paul Stevens in his dissent from the January ruling -- is that effective free speech in a modern election is not free.

Thus, the organizations with the most money buy the most speech. With the court's ruling, that's more likely than ever before. Corporate interests could dominate radio, television and print advertising and have the power to drown out dissenting voices. Candidates -- despite any disclaimers -- could find themselves ever more beholden to corporate interests that outspend their own campaigns and claim credit for their victories.

A healthy representative democracy limits such power.

Given the Supreme Court's decision, such a law likely would be challenged. That's the idea. The sponsors want the court to rethink the Citizens United case.

Sen. French said these bills will take more time and are part of a national chorus of opposition to the court's ruling. Alaska's voice should be clear in that chorus. The court's January ruling is the law of the land for now. That's all the more reason to get tough disclosure laws on the books.

BOTTOM LINE: The Legislature should waste no time approving tough disclosure laws -- and provide the means to enforce them.

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26-LS1448\E.1
Bullard
3/17/10

AMENDMENT #1

OFFERED IN THE SENATE BY SENATOR FRENCH

TO: CSSB 284(JUD), Draft Version "E"

Page 4, following line 5:

Insert a new bill section to read:

"* **Sec. 7.** AS 15.13.040 is amended by adding a new subsection to read:

(q) For purposes of (e) of this section,

(1) "director" means a member of the board of directors of a corporation or any person performing a similar function with respect to any organization;

(2) "officer" means a president, vice president, secretary, or treasurer, principal financial officer, or comptroller of a corporation, or any person routinely performing functions similar to those of a president, vice president, secretary, or treasurer, principal financial officer, or comptroller with respect to any organization."

Renumber the following bill sections accordingly.

2373

26-LS1448\E.3
Bullard
3/17/10

AMENDMENT #2

OFFERED IN THE SENATE BY SENATORS FRENCH AND COGHILL

TO: CSSB 284(JUD), Draft Version "E"

Page 5, line 17, through page 6, line 4:

Delete all material and insert:

"**Sec. 15.13.090. Identification of communication.** (a) All communications shall be clearly identified by the words "paid for by" followed by the name and address of the **person** [CANDIDATE, GROUP, NONGROUP ENTITY, OR INDIVIDUAL] paying for the communication. In addition, **a person shall clearly**

(1) provide the person's address or the person's principal place of business;

(2) for a person other than an individual or candidate, include

(A) the name and title of the person's principal officer;

(B) a statement from the principal officer approving the communication; and

(C) identification of the name and city and state of residence or principal place of business, as applicable, of each of the person's five largest contributors under AS 15.13.040(e)(5), if any, during the 12-month period before the date of the communication [CANDIDATES AND GROUPS MAY IDENTIFY THE NAME OF THEIR CAMPAIGN CHAIRPERSON]."

Page 6, line 16:

Delete "(a)(2)(C)"

Insert "(a)(1)"

Page 6, line 17:

Delete "(a)(2)(D)"

Insert "(a)(2)(C)"

Page 6, line 26:

Delete "AS 15.13.090(a)(2)(D)"

Insert "AS 15.13.090(a)(2)(C)"

26-LS1448\E.2
Bullard
3/17/10

AMENDMENT #3

OFFERED IN THE SENATE BY SENATOR FRENCH

TO: CSSB 284(JUD), Draft Version "E"

Page 5, line 24, following "**(2)**":

Insert "**except as provided by (d) of this section,**"

Page 6, line 15:

Delete "a new subsection"

Insert "new subsections"

Page 6, line 17, following "section,":

Insert "a communication that includes a print or video component must have"

Page 6, lines 17 - 18:

Delete "must be read, in a manner that is easily heard, or"

Page 6, lines 19 - 21:

Delete ", or, in a communication that is transmitted by a method that includes both audio and video components, be read in a manner that is easily heard and placed in the communication so as to be easily discernable"

Page 6, following line 26:

Insert a new subsection to read:

"(d) Notwithstanding the requirements of (a)(2)(A) - (D) of this section, in a communication transmitted through radio or other audio media and in the communication that includes an audio component, the following statement or

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statements, as applicable, must be read in a manner that is easily heard:

This communication was paid for by (person's name).

I am (name and, if applicable, title of the principal officer of the person) and I approve this message.

The top contributors of (person's name) are (the name of the largest contributors to the person under AS 15.13.090(a)(2)(D))."

AMENDMENT #5

OFFERED IN THE SENATE BY SENATOR WIELECHOWSKI

TO: CSSB 284(JUD), Draft Version "E"

Page 1, line 4, following "**campaigns;**":

Insert "**prohibiting certain expenditures in state election campaigns;**"

Page 5, following line 16:

Insert a new bill section to read:

"* **Sec. 11.** AS 15.13.084 is amended by adding a new subsection to read:

(b) A person that is owned or controlled, in any part, by a foreign national may not make an expenditure. In this subsection, "foreign national" includes

(1) an individual who is not a United States citizen or lawfully admitted for permanent residence under 8 U.S.C. 1101(a)(20);

(2) a foreign government, a political subdivision of a foreign government, a official, agent, or representative of a foreign government, and an agency, corporation, or instrumentality of a foreign government or of a political subdivision of a foreign government;

(3) a person outside of the United States, unless it is established that the person is an individual and a citizen of and domiciled in the United States, or that the person is not an individual and is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and that the person's principal place of business is in the United States;

(4) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; or

(5) a domestic subsidiary of an entity described in (2) - (4) of this

subsection or a domestic corporation controlled by an entity described in (2) - (4) of this subsection, if that entity finances, participates in, or selects a person who participates in the making of a contribution or an expenditure of the domestic subsidiary or domestic corporation."

Renumber the following bill sections accordingly.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 17, 2010

SUBJECT: Amendments E.4 and E.5 to CSSB 284(JUD)
(Work Order No. 26-LS1448\E)

TO: Senator Bill Wielechowski
Attn: Shelly Morgan

FROM: Alpheus Bullard TGB
Legislative Counsel

This memorandum accompanies the amendments described above.

Amendment E.4
Amendment E.4 prohibits a foreign national from making directly, or indirectly, a contribution or expenditure in connection with a state election.

The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating, or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly.[1] Because 2 U.S.C. 441e already clearly prohibits foreign nationals from making campaign contributions, expenditures, and independent expenditures in federal, state, and local elections, a state effort to legislate in this area may face a preemption challenge.

The Supremacy Clause, Art. VI, cl. 2 of the Constitution of the United States, provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Alaska Supreme Court has noted that "[u]nder the Supremacy Clause of the federal constitution, state laws that interfere with federal laws are invalid." Allen v. State, 203 P.3d 1155, 1161, n. 12 (Alaska 2009), quoting State v. Dupier, 118 P.3d 1039, 1049 (Alaska 2005). The court recently summarized federal preemption law as follows:

> There is a presumption against federal preemption of state law, and preemption doctrine "enjoin[s] seeking out conflicts between state and

[1] See 2 U.S.C. § 441e, 22 U.S.C. § 611(b), and 11 C.F.R. 110.4.

> federal regulation where none clearly exists." Additionally, "[w]here co-ordinate state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes," . . . "the case for federal pre-emption becomes a less persuasive one." But where state law comes into conflict with federal law, the Supremacy Clause of the United States Constitution dictates that state law must always yield.
>
> There are three major types of federal preemption of state law: "express," "field," and "conflict" preemption. Express preemption occurs when Congress explicitly declares an intent to preempt state law in a particular area. . . .
>
> Field preemption is the term used when the federal law governing a particular area is so comprehensive and so complete that Congress is said to have completely occupied a field, leaving no room for state law. We "will not infer an intent to occupy the field where Congress has left some room for state involvement." . . .
>
> Conflict preemption occurs when a state law and a federal law are in conflict, either because compliance with both state and federal law is impossible or because the state law "stands as an obstacle to accomplishment and execution of the full purposes and objectives of Congress." . . .

Allen v. State, 203 P.3d 1155, 1160 - 1161 (Alaska 2009) (citations and footnotes omitted).

The state clearly does not have authority to regulate contributions and expenditures in campaigns for federal office; that has been expressly preempted by federal law. 2 U.S.C. 453 (specifying that the provisions of the federal election campaigns act "supersede and preempt any provision of state law with respect to election to federal office."); 11 C.F.R. 108.7(b)(3) (federal law "supersedes state law concerning the . . . [l]imitation on contributions and expenditures regarding Federal candidates and political committees.").

Whether the state may regulate contributions and expenditures from foreign nationals in campaigns for state office is less clear. I am not aware of any federal statute or regulation which expressly preempts state regulation of foreign contributions and expenditures in campaigns for state office. However, field preemption may come into play here. To the extent a court found that the federal law governing contributions and expenditures by foreign nationals is so comprehensive and complete as to "occupy the field," it could invalidate state law attempting to cover the same ground. To the extent that the state and federal laws conflict, conflict preemption is also a possibility. Proposed AS 15.13.068(c) is an attempt to avoid conflicts with federal law as much as possible, but it may not succeed.

Amendment E.5

Amendment E.5 prohibits a person that is owned or controlled, in any part, by a foreign national from making an expenditure in connection with a state election. This amendment raises significant First Amendment issues. Given that that federal law already prohibits foreign nationals from directly or indirectly making contributions or expenditures in connection with a state election, I don't know what compelling state interest would serve as justification for such a prohibition. Because any large publicly traded domestic corporation is likely to have some foreign shareholders, a court is likely to interpret such a provision, if enacted, as an indirect prohibition against independent expenditures made by these persons, a violation of the First Amendment under Citizens United v. Federal Election Commission, 558 U.S. ___ (2010).

Because the amendment applies only to persons that are owned or controlled in some part by foreign nationals, whether the ownership interest be a majority interest or a de minimus minority interest, the amendment also raises equal protection issues. Alaska evaluates equal protection claims using a sliding scale.[2] There are several steps involved. First, the court determines the importance of the interest impaired by the challenged statute. Then the court looks at the purposes served by the statute. Finally, the court looks at how well the statutory means fits the purpose. "The common question in addressing equal protection cases is whether two groups of people who are treated differently are similarly situated and thus entitled to equal treatment."[3] In order for a classification to be valid under the state's equal protection test, it must be reasonable, not arbitrary, and must bear a fair and substantial relation to a legitimate governmental objective. Wilson v. Municipality of Anchorage, 669 P.2d 569, 572 (Alaska 1983). Under the amendment, a domestic corporation with .005 percent foreign ownership, in which a foreign national or nationals are unable to exert any meaningful control, would be treated differently from a publicly traded corporation that, by chance, has no shares held by foreign nationals. A court is unlikely to interpret this disparate treatment of domestic corporations as reasonable, and I don't know what state interest could be articulated as justification for such a prohibition.

TLAB:plm
10-150.plm

Enclosures

[2] Matanuska-Susitna Borough School v. State, 931 P.2d 391, 396 (Alaska 1997).

[3] Anderson v. State, 78 P.3d 710, 718 (Alaska 2003).

26-LS1448\E
Bullard
3/15/10

CS FOR SENATE BILL NO. 284(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to state election campaigns, the duties of the Alaska Public Offices Commission, the reporting and disclosure of expenditures and independent expenditures, the filing of reports, and the identification of certain communications in state election campaigns; and providing for an effective date."

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

*** Section 1.** AS 15.13.010(b) is amended to read:

(b) Except as otherwise provided, this chapter applies to contributions, expenditures, and communications made [BY A CANDIDATE, GROUP, NONGROUP ENTITY, MUNICIPALITY OR INDIVIDUAL] for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate.

*** Sec. 2.** AS 15.13.030 is amended to read:

Sec. 15.13.030. Duties of the commission. The commission shall

(1) develop and provide all forms for the reports and statements

required to be made under this chapter, AS 24.45, and AS 39.50;

(2) prepare and publish a manual setting out uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter and otherwise assist **all persons** [CANDIDATES, GROUPS, AND INDIVIDUALS] in complying with the requirements of this chapter;

(3) receive and hold open for public inspection reports and statements required to be made under this chapter and, upon request, furnish copies at cost to interested persons;

(4) compile and maintain a current list of all filed reports and statements;

(5) prepare a summary of each report filed under AS 15.13.110 and make copies of this summary available to interested persons at their actual cost;

(6) notify, by registered or certified mail, all persons who are delinquent in filing reports and statements required to be made under this chapter;

(7) examine, investigate, and compare all reports, statements, and actions required by this chapter, AS 24.45, and AS 39.50;

(8) prepare and publish a biennial report concerning the activities of the commission, the effectiveness of this chapter, its enforcement by the attorney general's office, and recommendations and proposals for change; the commission shall notify the legislature that the report is available;

(9) adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50, and this chapter, subject to the provisions of AS 44.62 (Administrative Procedure Act); and

(10) consider a written request for an advisory opinion concerning the application of this chapter, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50.

* **Sec. 3.** AS 15.13.040(d) is amended to read:

(d) Every [INDIVIDUAL,] person [, NONGROUP ENTITY, OR GROUP] making an **independent** expenditure shall make a full report of expenditures **made and contributions received**, upon a form prescribed by the commission, unless exempt from reporting.

* **Sec. 4.** AS 15.13.040(e) is amended to read:

(e) **Each person** [THE REPORT] required **to report** under (d) of this section **shall file a full report in accordance with AS 15.13.110(g) on a form prescribed by the commission. The report** must contain

(1) the name, address, principal occupation, and employer of the individual filing the report**;**

(2) [, AND] an itemized list of **all expenditures made, incurred, or authorized by the person;**

(3) the name of the candidate or the title of the ballot proposition or question supported or opposed by each expenditure and whether the expenditure is made to support or oppose the candidate or ballot proposition or question;

(4) the name and address of each officer and director, when applicable;

(5) the aggregate amount of all contributions made to the person, if any, for the purpose of influencing the outcome of an election; for all contributions to the person that exceed $100 in the aggregate in a year, the date of the contribution and amount contributed by each contributor; and for a contributor

(A) who is an individual, the name, address, principal occupation, and employer of the contributor; or

(B) that is not an individual, the name and address of the contributor and the name and address of each officer and director of the contributor [EXPENDITURES. THE REPORT SHALL BE FILED WITH THE COMMISSION NO LATER THAN 10 DAYS AFTER THE EXPENDITURE IS MADE].

*** Sec. 5.** AS 15.13.040(h) is amended to read:

(h) The provisions of (d) of this section do not apply to one or more expenditures made by an individual acting independently of any **other person** [GROUP OR NONGROUP ENTITY AND INDEPENDENTLY OF ANY OTHER INDIVIDUAL] if the expenditures

(1) cumulatively do not exceed $500 during a calendar year; and

(2) are made only for billboards, signs, or printed material concerning a ballot proposition as that term is defined by AS 15.13.065(c).

*** Sec. 6.** AS 15.13.040(p) is amended to read:

(p) For purposes of (b), **(e),** and (j) of this section, "contributor" means the true source of the funds, property, or services being contributed.

*** Sec. 7.** AS 15.13 is amended by adding a new section to read:

Sec. 15.13.052. Independent expenditures; political activities accounts. (a) Before making an independent expenditure in support of or in opposition to a candidate or before making an independent expenditure in support of or in opposition to a ballot proposition or question, each person other than an individual, candidate, or nongroup entity with an annual operating budget of $250 or less, shall establish a political activities account. The political activities account may be a separate account in the person's general treasury. The political activities account must be administered using generally accepted accounting principles. All funds used by the person to make independent expenditures must be drawn from the person's political activities account.

(b) Records necessary to substantiate that the requirements of (a) of this section have been met must be made available for inspection by the commission.

(c) Each person who has established a political activities account under this section shall preserve all records necessary to substantiate the person's compliance with the requirements of this section for each of the six preceding years.

*** Sec. 8.** AS 15.13.067 is amended to read:

Sec. 15.13.067. Who may make expenditures. Only the following may make an expenditure **that is not an independent expenditure** in an election for candidates for elective office:

(1) the candidate;

(2) an individual;

(3) a group that has registered under AS 15.13.050; and

(4) a nongroup entity that has registered under AS 15.13.050.

*** Sec. 9.** AS 15.13.082(b) is amended to read:

(b) A **person, other than an individual exempt from reporting under AS 15.13.040(h),** [CANDIDATE, GROUP, OR NONGROUP ENTITY] may not

make an expenditure unless the source of the expenditure has been disclosed as required by this chapter.

*** Sec. 10.** AS 15.13.084 is amended to read:

Sec. 15.13.084. Prohibited expenditures. A person may not make an expenditure

(1) anonymously, unless the expenditure is

(A) paid for by an individual acting independently of any **person** [GROUP OR NONGROUP ENTITY AND INDEPENDENTLY OF ANY OTHER INDIVIDUAL];

(B) made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065(c); and

(C) made for

(i) a billboard or sign; or

(ii) printed material, other than an advertisement made in a newspaper or other periodical;

(2) using a fictitious name or using the name of another.

*** Sec. 11.** AS 15.13.090 is amended to read:

Sec. 15.13.090. Identification of communication. (a) All communications shall be clearly identified by the words "paid for by" followed by the name and address of the **person** [CANDIDATE, GROUP, NONGROUP ENTITY, OR INDIVIDUAL] paying for the communication. In addition,

(1) candidates and groups may identify the name of their campaign chairperson**; and**

(2) a person other than a candidate, an individual, or a political party shall clearly

(A) identify the person's principal officer and the officer's title;

(B) include a statement from the principal officer approving the communication;

(C) provide the address of the person's principal place of business; and

(D) identify the name and city and state of residence or principal place of business, as applicable, of each of the person's five largest contributors under AS 15.13.040(e)(5), if any, during the 12-month period before the date of the communication.

(b) The provisions of (a) of this section do not apply when the communication

(1) is paid for by an individual acting independently of any **other person** [GROUP OR NONGROUP ENTITY AND INDEPENDENTLY OF ANY OTHER INDIVIDUAL];

(2) is made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065(c); and

(3) is made for

(A) a billboard or sign; or

(B) printed material other than an advertisement made in a newspaper or other periodical.

*** Sec. 12.** AS 15.13.090 is amended by adding a new subsection to read:

(c) To satisfy the requirements of (a)(2)(C) of this section and, if applicable, (a)(2)(D) of this section, the following statement or statements must be read, in a manner that is easily heard, or placed in the communication so as to be easily discernable, or, in a communication that is transmitted by a method that includes both audio and video components, be read in a manner that is easily heard and placed in the communication so as to be easily discernable:

This communication was paid for by (person's name and city and state of principal place of business).

The top contributors of (person's name) are (the name and city and state of residence or principal place of business, as applicable, of the largest contributors to the person under AS 15.13.090(a)(2)(D)).

*** Sec. 13.** AS 15.13.110 is amended by adding a new subsection to read:

(g) An independent expenditure report required under AS 15.13.040(e) shall be filed with the commission not later than 10 days after an independent expenditure has been made. However, an independent expenditure that exceeds $250 and that is made within nine days of an election shall be reported to the commission not later than

24 hours after the expenditure is made.

* **Sec. 14.** AS 15.13.111(a) is amended to read:

(a) Each [CANDIDATE, GROUP, NONGROUP ENTITY, OR] person required to report under this chapter shall preserve all records necessary to substantiate information required to be reported under this chapter for a period of six years from the date of the election for which the information was required to be reported, unless the records have been submitted to the commission under (c) of this section.

* **Sec. 15.** AS 15.13.135 is amended to read:

Sec. 15.13.135. Independent expenditures for or against candidates. (a) [ONLY AN INDIVIDUAL, GROUP, OR NONGROUP ENTITY MAY MAKE AN INDEPENDENT EXPENDITURE SUPPORTING OR OPPOSING A CANDIDATE FOR ELECTION TO PUBLIC OFFICE.] An independent expenditure supporting or opposing a candidate for election to public office, except an independent expenditure made by a nongroup entity with an annual operating budget of $250 or less, shall be reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other requirements of this chapter.

(b) **A person** [AN INDIVIDUAL, GROUP, OR NONGROUP ENTITY] who makes independent expenditures for a mass mailing, for distribution of campaign literature of any sort, for a television, radio, newspaper, or magazine advertisement, or any other communication that supports or opposes a candidate for election to public office

(1) shall comply with AS 15.13.090; and

(2) shall place the following statement in the mailing, literature, advertisement, or other communication so that it is readily and easily discernible:

This NOTICE TO VOTERS is required by Alaska law. (I/we) certify that this (mailing/literature/advertisement) is not authorized, paid for, or approved by the candidate.

* **Sec. 16.** AS 15.56.014(a) is amended to read:

(a) A person commits the crime of campaign misconduct in the second degree if the person

(1) knowingly circulates or has written, printed or circulated a letter,

circular, or publication relating to an election, to a candidate at an election, or an election proposition or question without the name and address of the author appearing on its face;

(2) except as provided by AS 15.13.090(b), knowingly prints or publishes an advertisement, billboard, placard, poster, handbill, paid-for television or radio announcement, or communication, as that term is defined in AS 15.13.400, intended to influence the election of a candidate or outcome of a ballot proposition or question without the words "paid for by" followed by the name and address of the **person** [CANDIDATE, GROUP, OR INDIVIDUAL] paying for the advertising or communication and, if a candidate or group, with the name of the campaign chair;

(3) knowingly makes a communication, as that term is defined in AS 15.13.400,

(A) containing false factual information relating to a candidate for an election;

(B) that the person knows to be false; and

(C) that would provoke a reasonable person under the circumstances to a breach of the peace or that a reasonable person would construe as damaging to the candidate's reputation for honesty or integrity, or to the candidate's qualifications to serve if elected to office.

*** Sec. 17.** AS 15.13.140(a) is repealed.

*** Sec. 18.** This Act takes effect immediately under AS 01.10.070(c).

Redraft w/ language from lines 1-12 and accompanying renumbering retain deletion lines 20-21 ~~withdrawn~~

26-LS1448\R.1
Kurtz/Bullard
3/15/10

AMENDMENT #3

French &

OFFERED IN THE SENATE BY SENATOR COGHILL

TO: CSSB 284(JUD), Draft Version "R"

Page 5, line 18, through page 6, line 7:

Delete all material and insert:

"**Sec. 15.13.090. Identification of communication.** (a) All communications shall be clearly identified by the words "paid for by" followed by the name and address of the **person** [CANDIDATE, GROUP, NONGROUP ENTITY, OR INDIVIDUAL] paying for the communication. In addition, **a person shall clearly**

(1) provide the person's address, or the address of the person's principal place of business;

(2) for a person other than an individual or candidate, include

(A) the name and title of the person's principal officer;

(B) a statement from the principal officer approving the communication; and

(C) the name and city and state of residence or principal place of business, as applicable, of each of the person's three largest contributors under AS 15.13.040(e)(5), if any, during the 12-month period before the date of the communication; and

(3) for a candidate, include

(A) the name of the candidate; and

(B) a statement from the candidate approving the communication [CANDIDATES AND GROUPS MAY IDENTIFY THE NAME OF THEIR CAMPAIGN CHAIRPERSON]."

Page 6, lines 19 - 20:

Delete "(a)(2)(C) of this section and, if applicable, (a)(2)(D)"

Insert "(a)(1) and (a)(2)(C)"

Page 6, line 29:

Delete "AS 15.13.090(a)(2)(D)"

Insert "AS 15.13.090(a)(2)(C)"

26-LS1448\R.1
Kurtz/Bullard
3/15/10

AMENDMENT

OFFERED IN THE SENATE BY SENATOR COGHILL

TO: CSSB 284(JUD), Draft Version "R"

Page 5, line 18, through page 6, line 7:

Delete all material and insert:

"**Sec. 15.13.090. Identification of communication.** (a) All communications shall be clearly identified by the words "paid for by" followed by the name and address of the **person** [CANDIDATE, GROUP, NONGROUP ENTITY, OR INDIVIDUAL] paying for the communication. In addition, **a person shall clearly**

(1) provide the person's address, or the address of the person's principal place of business;

(2) for a person other than an individual or candidate, include

(A) the name and title of the person's principal officer;

(B) a statement from the principal officer approving the communication; and

(C) the name and city and state of residence or principal place of business, as applicable, of each of the person's three largest contributors under AS 15.13.040(e)(5), if any, during the 12-month period before the date of the communication; and

(3) for a candidate, include

(A) the name of the candidate; and

(B) a statement from the candidate approving the communication [CANDIDATES AND GROUPS MAY IDENTIFY THE NAME OF THEIR CAMPAIGN CHAIRPERSON]."

Page 6, lines 19 - 20:

Delete "(a)(2)(C) of this section and, if applicable, (a)(2)(D)"

Insert "(a)(1) and (a)(2)(C)"

Page 6, line 29:

Delete "AS 15.13.090(a)(2)(D)"

Insert "AS 15.13.090(a)(2)(C)"

26-LS1448\R.2
Kurtz
3/15/10

AMENDMENT

OFFERED IN THE SENATE BY SENATOR COGHILL

TO: CSSB 284(JUD), Draft Version "R"

Page 7, following line 30:

Insert a new bill section to read:

"* **Sec. 16.** AS 15.56.014(a) is amended to read:

(a) A person commits the crime of campaign misconduct in the second degree if the person

(1) knowingly circulates or has written, printed or circulated a letter, circular, or publication relating to an election, to a candidate at an election, or an election proposition or question without the name and address of the author appearing on its face;

(2) except as provided by AS 15.13.090(b), knowingly prints or publishes an advertisement, billboard, placard, poster, handbill, paid-for television or radio announcement, or communication, as that term is defined in AS 15.13.400, intended to influence the election of a candidate or outcome of a ballot proposition or question without the words "paid for by" followed by the name and address of the **person** [CANDIDATE, GROUP, OR INDIVIDUAL] paying for the advertising or communication and, if a candidate or group, with the name of the campaign chair;

(3) knowingly makes a communication, as that term is defined in AS 15.13.400,

(A) containing false factual information relating to a candidate for an election;

(B) that the person knows to be false; and

(C) that would provoke a reasonable person under the circumstances to a breach of the peace or that a reasonable person would

construe as damaging to the candidate's reputation for honesty or integrity, or to the candidate's qualifications to serve if elected to office."

Renumber the following bill sections accordingly.

26-LS1448\R
Bullard
3/15/10

CS FOR SENATE BILL NO. 284(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to state election campaigns, the duties of the Alaska Public Offices Commission, the reporting and disclosure of expenditures and independent expenditures, the filing of reports, and the identification of certain communications in state election campaigns; and providing for an effective date."

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

*** Section 1.** AS 15.13.010(b) is amended to read:

(b) Except as otherwise provided, this chapter applies to contributions, expenditures, and communications made [BY A CANDIDATE, GROUP, NONGROUP ENTITY, MUNICIPALITY OR INDIVIDUAL] for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate.

*** Sec. 2.** AS 15.13.030 is amended to read:

Sec. 15.13.030. Duties of the commission. The commission shall

(1) develop and provide all forms for the reports and statements

required to be made under this chapter, AS 24.45, and AS 39.50;

(2) prepare and publish a manual setting out uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter and otherwise assist **all persons** [CANDIDATES, GROUPS, AND INDIVIDUALS] in complying with the requirements of this chapter;

(3) receive and hold open for public inspection reports and statements required to be made under this chapter and, upon request, furnish copies at cost to interested persons;

(4) compile and maintain a current list of all filed reports and statements;

(5) prepare a summary of each report filed under AS 15.13.110 and make copies of this summary available to interested persons at their actual cost;

(6) notify, by registered or certified mail, all persons who are delinquent in filing reports and statements required to be made under this chapter;

(7) examine, investigate, and compare all reports, statements, and actions required by this chapter, AS 24.45, and AS 39.50;

(8) prepare and publish a biennial report concerning the activities of the commission, the effectiveness of this chapter, its enforcement by the attorney general's office, and recommendations and proposals for change; the commission shall notify the legislature that the report is available;

(9) adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50, and .this chapter, subject to the provisions of AS 44.62 (Administrative Procedure Act); and

(10) consider a written request for an advisory opinion concerning the application of this chapter, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50.

* **Sec. 3.** AS 15.13.040(d) is amended to read:

(d) Every [INDIVIDUAL,] person [, NONGROUP ENTITY, OR GROUP] making an **independent** expenditure shall make a full report of expenditures **made and contributions received**, upon a form prescribed by the commission, unless exempt from reporting.

* **Sec. 4.** AS 15.13.040(e) is amended to read:

(e) **Each person** [THE REPORT] required **to report** under (d) of this section **shall file a full report in accordance with AS 15.13.110(g) on a form prescribed by the commission. The report** must contain

(1) the name, address, principal occupation, and employer of the individual filing the report**;**

(2) [, AND] an itemized list of **all expenditures made, incurred, or authorized by the person;**

(3) the name of the candidate or the title of the ballot proposition or question supported or opposed by each expenditure and whether the expenditure is made to support or oppose the candidate or ballot proposition or question;

(4) the name and address of each officer and director, when applicable;

(5) the aggregate amount of all contributions made to the person, if any, for the purpose of influencing the outcome of an election; for all contributions to the person that exceed $100 in the aggregate in a year, the date of the contribution and amount contributed by each contributor; and for a contributor

(A) who is an individual, the name, address, principal occupation, and employer of the contributor; or

(B) that is not an individual, the name and address of the contributor and the name and address of each officer and director of the contributor [EXPENDITURES. THE REPORT SHALL BE FILED WITH THE COMMISSION NO LATER THAN 10 DAYS AFTER THE EXPENDITURE IS MADE].

*** Sec. 5.** AS 15.13.040(h) is amended to read:

(h) The provisions of (d) of this section do not apply to one or more expenditures made by an individual acting independently of any **other person** [GROUP OR NONGROUP ENTITY AND INDEPENDENTLY OF ANY OTHER INDIVIDUAL] if the expenditures

(1) cumulatively do not exceed $500 during a calendar year; and

(2) are made only for billboards, signs, or printed material concerning a ballot proposition as that term is defined by AS 15.13.065(c).

*** Sec. 6.** AS 15.13.040(p) is amended to read:

(p) For purposes of (b), **(e),** and (j) of this section, "contributor" means the true source of the funds, property, or services being contributed.

*** Sec. 7.** AS 15.13 is amended by adding a new section to read:

Sec. 15.13.052. Independent expenditures; political activities accounts. (a) Before making an independent expenditure in support of or in opposition to a candidate or before making an independent expenditure in support of or in opposition to a ballot proposition or question, each person other than an individual, candidate, or nongroup entity with an annual operating budget of $250 or less, shall establish a political activities account. The political activities account may be a separate account in the person's general treasury. The political activities account must be administered using generally accepted accounting principles. All funds used by the person to make independent expenditures must be drawn from the person's political activities account.

(b) Records necessary to substantiate that the requirements of (a) of this section have been met must be made available for inspection by the commission.

(c) Each person who has established a political activities account under this section shall preserve all records necessary to substantiate the person's compliance with the requirements of this section for each of the six preceding years.

*** Sec. 8.** AS 15.13.067 is amended to read:

Sec. 15.13.067. Who may make expenditures. Only the following may make an expenditure **that is not an independent expenditure** in an election for candidates for elective office:

(1) the candidate;

(2) an individual;

(3) a group that has registered under AS 15.13.050; and

(4) a nongroup entity that has registered under AS 15.13.050.

*** Sec. 9.** AS 15.13.082(b) is amended to read:

(b) A **person, other than an individual exempt from reporting under AS 15.13.040(h),** [CANDIDATE, GROUP, OR NONGROUP ENTITY] may not

make an expenditure unless the source of the expenditure has been disclosed as required by this chapter.

*** Sec. 10.** AS 15.13.084 is amended to read:

Sec. 15.13.084. Prohibited expenditures. A person may not make an expenditure

(1) anonymously, unless the expenditure is

(A) paid for by an individual acting independently of any **person** [GROUP OR NONGROUP ENTITY AND INDEPENDENTLY OF ANY OTHER INDIVIDUAL];

(B) made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065(c); and

(C) made for

(i) a billboard or sign; or

(ii) printed material, other than an advertisement made in a newspaper or other periodical;

(2) using a fictitious name or using the name of another.

*** Sec. 11.** AS 15.13.090 is amended to read:

Sec. 15.13.090. Identification of communication. (a) All communications shall be clearly identified by the words "paid for by" followed by the name and address of the **person** [CANDIDATE, GROUP, NONGROUP ENTITY, OR INDIVIDUAL] paying for the communication. In addition,

(1) candidates and groups may identify the name of their campaign chairperson**; and**

(2) a person other than a candidate, an individual, or a political party shall clearly

(A) identify the person's principal officer and the officer's title;

(B) include a statement from the principal officer approving the communication;

(C) provide the address of the person's principal place of business;

(D) identify the name and city and state of residence or principal place of business, as applicable, of each of the person's five largest contributors under AS 15.13.040(e)(5), if any, during the 12-month period before the date of the communication; and

(E) state that the communication, if made to influence the outcome of an election for elective office, is not authorized or approved by any candidate.

(b) The provisions of (a) of this section do not apply when the communication

(1) is paid for by an individual acting independently of any **other person** [GROUP OR NONGROUP ENTITY AND INDEPENDENTLY OF ANY OTHER INDIVIDUAL];

(2) is made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065(c); and

(3) is made for

(A) a billboard or sign; or

(B) printed material other than an advertisement made in a newspaper or other periodical.

*** Sec. 12.** AS 15.13.090 is amended by adding a new subsection to read:

(c) To satisfy the requirements of (a)(2)(C) of this section and, if applicable, (a)(2)(D) of this section, the following statement or statements must be read, in a manner that is easily heard, or placed in the communication so as to be easily discernable, or, in a communication that is transmitted by a method that includes both audio and video components, be read in a manner that is easily heard and placed in the communication so as to be easily discernable:

This communication was paid for by (person's name and city and state of principal place of business).

The top contributors of (person's name) are (the name and city and state of residence or principal place of business, as applicable, of the largest contributors to the person under AS 15.13.090(a)(2)(D)).

*** Sec. 13.** AS 15.13.110 is amended by adding a new subsection to read:

(g) An independent expenditure report required under AS 15.13.040(e) shall

be filed with the commission not later than 10 days after an independent expenditure has been made. However, an independent expenditure that exceeds $250 and that is made within nine days of an election shall be reported to the commission not later than 24 hours after the expenditure is made.

* **Sec. 14.** AS 15.13.111(a) is amended to read:

(a) Each [CANDIDATE, GROUP, NONGROUP ENTITY, OR] person required to report under this chapter shall preserve all records necessary to substantiate information required to be reported under this chapter for a period of six years from the date of the election for which the information was required to be reported, unless the records have been submitted to the commission under (c) of this section.

* **Sec. 15.** AS 15.13.135 is amended to read:

Sec. 15.13.135. Independent expenditures for or against candidates. (a) [ONLY AN INDIVIDUAL, GROUP, OR NONGROUP ENTITY MAY MAKE AN INDEPENDENT EXPENDITURE SUPPORTING OR OPPOSING A CANDIDATE FOR ELECTION TO PUBLIC OFFICE.] An independent expenditure supporting or opposing a candidate for election to public office, except an independent expenditure made by a nongroup entity with an annual operating budget of $250 or less, shall be reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other requirements of this chapter.

(b) **A person** [AN INDIVIDUAL, GROUP, OR NONGROUP ENTITY] who makes independent expenditures for a mass mailing, for distribution of campaign literature of any sort, for a television, radio, newspaper, or magazine advertisement, or any other communication that supports or opposes a candidate for election to public office

(1) shall comply with AS 15.13.090; and

(2) shall place the following statement in the mailing, literature, advertisement, or other communication so that it is readily and easily discernible:

This NOTICE TO VOTERS is required by Alaska law. (I/we) certify that this (mailing/literature/advertisement) is not authorized, paid for, or approved by the candidate.

* **Sec. 16.** AS 15.13.140(a) is repealed.

*** Sec. 17.** This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT

BY COGHILL

Page 2, line 28;

After the words "making an", insert:

independent

Page 6, line 13:

After "(g) An", insert:

independent

AMENDMENT

BY COGHILL

Page 4, line 6 – 13:

Delete all language and insert:

Sec. 15.13.067. Who may make expenditures. Only the following may make an expenditure **that is not an independent expenditures** in an election for candidates for elective office:

(1) the candidate;

(2) an individual;

(3) a group that has registered under AS 15.13.050; and

(4) a nongroup entity that has registered under AS 15.13.050.

AMENDMENT

BY COGHILL

Page 5, lines 17 – 20:

Delete all language.

Page 5, line 16, after "In addition,"

Insert:

a person shall clearly

Page 5, line 26:

After "business;"

Insert: **and**

Line 27, after "(D)" delete:

[indentify the person's five largest contributors under AS 15.13.040(e)(5), if any, during the 12-month period before the date of the communication, with the words "top five contributors"; and

(E)]

AMENDMENT

OFFERED IN THE SENATE

TO: SB 284

Page 5, line 27, following "**the**":

Insert "**name and city and state of residence or principal place of business, as applicable, of each of the**"

Page 5, line 29, following "**communication**":

Delete "**, with the words "top five contributors"**"

Page 6, following line 11:

Insert a new bill section to read:

"*** Sec. 12.** AS 15.13.090 is amended by adding a new subsection to read:

(c) To satisfy the requirements of (a)(2)(C) of this section and, if applicable, (a)(2)(D) of this section, the following statement or statements must be read, in a manner that is easily heard, or placed in the communication so as to be easily discernable, or, in a communication that is transmitted by a method that includes both audio and video components, be read in a manner that is easily heard and placed in the communication so as to be easily discernable:

This communication was paid for by (person's name and city and state of principal place of business).

The top contributors of (person's name) are (the name and city and state of residence or principal place of business, as applicable, of the largest contributors to the person under AS 15.13.090(a)(2)(D))."

Renumber the following bill sections accordingly.

Audible Disclaimer Why it is important for Independent Expenditures:

1. Unlike regular ads, the money that can go into "independent expenditures" is Unlimited. Given the danger of unlimited spending by unions, corporations, environmental and business groups, stronger disclosure of who really is dumping money into an ad is important.
2. With the long "disclaimer (5 top contributors) – a 4 second flash on the screen of a very long "paid for" line won't be noticed by voters. The verbal disclaimer is really needed here.
3. Alpheus Bullard wrote the language (under current law, TV advertisers are given the OPTION of a written or verbal disclaimer) – he can testify if you have language questions.

26-LS1448\A.8
Bullard
3/12/10

AMENDMENT #6

OFFERED IN THE SENATE BY SENATOR COGHILL

TO: SB 284

Page 4, lines 5 - 14:

Delete all material and insert:

"* **Sec. 7.** AS 15.13.067 is amended to read:

Sec. 15.13.067. Who may make expenditures. Only the following may make an expenditure **that is not an independent expenditure** in an election for candidates for elective office:

(1) the candidate;

(2) an individual;

(3) a group that has registered under AS 15.13.050; and

(4) a nongroup entity that has registered under AS 15.13.050."

Page 5, lines 3 - 11:

Delete all material.

Renumber the following bill sections accordingly.

26-LS1448\A.9
Bullard
3/12/10

AMENDMENT #5

OFFERED IN THE SENATE BY SENATOR COGHILL

TO: SB 284

Page 5, line 13, through page 6, line 1:

Delete all material and insert:

"**Sec. 15.13.090. Identification of communication.** (a) All communications shall be clearly identified by the words "paid for by" followed by the name and address of the **person** [CANDIDATE, GROUP, NONGROUP ENTITY, OR INDIVIDUAL] paying for the communication. In addition, **a person shall clearly**

(1) provide the person's address, or the address of the person's principal place of business;

(2) for a person other than an individual or candidate, include

(A) the name and title of the person's principal officer; and

(B) a statement from the principal officer approving the communication; and

(3) for a candidate, include

(A) the name of the candidate; and

(B) a statement from the candidate approving the communication [CANDIDATES AND GROUPS MAY IDENTIFY THE NAME OF THEIR CAMPAIGN CHAIRPERSON]."

26-LS1448\A.6
Bullard
3/11/10

AMENDMENT #4

OFFERED IN THE SENATE BY SENATOR FRENCH

TO: SB 284

Page 5, line 27, following "**the**":

Insert "**name and city and state of residence or principal place of business, as applicable, of each of the**"

Page 5, line 29, following "**communication**":

Delete "**, with the words "top five contributors"**"

Page 6, following line 11:

Insert a new bill section to read:

"*** Sec. 12.** AS 15.13.090 is amended by adding a new subsection to read:

(c) To satisfy the requirements of (a)(2)(C) of this section and, if applicable, (a)(2)(D) of this section, the following statement or statements must be read, in a manner that is easily heard, or placed in the communication so as to be easily discernable, or, in a communication that is transmitted by a method that includes both audio and video components, be read in a manner that is easily heard and placed in the communication so as to be easily discernable:

This communication was paid for by (person's name and city and state of principal place of business).

The top contributors of (person's name) are (the name and city and state of residence or principal place of business, as applicable, of the largest contributors to the person under AS 15.13.090(a)(2)(D))."

Renumber the following bill sections accordingly.

2412

26-LS1448\A.4
Bullard
3/12/10

AMENDMENT #3

OFFERED IN THE SENATE BY SENATOR FRENCH

TO: SB 284

Page 4, following line 4:

Insert a new bill section to read:

"* **Sec. 7.** AS 15.13 is amended by adding a new section to read:

Sec. 15.13.052. Independent expenditures; political activities accounts. (a) Before making an independent expenditure in support of or in opposition to a candidate or before making an independent expenditure in support of or in opposition to a ballot proposition or question, each person other than an individual, candidate, or nongroup entity with an annual operating budget of $250 or less, shall establish a political activities account. The political activities account may be a separate account in the person's general treasury. The political activities account must be administered using generally accepted accounting principles. All funds used by the person to make independent expenditures must be drawn from the person's political activities account.

(b) Records necessary to substantiate the requirements of (a) of this section must be made available for inspection by the commission.

(c) Each person who has established a political activities account under this section shall preserve all records necessary to substantiate the person's compliance with the requirements of this section for each of the six preceding years."

Renumber the following bill sections accordingly.

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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 12, 2010

SUBJECT: Political activities account amendment to SB 284
(Work Order No. 26-LS1448\A.4 to SB 284)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy French

FROM: Alpheus Bullard TLAB
Legislative Counsel

I have one comment regarding amendment A.4.

If this amendment is to be incorporated into the bill, you may wish to consider further amending the bill to require a person to report to the Alaska Public Offices Commission (commission) when funds are deposited into, or expended from, the person's political activities account. Such a change would shift a number of the requirements of the current bill's expenditure report section (sec. 4 of SB 284, 26-LS1448\A) to the political activities account section added by this amendment. Reporting requirements for the political activities account would also have to be included.

Such a change is not legally or constitutionally required. At present, the bill requires a person making an expenditure under AS 15.13.040(d) to report the persons' contributors, if any, when making an expenditure report under AS 15.13.040(e). It may be more efficient for both persons making independent expenditures and the commission to have funds received into, and withdrawn from, a political activities account reported.

You may wish to confer with the appropriate personnel at the commission about the above suggestion.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw
10-168.ljw

Enclosure

26-LS1448\A.7
Bullard
3/12/10

AMENDMENT #2

OFFERED IN THE SENATE

BY SENATOR COGHILL

TO: SB 284

Page 2, line 28, following "an":

Insert "**independent**"

Page 6, line 13, following "An":

Insert "independent"

Page 6, line 14, following "an":

Insert "independent"

Page 6, line 15, following the first occurrence of "an":

Insert "independent"

2415

26-LS1448\A.3
Bullard
3/11/10

AMENDMENT #1

OFFERED IN THE SENATE BY SENATOR FRENCH

TO: SB 284

Page 2, line 28:

Following "an":

Insert "**independent**"

Following "expenditures":

Insert "**made and contributions received**"

2416

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 12, 2010

SUBJECT: Amendment 26-LS1448\A.3 (SB 284)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies the amendment described above. I have one comment.

In addition to the change you requested, I added the word "independent" to "expenditure" to clarify that the reporting requirements of AS 15.13.040(d) and (e) apply only to independent expenditures. In current law these provisions read "expenditure." However, it is the practice of the Alaska Public Offices Commission to require only the reporting of independent expenditures under these subsections. Candidates, groups, and nongroup entities report their expenditures under AS 15.13.040(a), (b), and (j) respectively.[1]

If you have any questions, please do not hesitate to contact me.

TLAB:lmb
10-003.lmb

Enclosure

[1] See 2 AAC 50.336(a), which provides:

> (a) A candidate, group, or nongroup entity who regularly files reports under 2 AAC 50.321 and satisfies the applicable requirements of AS 15.13.040(a), (b), (c), and (j) need **not also file a statement of contribution or of independent expenditure under AS 15.13.040(d) or (e)** (emphasis added).

SEAN PARNELL
GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

LABOR & STATE AFFAIRS
1031 WEST 4th AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-6612
FAX: (907) 258-4978

March 9, 2010

VIA U.S. MAIL

Cindy Smith
Office of Senator Hollis French
State Capitol Room 417
Juneau AK, 99801

Re: *Response to your Inquiry Regarding Senate Bill 284*

In response to *Citizens United v. FEC*, Senate Bill 284 (SB 284), as proposed, permits companies and labor unions to make expenditures in candidate elections. Companies and labor unions would still be restricted from making contributions directly to candidates. Arguably, the definitions of expenditure and contribution overlap. See AS 15.13.400(4); 15.13.400(6)(A)(iii). Consider clarification of these definitions.

SB 284 (Section 11) would require the company or labor union to disclose the top five contributors to the expenditure. Section 11 does not clarify the proper disclosure if several contributors contribute the same amount of money. For instance, the company or labor union would have no statutory guidance if its top 10 contributors all contribute equally to the expenditure.

SB 284 (Section 4) would require the company or labor union to disclose each officer or director of the company or labor union. SB 284 allows entities other than corporations and labor unions to make expenditures in candidate elections. It may be appropriate to expand this disclosure requirement to more than officers and directors.

These are my initial impressions and do not hesitate to contact me with further questions.

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By:
John M. Ptacin
Assistant Attorney General
Alaska Bar No. 0412106

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MEMORANDUM March 12, 2010

SUBJECT: Amendment 26-LS1448\A.5 to SB 284
(Work Order No. 26-LS1448\A.5)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard TLAB
Legislative Counsel

You requested an amendment that would require "in addition to ads that specifically support or oppose candidates, all ads during an election season that refer to a candidate for office [to] disclose and use disclaimers." Section 11 of SB 284 requires certain information to be identified in all communications. Communication is defined under AS 15.13.400(3):

> "communication" means an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing $500 or less and those that do not directly or indirectly identify a candidate or proposition, as that term is defined in AS 15.13.065(c)[.]

Any communication that directly or indirectly identifies a candidate is required to contain the disclaimer and information required by AS 15.13.090. The expenditure or independent expenditure made to fund the communication must be disclosed to the Alaska Public Office Commission under AS 15.13.040.

I have placed this amendment on hold, pending further instruction from your office. If I have misapprehended the nature of your request or if you would like to cancel the amendment, please do not hesitate to contact me.

TLAB:lmb
10-004.lmb

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

March 15, 2010

TO: Alpheus Bullard

FROM: Cindy Smith for Senator Hollis French

RE: new CS for SB284

Please draft a new CS for SB284 (26-LS1448\R): with the following amendments

On page 6, delete lines 5, 6 and 7.

Amendment R.2, attached

We'll need it for the committee meeting on Wednesday – if possible I'd like to get it in time to make copies and distribute them, so if I can have it Tuesday afternoon that'd be great!

26-LS1448\R.2
Kurtz
3/15/10

AMENDMENT #2

OFFERED IN THE SENATE BY SENATOR COGHILL

TO: CSSB 284(JUD), Draft Version "R"

Page 7, following line 30:

Insert a new bill section to read:

"* **Sec. 16.** AS 15.56.014(a) is amended to read:

(a) A person commits the crime of campaign misconduct in the second degree if the person

(1) knowingly circulates or has written, printed or circulated a letter, circular, or publication relating to an election, to a candidate at an election, or an election proposition or question without the name and address of the author appearing on its face;

(2) except as provided by AS 15.13.090(b), knowingly prints or publishes an advertisement, billboard, placard, poster, handbill, paid-for television or radio announcement, or communication, as that term is defined in AS 15.13.400, intended to influence the election of a candidate or outcome of a ballot proposition or question without the words "paid for by" followed by the name and address of the **person** [CANDIDATE, GROUP, OR INDIVIDUAL] paying for the advertising or communication and, if a candidate or group, with the name of the campaign chair;

(3) knowingly makes a communication, as that term is defined in AS 15.13.400,

(A) containing false factual information relating to a candidate for an election;

(B) that the person knows to be false; and

(C) that would provoke a reasonable person under the circumstances to a breach of the peace or that a reasonable person would

construe as damaging to the candidate's reputation for honesty or integrity, or to the candidate's qualifications to serve if elected to office."

Renumber the following bill sections accordingly.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

March 16, 2010

TO: Alpheus Bullard

FROM: Cindy Smith for Senator Hollis French

RE: Amendment to CSSB284\E

Please draft an amendment to CSSB284\E to do the following:

In section 12 provide language that distinguishes that audio disclaimers are only required to provide the person's name (and not city and state of principal place of business) and the names of the largest contributors (again, not the city and state of principal place of business) of the largest contributors to the person under AS.15.13.090(a)(2)(D).

We need to differentiate this from print requirements, which stay the same.

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MEMORANDUM March 1, 2010

SUBJECT: Senate Bill 284 and Attorney General's analysis of Citizens United and its effect on Alaska law (Work Order No. 26-LS1448\A)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard TLAB
Legislative Counsel

You asked whether Senate Bill 284 (SB 284) addresses the effects on AS 15.13 (state elections) of the United States Supreme Court's decision in Citizens United v. Federal Elections Commission, No. 08-205, 558 U.S. ___ (January 21, 2010), identified in the Attorney General's opinion of February 19, 2010.[1]

Citizens United implicates the state's existing statutory prohibition against labor unions and certain corporations making independent expenditures for the purpose of influencing state elections. The Attorney General's opinion identifies AS 15.13.067 and AS 15.13.135(a)[2] as statutes that are likely invalidated by the ruling and recommends that certain state campaign finance laws relating to the identification of communications[3] and the disclosure of expenditures[4] be amended "to provide more clarity for Alaskans."

While the Attorney General's opinion does not prescribe how AS 15.13 should be amended to conform with Citizens United, SB 284 amends AS 15.13.067 and AS 15.13.135(a) to no longer prohibit labor unions and corporations from making independent expenditures in state election campaigns and additionally amends, and adds to, the body of state law governing the reporting of expenditures and the identification of communications in state elections.

If you have further questions, please do not hesitate to contact me.

TLAB:ljw
10-132.ljw

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[1] Available on February 26th at http://www.law.state.ak.us/pdf/civil/021910-citizen.pdf.

[2] See the Attorney General's opinion of February 19, 2010, at pages 5 - 6.

[3] Id. at 6 - 7.

[4] Id. at 6 - 8.

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MEMORANDUM March 17, 2010

SUBJECT: Amendments E.4 and E.5 to CSSB 284(JUD)
(Work Order No. 26-LS1448\E)

TO: Senator Bill Wielechowski
Attn: Shelly Morgan

FROM: Alpheus Bullard TAB
Legislative Counsel

This memorandum accompanies the amendments described above.

Amendment E.4
Amendment E.4 prohibits a foreign national from making directly, or indirectly, a contribution or expenditure in connection with a state election.

The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating, or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly.[1] Because 2 U.S.C. 441e already clearly prohibits foreign nationals from making campaign contributions, expenditures, and independent expenditures in federal, state, and local elections, a state effort to legislate in this area may face a preemption challenge.

The Supremacy Clause, Art. VI, cl. 2 of the Constitution of the United States, provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Alaska Supreme Court has noted that "[u]nder the Supremacy Clause of the federal constitution, state laws that interfere with federal laws are invalid." Allen v. State, 203 P.3d 1155, 1161, n. 12 (Alaska 2009), quoting State v. Dupier, 118 P.3d 1039, 1049 (Alaska 2005). The court recently summarized federal preemption law as follows:

> There is a presumption against federal preemption of state law, and preemption doctrine "enjoin[s] seeking out conflicts between state and

[1] See 2 U.S.C. § 441e, 22 U.S.C. § 611(b), and 11 C.F.R. 110.4.

> federal regulation where none clearly exists." Additionally, "[w]here co-ordinate state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes," . . . "the case for federal pre-emption becomes a less persuasive one." But where state law comes into conflict with federal law, the Supremacy Clause of the United States Constitution dictates that state law must always yield.
>
> There are three major types of federal preemption of state law: "express," "field," and "conflict" preemption. Express preemption occurs when Congress explicitly declares an intent to preempt state law in a particular area. . . .
>
> Field preemption is the term used when the federal law governing a particular area is so comprehensive and so complete that Congress is said to have completely occupied a field, leaving no room for state law. We "will not infer an intent to occupy the field where Congress has left some room for state involvement." . . .
>
> Conflict preemption occurs when a state law and a federal law are in conflict, either because compliance with both state and federal law is impossible or because the state law "stands as an obstacle to accomplishment and execution of the full purposes and objectives of Congress." . . .

Allen v. State, 203 P.3d 1155, 1160 - 1161 (Alaska 2009) (citations and footnotes omitted).

The state clearly does not have authority to regulate contributions and expenditures in campaigns for federal office; that has been expressly preempted by federal law. 2 U.S.C. 453 (specifying that the provisions of the federal election campaigns act "supersede and preempt any provision of state law with respect to election to federal office."); 11 C.F.R. 108.7(b)(3) (federal law "supersedes state law concerning the . . . [l]imitation on contributions and expenditures regarding Federal candidates and political committees.").

Whether the state may regulate contributions and expenditures from foreign nationals in campaigns for state office is less clear. I am not aware of any federal statute or regulation which expressly preempts state regulation of foreign contributions and expenditures in campaigns for state office. However, field preemption may come into play here. To the extent a court found that the federal law governing contributions and expenditures by foreign nationals is so comprehensive and complete as to "occupy the field," it could invalidate state law attempting to cover the same ground. To the extent that the state and federal laws conflict, conflict preemption is also a possibility. Proposed AS 15.13.068(c) is an attempt to avoid conflicts with federal law as much as possible, but it may not succeed.

Amendment E.5

Amendment E.5 prohibits a person that is owned or controlled, in any part, by a foreign national from making an expenditure in connection with a state election. This amendment raises significant First Amendment issues. Given that that federal law already prohibits foreign nationals from directly or indirectly making contributions or expenditures in connection with a state election, I don't know what compelling state interest would serve as justification for such a prohibition. Because any large publicly traded domestic corporation is likely to have some foreign shareholders, a court is likely to interpret such a provision, if enacted, as an indirect prohibition against independent expenditures made by these persons, a violation of the First Amendment under Citizens United v. Federal Election Commission, 558 U.S. ___ (2010).

Because the amendment applies only to persons that are owned or controlled in some part by foreign nationals, whether the ownership interest be a majority interest or a de minimus minority interest, the amendment also raises equal protection issues. Alaska evaluates equal protection claims using a sliding scale.[2] There are several steps involved. First, the court determines the importance of the interest impaired by the challenged statute. Then the court looks at the purposes served by the statute. Finally, the court looks at how well the statutory means fits the purpose. "The common question in addressing equal protection cases is whether two groups of people who are treated differently are similarly situated and thus entitled to equal treatment."[3] In order for a classification to be valid under the state's equal protection test, it must be reasonable, not arbitrary, and must bear a fair and substantial relation to a legitimate governmental objective. Wilson v. Municipality of Anchorage, 669 P.2d 569, 572 (Alaska 1983). Under the amendment, a domestic corporation with .005 percent foreign ownership, in which a foreign national or nationals are unable to exert any meaningful control, would be treated differently from a publicly traded corporation that, by chance, has no shares held by foreign nationals. A court is unlikely to interpret this disparate treatment of domestic corporations as reasonable, and I don't know what state interest could be articulated as justification for such a prohibition.

TLAB:plm
10-150.plm

Enclosures

[2] Matanuska-Susitna Borough School v. State, 931 P.2d 391, 396 (Alaska 1997).

[3] Anderson v. State, 78 P.3d 710, 718 (Alaska 2003).

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MEMORANDUM March 17, 2010

SUBJECT: Committee questions of March 15, 2010 (CSSB 284(JUD))
(Work order No. 26-LS1448\E)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard
Legislative Counsel

As part of a legislative response to the United States Supreme Court's ruling in Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. ___ (January 21, 2010), you requested a legal opinion as to whether the state could prohibit independent expenditures made in connection with a state election, by (1) foreign nationals, (2) American subsidiaries of foreign nationals, (3) domestic corporations owned in part by foreign nationals, and (4) domestic corporations or entities not domiciled in Alaska.

Any statute prohibiting a person from making an independent expenditure in connection with a state election is likely to be challenged on First Amendment grounds. A state prohibition against independent expenditures made by foreign nationals, who are already prohibited from making contributions or expenditures in connection with federal, state, or local elections under federal law, raises federal preemption issues. Prohibiting independent expenditures by domestic subsidiaries of foreign corporations, domestic corporations owned in part by foreign nationals, and domestic corporations or entities not domiciled in Alaska raise additional constitutional issues.

First Amendment

The First Amendment of the Constitution of the United States protects freedom of speech and freedom of association.[1] Independent expenditures made in connection with state elections are protected speech under the First Amendment. See Randall v. Sorrell, 548 U.S. 230 (2006), and Buckley v. Valeo, 424 U.S. 1 (1976).

[1] Note that the freedom of speech provision in article I, section 5 of the Constitution of the State of Alaska is more protective of speech than the United States Constitution's First Amendment. Mickens v. City of Kodiak, 640 P.2d 818, 820 (Alaska 1982); Messerli v. State, 626 P.2d 81, 83 (Alaska 1980).

An attempt to prohibit independent expenditures by any class or category of persons is likely to encounter constitutional problems associated with First Amendment protections of the rights of association and expression.

> The concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed "to secure the widest possible dissemination of information from diverse and antagonistic sources," and "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people."

Buckley, 424 U.S. at 48 - 49 (quoting New York Times Co. v. Sullivan, 376 U.S. 254, 266, 269 (1964) (citations omitted)). In State v. Alaska Civil Liberties Union, 978 P.2d 597 (1999), the Alaska Supreme Court observed that existing campaign finance jurisprudence was based on the threat of corruption. Id. at 606 - 607. The Supreme Court has recently concluded that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. ___, Slip op. at 42 (January 21, 2010).

Given that independent expenditures have not been found to present a risk of corruption or the appearance of corruption, a state effort to prohibit independent expenditures from any source may face significant First Amendment hurdles.

The state's interest in prohibiting independent expenditures made by nonresidents or persons domiciled outside the state

I am not aware of any applicable judicial decision holding that protecting state residents from nonresident domination or enhancing voter participation is a compelling state interest. See Alaska Civil Liberties Union, 978 P.2d at 615. Instructive, however, is VanNatta v. Keisling, 151 F.3d 1215 (9th Cir. 1998), in which the Ninth Circuit invalidated a geographically based restriction on political contributions enacted by initiative in Oregon. The court found:

> Measure 6 bans all out-of-district donations, regardless of size or any other factor that would tend to indicate corruption. Appellants are unable to point to any evidence which demonstrates that all out-of-district contributions lead to the sort of corruption discussed in Buckley. . . . Measure 6 is not closely drawn to advance the goal of preventing corruption and under this analysis fails to pass muster under the First Amendment.

Id. at 1221. The proponents of the initiated law in VanNatta also offered an alternate justification for the measure, apart from the corruption rationale. They argued that the measure protected the state's interest in the integrity of republican government by, in the

court's words, "assuring that representatives are truly selected by their own constituents." Id. However, the court rejected this justification, observing that "[t]he right to a republican form of government has never been recognized as a sufficiently important state interest." Id., citing Whitmore v. Federal Election Comm'n, 68 F.3d 1212 (9th Cir.1995) (rejecting the same argument as a justification for a ban on out-of-state contributions in Alaska). A state law prohibiting independent expenditures made by persons who are citizens of, or who are domiciled in, other states would be similarly evaluated by a court, and absent some evidence showing the corrupting influence of non-resident expenditures, would be struck down by a court.

Privileges and immunities

Prohibiting independent expenditures from non-residents would also be subject to challenge under the privileges and immunities clause. The federal privileges and immunities clause restricts the state's ability to interfere with the fundamental rights of non-residents. See Robison v. Francis, 713 P.2d 259, 263 (Alaska 1986). The Alaska Supreme Court has summarized the effect of the privileges and immunities clause as follows:

> Article IV, section 2 prohibits discrimination against nonresidents "where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states." No "substantial reason" will be found absent some showing that nonresidents are "a peculiar source of the evil" which the state's action is meant to remedy. In addition, the discrimination worked upon nonresidents must "bear a substantial relationship to the particular 'evil' they are said to present." Only if the challenged discriminatory action surmounts both of these hurdles will it survive privileges and immunities clause scrutiny.

Noll v. Alaska Bar Association, 649 P.2d 241, 244 (Alaska 1982) (quoting Toomer v. Witsell, 334 U.S. 385, 396 (1948), and Hicklin v. Orbeck, 437 L.Ed.2d 397, 404 (1978); citations omitted). So, in addition to having to provide a "compelling justification" for the measure to satisfy the First Amendment, you would also need to show a "substantial reason" why a prohibition against independent expenditures should apply only to non-residents in order to withstand a privileges and immunities clause challenge.

Equal protection

If the state were to prohibit domestic subsidiaries of foreign corporations, domestic corporations owned in part by foreign nationals, or domestic corporations or other organizations not domiciled in the state from making independent expenditures in connection with a state election, the prohibition would likely also face an equal protection challenge. "The common question in addressing equal protection cases is whether two groups of people who are treated differently are similarly situated and thus entitled to

equal treatment."[2] In order for a classification to be valid under the state's equal protection test, it must be reasonable, not arbitrary, and must bear a fair and substantial relation to a legitimate governmental objective. Wilson v. Municipality of Anchorage, 669 P.2d 569, 572 (Alaska 1983). Alaska evaluates equal protection claims using a sliding scale.[3] There are several steps involved. First, the court determines the importance of the interest impaired by the challenged statute. Then the court looks at the purposes served by the statute. Finally, the court looks at how well the statutory means fits the purpose.

Because federal law prohibits foreign nations from making contributions or expenditures, directly or indirectly, in connection with a state election, it is not clear to me what state purpose any of these possible prohibitions would serve. Consequently, I do not know how a court would evaluate the state's interest in prohibiting domestic subsidiaries of foreign corporations, domestic corporations owned in part by foreign nationals, or domestic corporations or other organizations not domiciled in the state from exercising their First Amendment right recognized in Citizens United to make independent expenditures.

Preemption

In Citizens United, the Supreme Court neither considered nor overruled the existing federal law that prohibits a "foreign national" from making a direct or indirect expenditure in connection with a federal, state, or local election. The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating, or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly.[4] Because 2 U.S.C. § 441e already clearly prohibits foreign nationals from making campaign contributions, expenditures, and independent expenditures in federal, state, and local elections, a state effort to legislate in this area may face a preemption challenge.

The Supremacy Clause, Art. VI, cl. 2 of the Constitution of the United States, provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

---

[2] Anderson v. State, 78 P.3d 710, 718 (Alaska 2003).

[3] Matanuska-Susitna Borough School v. State, 931 P.2d 391, 396 (Alaska 1997).

[4] See 2 U.S.C. § 441e, 22 U.S.C. § 611(b), and 11 C.F.R. 110.4.

The Alaska Supreme Court has noted that "[u]nder the Supremacy Clause of the federal constitution, state laws that interfere with federal laws are invalid." Allen v. State, 203 P.3d 1155, 1161, n. 12 (Alaska 2009), quoting State v. Dupier, 118 P.3d 1039, 1049 (Alaska 2005). The court recently summarized federal preemption law as follows:

> There is a presumption against federal preemption of state law, and preemption doctrine "enjoin[s] seeking out conflicts between state and federal regulation where none clearly exists." Additionally, "[w]here co-ordinate state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes," . . . "the case for federal pre-emption becomes a less persuasive one." But where state law comes into conflict with federal law, the Supremacy Clause of the United States Constitution dictates that state law must always yield.
>
> There are three major types of federal preemption of state law: "express," "field," and "conflict" preemption. Express preemption occurs when Congress explicitly declares an intent to preempt state law in a particular area. . . .
>
> Field preemption is the term used when the federal law governing a particular area is so comprehensive and so complete that Congress is said to have completely occupied a field, leaving no room for state law. We "will not infer an intent to occupy the field where Congress has left some room for state involvement." . . .
>
> Conflict preemption occurs when a state law and a federal law are in conflict, either because compliance with both state and federal law is impossible or because the state law "stands as an obstacle to accomplishment and execution of the full purposes and objectives of Congress." . . .

Allen v. State, 203 P.3d 1155, 1160 - 1161 (Alaska 2009) (citations and footnotes omitted).

The state clearly does not have authority to regulate contributions and expenditures in campaigns for federal office; that has been expressly preempted by federal law. 2 U.S.C. § 453 (specifying that the provisions of the federal election campaigns act "supersede and preempt any provision of state law with respect to election to federal office"); 11 C.F.R. 108.7(b)(3) (federal law "supersedes state law concerning the . . . [l]imitation on contributions and expenditures regarding Federal candidates and political committees.").

Whether the state may prohibit independent expenditures from foreign nationals in campaigns for state office is less clear. I am not aware of any federal statute or regulation which expressly preempts state regulation of foreign expenditures in campaigns for state

office. However, field preemption may come into play here. To the extent a court found that the federal law governing contributions and expenditures by foreign nationals is so comprehensive and complete as to "occupy the field," it could invalidate state law attempting to cover the same ground. To the extent that the state and federal laws conflict, conflict preemption is also a possibility.

If you have further questions, please do not hesitate to contact me.

TLAB:ljw:plm
10-191.ljw

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MEMORANDUM March 15, 2010

SUBJECT: Drafting issues (CSSB 284(JUD)) (Work Order No. 26-LS1448\R)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies the Committee Substitute you requested. I have three comments.

1. The requirement added by this draft's sec. 12 15.13.090(a)(2)(E), that "a person other than a candidate, an individual, or a political party shall clearly . . . state that [a] communication, if made to influence the outcome of an election for elective office, is not authorized or approved by any candidate[,]" is unnecessary. Existing AS 15.13.135(b)(2) already provides:

> (b) An individual, group, or nongroup entity who makes independent expenditures for a mass mailing, for distribution of campaign literature of any sort, for a television, radio, newspaper, or magazine advertisement, or any other communication that supports or opposes a candidate for election to public office . . . shall place the following statement in the mailing, literature, advertisement, or other communication so that it is readily and easily discernible:
> This NOTICE TO VOTERS is required by Alaska law. (I/we) certify that this (mailing/literature/advertisement) is not authorized, paid for, or approved by the candidate.

You may wish to consider an amendment to remove the redundant requirement of the bill's sec. 15.13.090(a)(2)(E).

2. The crime of campaign misconduct in the second degree is defined by AS 15.56.014. AS 15.56.014(a)(2) of that section provides that

> [a] person commits the crime of campaign misconduct in the second degree if the person . . . except as provided by AS 15.13.090(b), knowingly prints or publishes an advertisement, billboard, placard, poster,

> handbill, paid-for television or radio announcement, or communication, as that term is defined in AS 15.13.400, intended to influence the election of a candidate or outcome of a ballot proposition or question without the words "paid for by" followed by the name and address of the *candidate, group, or individual* paying for the advertising or communication and, if a candidate or group, with the name of the campaign chair . . . (emphasis added).

The phrase "candidate, group, or individual" should be amended to "person" to correspond to the changes made by the bill to AS 15.13.090.

3. Under sec. 12 of the bill (AS 15.13.090), the "five largest contributors" to the person paying for a communication must be identified in communications made by the person. The phrase "largest contributors" could be interpreted to refer to the size of the contributor. "Largest contributor" might be best replaced with "contributors of the largest amounts." Also, Mr. Ptacin, of the Department of Law, has expressed concern that the bill does not address the possibility of a person paying for a communication having more than five contributors that donate exactly equal amounts. I do not know how likely it is that a person would have contributors of equal amounts. This may be an issue that the Alaska Public Offices Commission (commission) can address in regulation, or, if it is your intent, some mechanism could be provided in the bill to deal with this scenario. Whether or not further clarification is required may be a matter that you wish to discuss with a member of the commission.

If you have any questions, please do not hesitate to contact me.

TLAB:ljw
10-177.ljw

Enclosure

Post-it® Fax Note 7671	Date	# of pages ▶ 1
To Alpheus Bullard	From Cindy	
Co./Dept.	Co.	
Phone #	Phone #	
Fax #	Fax #	

Cindy Smith

From: Ptacin, John M (LAW) [john.ptac
Sent: Monday, March 15, 2010 10:56
To: Cindy Smith
Subject: RE: any suggestions?

AS 15.13.040(e)(4) could benefit from expansive definitions. See Paragraph 3 of my letter last week. These definitions may help.

The term "officer" means a president, vice president, secretary, treasurer or principal financial of comptroller or

principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.

The term "director" means any director of a corporation or any person performing similar functi with respect to any organization whether incorporated or unincorporated.

John-

From: Cindy Smith [mailto:Cindy_Smith@legis.state.ak.us]
Sent: Friday, March 12, 2010 4:26 PM
To: Ptacin, John M (LAW)
Subject: any suggestions?

Did you have any suggestions for how to handle multiple top contributors if there are more than 5?

I've sent your letter over to Alpheus to think about as well, but any suggested language is always helpful!

Cindy Smith
Office of Senator Hollis French
(907) 465-3892
www.aksenate.org

A - please draft as an amendment to the working draft CS SB 284 -

C.

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MEMORANDUM March 12, 2010

SUBJECT: Expenditures, independent expenditures, and the effect of amendment 26-LS1448\A.8 to SB 284

TO: Senator John Coghill
Attn: Rynnieva Moss

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies amendment A.8 to SB 284.

This amendment would make explicit that the only expenditures that the bill permits, beyond those that are currently allowed, are the independent expenditures that the Court, in Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. ___ (January 21, 2010) (a case about independent election campaign expenditures made by corporations),[1] held could not be prohibited under the First Amendment.

The United States Supreme Court's Citizens United decision spoke in terms of "independent expenditures" in the course of an election campaign. Since the legal distinction between an "expenditure" on behalf of a candidate made by a corporation or labor union and a "contribution" from that corporation or labor union to the candidate is not entirely clear,[2] it seems best to follow the court's lead and to make explicit in the bill

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[1] Because one of the statutes involved in this case and considered by the Court concerned labor unions, it also, arguably, is a case about independent election campaign expenditures made by labor unions, though that is not made explicit in the U. S. Supreme Court opinion.

[2] See definitions for "contribution" and "expenditure" at AS 15.13.400:

> (4) "contribution"
>
> (A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made and that is made for the purpose of influencing the nomination or election of a candidate, and in AS 15.13.010(b) for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or

that the only expenditures that may be made under AS 15.13 by a person that is not a candidate, individual, group, or nongroup entity, are independent expenditures.

---

political party, or compensation for the personal services of another person, that are rendered to the candidate or political party; . . .

(B) does not include

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;

(ii) ordinary hospitality in a home;

(iii) two or fewer mass mailings before each election by each political party describing the party's slate of candidates for election, which may include photographs, biographies, and information about the party's candidates;

(iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;

(v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party;

(6) "expenditure"

(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or political party of compensation for the personal services of another person that are rendered to a candidate or political party; or

(iv) influencing the outcome of a ballot proposition or question;

(B) does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(C) includes an express communication and an electioneering communication, but does not include an issues communication;

As a drafting matter, amendment A.8 proposes to modify existing AS 15.13.067 to clarify that the only persons permitted to make an expenditure that is not an independent expenditure in a state election are those persons who are currently permitted to do so under state law. Because AS 15.13.067(c)(3) is to be retained, there is no need to repeal the reference to that section that appears in bill section 9. Since the remainder of bill section 9 consists of technical changes, this amendment eliminates bill section 9.

If you have any questions, please do not hesitate to contact me.

TLAB:ljw
10-169.ljw

Enclosure

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

March 11, 2010

TO: Alpheus Bullard

FROM: Cindy Smith, Senate Judiciary Committee

RE: Amendments to SB284

After speaking with Senator French, he would like the following amendments drafted for the committee's review tomorrow:

1. In section 3, clarify that it is full report of contributions and expenditures (per Mike Frank's suggestion).

2. Add language that makes it clear that a person making independent expenditures keep a separate account of funds used for this purpose.

3 The appropriate section or sections should be amended to clarify that in addition to ads that specifically support or oppose candidates, all ads during an election season that refer to a candidate for office must also disclose and use disclaimers.

4 Amend disclaimer language to include audio disclaimers, per attached language you drafted for the house bill.

AMENDMENT

OFFERED IN THE SENATE

TO: SB 284

Page 5, line 27, following "**the**":

Insert "**name and city and state of residence or principal place of business, as applicable, of each of the**"

Page 5, line 29, following "**communication**":

Delete "**, with the words "top five contributors"**"

Page 6, following line 11:

Insert a new bill section to read:

"*** Sec. 12.** AS 15.13.090 is amended by adding a new subsection to read:

(c) To satisfy the requirements of (a)(2)(C) of this section and, if applicable, (a)(2)(D) of this section, the following statement or statements must be read, in a manner that is easily heard, or placed in the communication so as to be easily discernable, or, in a communication that is transmitted by a method that includes both audio and video components, be read in a manner that is easily heard and placed in the communication so as to be easily discernable:

This communication was paid for by (person's name and city and state of principal place of business).

The top contributors of (person's name) are (the name and city and state of residence or principal place of business, as applicable, of the largest contributors to the person under AS 15.13.090(a)(2)(D))."

Renumber the following bill sections accordingly.

ALASKA STATE LEGISLATURE

SENATOR JOHN COGHILL

State Capitol, Room 504, Juneau, AK 99801-1182 (907) 465-3719
3340 Badger Road Suite #290, North Pole, AK 99705 (907) 488-5725

MEMORANDUM

Date: March 12, 2010

To: Alpheus Bullard, Legal Counsel

From: Rynnieva Moss, Legislative Aide RMoss

Re: Amendments for SB 284

I have attached three amendments to be prepared for Senate Judiciary this afternoon. Can you have them prepare for submittal? Thank you.

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MEMORANDUM March 10, 2010

SUBJECT: Constitutional Issues in CSHB 409(STA)
(Work Order No. 26-LS1495\S)

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Mike Sica

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies the draft committee substitute you requested. I have some concerns about the constitutionality of some of its provisions.

1. Bill Section 8 (expenditures and contributions by foreign nationals).
The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating, or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly.[1] Whether the state may regulate contributions and expenditures from foreign nationals in campaigns for state office is not clear. Because 2 U.S.C. 441e already clearly prohibits foreign nationals from making campaign contributions, expenditures, and independent expenditures in federal, state, and local elections, a state effort to legislate in this area may face a preemption challenge. To the extent a court might find that the federal law governing contributions and expenditures by foreign nationals is so comprehensive and complete as to "occupy the field," it could invalidate state law attempting to cover the same ground.

2. Bill Section 10 (anonymous expenditures).
Conceptual amendment number 9 deleted a portion of AS 15.13.084 that permits an individual, acting independently of any other person, to make an anonymous expenditure to influence the outcome of a ballot proposition, if the expenditure is made for a (1) billboard, (2) sign, or (3) printed material, other than an advertisement in a newspaper or other periodical. In McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995), the United States Supreme Court recognized an individual's First Amendment right to anonymous speech. A statute that prohibits an individual from making any anonymous expenditure, no matter how small, in connection with a state election is unlikely to survive scrutiny under the First Amendment or art. I, sec. 5 of the state constitution.[2]

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[1] See 2 U.S.C. § 441e, 22 U.S.C. § 611(b), and 11 C.F.R. 110.4.

[2] Note that the freedom of speech provision in article I, section 5 of the Constitution of the State of Alaska is more protective of speech than the United States' Constitution's

3. Bill Section 12 (precertification).
Subsection 15.13.090(c) requires the principal officer of a person (other than a candidate, individual, or political party) making a communication under AS 15.13.090 to certify to the Alaska Public Offices Commission that the officer has reviewed the communication and, based on the officer's knowledge, the communication is not defamatory and does not contain defamatory statements. This requirement burdens speech and may violate the First Amendment. Candidates, individuals, and political parties would not be required to provide these certifications, which creates a possible equal protection issue.

4. Bill Section 12 (identification of foreign ownership).
Subsection 15.13.090(e) requires a corporation or other person in which a foreign government holds a 10 percent ownership interest or more to identify the foreign government's ownership interest (in the person) in any communication under AS 15.13.090 paid for by that person. The regulation of foreign governments' involvement in state elections may be preempted by federal law (see 1., above). Requiring identification of a foreign government's ownership interest of 10 percent or more in a person paying for a communication under AS 15.13.090 also raises equal protection and First Amendment associational rights issues.

5. Bill Section 17 (severability).
This version of CSHB 409(STA) includes a severability provision. There is a general severability provision in the Alaska statutes (AS 01.10.030). Usually a severability clause is not included in a bill unless it is necessary to specify more details than are provided in AS 01.10.030.

Please note the changes to the title due to the inclusion of the adopted amendments.

The conceptual amendment to amendment #5 (26-LS1495\E.3) is located in a new subsection (f) to AS 15.13.090, found in sec. 12 of this draft.

Since the bill has passed out of your committee, please share the constitutional concerns identified in this memorandum with the next committee of referral. If you have any questions, please do not hesitate to contact me.

TLAB:ljw
10-148.ljw

Enclosure

First Amendment. Mickens v. City of Kodiak, 640 P. 2d 818, 820 (Alaska 1982); Messerli v. State, 626 P.2d at 83 (Alaska 1980). Additionally, the federal First Amendment right to anonymous speech may extend beyond individuals to encompass groups of individuals and organizations see American Civil Liberties Union of Nevada v. Heller, 378 F.3d 979, 989 - 991 (9th Cir. 2004).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 12, 2010

SUBJECT: Amendment 26-LS1448\A.5 to SB 284
(Work Order No. 26-LS1448\A.5)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard TLAB
Legislative Counsel

You requested an amendment that would require "in addition to ads that specifically support or oppose candidates, all ads during an election season that refer to a candidate for office [to] disclose and use disclaimers." Section 11 of SB 284 requires certain information to be identified in all communications. Communication is defined under AS 15.13.400(3):

> "communication" means an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing $500 or less and those that do not directly or indirectly identify a candidate or proposition, as that term is defined in AS 15.13.065(c)[.]

Any communication that directly or indirectly identifies a candidate is required to contain the disclaimer and information required by AS 15.13.090. The expenditure or independent expenditure made to fund the communication must be disclosed to the Alaska Public Office Commission under AS 15.13.040.

I have placed this amendment on hold, pending further instruction from your office. If I have misapprehended the nature of your request or if you would like to cancel the amendment, please do not hesitate to contact me.

TLAB:lmb
10-004.lmb

LEGAL SERVICES

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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 12, 2010

SUBJECT: Political activities account amendment to SB 284
(Work Order No. 26-LS1448\A.4 to SB 284)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy French

FROM: Alpheus Bullard TLAB
Legislative Counsel

I have one comment regarding amendment A.4.

If this amendment is to be incorporated into the bill, you may wish to consider further amending the bill to require a person to report to the Alaska Public Offices Commission (commission) when funds are deposited into, or expended from, the person's political activities account. Such a change would shift a number of the requirements of the current bill's expenditure report section (sec. 4 of SB 284, 26-LS1448\A) to the political activities account section added by this amendment. Reporting requirements for the political activities account would also have to be included.

Such a change is not legally or constitutionally required. At present, the bill requires a person making an expenditure under AS 15.13.040(d) to report the persons' contributors, if any, when making an expenditure report under AS 15.13.040(e). It may be more efficient for both persons making independent expenditures and the commission to have funds received into, and withdrawn from, a political activities account reported.

You may wish to confer with the appropriate personnel at the commission about the above suggestion.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw
10-168.ljw

Enclosure

26-LS1448\A.4
Bullard
3/12/10

AMENDMENT

OFFERED IN THE SENATE BY SENATOR FRENCH

TO: SB 284

Page 4, following line 4:

Insert a new bill section to read:

"* **Sec. 7.** AS 15.13 is amended by adding a new section to read:

Sec. 15.13.052. Independent expenditures; political activities accounts. (a) Before making an independent expenditure in support of or in opposition to a candidate or before making an independent expenditure in support of or in opposition to a ballot proposition or question, each person other than an individual, candidate, or nongroup entity with an annual operating budget of $250 or less, shall establish a political activities account. The political activities account may be a separate account in the person's general treasury. The political activities account must be administered using generally accepted accounting principles. All funds used by the person to make independent expenditures must be drawn from the person's political activities account.

(b) Records necessary to substantiate the requirements of (a) of this section must be made available for inspection by the commission.

(c) Each person who has established a political activities account under this section shall preserve all records necessary to substantiate the person's compliance with the requirements of this section for each of the six preceding years."

Renumber the following bill sections accordingly.

LEGAL SERVICES

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM January 25, 2010

SUBJECT: Citizens United v. Federal Election Commission
(Work Order No. 26-LS1367)

TO: Representative Jay Ramras
Attn: Jane Pierson

FROM: Alpheus Bullard
Legislative Counsel

You requested a legal analysis of the United States Supreme Court's ruling in Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. ___ (January 21, 2010), and its effect on Alaska law.

WHAT IS MOST SIGNIFICANT

The Court held that the government cannot suppress political speech on the basis of the speaker's corporate identity.

WHAT THE DECISION DOES NOT DO

This is a case about independent election campaign expenditures made by corporations. Because one of the statutes involved in this case and considered by the Court concerned labor unions, it also, arguably, is a case about independent election campaign expenditures made by labor unions, though that is not made explicit in the opinion. Laws regulating corporate and union contributions to candidates, party committees, and political action committees, whether direct or in-kind, are not directly affected by the ruling. Disclosure and disclaimer requirements for communications relating to elections for public office and laws requiring corporations and unions to identify the sources of money for their political activities are also unaffected.

FACTS AND PROCEDURAL POSTURE

The case involved a documentary critical of the then potential presidential candidacy of Hillary Clinton. The documentary, "Hillary: The Movie," was produced by Citizens United, a nonprofit corporation. Anticipating that it would make the documentary available within a time period prohibited under the Bipartisan Campaign Reform Act of 2002 (BCRA),[1] Citizens United sought declaratory and injunctive relief in the United

[1] 2 U.S.C. § 431 *et seq.* (also known as the McCain-Feingold Act (Pub. L. No. 107-155, 116 Stat. 81)).

States District Court for the District of Columbia seeking to prevent the Federal Election Commission (FEC) from enforcing provisions of the BCRA.[2] Citizens United argued that § 203 of the BCRA[3] violated the First Amendment on its face and as applied to the documentary and its related advertisements, and that §§ 201[4] and 311[5] of the Act, relating to disclosure, disclaimer, and reporting requirements were, as applied to the documentary, also unconstitutional.

The United States District Court denied the injunction, holding that under § 203 of the BCRA the documentary could not be shown on television in the 30 day period preceding the 2008 Democratic primaries. The court held that the BCRA prohibitions against corporate independent expenditures were constitutional, reasoning that the question had been answered by the Supreme Court in McConnell v. Federal Election Commission, 540 U.S. 93 (2003).[6] The United States District Court held that the documentary had no other purpose than to discredit Hillary Clinton and inform viewers that she was unfit for public office, and thus the provision of the BCRA relating to electioneering communications

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[2] Citizens United v. Fed. Election Commission, 530 F. Supp. 2d 274 (D.D.C. 2008).

[3] Section 203 of the BCRA regulates "electioneering communications." Generally, these are broadcast, cable, or satellite communications made within 60 days of a general election or 30 days of a primary election. 2 U.S.C. § 434(f)(3)(A)(i). Section 203 restricts corporations (other than media corporations) and labor organizations from funding electioneering communications from their general funds except under certain specific circumstances, e.g., get-out-the-vote campaigns. 2 U.S.C. § 441b(b)(2).

[4] Under § 201 of the BCRA, persons who disburse an aggregate of $10,000 or more a year for the production and airing of electioneering communications are required to file a statement with the Federal Election Commission (FEC) that includes the names and addresses of persons who have contributed in excess of $1,000 to accounts funding the communication. See 2 U.S.C. § 434(f)(1) and (2).

[5] Under the BCRA's § 311, the entity paying for a communication that is not authorized by a candidate or the candidate's political committee, must include in the communication a statement that the organization "is responsible for the content of this advertising." See 2 U.S.C. § 441d.

[6] In McConnell, the United States Supreme Court upheld § 203 as facially constitutional, reasoning that the justifications for regulating independent corporate expenditures constituting express advocacy "apply equally" to ads that are "the functional equivalent of express advocacy." Id. at 206. The Court held that the regulation of such independent expenditures was acceptable because the government has a compelling interest in countering the kind of "corrosive and distorting effect" identified in Austin. Id. at 205.

was not unconstitutionally applied. Lastly, the court ruled that the Act's disclosure, disclaimer, and reporting requirements were not unconstitutional as applied to the documentary or its advertisements.

Citizens United appealed the decision and the Supreme Court docketed the case on August 18, 2008,[7] hearing oral arguments on March 24, 2009. However, on June 29, 2009, the Supreme Court ordered the parties to reargue the case on September 9 after submitting briefs on the larger questions of whether the Court should overrule Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990)[8], that portion of McConnell 540 U.S. 93 (2003) that found § 203 of the BCRA to be facially valid, or both.

ANALYSIS

In Citizens United, 558 U.S. ___ (January 21, 2010), the Supreme Court considered (1) the validity of § 203 of the BCRA, which prohibits corporations and unions from using their general treasury funds to make independent expenditures for speech that is an "electioneering communication"; (2) the Court's prior holding in Austin that political speech may be banned based on the speaker's corporate identity; and (3) whether §§ 201 and 311 of the BCRA, which mandate disclaimer and disclosure requirements for Citizens United's ads, were constitutionally invalid.

Prohibitions on Independent Expenditures

The Court held that § 203 of the BCRA, which prohibits certain corporations and unions from using funds from their general treasuries[9] for certain independent expenditures made to influence the outcomes of elections for federal public office, was unconstitutional.[10] It

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[7] Under § 403(a)(3) of the BCRA, the final decision of the district court in this case is "reviewable only by appeal directly to the Supreme Court of the United States."

[8] In Austin, the Court upheld a Michigan law that barred corporations from using their general treasury funds to support or oppose any state candidate, even though the spending occurred independently of that candidate's campaign operation.

[9] Prior to the ruling, to spend money on "electioneering communications" under federal law, corporations and unions were required to establish political action committees (PACS) that had a separate legal identity from the corporation or union. PACS could receive limited donations from employees, shareholders, or organization members. Now, after the Citizens United decision, corporations and unions may spend money directly from their treasuries on independent expenditures to influence elections for public office.

[10] While § 203 of the BCRA applied equally to corporations and unions, independent expenditures made by unions were not an issue before the Court, and it is not explicit in the ruling that the BCRA's independent expenditure prohibition is lifted for unions.

determined that prohibitions on corporate independent expenditures are an impermissible "ban on speech," id. at 22, and that political speech does not lose First Amendment protection "simply because its source is a corporation," id. at 26.[11]

The Court held that the case could not be decided in an examination of the relevant provisions of the BCRA alone, because the fundamental legal rationale underlying the challenged provisions of the Act was itself unjustified by a sufficient governmental interest.[12] The Court held that this rationale, identified in Austin, the prevention of "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form that have little or no correlation to the public's support for the corporation's political ideas," id. at 660, is inconsistent with the protections offered speech and speakers by the First Amendment.[13]

Precedent Overturned

The Court overruled Austin, and those portions of McConnell that upheld the BCRA's restrictions on independent expenditures made by corporations and labor organizations. It did so holding that "no sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations[,]" and "[g]overnment may not suppress political speech on the basis of the speaker's corporate identity." Citizens United, 558 U.S. at 50.[14]

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[11] Of less immediate consequence, in the absence of acknowledgement by the Court of any permissible First Amendment distinctions between corporate and natural persons, the case raises questions relating to whether corporations' newly realized equality under the First Amendment will affect (1) the constitutionality of existing prohibitions against corporate contributions to candidates in elections for public office and (2) other corporate related constitutional jurisprudence. These remain for future litigation.

[12] "When constitutional questions are 'indispensably necessary' to resolving the case at hand, 'the court must meet and decide them.'" Citizens United v. Federal Election Commission, 558 U.S. at 4 of Roberts, C.J. (concurring opinion), quoting Ex parte Randolph, 20 F. Cas. 242, 254 (No. 11, 558) (CC Va. 1833) (Marshall, C.J.).

[13] The First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech . . . ."

Given the Court's interpretation of the requirements of the First Amendment, existing distinctions between "express advocacy" versus "issue advocacy" and "independent expenditures" versus contributions to candidates are less clear. Citizens United does not address these distinctions, but the logic underlying the decision suggests that they may soon be revisited.

[14] In addition to overturning Austin, the Court dismissed arguments that independent corporate expenditures in elections for federal office give rise to corruption or its appearance (Citizens United at 41 - 45) and that the government has a compelling interest

Disclosure and Disclaimer Requirements

The Court upheld the BCRA's disclosure and disclaimer requirements which were applied to the documentary (§§ 201 and 311 of the Act), holding that such requirements "may burden the ability to speak, but they 'impose no ceiling on campaign-related activities,' [Buckley v. Valeo, 424 U.S. 1, 64 (1976)] and 'do not prevent anyone from speaking,' McConnell, [540 U.S.] at 201." Citizens United, 558 U.S. at 51. Citing Buckley and McConnell, the Court held that these requirements bear a substantial relation to the government's interest in ensuring that the electorate is able to evaluate the arguments to which it is being subjected, and that Citizens United did not demonstrate that the requirements imposed a chill on the organization's (or the organization's members') speech or expression. Id. at 51 - 56.

EFFECT ON ALASKA LAW

1. Under existing AS 15.13.067 (who may make expenditures in an election for candidates for elective office) and AS 15.13.135 (independent expenditures for or against candidates), only individuals, groups, and nongroup entities, as these terms are defined under AS 15.13.400, are permitted to make independent expenditures supporting or opposing candidates in elections under AS 15.13.[15] The terms "individual," "group," and "nongroup entity" are defined at AS 15.13.400. Together, these provisions effectively prohibit independent expenditures by for-profit corporations, and are likely to be interpreted by a court as unconstitutional in light of this decision.[16]

2. For-profit corporations are currently prohibited from making independent expenditures for or against candidates in elections under AS 15.13. Because of that, existing state statutes relating to (1) disclosure of expenditures, (2) limitations on expenditures, (3) identification of communications, and (4) filing of reports[17] under AS 15.13 do not currently account for independent expenditures and communications by for-profit corporations. Given the silence of our state statutes, and the likelihood that our existing

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in regulating corporations' independent expenditures to protect dissenting shareholders from being compelled to fund corporate political speech. (Citizens United at 46 - 47).

[15] Under AS 15.13.010(a), AS 15.13 applies to elections for governor, lieutenant governor, a member of the state legislature, a delegate to a constitutional convention, and a judge seeking judicial retention, and to elections for municipal office in municipalities with a population of more than 1,000 inhabitants unless the municipality has exempted itself from the provisions of the chapter.

[16] These statutes remain the law for the State of Alaska. If left unchanged, will they be enforced? The state could attempt to enforce them; however, enforcement would likely be quickly curtailed once the aggrieved party petitioned the state's courts.

[17] See AS 15.13.040, AS 15.13.082, AS 15.13.090, and AS 15.13.110.

statutes will not be enforced following the Court's holding in Citizens United, there are now no limits on independent expenditures made by for-profit corporations and no statutory disclosure, identification, or reporting requirements for these expenditures.

If I may be of further assistance, please advise.

TLAB:plm
10-035.plm

Cindy Smith

From: Ptacin, John M (LAW) [john.ptacin@alaska.gov]
Sent: Monday, March 15, 2010 10:56 AM
To: Cindy Smith
Subject: RE: any suggestions?

AS 15.13.040(e)(4) could benefit from expansive definitions. See Paragraph 3 of my letter last week. These definitions may help.

The term "officer" means a president, vice president, secretary, treasurer or principal financial of comptroller or

principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.

The term "director" means any director of a corporation or any person performing similar functi with respect to any organization whether incorporated or unincorporated.

John-

From: Cindy Smith [mailto:Cindy_Smith@legis.state.ak.us]
Sent: Friday, March 12, 2010 4:26 PM
To: Ptacin, John M (LAW)
Subject: any suggestions?

Did you have any suggestions for how to handle multiple top contributors if there are more than 5?

I've sent your letter over to Alpheus to think about as well, but any suggested language is always helpful!

Cindy Smith
Office of Senator Hollis French
(907) 465-3892
www.aksenate.org

Cindy Smith

From: Ware, Patricia A (DOA) [patricia.ware@alaska.gov]
Sent: Wednesday, April 21, 2010 8:14 AM
To: Cindy Smith
Subject: RE: HB36 and SB284 pass

Cindy,

I took a couple days off but did watch gavel to gavel and see that both passed the noted the amendment. Kind of funny how after camping out over there a few weekends in a row, the process becomes even more fascinating (and maddening at times) but I confess that chips and gavel to gavel were a staple ...

And, I want to say again how very much I appreciate your expertise and shepherding me through some of the nuances of the process- I really enjoyed working with you and the staff. I continue to be amazed at your good humor in the face of some of the stuff that goes on – you are indeed a role model for all of us! Hope you are planning on some amount of a break soon ...

Patty Ware, Administrator, Juneau Office
Alaska Public Offices Commission (APOC)
patricia.ware@alaska.gov
Phone: (907) 465-4865 Fax: (907) 465-4832
http://doa.alaska.gov/apoc/

From: Cindy Smith [mailto:Cindy_Smith@legis.state.ak.us]
Sent: Monday, April 19, 2010 12:35 AM
To: Ware, Patricia A (DOA); Ptacin, John M (LAW); Hill, Holly R (DOA)
Subject: HB36 and SB284 pass

Thought I'd take a moment to thank each of you for all of your work on these bills – they both passed late this evening and you helped make them better bills.

By the way, the audio tv components in SB284 were restored in a floor amendment in the house....

Cindy

Cindy Smith

From: Ptacin, John M (LAW) [john.ptacin@alaska.gov]
Sent: Monday, April 12, 2010 1:46 PM
To: Cindy Smith
Subject: SB 284

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Cindy:
Headed to Fbx tomorrow. Just give a call on the cell with anything re SB 284.

John
304-2271

Cindy Smith

From: Ptacin, John M (LAW) [john.ptacin@alaska.gov]
Sent: Tuesday, March 16, 2010 10:00 AM
To: Cindy Smith
Subject: RE: any suggestions?

Hi:

That is a valid concern re the top 5.

Defining director and officer:

To follow up on the letter I submitted, APOC could best administer the proposed legislation if "principle officer" and "director" were defined. I believe SB 284 Section 4 wants any person routinely performing the duties of an officer or director to be included on the APOC reporting form.

I believe that the phrase "any person performing similar functions with respect to any organization whether incorporated or unincorporated," or some variation of this language, would apply the reporting requirement to loosely affiliated groups, labor unions, LLC's, essentially to any organization not in the corporate form. It would assist APOC administration because it clarifies that anyone acting as a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, etc., regardless of title, would need to report under Section 4 of the proposed legislation.

John-

From: Cindy Smith [mailto:Cindy_Smith@legis.state.ak.us]
Sent: Tuesday, March 16, 2010 9:33 AM
To: Ptacin, John M (LAW)
Subject: RE: any suggestions?

Hi John!

I am on the run and meant to get back to you yesterday - We looked at your idea for the 5-top contributors and I am not sure it will work. This is for a disclaimer in advertising and even doing 5 is pushing ad time! If there were more I don't see how it could be done. We're all still thinking about this requirement so I'll try to come up with something...

Do we have unincorporated corporations? Is that possible?

From: Ptacin, John M (LAW) [mailto:john.ptacin@alaska.gov]
Sent: Monday, March 15, 2010 10:56 AM

To: Cindy Smith
Subject: RE: any suggestions?

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The term "officer" means a president, vice president, secretary, treasurer or principal financial officer, comptroller or

principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.

The term "director" means any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

John-

From: Cindy Smith [mailto:Cindy_Smith@legis.state.ak.us]
Sent: Friday, March 12, 2010 4:26 PM
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Subject: any suggestions?

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I've sent your letter over to Alpheus to think about as well, but any suggested language is always helpful!

Cindy Smith
Office of Senator Hollis French
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MEMORANDUM

STATE OF ALASKA
DEPARTMENT OF LAW

TO: Mike Nizich
Chief of Staff
Office of the Governor

DATE: February 19, 2010

FROM: Daniel S. Sullivan
Attorney General

SUBJECT: Analysis of *Citizens United v. Federal Election Commission* and its Impact on Alaska Campaign Finance Laws

The following is our response to your request for an analysis of the United States Supreme Court's decision in *Citizens United v. Federal Election Commission* 558 U.S. ___, --- S.Ct. ---- (2010) and how that decision impacts Alaska's campaign finance laws. The ruling affects the balance between a government's interest in ensuring transparent and fair elections and the First Amendment rights of organizations, such as corporations and labor unions, to engage in political speech. In this memorandum we will describe the holding of the case as well as its direct and indirect effects on Alaska law.

I. Summary

Our analysis addresses two main points. First, under *Citizens United*, Alaska may not prohibit political speech by corporations and labor unions altogether.[1] As a result, our laws prohibiting independent expenditures by corporations and labor unions in a candidate election are likely unconstitutional.

Second, Alaska's laws regarding contributions to candidates, coordinated expenditures, disclaimers, and disclosures are not directly affected by *Citizens United.* Alaska's laws continue to regulate corporate and labor union political speech through disclaimer and disclosure requirements. However, some disclaimer and disclosure laws that provide specific standards for reporting and identification of expenditures do not currently apply to corporations and labor unions.

II. *Citizens United v. Federal Election Commission*

On January 21, 2010, the United States Supreme Court issued its opinion in *Citizens United v. Federal Election Commission.*[2] The Court's main holding was that

[1] *See* 558 U.S. ___, at 2, --- S.Ct. ---- (2010).

[2] 558 U.S. ___, --- S.Ct. ---- (2010).

2459

"the Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether."[3] The particular federal law reviewed by the Court, part of the Bipartisan Campaign Reform Act of 2002,[4] prohibited corporations and unions from using their general treasury funds to make independent expenditures for speech that is an electioneering communication or for speech that expressly advocates the election or defeat of a candidate.[5] The Court held that this prohibition on corporate and labor union speech violated the First Amendment to the United States Constitution. Because the First Amendment applies to states as well as the federal government, the ruling not only strikes down the federal requirement, it also calls into question similar provisions enacted by the State of Alaska.[6]

The Court further ruled that the disclosure and disclaimer laws under the Bipartisan Campaign Reform Act are justified to provide the electorate with information about the sources of election-related spending and that disclosure assists citizens in making informed choices in the marketplace of political ideas.[7]

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[3] *Id.* at 1-2.

[4] 2 U.S.C. § 441b (2000).

[5] 2 U.S.C. § 441b(b)(2) prohibited corporations and labor unions from using general treasury funds to make expenditures on electioneering communications, which include broadcast, cable, or satellite communications that refer to a clearly identified candidate for federal office and are made within 30 days of a primary or 60 days of a general election. 2 U.S.C. § 434(f)(3)(A); 11 CFR § 100.29(a)(2)(2009).

[6] *See Gitlow v. New York*, 268 U.S. 652, 666, 45 S.Ct. 625, 630 (1925) (freedom of speech protected by the First Amendment from abridgment by Congress is among the fundamental personal rights protected by the due process clause of the Fourteenth Amendment from impairment by the States); *see also Near v. Minnesota*, 283 U.S. 697, 51 S.Ct. 625 (1931); *DeJonge v. Oregon,* 299 U.S. 353, 57 S.Ct. 255 (1937).

[7] 558 U.S. ___ , at 51-2 (citing *Buckley v. Valeo*, 424 U.S. 1, 66, 96 S.Ct. 612, 657 (1976) (*per curiam*)). Under federal law, televised electioneering communications funded by anyone other than a candidate must include a disclaimer describing the entity responsible for the content of the ad. The required statement must be made in a clearly spoken manner and displayed on the screen in a clearly readable manner for at least four seconds. It must state that the communication is not authorized by any candidate or candidate's committee and it must display the name and address of the person or group that funded the advertisement. *Id.* (citing 2 U.S.C. § 441d(a)(2)).

III. The Direct and Indirect Impacts of *Citizens United* on Alaska Laws

A. Overview

Alaska campaign finance laws regulate a majority of state elections, the ballot proposition process, lobbying, and the judicial retention process.[8] These laws regulate the conduct of candidates, political parties, individuals, lobbyists, corporations, labor unions, groups, and other entities. Both state and federal campaign finance laws make several important distinctions with respect to the application of such laws. For instance, Alaska campaign finance laws distinguish "contributions" from "expenditures." A contribution is basically a purchase, payment, or deposit rendered directly to a candidate or political party.[9] An expenditure is defined broadly to include several activities which are not direct contributions to candidates. Expenditures include direct payments for services but also include various communications.[10] An "independent expenditure" is a type of expenditure but is more limited in that it is made without any coordination with a candidate.[11]

Another important distinction is between disclosures and disclaimers. Certain campaign finance laws mandate public reporting of expenditures made. In campaign finance jurisprudence, these laws are referred to as disclosure laws. When a campaign finance law requires an identification to be placed on a communication, courts and campaign finance law commentators broadly refer to this as a disclaimer law. The Alaska Public Offices Commission enforces the legality of contributions and expenditures and also ensures that individuals and entities are properly disclosing and disclaiming their conduct as it relates to an election.[12]

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[8] *See* AS 15.13.010(a)(1)-(2)(describing scope of AS 15.13, entitled State Election Campaigns).

[9] *See* AS 15.13.400(4)(A).

[10] An expenditure is defined, in relevant part, as "a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of...influencing...[the outcome of an election]." Expenditures also include "express communications" and "electioneering communications." AS 15.13.400(6).

[11] An independent expenditure "means an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate's campaign treasurer or deputy campaign treasurer, or another person acting as a principal or agent of the candidate." AS 15.13.400(10).

[12] *See generally* AS 15.13.010(b); AS 15.13.400(1); AS 15.13.400(8), (11), (13)-(15); AS 15.13.030.

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Citizens United directly implicates one key aspect of Alaska's campaign finance laws: Alaska's prohibition on independent expenditures by corporations or labor unions in candidate elections.[13] The decision does not directly call into question the constitutionality of any other contribution, expenditure, disclaimer or disclosure law. For example, Alaska's prohibition on direct contributions to candidates by corporations and labor unions is unaffected.[14] Candidates and their agents are still prohibited from accepting contributions from corporations and labor unions.[15] A corporation or labor union still may not directly or indirectly consult or cooperate with candidates or their agents when making an expenditure.[16] Individuals are still limited to contributing $500 per year to a candidate, and $5,000 per year to a political party,[17] and corporations and labor unions must continue to follow disclosure laws whenever applicable.[18] The current statutes and regulations that require that an independent expenditure in a candidate election be reported within 10 days will be applicable to a corporation or labor union that makes such an expenditure.[19] There must be some identification of corporations or labor

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[13] *See* AS 15.13.067; AS 15.13.135(a).

[14] *See* AS 15.13.065(a); AS 15.13.074(a).

[15] AS 15.13.072(a)(1).

[16] AS 15.13.400(10). 2 AAC 50.270 provides guidance as to what constitutes an independent expenditure. Where an expenditure is based on information provided by the candidate or an agent of a group or nongroup entity, it is not an independent expenditure. An expenditure is not an independent expenditure if it is made based on data from a candidate's, group's, or nongroup entity's pollster or campaign consultant or any other person who receives compensation or reimbursement from the campaign. Solicitations to a candidate, group, or nongroup entity, or an expenditure made to finance distribution of campaign material provided by the candidate or his agents are not independent expenditures.

[17] AS 15.13.070(b)(1)-(2).

[18] *See* AS 15.13.400(14); AS 01.10.060. Because the relevant statutes define "person" to include a corporation or labor union, statutes and regulations that cover a "person" apply to any corporation or union making an independent expenditure in a candidate election.

[19] AS 15.13.040(d) states that "every individual, person, nongroup entity, or group making an expenditure shall make a full report of expenditures, upon a form prescribed by the commission, unless exempt from reporting." AS 15.13.040(e) states that "the report required under (d) must contain the name, address, principal occupation, and employer of the individual filing the report, and an itemized list of expenditures. The report shall be filed with the commission no later than 10 days after the expenditure is made." The reporting requirement of AS 15.13.040(d) and (e) applies to all "persons"

unions making an independent expenditure as they are subject to the requirement that such independent expenditures may not be made anonymously.[20]

B. Alaska's Prohibition on Expenditures – AS 15.13.067 and AS 15.13.135(a)

Citizens United likely invalidates AS 15.13.067 and AS 15.13.135(a) in their current form. Under AS 15.13.067, expenditures in candidate elections may only be made by candidates, individuals, groups, and nongroup entities. Under AS 15.13.135(a), "independent expenditures" in candidate elections may only be made by individuals, groups and nongroup entities. Because labor unions and corporations do not fall within the definitions of individual, group, or non-group entity,[21] AS 15.13.067 and AS 15.13.135(a) prohibit corporations and labor unions from making any expenditures in candidate elections. Alaska law defines expenditure broadly to include activities which are political speech.[22] After *Citizens United*, these specific prohibitions will not likely pass constitutional muster.

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who make an expenditure. A person is defined to include corporations and unions. AS 15.13.400(14); AS 01.10.060.

Alaska regulations likewise require reporting of all independent expenditures. 2 AAC 50.270(c) provides that "a person making an independent expenditure must disclose the following on an independent expenditure report under AS 15.13.040 (d) and (e): (1) the date of the expenditure; (2) the amount of the expenditure; (3) the check number, if the expenditure is paid by check; (4) the name and address of the payee; (5) a description of items or services purchased; (6) identification of the candidate or ballot proposition the expenditure was intended to influence; (7) a statement as to whether the expenditure was intended to support or oppose the candidate or ballot proposition."

[20] AS 15.13.084 states that "a person may not make an expenditure anonymously," unless the expenditure is made by an individual acting independently and the expenditure is made for a billboard or sign, or printed material other than an advertisement in a newspaper or other periodical.

[21] AS 15.13.400(8), (11), (13).

[22] Specifically, Alaska law prohibits corporations and labor unions from making express communications, electioneering communications, and any payment made to influence the outcome of a candidate election. AS 15.13.400(6)(A)(i);(C); *see also* AS 15.13.400(5), (7). Other parts of the expenditure definition do not implicate political speech. For example, expenditures include purchases made for the purpose of a political party or direct payment of personal services rendered to a candidate or political party. *See, e.g.*, AS 15.13.400(6)(A)(ii)-(iii).

Accordingly, we recommend that these two statutes be amended to conform to the holding of *Citizens United* in order to clarify the extent to which corporations and labor unions may make independent expenditures.

C. Disclosure of Expenditures – AS 15.13.040(d) and (e)

The Supreme Court in *Citizens United* specifically upheld laws requiring the disclosure of independent expenditures. The Court found that the disclosure laws assisted the electorate in making informed choices in the marketplace of political ideas.[23] Accordingly, *Citizens United* does not suggest that Alaska's disclosure laws are in any way unconstitutional. Alaska Statute 15.13.040(d) and (e) is a disclosure law that broadly applies to corporations and labor unions making independent expenditures in a candidate election. It provides that any person making any expenditure must report the expenditure within 10 days. Because corporations and unions are deemed to be "persons" under Alaska law, this requirement applies to them as well.[24] Thus, the requirement to disclose is written broadly enough to require disclosure of expenditures made by corporations and labor unions.

D. Disclaimers For Communications – AS 15.13.084; AS 15.13.090; and AS 15.13.135(b)(2)

Citizens United upheld federal disclaimer laws.[25] Thus, the decision does not suggest that Alaska's disclaimer laws suffer from any constitutional infirmity. Alaska Statute 15.13.090 is a disclaimer law requiring certain communications to be identified by the words "paid for by" followed by the name of the candidate, group or nongroup entity paying for the communication. Alaska Statute 15.13.135(b)(2) is a disclaimer law which requires that certain independent expenditures contain a disclaimer that they are not authorized or paid for by a candidate. However, because corporations and labor unions were not permitted to make any expenditures in a candidate election, these specific statutes were not written to apply to them, and only refer to individuals, groups, and nongroup entities.

Corporations and labor unions are nevertheless subject to AS 15.13.084 which prohibits independent expenditures in a candidate election from being made

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[23] 558 U.S. at 51-2 (citing *Buckley*, 424 U.S. at 66, 96 S.Ct. at 657).

[24] *See supra* note 18. *Cf* 2 AAC 50.270(c) (reporting of independent expenditures applies to "persons," and thus to corporations and labor unions). Additionally, "persons," including corporations and labor unions, are required to preserve their expenditure records for up to 6 years after the expenditure is made. AS 15.13.111.

[25] 558 U.S. at 51-2 (citing *Buckley v. Valeo*, 424 U.S. at 66, 96 S.Ct. at 657).

anonymously; thus some identification is required.[26] This prohibition is very general and it is unclear how a corporation or labor union must identify itself when making the expenditure. This may create uncertainty among corporations and labor unions about how to proceed with speech protected under *Citizens United.* Therefore, consideration should be given to amending AS 15.13.084 to clarify how corporations or labor unions must identify themselves when exercising their right to make independent expenditures in an election. As discussed above, it would be constitutional to extend the requirements of AS 15.13.090 and AS 15.13.135(b)(2) to corporations and labor unions.

E. Other Reporting and Disclosure Issues – AS 15.13.110 and AS 15.13.086(2)

As stated above, *Citizens United* did not invalidate disclosure or disclaimer laws,[27] and Alaska statutes currently require all persons making independent expenditures to report those expenditures to The Alaska Public Offices Commission within 10 days.[28] However, policy makers should consider whether other forms of disclosure for corporations and labor unions making independent expenditures in candidate elections are appropriate. For example, under AS 15.13.110, groups, nongroup entities, and candidates must file reports for election-related activity 30 days before an election, seven days before an election, and at year's end. The reporting requirements under AS 15.13.110 do not apply to "persons" and thus corporations and labor unions, like individuals, are exempt. Because corporations and labor unions were not allowed to make independent expenditures when this statutory scheme was created, we do not believe the drafters had corporations and unions in mind when this requirement was imposed only on candidates, groups and nongroup entities.

In addition to reporting expenditures, AS 15.13.110 requires groups,[29] nongroup entities,[30] and candidates[31] to include information regarding the source of all contributions in these reports. Under current Alaska law, corporations and labor unions would be required to report only their expenditures.[32] But as there is currently no Alaska

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[26] AS 15.13.084, prohibits all "persons" from making anonymous expenditures and expenditures using a fictitious name or the name of another. As explained above, corporations and labor unions are persons under the law.

[27] 558 U.S. at 51-2.

[28] AS 15.13.040(d)-(e).

[29] AS 15.13.400(8).

[30] AS 15.13.400(13).

[31] AS 15.13.400(1).

[32] AS 15.13.040(d)-(e).

law that requires a corporation or labor union to report the source of funds used to make expenditures, corporations and labor unions could receive funds for the purpose of making an independent expenditure in a candidate election. This situation was not contemplated at the time these reporting statutes were enacted due to the prohibition on expenditures by corporations or labor unions in candidate elections.

Additionally, while candidate contributions exceeding $250 made within nine days of the election must be reported to The Alaska Public Offices Commission within 24 hours of receipt by the candidate,[33] under current law, an independent expenditure made within 10 days of a candidate election does not have to be reported until after the election.[34] The latter timeline now likely applies to corporations and labor unions making independent expenditures in candidate elections after *Citizens United.*

F. Independent Expenditures by Foreign Corporations

Federal law currently prohibits expenditures made by foreign nationals and foreign corporations in state elections.[35] *Citizens United* did not invalidate this law, nor did it decide whether the federal government has a compelling interest in preventing foreign individuals or associations from influencing our nation's political process.[36] Alaska law does not have a corresponding prohibition on expenditures made by foreign nationals or foreign corporations in our elections.[37]

IV. Conclusion

Citizens United has had both direct and indirect impacts on Alaska campaign financing laws. We recommend that those laws directly impacted by the ruling, the prohibition on expenditures by corporations and labor unions, be amended to provide more clarity to Alaskans. We also identify, for your consideration, other areas of law regulating expenditures that were indirectly impacted by this decision.

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[33] AS 15.13.110(b).

[34] *See* AS 15.13.040(d)-(e).

[35] 2 U.S.C. § 441e prohibits any foreign national, including any foreign associations such as foreign corporations, from spending funds in connection with any state or local election in the United States.

[36] 558 U.S. ___ , at 47 *citing* 2 U.S.C. § 441(e).

[37] Because Alaska law currently restricts all expenditures, Alaska statutes do not differentiate between foreign and domestic corporations. AS 15.13.400(14); AS 01.10.060.

STATE OF ALASKA

DEPARTMENT OF LAW

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March 9, 2010

VIA U.S. MAIL

Cindy Smith
Office of Senator Hollis French
State Capitol Room 417
Juneau AK, 99801

Re: *Response to your Inquiry Regarding Senate Bill 284*

In response to *Citizens United v. FEC*, Senate Bill 284 (SB 284), as proposed, permits companies and labor unions to make expenditures in candidate elections. Companies and labor unions would still be restricted from making contributions directly to candidates. Arguably, the definitions of expenditure and contribution overlap. See AS 15.13.400(4); 15.13.400(6)(A)(iii). Consider clarification of these definitions.

SB 284 (Section 11) would require the company or labor union to disclose the top five contributors to the expenditure. Section 11 does not clarify the proper disclosure if several contributors contribute the same amount of money. For instance, the company or labor union would have no statutory guidance if its top 10 contributors all contribute equally to the expenditure.

SB 284 (Section 4) would require the company or labor union to disclose each officer or director of the company or labor union. SB 284 allows entities other than corporations and labor unions to make expenditures in candidate elections. It may be appropriate to expand this disclosure requirement to more than officers and directors.

These are my initial impressions and do not hesitate to contact me with further questions.

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By:
John M. Ptacin
Assistant Attorney General
Alaska Bar No. 0412106

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SB 292

26-LS1487\T
Bannister
4/5/10

CS FOR SENATE BILL NO. 292( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS HUGGINS, McGuire, Menard

A BILL

FOR AN ACT ENTITLED

"An Act relating to the registration and operation of pawnbrokers, to the exemption for pawnbrokers under the Alaska Small Loans Act, and to the exclusion of pawnbrokers under certain definitions in the Uniform Commercial Code; and providing for an effective date."

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

*** Section 1.** AS 06.20.330(b) is amended to read:

(b) This chapter does not apply to individual loans by pawnbrokers or loan shops where separate and individual loans do not exceed $500. **In this subsection, "pawnbroker" means a person who is regulated under AS 08.76.100 - 08.76.590.**

*** Sec. 2.** AS 08.01.010 is amended by adding a new paragraph to read:

(39) regulation of pawnbrokers (AS 08.76.100 - 08.76.590).

*** Sec. 3.** AS 08.76.010(a) is amended to read:

(a) A person engaged in the business of buying and selling secondhand articles, [OR LENDING MONEY ON SECONDHAND ARTICLES,] except a bank

or a person regulated by AS 08.76.100 - 08.76.590, shall maintain a book, in permanent form, in which the person shall enter in legible English at the time of each [LOAN,] purchase [,] or sale

(1) the date of the transaction;

(2) the name of the person conducting the transaction;

(3) the name, age, and address of the customer;

(4) a description of the property bought [OR RECEIVED IN PLEDGE], which includes, for any firearm, watch, camera, or optical equipment bought [OR RECEIVED IN PLEDGE], the name of the maker, the serial, model, or other number, and all letters and marks inscribed;

(5) the price paid [OR AMOUNT LOANED];

(6) the signature of the customer.

*** Sec. 4.** AS 08.76.020 is amended to read:

Sec. 08.76.020. Manner of recording entry. The entries in the book [AND THE ELECTRONIC RECORD] required by AS 08.76.010 shall appear in chronological order [AND, WHEN MADE IN A BOOK,] in ink or indelible pencil. Blank lines may not be left between entries. Obliterations, alterations, or erasures may not be made. Corrections shall be made by drawing a line through the entry without destroying its legibility, and [, WHEN MADE IN A BOOK,] the line shall be drawn in ink. The book shall be open to the inspection of a peace officer at reasonable times.

*** Sec. 5.** AS 08.76 is amended by adding new sections to read:

Article 2. Licensing and Regulation of Pawnbrokers.

Sec. 08.76.100. Licensing required. (a) A person may not engage in business as a pawnbroker without holding a license issued by the department.

(b) A license is not transferable or assignable.

Sec. 08.76.110. Requirements for license. The department may issue a license to a person if the person

(1) has good character;

(2) has the experience to engage in business as a pawnbroker;

(3) is fit to engage in business as a pawnbroker;

(4) submits an application as required by the department under

AS 08.01.060; and

(5) pays a fee established by the department under AS 08.01.065.

Sec. 08.76.130. Withdrawal of application. The department may consider that a person has withdrawn the person's application for a license if

(1) the application does not contain all of the required information; or

(2) the information required for the application is not submitted to the department within 90 days after the department requests in writing that the person provide the department with the information.

Sec. 08.76.140. Duration and renewal of license. (a) A license is valid for two years.

(b) A person may renew a license under AS 08.01.100. The renewal fee must be equal to the fee established under AS 08.76.110(5).

(c) Notwithstanding AS 08.01.100(b), if a person fails to renew a license before the expiration date of the license, the person shall pay the department a delayed renewal penalty of $100 in addition to the regular renewal fee.

(d) If a person fails to renew the person's license, the person may not engage in business as a pawnbroker until the person's license is renewed or a new license is issued.

(e) The department may refuse to renew a license under this section for reasons that would have prevented the issuance of the license to the person under AS 08.76.110.

Sec. 08.76.160. Limit on pawn transaction amount. A licensee may not enter into a pawn transaction that exceeds $500, excluding the finance fee and any fees charged under AS 08.76.220.

Sec. 08.76.170. Customer and transaction limitations. (a) A pawnbroker may not knowingly enter into a pawnbroker transaction with a person who is

(1) under 18 years of age;

(2) under the influence of alcohol or a controlled substance when the influence is apparent; or

(3) using the name of another person.

(b) A pawnbroker may not knowingly accept or receive misappropriated

property from a person in a pawnbroker transaction.

Sec. 08.76.180. Register of pawnbroker transactions. (a) A pawnbroker shall maintain a register in which the pawnbroker shall enter in legible English at the time of each pawnbroker transaction

(1) the date of the pawnbroker transaction;

(2) the name of the person conducting the pawnbroker transaction;

(3) the name, age, and address of the pledgor or purchaser;

(4) a description of the pledged property or purchased property, including the serial number, model number, or other number on the item of property;

(5) the price paid or amount loaned;

(6) the signature of the pledgor or seller; and

(7) the type of identification used by the pledgor or seller, the name of the government agency that issued the identification, and the number written on the identification.

(b) A register may be contained in a book or in an electronic format, except that the register for pawn transactions must be in an electronic format if the pawnbroker is located in a municipality that has a population of more than 5,000.

(c) A pawnbroker may not falsify or intentionally fail to make an entry of a material matter in a register.

(d) A pawnbroker shall maintain in good condition the record in the register of a completed pawnbroker transaction for one year after the completion of the pawnbroker transaction.

Sec. 08.76.190. Recording requirements. The records required to be maintained in a register by AS 08.76.180 must appear in chronological order and, if made in a book, in ink or indelible pencil. Blank lines may not be left between entries. A pawnbroker may not change a record in a register by obliteration, alteration, or erasure. A pawnbroker may correct a record in a register by drawing a line through the entry without destroying its legibility.

Sec. 08.76.200. Transaction agreement. A pawnbroker shall provide to a pledgor or seller a copy of the transaction agreement between the pawnbroker and the pledgor or seller. The agreement must clearly and conspicuously disclose

(1) the name and address of the pawnbroker and the name and mailing address of the pledgor or seller;

(2) the date of the transaction;

(3) a description of the item sold or pledged;

(4) the amount of each fee charged under AS 08.76.210 and 08.76.220;

(5) if the transaction is a pawn transaction, the amount financed and the maturity date; and

(6) if the transaction is a purchase by the pawnbroker, the amount of the purchase price.

Sec. 08.76.210. Finance fee. (a) Except as provided in AS 08.76.280, for each 30-day period of a pawn transaction, including a grace period, a pawnbroker may charge a pledgor a finance fee of $5 or an amount that equals interest at a rate that does not exceed 20 percent of the amount financed, whichever amount is greater.

(b) A finance fee is considered to be earned on the day that the pawn transaction is entered into and on the first day of each subsequent 30-day period of the pawn transaction.

Sec. 08.76.220. Other charges allowed. (a) Except as provided in AS 08.76.280, a pawnbroker may charge a processing fee of not more than $5 for each pawn transaction for preparing and processing the pawn transaction documentation, providing law enforcement reports, paying expenses, providing other services, and for losses.

(b) A pawnbroker may charge a pledgor who places a firearm with the pawnbroker as pledged property

(1) a firearm processing fee of not more than $5; and

(2) a governmental fee.

Sec. 08.76.230. Insurance. A pawnbroker may not sell to a pledgor or otherwise charge a pledgor for insurance in connection with a pawn transaction, except to cover the shipment of pledged property that is redeemed by mail.

Sec. 08.76.240. Return of pledged property. A pawnbroker shall return pledged property to a pledgor when the pledgor redeems the pledged property. The pawnbroker shall provide the pledgor with a receipt showing the redemption. The

receipt must be on a form approved by the department.

Sec. 08.76.250. Extension of grace period. A pawnbroker and a pledgor may agree to extend the 30-day grace period allowed under AS 08.76.270(b), but each extension may not exceed 30 days. An extension must be in writing, and the pawnbroker shall give the pledgor a copy of the extension agreement. The agreement must clearly state the last day of the extension and the finance fee charged for the extension.

Sec. 08.76.260. Retention, storage, and lease. A pawnbroker shall store pledged property in a secure area and maintain the pledged property in an unaltered condition. A pawnbroker may not lease pledged property.

Sec. 08.76.270. Redemption. (a) Unless there is a hold order on the pledged property, the pledged property is subject to a claim under AS 08.76.370 or 08.76.380, or the property is returned to a lessor under AS 08.76.400, a pledgor may redeem pledged property by paying the amount financed and the finance fee in full before the pawnbroker's scheduled closing time on the maturity date.

(b) If a pledgor does not pay the amount financed and the finance fee in full before the pawnbroker's scheduled closing time on the maturity date, the pawnbroker shall hold the pledged property on the pawnbroker's business premises for a grace period of 30 days plus any extension allowed under AS 08.76.250. A pledgor may redeem the pledged property during the actual grace period by paying the amount financed and the finance fee, but a pledgor may not redeem pledged property after the pawnbroker's scheduled closing time on the last day of the actual grace period. In this subsection, "actual grace period" means the grace period plus any extension allowed under AS 08.76.250.

(c) If there is a hold order on pledged property, the pledgor may redeem the pledged property only when the hold order is released.

(d) If pledged property is subject to a claim under AS 08.76.370 or 08.76.380, the pledgor may redeem the pledged property only when the pledged property becomes available under AS 08.76.370 or 08.76.380 for redemption.

(e) If a pledgor does not redeem pledged property under (a) - (d) of this section, the title and all interest in the pledged property transfer to the pawnbroker.

(f) The holder of a transaction agreement is presumed to be the person who is entitled to redeem the pledged property that is the subject of the transaction agreement, and a pawnbroker shall deliver the pledged property to the person who presents the transaction agreement and pays the amount financed and the finance fee for the pawn transaction.

Sec. 08.76.280. Military personnel. A pawnbroker shall waive the unpaid amount financed and the finance fee due on a pawn transaction and hold, except as provided in AS 08.76.320 - 08.76.380, the pledged property that is the subject of the pawn transaction on the pawnbroker's business premises until 60 days after the pledgor, the pledgor's spouse, or the pledgor's dependent returns to the United States, if the pawnbroker receives a copy of military orders indicating that

(1) the pledgor, or the pledgor's spouse or dependent, is enlisted in the military service of a state or the federal government; and

(2) after the pawn transaction was entered into, the person was or is to be deployed abroad for service relating to a military conflict.

Sec. 08.76.290. Business operation method and hours. A pawnbroker may not engage in the business of being a pawnbroker

(1) by using a method, including a drive-through window, in which a person remains in a motor vehicle while conducting the pawnbroker transaction; or

(2) between the hours of 12 midnight and 6:00 a.m.

Sec. 08.76.300. Waiver prohibited. A pawnbroker may not require or allow a person to waive a provision of AS 08.76.100 - 08.76.590.

Sec. 08.76.310. Employees. A pawnbroker may not knowingly employ a person to work in a pawnshop if, within five years before the employment begins, the person was convicted of, entered a plea of guilty to, entered a plea of no contest to, or had adjudication withheld for a felony, or for a misdemeanor involving dishonesty.

Sec. 08.76.320. Issuance of police hold order. (a) When a law enforcement officer has probable cause to believe that property in the possession of a pawnbroker at a pawnshop in the law enforcement officer's jurisdiction has been misappropriated, the law enforcement officer may issue a police hold order that directs the pawnbroker not to release or dispose of the property until the police hold order terminates or a

court orders the release or disposal.

(b) Unless a pawnbroker or the pawnbroker's designee refuses to sign the police hold order, a police hold order begins when the pawnbroker or the pawnbroker's designee receives the police hold order. If the pawnbroker or the pawnbroker's designee refuses to sign the police hold order, the police hold order begins when the refusal occurs.

Sec. 08.76.330. Evidentiary hold order. (a) When property in the possession of the pawnbroker may be needed as evidence in a filed court action involving a criminal charge, a law enforcement agency may issue an evidentiary hold order to a pawnbroker that directs the pawnbroker not to release or dispose of the property until the evidentiary hold order terminates or a court orders the release or disposal.

(b) A pawnbroker who receives an evidentiary hold order under (a) of this section shall hold the property until the attorney general notifies the pawnbroker in writing of the disposition of the filed court action. The attorney general shall notify the pawnbroker within 15 days after the disposition of the filed court action for which the property may be needed as evidence.

Sec. 08.76.340. Contents and form of hold order. A hold order must be in writing and contain

(1) the name of the pawnbroker;

(2) if a police hold order, the name, title, and identification number of the law enforcement officer issuing the police hold order, and the name and address of the law enforcement agency for which the law enforcement officer is acting;

(3) if an evidentiary hold order, the name and address of the law enforcement agency issuing the evidentiary hold order;

(4) the number, if any, assigned by the law enforcement agency to the case, and, for an evidentiary hold order, the number and caption of the filed court action;

(5) a complete description of the property being held, including the model number and serial number, if any;

(6) if a police hold order, the name of the person, if any, who reported the property as misappropriated;

(7) the mailing address of the pawnshop where the property is being held; and

(8) the expiration date of the hold order.

Sec. 08.76.350. Duration of police hold order. (a) A police hold order may not exceed 30 days. However, a law enforcement officer may extend the police hold order for two additional successive 30-day periods by giving written notification to the pawnbroker before the expiration of each 30-day period.

(b) A law enforcement agency may not issue a new police hold order for the same property after the second additional 30-day period allowed under this section. However, the termination of the police hold order does not affect an existing evidentiary hold order on the same property or prevent the issuance of an evidentiary hold order for the same property.

(c) A law enforcement agency may release a police hold order before the end of a 30-day period by issuing a written release to the pawnbroker.

Sec. 08.76.360. Noncompliance with hold order. The department may suspend or revoke a pawnbroker's license if the pawnbroker knowingly fails to comply with a hold order.

Sec. 08.76.370. Claim notification. (a) If a person believes that property in the possession of a pawnbroker was misappropriated from the person, and if the person wants to obtain possession of the property from the pawnbroker, the person shall first notify the pawnbroker by certified mail, return receipt requested, of the person's claim.

(b) A notice under (a) of this section must contain a complete and accurate description of the property and must be accompanied by proof that the claimant owns the property and, if the claimant alleges that the property was stolen, a legible copy of a law enforcement agency's report indicating that the property was stolen.

(c) Except as provided in AS 08.76.380, a pawnbroker may not, for 30 days after the pawnbroker receives notice of the claim under this section, dispose of property that is the subject of a claim.

Sec. 08.76.380. Court action on claim. If a claimant and a pawnbroker do not resolve a claim within 10 days after the pawnbroker's receipt of a notice of the claim under AS 08.76.370, the claimant may bring an action in superior court to require the

pawnbroker to return the property to the claimant. After a pawnbroker is notified that a court action has been filed, the pawnbroker may not dispose of the property until the court disposes of the court action, disposes of the property, or allows the pawnbroker to dispose of the property.

Sec. 08.76.390. Liability of pledgor. A pledgor or seller of property to a pawnbroker is liable to the pawnbroker for the full amount that the pledgor or seller received from the pawnbroker, all charges owed by the pledgor for the pawnbroker transaction, and attorney fees and other costs as allowed by the rules of court if, in an action under AS 08.76.380,

(1) the superior court determines that the pledgor or seller misappropriated the property from the claimant; and

(2) the superior court orders the pawnbroker to return the property to the claimant.

Sec. 08.76.400. Recovery of leased property. (a) If property in the possession of a pawnbroker was leased to a pledgor or seller when the pledgor or seller pledged or sold the property to the pawnbroker, but the property did not have a permanent label or other conspicuous mark identifying it as the lessor's property, the pawnbroker shall return the property to the lessor if the lessor

(1) provides the pawnbroker with evidence that the property was the lessor's property and was leased to the pledgor or seller at the time the property was pledged or sold to the pawnbroker; and

(2) pays the pawnbroker

(A) the amount financed and the finance fee for the pawn transaction, if the property was pledged to the pawnbroker; or

(B) the amount that the pawnbroker paid the seller if the property was sold to the pawnbroker.

(b) A pawnbroker is not liable to the pledgor or seller of property that is recovered by a lessor under (a) of this section for returning the property to a lessor under (a) of this section.

Sec. 08.76.410. Law enforcement reports. (a) A pawnbroker shall provide a law enforcement officer with a law enforcement report in paper or in an electronic

format on a weekly basis.

(b) A law enforcement report is confidential under AS 40.25.100 - 40.25.220, and a law enforcement officer and a law enforcement agency may only use a law enforcement report to investigate a crime involving the property that is the subject of the pawnbroker transactions of the pawnbroker.

Sec. 08.76.420. Contents of law enforcement reports. (a) A law enforcement report must contain

(1) a complete and accurate description of all property pledged to or purchased by the pawnbroker, including, as applicable, the property's

(A) brand name, model number, and manufacturer's serial number; and

(B) type of action and caliber or gauge, if the property is a firearm; and

(2) the number of the pawnbroker transaction document that the pawnbroker used to document the pawnbroker transaction.

(b) Notwithstanding (a) of this section, the description of the items under (a)(1) of this section is adequate if the description gives the quantity of the items and describes the type of the items if the pawnbroker transaction consists solely of multiple items that are of a similar type, do not have serial or model numbers, and do not contain precious metals or gemstones.

Sec. 08.76.430. Inspection by law enforcement entities. If a law enforcement agency provides the case number assigned to the investigation for which the inspection is being made, a pawnbroker may not refuse to allow the law enforcement agency to inspect during normal business hours the pawnbroker's register and the purchased property involved in the investigation or the unredeemed pledged property involved in the investigation.

Sec. 08.76.440. Discipline. (a) The department may, after notice to the licensee and reasonable opportunity to be heard, take the following disciplinary action against a licensee if the licensee or an officer, agent, or employee of the licensee violates AS 08.76.100 - 08.76.590:

(1) permanently revoke a license;

(2) suspend a license for a specified period;

(3) censure or reprimand a licensee;

(4) impose limitations or conditions on the licensee;

(5) impose probation requiring a licensee to report regularly to the department on matters related to the grounds for probation;

(6) order the licensee to make restitution.

(b) If the department takes disciplinary action under (a) of this section, the department may not, for one year after the date of the disciplinary action, issue another license to the licensee or a license to

(1) the spouse of the licensee;

(2) a partnership if the licensee is a partner of the partnership;

(3) a corporation if the licensee is an officer of the corporation, including a member of the board of directors of the corporation;

(4) a limited liability company if the licensee is a member or manager of the limited liability company; or

(5) an employee of the licensee.

(c) Before taking disciplinary action under (a) of this section, the department shall allow a licensee 30 days to correct the violation.

Sec. 08.76.450. Civil penalty. If a licensee, or an officer, agent, or employee of a licensee violates AS 08.76.100 - 08.76.590, the licensee is liable to the state for a civil penalty. Notwithstanding AS 08.01.075(a)(8), the penalty may not be less than $200 or more than $2,000. The amount of the civil penalty must be adjusted to the seriousness of the violation.

Sec. 08.76.460. Municipal regulation. (a) Subject to (b) of this section, a municipality with the authority under AS 29 to enact ordinances regulating pawnbrokers and pawnbroker transactions may adopt an ordinance regulating pawnbrokers and pawnbroker transactions if at a minimum the ordinance complies with AS 08.76.100 - 08.76.590.

(b) A municipality may not enact an ordinance that

(1) requires the payment of a fee or tax related to a pawnbroker transaction; or

(2) restricts the hours of operation of a pawnbroker, except that an ordinance may prohibit pawnbrokers from operating as provided under AS 08.76.290(2).

(c) An ordinance that violates this section is void.

Sec. 08.76.470. Regulations. (a) The department may adopt regulations to implement AS 08.76.100 - 08.76.590.

(b) Before the department adopts a regulation to implement AS 08.76.100 - 08.76.590, the department shall, in addition to any other requirements under AS 44.62 (Administrative Procedure Act), notify licensees of the proposed regulation. After the regulation is adopted, the department shall send each licensee a copy of the regulation adopted.

Sec. 08.76.500. Exemptions. This chapter does not apply to

(1) a financial institution that is subject to the regulation of the department under AS 06, including a commercial bank, savings bank, credit union, premium finance company, small loan company, bank holding company, financial holding company, trust company, savings and loan association, and deferred deposit advance licensee under AS 06.50; or

(2) a financial institution organized under federal law.

Sec. 08.76.590. Definitions. In AS 08.76.100 - 08.76.590,

(1) "amount financed" means the amount of money, excluding a finance fee, charged by a pawnbroker for a pawn transaction;

(2) "business" includes advertising;

(3) "claim" means a claim under AS 08.76.370;

(4) "claimant" means a person who makes a claim;

(5) "department" means the Department of Commerce, Community, and Economic Development;

(6) "evidentiary hold order" means an evidentiary hold order authorized under AS 08.76.330;

(7) "finance fee" means all the amounts that a pawnbroker may charge under AS 08.76.210;

(8) "governmental fee" means a fee imposed by a governmental

agency on a pawnbroker to hold or transfer a firearm or conduct a background check required by the governmental agency;

(9) "grace period" means the 30-day period after a maturity date during which a pawnbroker is required by AS 08.76.270(b) to retain possession of pledged property;

(10) "hold order" means a police hold order or an evidentiary hold order;

(11) "identification" means

(A) a government-issued identification document that contains a photograph; or

(B) an electronic image of a document identified under (A) of this paragraph;

(12) "knowingly" has the meaning given in AS 11.81.900;

(13) "law enforcement agency" means

(A) the police department of a municipality where a pawnshop is located;

(B) the Department of Law;

(C) the Department of Public Safety;

(14) "law enforcement officer" means

(A) a police officer of the municipality where a pawnshop is located; or

(B) a state trooper if a pawnshop is located in the unorganized borough or if a pawnshop is located in a municipality that does not provide police protection services;

(15) "law enforcement report" means a report required by AS 08.76.410;

(16) "lease" means any form of rental;

(17) "license" means a license to engage in business as a pawnbroker issued under AS 08.76.110;

(18) "licensee" means a person who holds a license;

(19) "maturity date" means the date by which a pledgor is required to

pay a pawnbroker the amount financed and the finance fee for a pawn transaction, but does not include a grace period;

(20) "misappropriated" means pledged or sold to a pawnbroker

(A) after being stolen; or

(B) while being leased to the pledgor or seller by another person if the property has a permanent label or other conspicuous mark identifying it as another person's property;

(21) "pawnbroker" means a person who lends money in exchange for a pledge of property;

(22) "pawnbroker transaction" means a pawn transaction or purchase;

(23) "pawn transaction" means a pledge given in exchange for a loan by a pawnbroker;

(24) "personal property" means tangible personal property, but does not include a security, a title to property, a deed, a bill of sale, or printed evidence of indebtedness;

(25) "pledge" means a deposit of property as security for payment of financial obligations to a pawnbroker in a pawn transaction;

(26) "pledged property" means the property that is pledged in a pawn transaction;

(27) "pledgor" means

(A) a person who delivers property to a pawnbroker for a pawn transaction; or

(B) the principal, if the person who delivers property to a pawnbroker for a pawn transaction discloses that the delivery person is acting for a principal;

(28) "police hold order" means a hold order authorized under AS 08.76.320;

(29) "property" means personal property;

(30) "purchase" means a purchase of property by a pawnbroker that is not a pawn transaction;

(31) "register" means the register required to be maintained by

AS 08.76.180;

(32) "redeem" means to obtain the return of pledged property under AS 08.76.270;

(33) "registration fee" means a fee for registering a firearm;

(34) "seller" means a person who sells property to a pawnbroker, but does not include a pledgor;

(35) "transaction agreement" means the transaction agreement required by AS 08.76.200.

* **Sec. 6.** AS 45.01.211(b) is amended by adding a new paragraph to read:

(47) "pawnbroker" has the meaning given in AS 08.76.590.

* **Sec. 7.** AS 08.76.010(b) and 08.76.040 are repealed.

* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Commerce, Community, and Economic Development may proceed to adopt regulations under AS 08.01.080 and AS 08.76.470, enacted by sec. 5 of this Act, necessary to implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1, 2011.

* **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: CURRENT MUNICIPAL LICENSEES. (a) Notwithstanding AS 08.76.100, enacted by sec. 5 of this Act, a person who holds a current municipal license on July 1, 2011, may continue to engage in business as a pawnbroker through June 30, 2014, without having a license issued by the Department of Commerce, Community, and Economic Development.

(b) Notwithstanding AS 08.76.110, enacted by sec. 5 of this Act, the department shall issue a license to a person who holds a municipal license if the person

(1) submits, before July 1, 2014, an application as required by the department under AS 08.01.060; and

(2) pays a fee established by the department under AS 08.01.065.

(c) In this section,

(1) "license" has the meaning given in AS 08.76.590, enacted by sec. 5 of this

Act;

(2) "municipal license" means a license that is issued by a municipality to authorize a person to engage in business as a pawnbroker; in this paragraph, "business" has the meaning given in AS 08.76.590, enacted by sec. 5 of this Act;

(3) "pawnbroker" has the meaning given in AS 08.76.590, enacted by sec. 5 of this Act.

*** Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: EXISTING ORDINANCES. An ordinance of a municipality that is in effect on July 1, 2011, and that does not comply with AS 08.76.100 - 08.76.590, enacted by sec. 5 of this Act, is void.

*** Sec. 11.** Section 8 of this Act takes effect immediately under AS 01.10.070(c).

*** Sec. 12.** Except as provided in sec. 11 of this Act, this Act takes effect July 1, 2011.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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STATE OF ALASKA

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MEMORANDUM February 25, 2010

SUBJECT: Sectional summary of ~~SSSB 292~~ CSSB 292 relating to pawnbrokers (Work Order No. 26-LS1487\R)

TO: Senator Charlie Huggins
Attn: Josh Tempel

FROM: Theresa Bannister
Legislative Counsel

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

Separates pawnbrokers from secondhand stores/ conforms language to new articles

Section 1. Amends a small loans provision to define a "pawnbroker" to be a person regulated under the new article.

Section 2. Adds the regulation of pawnbrokers under the new provisions to the list of subjects to which the chapter on centralized licensing applies.

Section 3. Removes persons regulated by the new provisions from a statute that currently regulates persons who buy, sell, and loan money on secondhand articles.

Section 4. Makes amendments to conform a current statute to the repeal (in bill sec. 6) of AS 08.76.010(b), which requires certain persons who lend money on secondhand articles to keep records electronically.

Section 5. Establishes a new article in AS 08.76 to license and regulate pawnbrokers.

licensing

Sec. 08.76.100. Requires a person who wants to engage in business as a pawnbroker to be licensed. Prohibits the transfer or assignment of a license.

Sec. 08.76.110. Sets out the conditions a person must satisfy in order for the department to issue the person a pawnbroker license.

~~Sec. 08.76.120. Requires a license applicant to pay an initial investigation fee of $200. Makes the fee nonrefundable.~~

(Not a statute, removed as recommended by DCED)

Licensing

Sec. 08.76.130. Allows the department to consider an application to be withdrawn under certain listed conditions.

Sec. 08.76.140. Makes a license valid for two years. Allows a person to renew the license. Sets the renewal fee. Adds a renewal penalty fee if renewal is delayed. Prohibits a person who fails to renew from engaging in business as a pawnbroker until the license is renewed or a new license is issued. Allows the department to refuse to renew for a reason that would have prevented the license's issuance.

$500 limit - Sec. 08.76.160. Limits pawn transactions to not more than $500. Excludes the finance fee and any fees under sec. 08.76.220 from this amount.

Customer Restriction

Sec. 08.76.170. Prohibits a pawnbroker from knowingly entering into pawnbroker transactions with certain listed categories of persons. Prohibits a pawnbroker from knowingly accepting or receiving misappropriated property.

Record Requirements

Sec. 08.76.180. Requires a pawnbroker to maintain a pawn book. Requires entering in the pawn book certain specified items, including the signature of the pledgor or seller, at the time of each pawnbroker transaction. Allows the pawn book to be made in a book or electronically. Prohibits a pawnbroker from falsifying or intentionally failing to make an entry of a material matter in a pawn book. Prohibits a pawnbroker from knowingly obliterating, discarding, or destroying the record in a pawn book of a transaction for one year after its completion.

Sec. 08.76.190. Establishes requirements for making entries in a pawn book. Prohibits a pawnbroker from changing a record in a pawn book by obliteration, alteration, or erasure. Provides a method for correcting entries.

Transaction Agreement

Sec. 08.76.200. Requires a pawnbroker to provide to a pledgor or seller a copy of the agreement with the pawnbroker. Lists the items that the agreement must disclose, including each fee charged under secs. 08.76.210 and 08.76.220.

Interest / fee restrictions

Sec. 08.76.210. Establishes how much a pawnbroker may charge a pledgor as a finance fee. Indicates when a finance fee is considered to be earned.

Sec. 08.76.220. Identifies what other charges a pawnbroker may charge a pledgor. Allows for a processing fee and, when dealing with a firearm, a firearm processing fee and a governmental fee.

Sec. 08.76.230. Prohibits a pawnbroker from selling to, or charging a pledgor for, insurance -- except to cover shipment of property redeemed by mail.

Property Redemption

Sec. 08.76.240. Requires a pawnbroker to return pledged property to the pledgor when redeemed. Requires a pawnbroker to provide a redemption receipt. Requires a pawnbroker to use a department-approved form for the receipt.

Extending Pawn Agreement

Sec. 08.76.250. Allows a pawnbroker and a pledgor to agree to an extension of the grace period allowed under sec. 08.76.270(b). Limits the length of an extension. Requires the extension to be written. Requires a pawnbroker to give the pledgor a copy of the extension agreement. Indicates that the agreement must clearly state the last day of the extension and the finance fee for the extension.

Storage of property

Sec. 08.76.260. Requires a pawnbroker to store the pledged property in a secure area. Requires a pawnbroker to maintain the property in an unaltered condition. Prohibits a pawnbroker from leasing the property.

Redemption of Property

Sec. 08.76.270. With three exceptions relating to hold orders, claims, and lessors, allows a pledgor to redeem pledged property. Establishes what the pledgor must do to redeem the property.

If property is not redeemed as required by closing time on the maturity date, directs the pawnbroker to hold the property for a specified grace period. Allows the pledgor to redeem the property during the grace period. Indicates how and when the pledgor may redeem the property during the grace period.

Requires that any hold order be released before a pledgor may redeem the property. Addresses when a pledgor may redeem property that is subject to a claim under sec. 08.76.370 or 08.76.380.

Provides that title and all interest in property transfer to the pawnbroker if the pledgor does not redeem as provided under (a) - (d) of this section.

Establishes a presumption that the holder of the transaction agreement is the person entitled to redeem. Directs a pawnbroker to deliver the pledged property to the person who presents the transaction agreement and pays the required amounts.

Military Exemption

Sec. 08.76.280. Establishes special rules for payment and holding pledged property for pawn transactions relating to military personnel who are deployed abroad for service relating to a military conflict.

Pawn Shop Restrictions

Sec. 08.76.290. Prohibits a pawnbroker from using a business method in which a person remains in a motor vehicle while conducting a transaction. Prohibits a pawnbroker from operating during specified early morning hours.

Sec. 08.76.300. Prohibits a pawnbroker from requiring or allowing a person to waive a provision of the new article.

Sec. 08.76.310. Prohibits a pawnbroker from knowingly hiring a person with a background involving a felony, or a misdemeanor involving dishonesty, within the past five years.

Stolen Property / Holds

Sec. 08.76.320. Allows a law enforcement officer to issue a hold order on property suspected of being misappropriated. Requires the pawnbroker to hold the property until the hold order terminates or a court orders release of the hold order or disposal of the property. Indicates when the hold order takes effect.

Sec. 08.76.330. Allows a law enforcement officer to issue an evidentiary hold order on property that may be needed as evidence in a filed court criminal action. Requires the pawnbroker to hold the property until the hold order terminates or a court orders release of the hold order or disposal of the property. Indicates how long the pawnbroker is to hold the property. Requires the attorney general to notify the pawnbroker after the disposition of the filed court action.

Sec. 08.76.340. Requires a hold order to be in writing and to contain specified information.

Sec. 08.76.350. Limits a police hold order to 30 days. Allows for two extensions of 30 days each. Indicates how extensions are made. Prohibits the issuance of a new police hold order after the second extension has ended. Provides that the termination of a police hold order does not affect an existing or future evidentiary hold order on the same property. Allows for release of a police hold order before the time expires.

Sec. 08.76.360. Allows the department to suspend or revoke a pawnbroker's license for knowingly failing to comply with a hold order.

Sec. 08.76.370. Provides a procedure for a person who believes that pledged property was misappropriated to notify the pawnbroker of the person's claim and to delay the disposal of the property for 30 days, except as provided by sec. 08.76.380.

Sec. 08.76.380. If a misappropriation claim is not resolved within a specified time, allows the claimant to file a court action to order the pawnbroker to return the property. Prohibits the pawnbroker, after notification about the court action, from disposing of the property until the court disposes of the court action or allows the pawnbroker to dispose of the property.

Sec. 08.76.390. Establishes the liability of the pledgor or seller of property to a pawnbroker in a court action under sec. 08.76.380 when the court finds that the property was misappropriated and orders the pawnbroker to return the property to the claimant.

Sec. 08.76.400. Requires a pawnbroker, under certain conditions, to return property to the lessor of the property if the property was leased to the pledgor or seller when pledged or sold to the pawnbroker. Requires the lessor to provide supporting evidence and to pay a specified amount. Removes any liability of the pawnbroker to the pledgor or seller for returning the property to the lessor.

Weekly Reporting

Sec. 08.76.410. Requires a pawnbroker to provide weekly reports to law enforcement officers. Makes the reports confidential under the Alaska Public Records Act and limits how a law enforcement officer and a law enforcement agency may use the reports.

Sec. 08.76.420. Lists what a law enforcement report must contain.

Police Inspections

Sec. 08.76.430. Prohibits, if the case number is provided, a pawnbroker from refusing to allow a law enforcement agency or the department to inspect the pawn book, purchased property, or unredeemed property during normal business hours, .

Discipline

Sec. 08.76.440. Allows the department to take the listed disciplinary action against a licensee if the licensee, or the licensee's agents, officers, or employees, violates the new article. Requires notice and a reasonable opportunity to be heard. Within one year after disciplinary action prohibits the department from issuing another license to the licensee or to the listed persons related to the licensee. Requires the department to allow a licensee 30 days to correct the violation before taking disciplinary action.

Sec. 08.76.450. Establishes a civil penalty if a licensee, or an officer, agent, or employee of the licensee, violates the new article. Sets the penalty from $200 to $2,000. Requires the amount of the civil penalty to be adjusted for the seriousness of the violation.

State Authority

Sec. 08.76.460. Authorizes municipalities with the authority under AS 29 to regulate pawnbrokers. Requires the ordinances to comply with the new article and not to be more restrictive than the new article. Prohibits municipal requirements requiring fees or taxes or restricting hours of operation (except as provided by sec. 08.76.290(2)). Voids an ordinance that violates this section.

Sec. 08.76.470. Authorizes the department to adopt regulations to implement the new article. Requires the department to notify licensees of proposed regulations and to provide them with copies of new regulations.

Sec. 08.76.500. Exempts specified financial institutions from the new article.

Sec. 08.76.590. Defines the terms for the new article.

Section 6. Defines "pawnbroker" for the Uniform Commercial Code.

Repeal Elec. Record requirement 08.76.010(b)

Section 7. Repeals AS 08.76.010(b), the provision requiring pawnbrokers in certain-sized municipalities to keep records electronically and to submit them as required by the municipal law enforcement agency. Repeals AS 08.76.040, which relates to the disposition of unredeemed property.

Section 8. Allows the Department of Commerce, Community, and Economic Development to adopt regulations necessary to implement the bill.

Transition from Muni licensing

Section 9. Provides transition provisions for pawnbrokers who are currently licensed by a municipality.

Section 10. Voids a municipal ordinance that is in effect on July 1, 2011, if the ordinance violates sec. 08.76.480.

Section 11. Gives sec. 8 an immediate effective date.

Section 12. Gives the bill, except for sec. 8, an effective date of July 1, 2011.

If I may be of further assistance, please advise.

TLB:plm
10-106.plm

ALASKA STATE LEGISLATURE

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Charlie Huggins
Senator

Sponsor Statement SB292

"An Act relating to the registration and operation of pawnbrokers, to the exemption for pawnbrokers under the Alaska Small Loans Act, and to the exclusion of pawnbrokers under certain definitions in the Uniform Commercial Code; and providing for an effective date."

SB 292 institutes a regulatory framework for the operation of pawn shops in the State of Alaska. Currently, there is no codified regulation of this industry in statute – an oversight when it comes to consumer protection and protecting small businesses. Alaska is currently the only state without statewide regulation of the pawn shop industry.

Under present law, Alaska Statute 08.76.040 "The Disposition of Unredeemed Property" is the controlling language under which all pawnbrokers in Alaska currently conduct business. Under that statute, four paragraphs outline the redemption period, notices, and entitlements. SB 292 establishes a more robust structure that is easy for pawnbrokers to follow and effective for the state to regulate. This bill holds all pawn shops to the same transparent standard.

This legislation protects consumers as they will pay consistent rates and have specified rights throughout the State when utilizing pawn shops. It protects service-members who have pawned property and then been deployed, their interest will be frozen, and their property will be held until they return.

SB 292 helps business by providing a consistent regulatory framework under which to operate statewide. The legislation also assists local and state police forces by requiring a simple, but clear reporting system whereby all transactions are catalogued, inventoried and available to the authorities.

This legislation is not attempting to "fix a problem" that exists within the State. Rather it is a pro-active attempt to protect consumers and small businesses. I urge your support of this legislation

ALASKA STATE LEGISLATURE

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Charlie Huggins
Senator

Changes from SB 292 to CSSB 292

Page 1, line 6-9, following "by":

Delete "(1) [PAWNBROKERS OR] loan shops where separate and individual loans do not exceed $500; or (2) a person who is regulated under AS 08.76.100 – 08.76.590."

Insert "pawnbrokers or loan shops where separate and individual loans do not exceed $500. In this subsection, "pawnbroker" means a person who is regulated under AS 08.76.100 – 08.76.590."

Page 3, line 3:

Delete "(6) pays the investigation fee under AS 08.76.120."

Page 3, line 4-7:

Delete "**Sec. 08.76.120. Investigations fee.** Notwithstanding AS 08.01.065, a person applying for a license shall pay the department a nonrefundable initial investigation fee of $200. The investigation fee is nonrefundable even if the application is considered withdrawn under AS 08.76.130."

Page 3, line 19, following "before":

Delete "September 1 of the calendar year in which the license expires"

Insert "the expiration date of the license"

Page 3, line 28, following "**Sec. 08.76.160.**":

Delete "**Amount financed.** Except for the limitations in AS 08.76.210 and 08.76.220 on interest and other charges that a licensee may charge, a licensee may enter into a pawn transaction for any amount."

Insert "**Limit on pawn transaction amount.** A licensee may not enter into a pawn transaction that exceeds $500, excluding the finance fee and any fees charged under AS 08.76.220.

Page 4, line 9, following "maintain a":

Delete "record"

Insert "pawn book"

Page 4, line 16-17, following "other number,":
Delete "and all letters and marks inscribed"
Page 4, line 23, following "(b) A":
Delete "pawnbroker may make a record in a book or in an electronic format"
Insert "pawn book may be contained in a book or in an electronic format"

Page 4, line 26, following "A pawnbroker":
Delete "may not knowingly obliterate, discard, or destroy the record of a completed pawnbroker transaction within"
Insert "shall maintain in good condition the pawn book record of a completed pawnbroker transaction for"

Page 4, line 29, following "required":
Insert "to be maintained in a pawn book"

Page 5, line 1, following "a record":
Insert "in a pawn book"

Page 5, line 2, following "record":
Insert "in a pawn book"

Page 5, line 4, following "copy of the":
Insert "transaction"

Page 5, line 5, following "agreement must":
Delete "disclose each fee charged under AS 08.76.210 or 08.76.220. The agreement must be on a form approved by the department.
Insert "clearly and conspicuously disclose (1) the name and address of the pawnbroker and the name and mailing address of the pledgor or seller; (2) the date of the transaction; (3) a description of the item sold or pledged; (4) the amount of each fee charged under AS 08.76.210 and 08.76.220; (5) if the transaction is a pawn transaction, the amount financed and the maturity date; and (6) if the transaction is a purchase by the pawnbroker, the amount of the purchase price."

Page 5, line 19, following "places":
Delete "with the pawnbroker a firearm that is required by law to be registered"

Page 5, line 21, following "(1) a":
Delete "registration"
Insert "firearm processing"

Page 6, line 29, following "holder of a":
Delete "pawn ticket"
Insert "transaction agreement"

Page 6, line 30, following "of the":
Delete "pawn ticket"
Insert "transaction agreement"

Page 6, line 31, following "presents the":
Delete "pawn ticket"
Insert "transaction agreement"

Page 9, line 18, following "claim"
Delete "and obtain a signed receipt from the pawnbroker that the pawnbroker was notified"

Page 9, line 21, following "property and":
Insert "must be accompanied by proof that the claimant owns the property and"

Page 9, line 21, following "stolen,":
Delete "be accompanied by"

Page 10, line 30, following "basis"
Delete ", as determined by the law enforcement officer"

Page 11, line 10 – 13, following (B)
Delete "size and the color that is apparent to an untrained eye; (C) precious metal type, weight, and content, if known; (D) gemstone description; (E)"

Page 11, line 13-14, following "gauge,":
Delete "number of barrels, barrel length, and finish,"

Page 11, line 24-31, following "**Sec. 08.76.430.**"
Delete "**Review by law enforcement officers.** (a) A pawnbroker shall make purchased property, records, and pledged property that has not been redeemed available for inspection by a law enforcement officer during normal business hours during the 30 days after the pawnbroker transaction is entered into. (b) A pawnbroker may not refuse to allow the department, a law enforcement officer, a law enforcement agency, or the state attorney general to inspect the pawnbroker's pledged property, purchased property, or records during the ordinary hours of the pawnbroker's business or at other mutually acceptable times."
Insert "**Inspection by law enforcement entities.** If a law enforcement agency provides the case number assigned to the investigation for which the inspection is being made, a pawnbroker may not refuse to allow the law enforcement agency to inspect during normal business hours the pawnbroker's pawn book and the purchased property involved in the investigation or the unredeemed pledged property involved in the investigation.

Page 12, line 11-12, following (6):
Delete "impose on the licensee a civil fine not to exceed $5,000; (7)"

Page 12, line 25, following "**Sec. 08.76.450.**":
Insert "Civil"

Page 12/13, line 30-1:
Delete "**Sec. 08.76.460. Criminal liability.** A person who violates AS 08.76.100 – 08.76.590 is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500, or by imprisonment for not more than six months, or by both."

Page 13, line 2, following "**Sec.**":
Delete "**08.76.480**"
Insert "**08.76.460**"

Page 13, line 15, following "**Sec.**":
Delete "**08.76.490**"
Insert "**08.76.470**"

Page 15, line 18, following "(21)":
Insert "pawn book" means the book required to be maintained by AS 08.76.180

Page 16, line 10, following "(31)":
Delete "record" means the record required to be maintained by AS 08.76.180

Page 16, line 17
Insert (35) "transaction agreement" means the transaction agreement required by AS 08.76.200.

Page 16, line 17, following "**Sec. 6.**"
Insert "AS 45.01.211(b) is amended by adding a new paragraph to read: (47) "pawnbroker" has the meaning given in AS 08.76.590.

Page 16, line 22 following "AS":
Delete "08.76.490"
Insert "08.76.470"

Page 17, line 16, following "AS"
Delete "08.76.480"
Insert "08.76.460"

Page 17, line 13, following "sec."
Delete "10"
Insert "11"

Cash America Statement

Why Alaska Should Regulate Pawnbrokers

SB 292 brings the pawn industry in Alaska into the 21st century. This bill marries the best of current regulation among the lower 48 states by instituting a regulatory framework for the operation of pawn shops in Alaska. Alaska is the only state in the nation without statewide regulation of pawn shops. This bill addresses this oversight and provides for needed consumer and business operator protections alike.

SB 292 is not attempting to fix a problem that exists currently. What it is trying to do is be proactive since current operators and their customers are vulnerable to unforeseen circumstances that could affect the industry. This proactive approach will protect both the consumer and business operator by instituting a regulatory framework under which to operate statewide.

Who pawnbrokers serve

In today's difficult economy, many people depend on pawnbrokers to help them meet daily financial needs not offered by other financial institutions. Pawn customers represent the working families of America who periodically experience an unexpected need for short-term funds. Pawn loans keep the electricity on, the rent paid and cars running with full tanks of gas. And pawn shops also provide a retail store environment where shoppers and sellers alike can save time and money by taking advantage of lower prices and favorable transaction terms.

Pawnshop customers have regular jobs, from working in hospitals to home construction. They support our economy by working in government, teaching our children and caring for the elderly, to name a few. Just like you, pawn customers have dreams; want better lives for their children and a stronger sense of security. However, they also have pressing bills and unforeseen financial issues.

According to GAO analysis of November 1999 Census, SIPP data, as many as 55 million people (28% of US adults) are un-banked. Pawn customers, therefore, use a pawn shop because they may or may not have a banking relationship and they find our pawnshops welcoming places to do business.

Average Pawn Customer

- Age: 36
- Household Income: $29,000
- 80% are employed
- 82% have high school diploma or GED
- 33% are homeowners
- All ethnicities

- **Pawnbrokers are governed by all of the major federal laws that apply to other entities designated as financial institutions including:**

- USA Patriot Act
- Truth-in-Lending Act
- Bank Secrecy Act and IRS regulations requiring reporting of certain cash transactions
- Trading with the Enemy Act and related Execute Orders and regulations
- Privacy provisions of the Gramm-Leach-Bliley Financial Services Modernization Act
- FTC Privacy Rule
- FTC Safeguards Rule
- Fair Credit Reporting Act
- FTC Consumer Information Disposal Rule
- Equal Credit Opportunity Act
- Servicemembers Civil Relief Act

Highlights of SB 292:

- Regulated by the Department of Commerce, Community, and Economic Development.
- Establishes a transparent operating structure for pawnbrokers to follow so customers know what to expect in any statewide shop.
- Holds pawnbrokers to a higher standard by strengthening the relationship between pawnbrokers and police agencies across the state.
- Assists law enforcement by providing for straight forward pawn transaction reporting requirements.
- Brings due process for misappropriated property to all parties involved.
- Allows our service members who have been deployed overseas the opportunity of not having to be concerned about any property that is in a pawnshop as this bill provides for the freezing of the interest charge and requires that items be held until their return.
- Standardizes the fee structure while maintaining the same rate cap.
- Allows customers who frequent a pawnshop for their financial needs an extra 30-day grace period upon the loan expiration date to retrieve their personal belongings.

ALASKA STATE LEGISLATURE

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907-373-4724 - Fax
Senator_Charlie_Huggins@legis.state.ak.us

State Capitol, Room 417
Juneau AK 99801-1182
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www.akrepublicans.org/huggins/

Charlie Huggins
Senator

March 23, 2010

To: Senator Hollis French, Chair
Senate Judiciary Committee

From: Senator Charlie Huggins

Subject: Request to Schedule SB 292 for a Hearing

I respectfully request the scheduling of SB 292, "An Act relating to the registration and operation of pawnbrokers under the Alaska Small Loans Act, and to the exclusion of pawnbrokers under certain definitions in the Uniform Commercial Code; and providing for an effective date," for a hearing before the Senate Judiciary Committee at your earliest convenience.

Please contact my staff, Josh Tempel, with any questions on the details of this bill. Josh's phone number is 465-4066.

Please find attached pertinent information for the committee.

Thank you.

Attachments

SB 297

26-LS1536\E
Bailey
3/23/10

CS FOR SENATE BILL NO. 297( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR DYSON

A BILL

FOR AN ACT ENTITLED

"An Act providing for the release of certain property in the custody of a law enforcement agency to the owner under certain conditions."

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

* **Section 1.** AS 12.36 is amended by adding a new section to read:

Sec. 12.36.070. Return of property by hearing. (a) The owner of property not belonging to a law enforcement agency that is in the custody of the agency under this chapter may request that the agency return the property to the owner.

(b) Within 10 days after receipt of a request under (a) of this section and following reasonable notice to the prosecution, defense, and other interested parties, the agency shall request a hearing before the court to determine if the property shall be released to the owner.

(c) After a hearing, the court may order the return of the property in the custody of a law enforcement agency to the owner if

(1) the owner provides satisfactory proof of ownership; and

(2) the law enforcement agency fails to prove that the agency or another interested party is authorized to retain possession of the property.

(d) The court may impose reasonable conditions on an owner claiming property under this section.

CS FOR SENATE BILL NO. 297

1. Line 9 – 12.36.070(b) clarifies that the "interested parties" identified in version 26-LS1536\R, includes the prosecution, defense and other interested parties.

2. p.2, lines 1 & 2 adds the language "or another interested party", for the purpose of those situations where a third party is claiming an ownership and possessory interest in the property.

3. P.2, line 3 replaces the word "receiving" in version 26-LS1536\R, with "claiming". This clarifies that the person making the request for return of property may not receive the property from the Court.

26-LS1536\R
Bailey
3/13/10

CS FOR SENATE BILL NO. 297( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR DYSON

A BILL

FOR AN ACT ENTITLED

"An Act providing for the release of property in the custody of a law enforcement agency to the owner under certain conditions."

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

*** Section 1.** AS 12.36 is amended by adding a new section to read:

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(c) After a hearing, the court shall order the return of the property in the custody of a law enforcement agency to the owner if

(1) the owner provides satisfactory proof of ownership; and

(2) the law enforcement agency fails to prove that the agency is

authorized to retain possession of the property.

(d) The court may impose reasonable conditions on an owner receiving property under this section.

CHUCK - FYI & INCLUSION IN OUR Bill

STATE OFFICE

ALASKA PEACE OFFICERS ASSOCIATION

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

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Thecla LaLonde, President
Wrangell Chapter
Wrangell

March 17, 2010

Senator Fred Dyson
Alaska State Senate
State Capitol
Juneau AK 99801-1182

Dear Senator Dyson:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing Senate Bill 297, an act providing for the release of property in the custody of a law enforcement agency to the owner under certain conditions.

The APOA Executive Board's Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

John Lucking, Jr.
State President

2506

STATE OF ALASKA
OFFICE OF VICTIMS' RIGHTS

March 25, 2010

Senator Fred Dyson
Chuck Kopp, Chief of Staff
Alaska State Legislature
120 4th Street, State Capitol, Room 3
Juneau, Alaska 99801-1182

Via Fax to (907) 465-4587 and
First Class U.S. Mail

RE: Senate Bill Number 297 – "An Act providing for the release of certain property in the custody of a law enforcement agency to the owner under certain conditions."

Dear Mr. Kopp:

The Alaska Office of Victims' Rights endorses Senate Bill Number 297 entitled, "An Act providing for the release of certain property in the custody of a law enforcement agency to the owner under certain conditions."

The Alaska Office of Victims' Rights appreciated the opportunity to speak with you directly on March 24, 2010 regarding the proposed legislation. The Alaska Office of Victims' Rights views this legislation as providing an important mechanism for crime victims to seek return of property seized during the course of a criminal prosecution.

It is the understanding of the Alaska Office of Victims' Rights that Senate Bill Number 297 is also endorsed by the Alaska Peace Officers Association and the Alaska Department of Law.

Thank you for the opportunity to meaningfully comment on Senate Bill Number 297.

Respectfully submitted,

D. Victor Kester
Executive Director

1007 WEST 3RD AVENUE, SUITE 205 • ANCHORAGE, ALASKA 99501-1936
TELEPHONE: 1-907-272-2620 • FACSIMILE: 1-907-272-2640

SENATOR FRED DYSON

SPONSOR STATEMENT

SB 297

An Act providing for the release of property in the custody of a law enforcement agency to the owner under certain conditions

All too often victims of theft and robbery are victimized a second time by bureaucracy. This is particularly true in cases of property crimes where demonstrable loss occurs to the victim's person or business as a result of property being held for a protracted period of time by a law enforcement agency, usually at the direction of prosecution, defense counsel and/or other interested parties.

SB 297 addresses the lack of a provision in the Alaska Code of Criminal Procedure that identifies a process for victims of property crime to petition the court for relief in recovering their property held as evidence. The law as currently written, provides discretionary authority to the prosecution for release of property, but does not clearly provide a right of hearing for a property owner to directly petition the court in those circumstances when property owners, prosecution and defense cannot come to agreement on return of property to the owner.

Victims of property theft often face the added burden of replacing stolen property. Small business owners who suffer property loss may face bankruptcy if the theft of property results in the inability to consummate a sale, continue their business operations, or the stolen property is uninsured or underinsured.

Property recovered by a law enforcement agency may be held as evidence for months or years. Property owners deserve protections in the law to ensure their property is held as evidence only as long as necessary for the prosecution and defense to physically retain the item, without jeopardizing the case.

SB 297 will provide property owners in the Alaska Code of Criminal Procedure, a clearly identifiable process to petition the court for the recovery of their property in those circumstances where they are otherwise not able to reach agreement with interested parties on the return of the property.

Contact: Chuck Kopp, Staff to Senator Dyson (907)465-6580

During Session (January - May): Alaska State Capitol • Juneau, Alaska 99801 • (800) 342-2199 • (907) 465-2199 • (907) 465-4587 (fax)
During Interim (June-December): 10928 Eagle River Road, Suite 238 • Eagle River, Alaska 99577 • (907) 694-6683 • (907) 694-1015 (fax)
senator.fred.dyson@legis.state.ak.us • www.akrepublicans.org

SENATOR FRED DYSON

CS SB 297

The proposed Committee Substitute for SB 297 alters SB 297 language at Line 8.

Sec. 12.36.070(b) provides additional language that sets a period of time for a request for return of property to be acted upon, and that notice be given to interested parties.

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SENATOR FRED DYSON

SB 297 NOTES

1. Alaska Statutes - Title 12 *Code of Criminal Procedure*, Chapter 36 *Disposition of Recovered or Seized Property*, Sec. 20 *Return of Property*, provides the legal process for return of property.
2. 12.36.020(a) identifies those circumstances when a law enforcement agency may **not** return property to an owner.
3. 12.36.020(b) provides for the return of property to owners *at the discretion of the prosecuting attorney* where photographs are used as evidence in place of the property, stating *the prosecuting attorney **may** release the property to the owner upon presentation of satisfactory proof of ownership.*
4. 12.36.020(c) states that wrongfully taken or damaged property that is *not* properly photographed and authenticated under 12.45.086 *Photographic evidence of property wrongfully taken or damaged,* and used as evidence in a criminal or children's court proceeding, is to be returned to the owner *within 60 days after the final disposition of the case.*
5. Unfortunately, final disposition of the case may be protracted for a long period of time. The return of property to its rightful owner may be hindered by concerns of prosecution, defense, and/or other interested parties.
6. 12.45.086 *Photographic evidence of property wrongfully taken or damaged,* defines the process for admissibility of photographs as evidence in criminal and children's court proceedings. This section states that properly submitted photographs are to be regarded to the same extent as if the property itself was introduced as evidence. This sounds good, but in practice falls short of its intent. 12.45.086(c) seems to recognize this problem by singling out only the theft of commercial fishing gear as being property that *shall be returned to the owner as soon as possible*. Nearly all thefts of property from businesses should be returned to the rightful owners ASAP.
7. SB 158 (last session, endorsed by the Alaska Peace Officers Association) sought to amend 12.36.020(c) by providing an alternative to waiting for final case disposition, which can take years. This allowed for the possibility of a law enforcement agency controlling the property to consult with the prosecuting attorney and defense counsel to determine if the property is no longer required to be retained as evidence, and if agreed on by all parties, returned to the rightful owner. In retrospect, this language placed all the discretion with the criminal justice entities, and still left victim property owners powerless to recover their property.
8. SB 297 corrects that deficiency by *providing directly to the property owner the right of a court hearing to recover possession of the owner's property*, and requiring that the law enforcement agency prove to the court that another parties' interest in the property overrides the owner's interest in having it returned.
9. 12.36.090 *Definitions* of "law enforcement agency" includes the Office of District Attorney, Department of Law, as this is a public agency having one of its principal functions being the enforcement of the criminal law.

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ALASKA STATE SENATE

SENATOR FRED DYSON

Date: March 12, 2010

To: Senator Hollis French, Chair
Senate Judiciary Committee

From: Senator Fred Dyson

Re: Committee Hearing Request for SB 297

I respectfully request a committee hearing be scheduled for SB 297, "An Act providing for the release of property in the custody of a law enforcement agency to the owner under certain conditions."

During Session (January - May): Alaska State Capitol • Juneau, Alaska 99801 • (800) 342-2199 • (907) 465-2199 • (907) 465-4587 (fax)
During Interim (June-December): 10928 Eagle River Road, Suite 238 • Eagle River, Alaska 99577 • (907) 694-6683 • (907) 694-1015 (fax)
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SB 303

SENATE COMMITTEE REPORT

DATE: 4/2/10

FURTHER: Rules

DATE TURNED IN TO OFFICE: 4/7/10

Judiciary Committee considered SENATE BILL NO. 303

SB 303 WORKERS' COMPENSATION AND CONTRACTORS

"An Act relating to a subcontractor's, contractor's, and project owner's liability for workers' compensation, to sole proprietors and partnerships without employees, and to managers or managing members of limited liability companies, and excluding certain persons from liability for securing the payment of workers' compensation benefits to employees; and providing for an effective date."

and recommends:

[ ] be **replaced** with [ ] **SCS** or [✓] **CS** SB303 (JUD)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** SCS/CS- Forthcoming

[ ] attached amendment(s)

[ ] adopt _____ Letter of Intent

[ ] further referral to _____ Committee

SENATE BILL:
[ ] Same Title
[✓] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
LWF	3/22/10			✓	1

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Coghill			✓	
	Wielechowski	✓			
CHAIR:	French	✓			

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 2, 2010

SUBJECT: CSSB 303( ) workers' compensation amendment (Work Order No. 26-LS1089\S)

TO: Senator Joe Paskvan
Chair of the Senate Labor and Commerce Committee
Attn: Jeff Stepp

FROM: Dennis C. Bailey
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Removes a provision that requires a project owner to be liable for and secure payment for workers' compensation when the contractor fails to secure payment for the contractor's employees, or for subcontractor's employees.

If the employer is a subcontractor, the contractor is liable for securing payment of compensation for the employees of the subcontractor unless the subcontractor secures the payment.

Section 2. Amends the definition of a "contractor" for purposes of defining an employer's liability for workers' compensation by removing an exception that excludes a vendor who sells or leases tools, equipment, other goods, or property.

Section 3. Requires a subcontractor acting as an independent contractor who has no employees to secure payment for workers' compensation for the subcontractor, and to provide a certificate of workers' compensation insurance coverage for the project.

If a subcontractor fails to secure payment for workers' compensation causing a contractor to become liable for an additional premium, the subcontractor is liable to the contractor for the additional premium and penalties.

Section 4. Removes a definition of an "employer" that allows a person who is potentially liable for securing workers' compensation to benefit from the exclusive liability provisions of the Alaska Workers' Compensation Act.

Section 5. Repeals a specific definition of a "project owner."

Section 6. Gives the Act a January 1, 2011, effective date.

DCB:plm
10-196.plm

26-LS1089\S
Bailey
4/2/10

CS FOR SENATE BILL NO. 303( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to a subcontractor's, contractor's, and project owner's liability for workers' compensation, to workers' compensation for independent contractors without employees, and excluding certain persons from liability for securing the payment of workers' compensation benefits to employees; and providing for an effective date."

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

*** Section 1.** AS 23.30.045(a) is amended to read:

(a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215. If the employer is a subcontractor [AND FAILS TO SECURE THE PAYMENT OF COMPENSATION TO ITS EMPLOYEES], the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor **unless the subcontractor secures the payment** [. IF THE EMPLOYER IS A CONTRACTOR AND FAILS TO SECURE THE PAYMENT OF COMPENSATION TO ITS EMPLOYEES OR THE EMPLOYEES OF A

SUBCONTRACTOR, THE PROJECT OWNER IS LIABLE FOR AND SHALL SECURE THE PAYMENT OF THE COMPENSATION TO EMPLOYEES OF THE CONTRACTOR AND EMPLOYEES OF A SUBCONTRACTOR, AS APPLICABLE].

*** Sec. 2.** AS 23.30.045(f)(1) is amended to read:

(1) "contractor" means a person who undertakes by contract performance of certain work for another [BUT DOES NOT INCLUDE A VENDOR WHOSE PRIMARY BUSINESS IS THE SALE OR LEASING OF TOOLS, EQUIPMENT, OTHER GOODS, OR PROPERTY];

*** Sec. 3.** AS 23.30.045 is amended by adding new subsections to read:

(g) A subcontractor who is hired by a contractor as an independent contractor and who has no employees during the term of the contract is liable for and shall secure the payment of compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215 that provides coverage for the subcontractor and shall produce a certificate of workers' compensation insurance coverage for the project.

(h) If a subcontractor fails to secure the payment required under (a) or (g) of this section and the contractor becomes liable for an additional premium because of the subcontractor's failure to secure payment, the subcontractor is liable to the contractor for the amount of the additional premium and associated penalties.

*** Sec. 4.** AS 23.30.055 is amended to read:

Sec. 23.30.055. Exclusiveness of liability. The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.022. However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter, or to maintain an action

against the employer at law or in admiralty for damages on account of the injury or death. In that action, the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence of the employee. [IN THIS SECTION, "EMPLOYER" INCLUDES, IN ADDITION TO THE MEANING GIVEN IN AS 23.30.395, A PERSON WHO, UNDER AS 23.30.045(a), IS LIABLE FOR OR POTENTIALLY LIABLE FOR SECURING PAYMENT OF COMPENSATION.]

* **Sec. 5.** AS 23.30.045(f)(2) is repealed.

* **Sec. 6.** This Act takes effect January 1, 2011.

Senator Joe Paskvan

Alaska State Senate • District E • Fairbanks • Ft Wainwright

Sponsor Statement
Senate Bill 303
Workers' Compensation and Contractors

From statehood and for decades afterward, Alaska's workers' compensation statutes promoted safety in the workplace by providing for actions by injured employees against those on the jobsite, other than their own employer, whose fault caused the employee's injury.

Most Alaskans are shocked, then, to learn that the exclusive liability provisions of AS 23.30.055, established in 2004, protect a project owner or general contractor from any liability when a subcontractor's employee is injured or killed, even when the project owner or general contractor acts with criminal negligence, when that criminal negligence is defined, in part, as, "the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

Senate Bill 303 seeks to return to the previous system which allowed for accountability and responsibility for wrongful conduct.

A fundamental principle when speaking to the concept of personal responsibility is: If you break it, you pay for it. This fundamental principle is thought of as a guiding standard and it is advanced as a family value worthy of passing from parent to child. We expect that if others do something wrong to us that the wrongdoer will be responsible and, correspondingly, if we do something wrong to another that we will be responsible.

In the common application of this fundamental principle to driving a vehicle, we expect that if we fail to stop for a red light and hurt someone that we will be responsible and that if someone else runs a red light that they will be responsible to us for the harm caused to a son, daughter, family member, or other loved one.

Just like responsible operators of motor vehicles know that they must follow the rules of the road (e.g., stopping for red lights), employers know that they must generally comply with state and federal codes, regulations, and laws relating to workplace safety, and are also subject to additional common law or statutory duties and responsibilities. Likewise, project owners, contractors and other entities have legal duties and responsibilities relating to the safety of workers.

Alaska has a system whereby the fault is apportioned so there can never be the worry that anyone will ever be responsible for more than their just share of the fault. However, where the project owner and/or contractor is at fault, but is nevertheless indemnified by the employer or granted immunity through legislation, the employer is left bearing the burden of the conduct of the project owner and/or contractor, and the project owner and/or contractor is not required to take any personal responsibility for its own actions.

In Juneau:
State Capitol, Juneau, AK 99801
(907) 465-3709 Office • (907) 465-4714 Fax

senator_joe_paskvan@legis.state.ak.us

In Fairbanks:
1292 Sadler Way, Ste. 308 Fairbanks, AK 99701
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Workers compensation has always been a system under which harm is only partially compensated. For example, if an unmarried worker without children is killed, the compensation benefits are modest funeral expenses only.

A common argument against the system prior to 2004 relates to the objection to "double dipping." However, prior to 2004, the monies recovered by the injured employee reimbursed the employer's compensation carrier for the benefits paid to the injured employee under the workers' compensation system; therefore, eliminating any notion of "double dipping."

I urge your support of this legislation.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 15, 2010

SUBJECT: Workers' compensation by contractor employer or project owner; sectional summary (SB 303, Work Order No. 26-LS1089\R)

TO: Senator Joe Paskvan
Chair of the Senate Labor and Commerce Committee
Attn: Jake Hamburg

FROM: Dennis C. Bailey
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Removes a provision that requires a project owner to be liable for and secure payment for workers' compensation when the contractor fails to secure payment for the contractor's employees, or for subcontractor's employees.

Section 2. Amends the definition of a "contractor" for purposes of defining an employer's liability for workers' compensation by removing an exception that excludes a vendor who sells or leases tools, equipment, other goods, or property.

Section 3. Makes a conforming change by removing a definition of an "employer" for purposes of workers' compensation exclusive liability.

Section 4. Repeals a definition of a "project owner."

Section 5. Gives the Act a January 1, 2011, effective date.

DCB:ljw
10-176.ljw

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 25, 2010

SUBJECT: Workers' compensation; exclusive liability for project owners and contractors (SB 303, Work Order No. 26-LS1089\R)

TO: Senator Joe Paskvan
Chair of the Senate Labor and Commerce Committee
Attn: Jeff Stepp

FROM: Dennis C. Bailey
Legislative Counsel

This memorandum is in response to your request for a memo that provides short answers to the questions posed in the memorandum to your office dated March 23, 2010, and an additional question related to whether the exclusive remedy provisions of AS 23.30.055 apply when the actions of an owner or contractor constitute criminal negligence.[1]

1. May an owner or general contractor assert the exclusive remedy of the Alaska Workers Compensation Act, based on the last sentence of AS 23.30.055, to avoid liability for an injury to an employee of a subcontractor that occurs during employment?

The short answer is yes, based on the analysis in my prior memorandum.

2. Are the "intentional injury" and "illegally employed minor" exceptions the only recognized exception to the workers' compensation exclusive remedy statute?

The short answer is yes.[2]

3. Do the exclusive remedy provisions of AS 23.30.055 protect a project owner or general contractor from liability for the injuries to a subcontractor's employee if the owner or general contractor acts with criminal negligence?[3]

---

[1] My conclusions are based on existing law, not addressing the changes to AS 23.30.055 proposed in SB 303.

[2] My research of the Alaska case law did not reveal an additional exception to AS 23.30.055.

[3] The material provided describes criminal negligence as follows: "the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

The short answer is yes.[4]

4. Do the exclusive remedy provisions of AS 23.30.055 protect an employer who intentionally injures an employee, or who violates child labor law?

The short answer is no, based on the analysis in my previous memo.

If I may be of further assistance, please advise.

DCB:med
10-057.med

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[4] I am unable to locate caselaw, an administrative opinion, or an attorney general opinion in Alaska that addressed criminally negligent conduct in the context of a workers compensation claim. Absent intentional conduct, it is unlikely that a court would find criminally negligent conduct on the part of an employer to be the kind of conduct that should be outside of the operation of workers' compensation statutes. See 6-103 *Larson's Workers' Compensation Law*, sec. 103.03

LEGAL SERVICES

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MEMORANDUM March 23, 2010

SUBJECT: Questions regarding workers' compensation exclusive remedy provisions (SB 303, Work Order No. 26-LS1089\R)

TO: Senator Joe Paskvan
Chair of the Senate Labor and Commerce Committee
Attn: Jeff Stepp

FROM: Dennis C. Bailey
Legislative Counsel

This memorandum responds to your questions concerning the exclusive liability provisions of the existing Alaska Workers' Compensation Act.

May an owner or a general contractor assert the exclusive remedy provisions of the Alaska Workers' Compensation Act to avoid liability for an injury to an employee of a subcontractor that occurs during employment?[1]

AS 23.30.055 sets out the exclusive liability provisions in the Alaska Workers' Compensation Act; the section reads:

> **Sec. 23.30.055. Exclusiveness of liability.**
> The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.022. However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter, or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action, the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence

[1] Workers' compensation is "payable irrespective of fault as cause for the injury." AS 23.30.045(b).

> of the employee. In this section, "employer" includes, in addition to the meaning given in AS 23.30.395, a person who, under AS 23.30.045(a), is liable for or potentially liable for securing payment of compensation.

Under AS 23.30.055, an employer's liability to secure workers' compensation under AS 23.30.045[2] is the exclusive liability of an employer for an injury to the employee. The last sentence of AS 23.30.055 adds to the definition of an "employer" a person who is potentially liable for securing workers' compensation payment. Under AS 23.30.045(a), a subcontractor, a contractor, or a project owner are each potentially liable for securing workers' compensation payments; therefore, any of them may assert the exclusive liability provisions of AS 23.30.055 as a defense.

Do the exclusive remedy provisions of AS 23.30.055 protect an employer who intentionally injures an employee or who violates child labor laws?

The Alaska Supreme Court has recognized an intentional injury exception to the exclusive remedy provisions in AS 23.30.055. The Alaska Supreme court has

> held that [the] exclusive remedy provision does not apply where an employee commits an intentional tort against a fellow worker. We found that the "socially beneficial purpose of the work[ers'] compensation law

---

[2] AS 23.30.045 provides:

> **Sec. 23.30.045. Employer's liability for compensation.**
>
> (a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215. If the employer is a subcontractor and fails to secure the payment of compensation to its employees, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor. If the employer is a contractor and fails to secure the payment of compensation to its employees or the employees of a subcontractor, the project owner is liable for and shall secure the payment of the compensation to employees of the contractor and employees of a subcontractor, as applicable.
>
> . . .
>
> (f) In this section,
>
> (1) "contractor" means a person who undertakes by contract performance of certain work for another but does not include a vendor whose primary business is the sale or leasing of tools, equipment, other goods, or property;
>
> (2) "project owner" means a person who, in the course of the person's business, engages the services of a contractor and who enjoys the beneficial use of the work;
>
> (3) "subcontractor" means a person to whom a contractor sublets all or part of the initial undertaking.

> would not be furthered by allowing a person who commits an intentional tort to use the compensation law as a shield against liability." We have permitted recovery for intentional torts "on the theory that the harm is not accidental and therefore not covered by the act."

Fenner v. Municipality of Anchorage, 53 P.3d 573, 575 (Alaska 2002) (internal cites omitted). The exception is limited to those cases where an employer has a specific intent to injure an employee. *Id.* at 577. *See also Williams v. Mammoth of Alaska*, 890 P.2d 581 (Alaska 1995) (exclusive remedy bars employee's common law tort claim against partner where partner's negligence arises within partnership business); *Elliott v. Brown,* 569 P.2d 1323 (Alaska 1977) (where employer hit and shoved employees, actions were intentional enough to take case outside workers' compensation system); *Van Bien v. ERA Helicopters, Inc.*, 779 P.2d 315 (Alaska 1979) (aviation firm dispatching pilots without adequate sleep was gross negligence or wilful and knowing violation of FAA regulations, but not the type of intentional tort actionable outside of the workers' compensation system).

With regard to your question concerning the application of child labor laws to the exclusive liability provisions of the Alaska Workers' Compensation Act, if an employer violates child labor laws, AS 23.30.055 does not bar a common law action for damages brought against an employer by a person who was employed in violation of child labor laws at the time of the injury. *Whitney-Fidalgo Seafoods, Inc. v. Beukers,* 554 P.2d 250 (Alaska 1976).

In the *Beukers* case, the Alaska Supreme Court found that the Alaska Workers' Compensation Act does not specifically address the question which remedies are available to illegally employed minors injured in the course of their employment. *Id.* at 252. However, the court held, as a matter of public policy, that

> where an employer has knowingly entered into an illegal contract of employment with a child, in express violation of a statute, the employer will not be permitted to insist that a child is an "employee" within the terms of the workmen's compensation act, so that the child can no longer assert its common law rights against the employer.

Id. at 253.

If I may be of further assistance, please advise.

DCB:ljw
10-207.ljw

2527 P. 02/02
FAX NO. 907 269 0229
MAR-25-2010 THU 12:45 PM ANCHORAGE LIO

Alaska Territorial
Governor J.F. Strong,
March 2, 1915
Message to Alaska
Legislature

oners, and providing the necessary expenses of performing such duties, and in the prosecuting of all crimes denounced by Territorial laws the costs shall be paid the same as is now or may hereafter be provided by act of Congress providing for the prosecution of criminal offenses in said Territory, except that in prosecutions growing out of any revenue law passed by the Legislature the costs shall be paid as in civil actions and such prosecutions shall be in the name of the Territory."

DISPOSITION OF TERRITORIAL FUNDS.

The funds of the Territory have been deposited with various banks, and interest is being received upon them at the rate of two per cent. per annum, the funds being deposited as "open accounts." The banks of deposit have in all cases given bonds to the Territory for the safeguarding of the moneys in their hands.

TERRITORIAL MINING LAW.

The Territorial mining law (Chapter 74, Session Laws of 1913) has been and still is, a subject of much discussion for and against. It is urged by some that this law is confiscatory in some of its provisions and therefore should be repealed; others assert with equally strong convictions that the law is sound in principle and should be retained with some minor amendments. You come direct from the people and your course should be guided by what you believe will confer the greatest good upon the greatest number. Mining is the leading industry of the Territory and every legitimate encouragement should be afforded it. To handicap any industry by unjust or repressive restrictions is inimical to development, and upon the development of its resources will depend the growth and prosperity of the Territory and the consequent welfare of its people.

The report of the Territorial Inspector of Mines will be submitted to you, together with a number of recommendations, including amendments to the act relating to the inspection of mines in the Territory, and making the payment of wages to miners more secure and certain.

WORKMEN'S COMPENSATION.

What are known as workmen's compensation or employers' liability laws have been enacted by the Federal government and in many states, and are being favorably considered everywhere. Whether the time has come when this Territory should provide legislation for such compensation

for industrial accidents, as may be considered just to both labor and capital, employer and employe, is a matter worthy of consideration, in view of our limited industries and the cost of administration that such law would entail. Of its advantages there can be no doubt, however, for in this way alone can the unfortunate employe, and sometimes the equally unfortunate employer, be protected from those who speculate upon the misfortunes of others. The subject must be approached in a spirit of fairness, with broad views of the dignity and importance of the laborer, aside from the labor that he performs, and also with a true conception of the rights of capital in its relation to industrial affairs. Each to a great extent, under our system of government, is dependent upon the other, but we must never forget the human equation. Money is for the use and support of the man; not to rule him. It is merely a measure of value, and those who have much of it should never be permitted to use it in such a way as to control the man, or the government which is established by him for his use and advancement.

AN EIGHT-HOUR DAY.

A law passed by the First session of the Legislature provides for an eight-hour day in all hard-rock and coal mines. This law I believe has been generally observed and has proved generally satisfactory. Under its operations placer mines are excepted, but there would seem to be no legitimate reason why the eight-hour day should not be extended to all kinds of underground and other mining. Speaking by and large, experience has demonstrated that a man who works eight hours a day will do as much work as he who works ten hours, and he will probably do it better.

ELECTIONS.

The need of a modified form of the Australian ballot system is imperative in this Territory. Under the present method many kinds of ballots are now used and it is frequently impossible for the voter to cast an independent ballot and maintain his sovereign right of citizenship. A simple, practical law that will meet present requirements is recommended. A law for the registration of voters in Territorial elections in all incorporated towns would be a logical concomitant of an improved ballot law.

In this connection I may be permitted to point out that a corrupt practices act would tend to promote purity of elections. Fortunately Alaska has been comparatively free from corruption in elections, but it has not been unknown.

Patrick A. Thompson
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(360) 933-1210
patthompson58@yahoo.com

Senator Joe Paskvan, Chair
Senate Labor and Commerce Committee
State Capitol, #7
Juneau, AK 99801
Fax is (907) 465-4714

Re: Senate Bill 303

Dear Senator Paskvan:

First let me thank you for your efforts in trying to correct an unfair provision in the worker's compensation law, passed during the corrupt reign of Bill Allen, which provides immunity to project owners or general contractors from fairly compensating a worker injured by the direct negligence of a project owner or general contractor.

My name is Pat Thompson, age 52, and I am an example of how this law you are trying to change can destroy a workingman's life.
I worked in the oil fields in Alaska my entire adult life and was proud to do so and was treated well.

On October 4 of 2006 I worked for PEAK Oilfield Services. On that day I was assigned a fire truck to help clean a Vac truck at the Beluga waste disposal facility that is owned and operated by Conoco Phillips. During the cleaning, I suffered a devastating electrical shock when I touched the Vac truck. These trucks are supposed to be grounded to protect against static electricity. Conoco failed to provide any kind of ground. If the ground had been provided, I would have used it.

I now live with a brain injury. My partner, Tory Sandoz, has helped me compose this letter, as I am unable to do this on my own. I am unable to provide a living for myself due to inability to organize, recall recent

information, and physically move about for more than an hour or two without rest. I must take medicine to manage depression, nerve pain, stabilize mood. My relationships are suffering, as they are weary of my constant pain. I feel like I am an 80-year-old man.

As you know, the worker's comp system is pretty bad. I paid over $20,000 from my life savings to get a proper diagnosis and treatment from specialists in Chicago. The work comp matter grinds on with no help in sight. I have no income and must tap into my very rapidly dwindling retirement account.

God bless you and the other compassionate legislators for trying to undo this horrible legislative mistake.

Very truly yours,

Patrick A. Thompson

Alaska Timber Insurance Exchange

2417 Tongass Avenue, Suite 214
Ketchikan, Alaska 99901
FAX (907) 225-9454
(907) 225-9451

March 22, 2010

The Honorable Senator Paskvan
State Capitol Room 7
Juneau AK, 99801

Re: Senate Bill 303

Dear Senator Paskvan:

This letter is to express concerns that the Alaska Timber Insurance Exchange has about Senate Bill 303.

Senate Bill 303 would weaken the exclusive remedy provision in the Alaska workers' compensation statutes. The exclusive remedy provisions currently in place prevent, in most instances, an employee of a subcontractor or a contractor from bringing a third party action against either a project owner or contractor that their employer is working for.

An entity that qualifies as a project owner under the Alaska workers' compensation statutes is considered an employer for exclusive remedy purposes for the employees of either a contractor or subcontractor working for them. This also applies to a contractor in relation to a subcontractor.

Senate Bill 303 would take away these exclusive remedy protections from project owners or contractors even if they were liable for the workers' compensation benefits of an injured employee of a contractor or subcontractor. Currently, a project owner or contractor can become liable for the workers' compensation benefits of a contractor or subcontractor's employees if the contractor or subcontractor does not have workers' compensation insurance.

Prior to the passage of Senate Bill 323 in 2004, project owners and contractors were not treated as employers for exclusive remedy purposes, i.e. an injured employee of a contractor or subcontractor could bring a third party action against a project owner that hired the contractor and subcontractor. Likewise, an injured

employee of a subcontractor could bring a third party action against the contractor that hired their employer.

The Alaska Timber Insurance Exchange feels that the existing workers' compensation laws in Alaska provide fair benefits for injured workers without exposing employers, contractors or project owners to excessive liabilities. The proposed changes contained in Senate Bill 303 would add uncertainty and possible expense for those entities that hire contractors or subcontractors to do work for them.

Sincerely,

Martin R. Pihl

Martin Pihl
Chairman, Alaska Timber Insurance Exchange Board of Governors

cc: Alaska Timber Insurance Exchange Board of Governors
Alaska Timber Exchange Management Corporation Board of Directors

March 25, 2010

Senator Joe Paskvan, Chair
Senate Labor & Commerce Committee
State Capitol
Juneau, AK 99802

RE: SB 303

Chair Paskvan and Members of the Senate Labor & Commerce Committee,

The Alaska State Chamber in accordance with our legislative position opposes Senate Bill 303 regarding exclusive liability. This position was adopted at the annual legislative fly-in this past fall. This position supports the change regarding exclusive liability made by the legislature in 2004. For your review, please find attached our legislative position on the issue.

Current law obligates the immediate employer and other project participants to pay an injured employee's workers' compensation benefits regardless of fault. In the unfortunate circumstance of an injury, a worker has clear understanding about remedies being provided under the workers' compensation system. Prior to 2004, many subcontractors employed by a larger company (project owner) or employer, were not required to carry worker's compensation insurance. Under current law, which passed in 2004, all employees including subcontractors now carry worker's compensation insurance. This requirement now insures all workers working on the job regardless of who may be their direct employer. Correspondingly, workers' compensation benefits-the employers associated with the project-is the exclusive remedy for potentially liability

Prior to 2004, project owners, contractors and their subs were expending tremendous resources in segregating project and safety programs to defend against potential tort liability. Alaska courts have adopted of what is referred to as the retained control doctrine. Prior to the 2004 reform, parties other than an employee's immediate employer were liable in tort for any injury to an employee of an independent contractor if the party retains any amount of control over the work, including the right to review the contractor's safety practices. See for example, Moloso v. State, 644 P.2d 205 (Alaska 1982). In essence, injured employees used the retained control doctrine to support tort claims against the project owners and other parties that had done nothing more than try to enforce reasonable safety practices during the performance of a contractor's work.

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In practice, project owners and contractors attempted to avoid tort liability by limiting their involvement with each other's safety programs and work performance. In other words, prior to 2004 the law actually discouraged project owners and other project participants from implementing and enforcing coordinated safe work practices.

Under current law, project participants can take an integrated approach to completion of a project and can integrate safety programs. That is, project owners, contractors and subcontractors work closely together to ensure that project specifications and safety standards are met and that all work is completed in a successful and safe manner.

Second, the Alaska Workers' Compensation Act is intended to provide injured workers with reasonable compensation for their work related injuries without regard to fault or the cause of the injury. Some may claim that without the risk of exposure to tort damages, the project owners and other project participants have had little incentive to implement and enforce safe work practices. As previously stated, the new law has allowed for increased safety awareness and coordinated safety programs interconnecting subcontractors and project owners together. The Alaska State Chamber of Commerce has been steadfast advocates of reducing workers' compensation (wc) expenses particularly wc insurance; however, continued improvement on insurance rates mean continued improvement on workplace safety.

The tort system is not the only available means to punish companies that violate safety practices. The Department of Labor, the Oil and Gas Commission and other State agencies have authority to fine companies that violate State safety standards. Those agencies also have the authority to shut down projects that pose a safety hazard to employees. When project owners, their contractors and subcontractors work in an integrated manner, all companies involved in the contracting chain are subject to the fines and other remedies of state agencies. This is a much more efficient, credible and cost effective means of policing job safety.

At this time and in accordance with our legislative position adopted this past fall, we cannot support SB 303.

Best Regards,

Wayne A. Stevens

Wayne A. Stevens
President/CEO

Alaska State Chamber of Commerce
2010 Position

Support Workers' Compensation Exclusive Liability Statute

The Chamber supports current Alaska law making compensation benefits an injured worker's exclusive remedy for on-the-job injuries. The State Chamber will oppose any legislation introduced to remove the exclusive liability language described above.

SB 307

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Dennis Egan
Senator John Coghill

Senate Judiciary Committee

Request to waive SB 307 from Senate Judiciary

I move and ask unanimous consent that SB307 Shelters for Runaway Minors be waived from the Senate Judiciary Committee in order to expedite it. I have the signatures of a majority of the committee and the bill has had a hearing in the Senate Health and Social Services Committee.

Senator French, Chair

Senator Wielechowski

Senator McGuire

Senator Egan

Senator Coghill

Alaska State Legislature

Interim: (May - Dec.)
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Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

Senator Bettye Davis

Memorandum

To: Senator Hollis French
Senate Judiciary Committee Chair

From: Senator Bettye Davis

Date: March 16, 2010

RE: Hearing request for **SB307: SHELTERS FOR RUNAWAY MINORS**

Senator French:

You currently have in your possession SB307. This bill is of significance to me and I am requesting that a hearing on SB307 be scheduled as soon as possible.

Thank you.

Bettye Davis

Alaska State Legislature

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Senate Health and Social Services Committee

SPONSOR STATEMENT

SENATE BILL 307 *"An Act relating to residential shelters for runaway minors"*

SB307 would allow emergency residential shelters like Covenant House Alaska to continue competing for federal grant funding. Covenant House Alaska has five programs that include emergency shelter, healthcare, job and educational assistance and transitional living. Covenant House Alaska served nearly 3,000 Alaskan youth in FY2009 and have been in Alaska over 20 years – serving literally tens of thousands of youth.

In 2007, Covenant House Alaska was awarded the federal Basic Center Grant (BCG) through the Administration for Children and Families. This competitive federal grant supplied Covenant House Alaska with $300,000 phased over three years to operate the Crisis Center - $100,000 per year. Recently, the Administration for Children and Families recently notified Covenant House Alaska the Crisis Center is technically out of compliance with federal grant requirements stated in the Homeless and Runaway Youth Act. Established through the Act, federal regulation 45 CFR 1351.18 (d) states the Basic Center Grant (BCG) may be awarded to facilities with a shelter capacity of 20 beds or less. Covenant House Alaska holds 40 beds.

However, the Act at 42 U.S.C Section 5712(b)(2)(A) states the shelter can have "a maximum capacity of not more than 20 youth, **except where the applicant assures that the State where the center or locally controlled facility is located has a State or local law or regulation that requires a higher maximum to comply with license requirements for child and youth serving facilities.**" The Administration for Children and Families (ACF) concedes that states with statutes requiring them to operate a facility over 20 beds will meet the federal requirements. Supporting SB307 would allow a statutory change which would make it possible for emergency residential shelters like the Covenant House to continue competing for federal grants by operating under the terms of their license.

HHS publishes annually in the Federal Register a program announcement of grant funds available under the Runaway and Homeless Youth Program Act. The program announcement states the amount of funds available, program priorities for funding, and criteria for evaluating applications in awarding grants. The announcement also describes specific procedures for receipt and review of applications. An applicant should:

(a) Obtain a program announcement from the Federal Register or from one of HHS's 10 Regional Offices in Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco, and Seattle;

(b) Obtain an application package from one of HHS's Regional Offices; and

(c) Submit a completed application to the Grants Management Office at the appropriate Regional Office.

[43 FR 55635, Nov. 28, 1978, as amended at 48 FR 29202, June 24, 1983]

§ 1351.18 What criteria has HHS established for deciding which Runaway and Homeless Youth Program grant applications to fund?

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In reviewing applications for a Runaway and Homeless Youth Program grant, HHS takes into consideration a number of factors, including:

(a) Whether the application meets one or more of the program's funding priorities; (see §1351.12)

(b) The need for Federal support based on the number of runaway or otherwise homeless youth in the area in which the runaway and homeless youth project is or will be located;

(c) The availability of services to runaway or otherwise homeless youth in the area in which the runaway and homeless youth project is located;

(d) Whether there is a minimum residential capacity of four and a maximum residential capacity not to exceed 20 youth with a ratio of staff to youth sufficient to assure adequate supervision and treatment;

(e) Plans for meeting the best interests of the youth involving, when possible, both the youth and the family. These must include contacts with the families. This contact should be made within 24 hours, but must be made no more than 72 hours following the time of the youth's admission into the runaway and homeless youth project. The plans must also include assuring the youth's safe return home or to local government officials or law enforcement officials and indicate efforts to provide appropriate alternative living arrangements.

(f) Plans for the delivery of aftercare or counseling services to runaway or otherwise homeless youth and their families;

(g) Whether the estimated cost to the Department for the runaway and homeless youth project is reasonable considering the anticipated results;

(h) Whether the proposed personnel are well qualified and the applicant agency has adequate facilities and resources;

(i) Whether the proposed project design, if well executed, is capable of attaining program objectives;

(j) The consistency of the grant application with the provisions of the Act and these regulations.

§ 1351.19 What additional information should an applicant or grantee have about a Runaway and Homeless Youth Program grant?

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(a) Several other HHS rules and regulations apply to applicants for or recipients of Runaway and Homeless Youth Program grants. These include:

(1) The provisions of 45 CFR part 74 pertaining to the Administration of Grants;

(2) The provisions of 45 CFR part 16, Departmental Grants Appeal Process, and the provisions of Informal Grant Appeal Procedures (Indirect Costs) in volume 45 CFR part 75;

(3) The provisions of 45 CFR part 80 and 45 CFR part 81 pertaining to nondiscrimination under programs receiving Federal assistance, and hearing procedures;

(4) The provisions of 45 CFR part 84 pertaining to discrimination on the basis of handicap;

(5) The provisions of 45 CFR part 46 pertaining to protection of human subjects.

C

Effective: October 8, 2008

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 72. Juvenile Justice and Delinquency Prevention (Refs & Annos)
Subchapter III. Runaway and Homeless Youth (Refs & Annos)
Part A. Basic Center Grant Program (Refs & Annos)
§ 5712. Eligibility; plan requirements

(a) Runaway and homeless youth center; project providing temporary shelter; counseling services

To be eligible for assistance under section 5711(a) of this title, an applicant shall propose to establish, strengthen, or fund an existing or proposed runaway and homeless youth center, a locally controlled project (including a host family home) that provides temporary shelter, and counseling services to youth who have left home without permission of their parents or guardians or to other homeless youth.

(b) Provisions of plan

In order to qualify for assistance under section 5711(a) of this title, an applicant shall submit a plan to the Secretary including assurances that the applicant--

(1) shall operate a runaway and homeless youth center located in an area which is demonstrably frequented by or easily reachable by runaway and homeless youth;

(2) shall use such assistance to establish, to strengthen, or to fund a runaway and homeless youth center, or a locally controlled facility providing temporary shelter, that has--

(A) a maximum capacity of not more than 20 youth, except where the applicant assures that the State where the center or locally controlled facility is located has a State or local law or regulation that requires a higher maximum to comply with licensure requirements for child and youth serving facilities; and

(B) a ratio of staff to youth that is sufficient to ensure adequate supervision and treatment;

(3) shall develop adequate plans for contacting the parents or other relatives of the youth and ensuring the safe return of the youth according to the best interests of the youth, for contacting local government officials pursuant to informal arrangements established with such officials by the runaway and homeless youth center and for providing for other appropriate alternative living arrangements;

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Covenant House Alaska

Crisis Center • Community Services Center • Transitional Living

The Honorable Bettye Davis
State Capitol
Juneau, AK 99801

March 1, 2010

Dear Senator Davis,

Thank you for your long-standing support of Covenant House Alaska (CHA). CHA is the only shelter in Alaska specifically designed for homeless youth. Throughout our five programs including emergency shelter, healthcare, job and educational assistance and transitional living, CHA served nearly 3,000 Alaskan youth in FY09. CHA has been in Alaska for over 20 years and served literally tens of thousands of youth.

CHA was awarded the Basic Center Grant (BCG) through the Administration for Children and Families (ACF) in 2007. This competitive, federal grant supplied CHA with $300,000 phased over 3 years to operate the Crisis Center ($100,000 per year). ACF recently notified CHA that the Crisis Center is technically out of compliance with federal grant requirements stated in the Homeless and Runaway Youth Act. CHA will not be competitive for the new grant cycle starting in September 2010 if Alaska's state statute is not amended to comply with federal requirements.

Established through the Act, federal regulation 45 CFR 1351.18 (d) states that the BCG will be awarded to facilities with a shelter capacity of 20 beds or less. CHA's Crisis Center holds 40 beds. ACF concedes that states with statute requiring them to operate a facility over 20 beds will override the federal requirements. Through consultation with an attorney, CHA proposes the following change in Alaska statute to satisfy ACF's request:

Amendment to AS 47.10.310 to add a new subsection (e):

> (e) A program for runaway minors, which operates a residential shelter in the State of Alaska for runaway or homeless minors and which is required to obtain a license to operate pursuant to AS 47.10.330 – 47.10.390, is required to provide a shelter with the capacity designated in the approved license.

Since CHA is licensed to operated a shelter with 40 beds, this amendment would effectively require CHA to operate a facility that houses over 20 youth.

As the Chair of the Senate Health, Education and Social Services Committee, CHA is seeking your assistance in changing Alaska's statute. Our goal is to have a committee bill introduced this session in order to comply with the federal regulations by September 2010. Please contact me for additional materials if necessary, including ACF's findings.

Thank you for your consideration. Please contact me with any questions.

Sincerely,

Deirdre A. Cronin

Lauren 351-8005 cell

Alaska State Legislature

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Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

Senate Health and Social Services Committee

SPONSOR STATEMENT

SENATE BILL 307 *"An Act relating to residential shelters for runaway minors"*

SB307 allows emergency residential shelters like the Covenant House Alaska to continue to accept federal grant funding. Covenant House Alaska has five programs that include emergency shelter, healthcare, job and educational assistance and transitional living. Covenant House Alaska served nearly 3,000 Alaskan youth in FY2009. Covenant House Alaska has been in Alaska for over 20 years and served literally tens of thousands of youth.

In 2007, Covenant House Alaska was awarded the federal Basic Center Grant (BCG) through the Administration for Children and Families. This competitive, federal grant supplied Covenant House Alaska with $300,000 phased over three years to operate the Crisis Center ($100,000 per year). The Administration for Children and Families recently notified Covenant House Alaska the Crisis Center is technically out of compliance with federal grant requirements stated in the Homeless and Runaway Youth Act.

The Act at 42 U.S.C Section 5712(b)(2)(A) states the shelter can have "a maximum capacity of not more than 20 youth, except where the applicant assures that the State where the center or locally controlled facility is located has a State or local law or regulation that requires a higher maximum to comply with licensure requirements for child and youth serving facilities." Established through the Act, federal regulation 45 CFR 1351.18 (d) states the Basic Center Grant (BCG) may be awarded to facilities with a shelter capacity of 20 beds or less. Covenant House Alaska holds 40 beds.

The Administration for Children and Families (ACF) concedes that states with statutes requiring them to operate a facility over 20 beds will meet the federal requirements. SB307 allows for a simple amendment to AS 47.10.310 – "Licensing of Programs for Runaway Minors" by adding a new subsection to read: "(e) A program for runaway minors that operates a licensed residential shelter in the state shall provide a shelter with a capacity designated in the license issued under AS 47.10.300-47.10.390." This simple amendment will allow emergency residential shelters like Covenant House Alaska to continue competing for the federal Basic Center Grant (BCG).

SJR

3

SENATOR
GENE THERRIAULT
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Alaska State Legislature

Senate

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SENATE DISTRICT F

Sponsor Statement

Senate Joint Resolution 3

It is the intent of SJR 3 to show appreciation for the change in National Park policy that now allows park users to carry the firearms they need for personal protection in National Parks.

Alaskans, who have in their state over 75% of the National Park system, understand how important it is to have personal protection when in the wilderness. This bill affirms that progress that has been made in allowing the carrying of firearms under the previous administration and encourages the new Obama administration to continue with the policy and add improvements by allowing open carry in addition as concealed carry.

Whether it is for bear protection, obtaining food in a survival situation, or signaling for assistance when needed, firearms have been on the hips and in the arms of Alaskans since the frontier was first explored. Now the unbroken wilderness and inherent dangers have been exacerbated with the conditioning of animals to lose their natural tendency of avoiding humans. With the Parks Service's steady line of visitors who have no real experience in the true wilderness, the need for protection is more prudent now than ever before.

Email: Senator_Gene_Therriault@legis.state.ak.us

U.S. Department of the Interior

OFFICE OF THE SECRETARY
U.S. Department of the Interior

www.doi.gov

News Release

Date: December 5, 2008
Contact: Chris Paolino
202-208-6416

Interior Announces Final Firearms Policy Update

WASHINGTON, D.C. – Assistant Secretary of the Interior for Fish and Wildlife and Parks Lyle Laverty today announced that the Department of the Interior has finalized updated regulations governing the possession of firearms in national parks and wildlife refuges. The final rule, which updates existing regulations, would allow an individual to carry a concealed weapon in national parks and wildlife refuges if, and only if, the individual is authorized to carry a concealed weapon under state law in the state in which the national park or refuge is located. The update has been submitted to the Federal Register for publication and is available to the public on www.doi.gov.

Existing regulations regarding the carrying of firearms remain otherwise unchanged, particularly limitations on poaching and target practice and prohibitions on carrying firearms in federal buildings.

"America was founded on the idea that the federal and state governments work together to serve the public and preserve our natural resources," Laverty said. "The Department's final regulation respects this tradition by allowing individuals to carry concealed firearms in federal park units and refuges to the extent that they could lawfully do so under state law. This is the same basic approach adopted by the Bureau of Land Management (BLM) and the United States Forest Service (USFS), both of which allow visitors to carry weapons consistent with applicable federal and state laws."

On February 22, 2008, Interior Secretary Kempthorne responded to letters from 51 Senators, both Democrats and Republicans, as well as from the Chairman and Ranking Member of the House Natural Resources Committee, urging him to update existing regulations that prohibit the carrying of firearms in national parks and wildlife refuges. In his response, the Secretary directed Assistant Secretary for Fish and Wildlife and Parks Lyle Laverty "to develop and propose for public comment by April 30 Federal regulations that will update firearms policies on these lands to reflect existing Federal laws (such as those prohibiting weapons in Federal buildings) and the laws by which the host states govern transporting and carrying of firearms on their analogous public lands."

Changes in the final regulations from those originally proposed in April were developed as the result of public comments. In particular, comments expressed concern about the feasibility of implementing regulations which directly linked the carrying of concealed firearms in national parks and wildlife refuges to the ability of an individual to carry a concealed firearm on analogous state lands. The final regulations remove that potential logistical hurdle.

The existing regulations, as currently in effect, were adopted in 1981 for national wildlife refuges and in 1983 for national parks. Since that time many states have enacted new firearms policies. Currently, 48 states have passed legislation allowing for the lawful possession of concealed weapons.

"The Department believes that in managing parks and refuges we should, as appropriate, make every effort to give the greatest respect to the democratic judgments of State legislatures with respect to concealed firearms," said Laverty. "Federal agencies have a responsibility to recognize the expertise of the States in this area, and federal regulations should be developed and implemented in a manner that respects state prerogatives and authority."

— DOI —

FAQ – Interior Firearms Policy Update

Q: Why is the Department of the Interior adopting this rule?

A: Our current firearm policies have been in place for some time, but they are now out-of-step with State law and thus need to be updated. Starting in the 1980's, a significant number of State Legislatures passed laws which allow law-abiding citizens to carry concealed firearms. Today, the overwhelming majority of States have enacted these laws. But the current National Park Service (NPS) and Fish and Wildlife Service (FWS) regulations don't recognize these developments.

America was founded on the idea that the federal and state governments work together to serve the public and preserve our natural resources. The Department's final regulation respects this tradition by allowing individuals to carry concealed firearms in federal park units and refuges to the extent that they could lawfully do so under non-conflicting state law. This is the same basic approach adopted by the Bureau of Land Management (BLM) and the United States Forest Service (USFS), both of which allow visitors to carry weapons consistent with applicable federal and state laws.

Q: Why did the Department decide to reject the original "similar state lands" approach and instead adopt a more general reference to state law?

A: This change helped clarify the rule and make it easier to implement. During the public comment process, a number of entities and individuals, including the National Park Conservation Association, the State of Alaska, and employees of the FWS, suggested that the Department's reference to "similar state lands" in the proposed regulation was ambiguous and confusing since: (1) individual States often provide for various management regimes for their parks and refuges; and (2) these differences make it difficult to determine what areas are actually "similar". The Department agrees with this concern and has deleted this language in the final rule. The modified final language adopts the suggestion of commenters and incorporates state law in a similar manner to regulations adopted by other federal agencies regarding firearms on public lands.

Q: What if a State doesn't want individuals to carry a concealed firearm in a park or refuge within its borders? Can it take any action?

A: Yes. States with concealed carry laws routinely impose statutory prohibitions on the lawful possession of concealed handguns in certain locations. It is possible that a state may wish to prohibit an individual from possessing a concealed weapon on federal lands within state boundaries. In the event a state enacts such a law, the Department's final rule would respect the legislative judgment of the people of that State.

Q: Won't visitors and wildlife be endangered by allowing concealed firearms in parks and refuges?

2546

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Alaska State Legislature

Senate

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SENATE DISTRICT F

Memorandum

To: Senator Hollis French / Chairman Senate Judiciary

From: Senator Gene Therriault

Date: January 29, 2007

Re: Senate Joint Resolution 3

I respectfully request a hearing on SJR 3 to encourage continuation and improvement on the policy allowing persons to carry firearms in National Parks.

Thank you for honoring this request.

Email: Senator_Gene_Therriault@legis.state.ak.us

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/26/09

FURTHER:

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: _____

Judiciary Committee considered SENATE JOINT RESOLUTION NO. 3

SJR 3 FIREARMS IN NATIONAL PARK

Relating to carrying firearms in national parks.

and recommends:

[ ] be **replaced** with [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt _____Letter of Intent

[ ] further referral to _____Committee

SENATE BILL:
[ ] Same Title
[ ] New Title
_____
HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
	2/11/09			✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
		✓			
				✓	
CHAIR:	French	✓			

SJR

6

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Senate

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SENATE DISTRICT F

Memorandum of Request

To: **Senator Hollis French / Chair Senate Judiciary**

From: **Senator Gene Therriault** GT

Date: **February 24, 2009**

Re: **SJR 6 / Opposing HR 45 (gun registration)**

SJR 6 has moved from the Senate State Affairs Committee to your Judiciary Committee.

I respectfully request at your earliest convenience a hearing on SJR 6.

Thank you for your consideration.

Email: Senator_Gene_Therriault@legis.state.ak.us

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SENATE DISTRICT F

Sponsor Statement

SJR 6

SJR 6 asks our congressional delegation to oppose and defeat HR 45, a bill that has been introduced in Congress that would significantly diminish Alaskans' right to keep and bear arms. Among other things, HR 45 would require anyone who possesses a firearm to obtain a federal license to do so; it would make it a felony to transfer a firearm to someone who does not have a license; it would also make it a felony to fail to timely report such a transfer or to fail to report the loss or theft of a firearm within 72 hours to the US Attorney General; it requires the Attorney General to establish and maintain a data base of firearm transfers.

With those who favor gun control becoming more active in our nation's Capital, I feel it is very important that our congressional delegation hear from the Alaska Legislature as soon as possible on this issue.

Email: Senator_Gene_Therriault@legis.state.ak.us

Back to the Trap Discussion Web

HR 45 Blair Holt Licensing and Record Act

Most Recent Posts First

Jump to First Post

Display Deleted Messages

Poster By	Posted Date/Time
Rich's Mom	13-Feb-09 - 10:30 PM ET
alfermann66	14-Feb-09 - 02:54 PM ET

Subject: HR 45 Blair Holt Licensing and Record Act
From: Rich's Mom
Email:
Date: Fri, Feb 13, 2009 - 10:30 PM ET
Website Address:

----- Original Message -----

PLEASE FORWARD.

HR 45, Blair Holt Licensing and Record Act

This is provided as information that should alarm most of you. The air has not yet stilled from the peaceful change of power in this country and already the Democrats have marshaled the anti-gun forces to license and fingerprint you into a National Database of gun owners. Note that there is no National Database of Convicted Felons and those who have lost their citizen's rights to gun ownership, but there will be one that seeks to make you either a dupe or a felon if this law is passed.

I request and suggest that you contact your elected representatives to voice your opposition to this bill to abridge your Rights. Note that the original author of this bill is Rahm Emanuel.

Are you ready for the House Bill titled 'HR 45, Blair Holt Licensing and Record Act of 2009'. It will make it illegal to own a firearm unless it is registered with the database in Washington D.C. As a gun owner you will have to be finger printed, you will be required to provide your DL#, SS#, you must maintain a valid address at all times, submit to mental and physical health records being put on file, you will also be required to file any address changes and any ownership changes even if a private sale. Each update will cost $25 and if you fail to comply you will lose your right to own firearms. This bill and its language mirror almost completely one defeated last year in the House of

Representatives by soon to be Chief of Staff Rahm Emanuel. Will we the citizenry be as lucky this time?

Pass this on to everyone who believes in strict Constitutionalism and remember that laws only apply to those who obey them. Criminals by definition and nature do not abide by laws. New laws and restrictions only apply to the law abiding citizen and are not written with the criminal in mind. With guns, it is not about having laws on the books to prosecute individuals, it is about taking guns away from the people so that no one has them in the first place. One last item to note, when assuming power and creating a fascist state, Hitler was a proponent of strong gun laws because a disarmed populace was much easier to control than an armed one. The kings of old also outlawed weapons of any kind in any region that they conquered to quell the ability of the citizens to uprise against them.

The Founding Fathers of this nation understood all of the above and because of this they included the second amendment in the constitution. In fact, they knew that at some point in every society's life span that the need for the population to arise came about. To this end they made the right to keep and bear arms against a tyrannical state an absolute right that could not be revoked. They did this because the first thing tyrants and despots do is to remove a population's right to defend themselves. When this is done, the tyrants have no problem with the destruction of society as we know it.

Send this on to all true patriots! Protect your Second Amendment!

The following is a summary of the bill as provided by the Congressional Research Service. If you read the whole bill, you'll find it will effectively preclude the ownership of ANY firearms by law-abiding people unless licensed by the Attorney General. How long do you think THAT would take??

The following summary was written by the Congressional Research Service, a well-respected nonpartisan arm of the Library of Congress. GovTrack did not write and has no control over these summaries.

1/6/2009--Introduced. Blair Holt's Firearm Licensing and Record of Sale Act of 2009 - Amends the Brady Handgun Violence Prevention Act to prohibit a person from possessing a firearm unless that person has been issued a firearm license under this Act or a state system certified under this Act and such license has not been invalidated or revoked. Prescribes license application, issuance, and renewal requirements. Prohibits transferring or receiving a qualifying firearm unless the recipient presents a valid firearms license, the license is verified, and the dealer records a tracking authorization number. Prescribes firearms transfer reporting and record keeping requirements. Directs the Attorney General to establish and maintain a federal record of sale system.

Prohibits: 1) transferring a firearm to any person other than a licensee, unless the transfer is processed through a licensed dealer in accordance with national instant criminal background check system requirements, with exceptions; (2) a licensed manufacturer or dealer from failing to comply with reporting and record keeping requirements of this Act; (3) failing to report the loss or theft of the firearm to the Attorney General within 72 hours; (4) failing to report to the Attorney General an

address change within 60 days; or (5) keeping a loaded firearm, or an unloaded firearm and ammunition for the firearm, knowingly or recklessly disregarding the risk that a child is capable of gaining access, if a child uses the firearm and causes death or serious bodily injury. Prescribes criminal penalties for violations of firearms provisions covered by this Act. Directs the Attorney General to: (1) establish and maintain a firearm injury information clearinghouse; (2) conduct continuing studies and investigations of firearm-related deaths and injuries; and (3) collect and maintain current production and sales figures of each licensed manufacturer. Authorizes the Attorney General to certify state firearm licensing or record of sale systems.

Subject: HR 45 Blair Holt Licensing and Record Act
From: alfermann66
Email:
Date: Sat, Feb 14, 2009 - 02:54 PM ET
Website Address:

A BILL

To reauthorize the assault weapons ban, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Assault Weapons Ban and Law Enforcement Protection Act of 2007'.

SEC. 2. REINSTATEMENT FOR 10 YEARS OF REPEALED CRIMINAL PROVISIONS RELATING TO ASSAULT WEAPONS AND LARGE CAPACITY AMMUNITION FEEDING DEVICES.

(a) Reinstatement of Provisions Wholly Repealed- Paragraphs (30) and (31) of section 921(a), subsections (v) and (w) and Appendix A of section 922, and the last 2 sentences of section 923(i) of title 18, United States Code, as in effect just before the repeal made by section 110105(2) of the Violent Crime Control and Law Enforcement Act of 1994, are hereby enacted into law.

(b) Reinstatement of Provisions Partially Repealed- Section 924 of title 18, United States Code, is amended--

(1) in subsection (a)(1), by striking subparagraph (B) and inserting the following:

(B) knowingly violates subsection (a)(4), (f), (k), (r), (v), or (w) of section 922;'; and

(2) in subsection (c)(1)(B), by striking clause (i) and inserting the following:

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon,

the person shall be sentenced to a term of imprisonment of not less than 10 years; or'.

SEC. 3. DEFINITIONS.

(a) In General- Section 921(a)(30) of title 18, United States Code, as added by section 2 (a) of this Act, is amended to read as follows:

(30) The term `semiautomatic assault weapon' means any of the following:

(A) The following rifles or copies or duplicates thereof:

(i) AK, AKM, AKS, AK-47, AK-74, ARM, MAK90, Misr, NHM 90, NHM 91, SA 85, SA 93, VEPR;

(ii) AR-10;

(iii) AR-15, Bushmaster XM15, Armalite M15, or Olympic Arms PCR;

(iv) AR70;

(v) Calico Liberty;

(vi) Dragunov SVD Sniper Rifle or Dragunov SVU;

(vii) Fabrique National FN/FAL, FN/LAR, or FNC;

(viii) Hi-Point Carbine;

(ix) HK-91, HK-93, HK-94, or HK-PSG-1;

(x) Kel-Tec Sub Rifle;

(xi) M1 Carbine;

(xii) Saiga;

(xiii) SAR-8, SAR-4800;

(xiv) SKS with detachable magazine;

(xv) SLG 95;

(xvi) SLR 95 or 96;

(xvii) Steyr AUG;

(xviii) Sturm, Ruger Mini-14;

(xix) Tavor;

(xx) Thompson 1927, Thompson M1, or Thompson 1927 Commando; or

(xxi) Uzi, Galil and Uzi Sporter, Galil Sporter, or Galil Sniper Rifle (Galatz).

(B) The following pistols or copies or duplicates thereof:

(i) Calico M-110;

(ii) MAC-10, MAC-11, or MPA3;

(iii) Olympic Arms OA;

(iv) TEC-9, TEC-DC9, TEC-22 Scorpion, or AB-10; or

(v) Uzi.

(C) The following shotguns or copies or duplicates thereof:

(i) Armscor 30 BG;

(ii) SPAS 12 or LAW 12;

(iii) Striker 12; or

(iv) Streetsweeper.

(D) A semiautomatic rifle that has an ability to accept a detachable magazine, and that has--

(i) a folding or telescoping stock;

(ii) a threaded barrel;

(iii) a pistol grip;

(iv) a forward grip; or

(v) a barrel shroud.

(E)(i) Except as provided in clause (ii), a semiautomatic rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

(ii) Clause (i) shall not apply to an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

(F) A semiautomatic pistol that has the ability to accept a detachable magazine, and has--

(i) a second pistol grip;

(ii) a threaded barrel;

(iii) a barrel shroud; or

(iv) the capacity to accept a detachable magazine at a location outside of the pistol grip.

(G) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.

(H) A semiautomatic shotgun that has--

(i) a folding or telescoping stock;

(ii) a pistol grip;

(iii) the ability to accept a detachable magazine; or

(iv) a fixed magazine capacity of more than 5 rounds.

(I) A shotgun with a revolving cylinder.

(J) A frame or receiver that is identical to, or based substantially on the frame or receiver of, a firearm described in any of subparagraphs (A) through (I) or (L).

(K) A conversion kit.

(L) A semiautomatic rifle or shotgun originally designed for military or law enforcement use, or a firearm based on the design of such a firearm, that is not particularly suitable for sporting purposes, as determined by the Attorney General. In making the determination, there shall be a rebuttable presumption that a firearm procured for use by the United States military or any Federal law enforcement agency is not particularly suitable for sporting purposes, and a firearm shall not be determined to be particularly suitable for sporting purposes solely because the firearm is suitable for use in a sporting event.'.

(b) Related Definitions- Section 921(a) of such title is amended by adding at the end the following:

(36) Barrel Shroud- The term `barrel shroud' means a shroud that is attached to, or partially or completely encircles, the barrel of a firearm so that the shroud protects the user of the firearm from heat generated by the barrel, but does not include a slide that encloses the barrel, and does not include an extension of the stock along the bottom of the barrel which does not encircle or substantially encircle the barrel.

(37) Conversion Kit- The term `conversion kit' means any part or combination of parts designed and intended for use in converting a firearm into a semiautomatic assault weapon, and any combination of parts from which a semiautomatic assault weapon can be assembled if the parts are in the possession or under the control of a person.

(38) Detachable Magazine- The term `detachable magazine' means an ammunition

feeding device that can readily be inserted into a firearm.

(39) Fixed Magazine- The term `fixed magazine' means an ammunition feeding device contained in, or permanently attached to, a firearm.

(40) Folding or Telescoping Stock- The term `folding or telescoping stock' means a stock that folds, telescopes, or otherwise operates to reduce the length, size, or any other dimension, or otherwise enhances the concealability, of a firearm.

(41) Forward Grip- The term `forward grip' means a grip located forward of the trigger that functions as a pistol grip.

(42) Pistol Grip- The term `pistol grip' means a grip, a thumbhole stock, or any other characteristic that can function as a grip.

(43) Threaded Barrel- The term `threaded barrel' means a feature or characteristic that is designed in such a manner to allow for the attachment of a firearm as defined in section 5845(a) of the National Firearms Act (26 U.S.C. 5845(a)).'.

SEC. 4. GRANDFATHER PROVISION.

Section 922(v)(2) of title 18, United States Code, as added by section 2(a) of this Act, is amended--

(1) by inserting `(A)' after `(2)'; and

(2) by adding after and below the end the following:

(B) Paragraph (1) shall not apply to any firearm the possession or transfer of which would (but for this subparagraph) be unlawful by reason of this subsection, and which is otherwise lawfully possessed on the date of the enactment of this subparagraph.'.

SEC. 5. REPEAL OF CERTAIN EXEMPTIONS.

Section 922(v)(3) of title 18, United States Code, as added by section 2(a) of this Act, is amended by striking `(3)' and all that follows through the 1st sentence and inserting the following:

(3) Paragraph (1) shall not apply to any firearm that--

(A) is manually operated by bolt, pump, level, or slide action;

(B) has been rendered permanently inoperable; or

(C) is an antique firearm.'.

SEC. 6. REQUIRING BACKGROUND CHECKS FOR THE TRANSFER OF LAWFULLY POSSESSED SEMIAUTOMATIC ASSAULT WEAPONS.

Section 922(v) of title 18, United States Code, as added by section 2(a) of this Act, is amended by adding at the end the following:

(5) It shall be unlawful for any person to transfer a semiautomatic assault weapon to which paragraph (1) does not apply, except through--

(A) a licensed dealer, and for purposes of subsection (t) in the case of such a transfer, the weapon shall be considered to be transferred from the business inventory of the licensed dealer and the dealer shall be considered to be the transferor; or

(B) a State or local law enforcement agency if the transfer is made in accordance with the procedures provided for in subsection (t) of this section and section 923(g).

(6) The Attorney General shall establish and maintain, in a timely manner, a record of the make, model, and date of manufacture of any semiautomatic assault weapon which the Attorney General is made aware has been used in relation to a crime under Federal or State law, and the nature and circumstances of the crime involved, including the outcome of relevant criminal investigations and proceedings. The Attorney General shall annually submit the record to the Congress and make the record available to the general public.'.

SEC. 7. STRENGTHENING THE BAN ON THE POSSESSION OR TRANSFER OF A LARGE CAPACITY AMMUNITION FEEDING DEVICE.

(a) Ban on Transfer of Semiautomatic Assault Weapon With Large Capacity Ammunition Feeding Device-

(1) IN GENERAL- Section 922 of title 18, United States Code, is amended by inserting after subsection (y) the following:

(z) It shall be unlawful for any person to transfer any assault weapon with a large capacity ammunition feeding device.'.

(2) PENALTIES- Section 924(a) of such title is amended by adding at the end the following:

(8) Whoever knowingly violates section 922(z) shall be fined under this title, imprisoned not more than 10 years, or both.'.

(b) Certification Requirement-

(1) IN GENERAL- Section 922(w) of such title, as added by section 2(a) of this Act, is amended--

(A) in paragraph (3)--

(i) by adding `or' at the end of subparagraph (B); and

(ii) by striking subparagraph (C) and redesignating subparagraph (D) as subparagraph (C); and

(B) by striking paragraph (4) and inserting the following:

(4) It shall be unlawful for a licensed manufacturer, licensed importer, or licensed dealer who transfers a large capacity ammunition feeding device that was manufactured on or before the date of the enactment of this subsection, to fail to certify to the Attorney General before the end of the 60-day period that begins with the date of the transfer, in accordance with regulations prescribed by the Attorney General, that the device was manufactured on or before the date of the enactment of this subsection.'.

(2) PENALTIES- Section 924(a) of such title, as amended by subsection (a)(2) of this section, is amended by adding at the end the following:

(9) Whoever knowingly violates section 922(w)(4) shall be fined under this title, imprisoned not more than 5 years, or both.'.

SEC. 8. UNLAWFUL WEAPONS TRANSFERS TO JUVENILES.

Section 922(x) of title 18, United States Code, is amended--

(1) in paragraph (1)--

(A) in subparagraph (B), by striking the period and inserting a semicolon; and

(B) by adding at the end the following:

(C) a semiautomatic assault weapon; or

(D) a large capacity ammunition feeding device.'; and

(2) in paragraph (2)--

(A) in subparagraph (B), by striking the period and inserting a semicolon; and

(B) by adding at the end the following:

(C) a semiautomatic assault weapon; or

(D) a large capacity ammunition feeding device.'.

SEC. 9. BAN ON IMPORTATION OF LARGE CAPACITY AMMUNITION FEEDING DEVICE.

(a) In General- Section 922(w) of title 18, United States Code, as added by section 2(a) of this Act, is amended--

(1) in paragraph (1), by striking `(1) Except as provided in paragraph (2)' and inserting `(1)(A) Except as provided in subparagraph (B)';

(2) in paragraph (2), by striking `(2) Paragraph (1)' and inserting `(B) Subparagraph (A)'; and

(3) by inserting before paragraph (3) the following:

(2) It shall be unlawful for any person to import or bring into the United States a large capacity ammunition feeding device.'.

(b) Conforming Amendment- Section 921(a)(31)(A) of such title, as added by section 2(a) of this Act, is amended by striking `manufactured after the date of enactment of the Violent Crime Control and Law Enforcement Act of 1994'.

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SJR

10

ALASKA STATE LEGISLATURE

SENATOR JOE THOMAS

SJR 10 - Urging the United States Congress to adopt S. 371, the Respecting States Rights and Concealed Carry Reciprocity Act of 2009

Sponsor Statement

The right to keep and bear arms is one of the rights most cherished by Alaskans. Our history and culture is tightly bound to our outdoor and sporting heritage. Residents of Alaska and Vermont enjoy some of the greatest freedoms in the country with regards to concealed carry. Senate Joint Resolution 10 supports federal legislation that recognizes and protects our unique situation.

The Respecting States Rights and Concealed Carry Reciprocity Act was introduced by U.S. Senators David Vitter (LA) and John Thune (SD). A House companion bill, H.R. 197, has been introduced by Representatives Cliff Stearns' (R-Fla.) and Rick Boucher (D-Va.) The bill would allow those American citizens who are licensed or otherwise authorized by their state government to carry a concealed weapon to lawfully carry concealed weapons in other states, in accordance with local laws. Provisions in the law ensure that residents of states like Alaska and Vermont, which have unique concealed carry laws, are not prohibited from enjoying the same rights as those residents from states with more common "conceal and carry" laws.

This piece of federal legislation respects state laws by requiring carriers of concealed firearms to follow all applicable state statutes governing concealed weapons. Currently, many states offer reciprocity agreements to other states with similar concealed carry laws. However, these agreements can change or lapse. For instance, North Dakota recently phased out the training requirement from the concealed carry-licensing process. This resulted in the lapse of several reciprocity agreements between North Dakota and other states. Such shifting agreements can make it difficult for a bearer of a concealed weapon to keep track of which states offer reciprocity.

Federal passage of the Respecting States Rights and Concealed Carry Reciprocity Act would establish a nationwide reciprocity agreement, and place the duty to comply with local and state concealed carry laws squarely on the shoulders of the citizen. Individuals must follow the laws of the host state, including laws concerning specific locations where firearms may not be carried. Additionally, any individual prohibited by federal law from carrying a firearm will continue to be prohibited under the bill.

January – May: State Capitol – Juneau, Alaska 99801 – (907) 465-2327 – 1 (800) 336-7383 – Fax (907) 465-5241
June – December: 1292 Sadler Way Ste 203 – Fairbanks, Alaska 99701 – (907) 456-8161 – Fax (907) 456-8163
Senator.Joe.Thomas@legis.state.ak.us

ALASKA STATE LEGISLATURE

SENATOR JOE THOMAS

SJR 10 - Urging the United States Congress to adopt S. 371, the Respecting States Rights and Concealed Carry Reciprocity Act of 2009

Bill Overview

The bill would not create a federal licensing system; it would require the states to recognize each others' carry permits, just as they recognize drivers' licenses and carry permits held by armored car guards.

• **Today, 48 states have laws permitting concealed carry, in some circumstances.** Forty states, accounting for two-thirds of the U.S. population, have RTC laws. Thirty-six have "shall issue" permit laws (including Alaska, which also allows carrying without a permit), three have fairly administered "discretionary issue" permit laws, and Vermont (and Alaska) allow carrying without a permit. (Eight states have restrictive discretionary issue laws.) Most RTC states have adopted their laws in the last decade.

• **Citizens with carry permits are more law-abiding than the general public.** Only 0.01% of nearly 1.2 million permits issued by Florida have been revoked because of firearm crimes by permit holders. Similarly low percentages of permits have been revoked in Texas, Virginia, and other RTC states that keep such statistics. RTC is widely supported by law enforcement officials and groups.

• **States with RTC laws have lower violent crime rates.** On average, 22% lower total violent crime, 30% lower murder, 46% lower robbery, and 12% lower aggravated assault, compared to the rest of the country. The seven states with the lowest violent crime rates are RTC states. (Data: FBI.)

• **Crime declines in states with RTC laws.** Since adopting RTC in 1987, Florida's total violent crime and murder rates have dropped 32% and 58%, respectively. Texas' violent crime and murder rates have dropped 20% and 31%, respectively, since its 1996 RTC law. (Data: FBI.)

• **The right of self-defense is fundamental, and has been recognized in law for centuries.** The Declaration of Independence asserts that "life" is among the unalienable rights of all people. The Second Amendment guarantees the right of the people to keep and bear arms for "security."

• **The laws of all states and constitutions of most states recognize the right to use force in self-defense.** The Supreme Court has stated that a person "may repel force by force" in self-defense, and is "entitled to stand his ground and meet any attack made upon him with a deadly weapon, in such a way and with such force" as needed to prevent "great bodily injury or death." (*Beard v. U.S.*, 1895)

• **Congress affirmed the right to guns for "protective purposes"** in the Gun Control Act (1968) and Firearm Owners' Protection Act (1986). In 1982, the Senate Judiciary Committee Subcommittee on the Constitution described the right to arms as "a right of the individual citizen to privately possess and carry in a peaceful manner firearms and similar arms."

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Senator.Joe.Thomas@legis.state.ak.us

United States Senate

WASHINGTON, DC 20510

February 4, 2009

Please support Senator Thune and Senator Vitter's bill

"Respecting States Rights and Concealed Carry Reciprocity Act"

Dear Colleague,

We are writing to invite you to cosponsor our legislation, which will allow individuals the right to carry lawfully concealed firearms across state lines, while at the same time respecting the laws of the host state.

Law-abiding citizens have a right to possess a firearm in order to defend against the threat of violence. A state's border should not limit a law-abiding individual's ability to defend themselves. At the same time, each state's laws deserve respect. The Respecting States Rights and Concealed Carry Reciprocity Act strikes an appropriate balance between states' rights and the rights of individuals to lawfully carry concealed firearms outside of his/her respective state.

Our bill allows individuals to lawfully carry a concealed firearm across state lines if they either hold a valid state license or permit or if, under the state of their residence, they are entitled to carry a concealed firearm. These provisions ensure that residents of states like Alaska and Vermont, which have unique conceal carry laws, are not prohibited from enjoying the same rights as those residents from states with more common conceal and carry laws.

In order to protect states' rights, our bill does not allow conceal carry in states that do not already allow the practice. Individuals must follow the laws of the host state, including laws concerning specific types of locations in which firearms may or may not be carried. Additionally, if an individual is prohibited by federal law from carrying a firearm, they will continue to be prohibited under our bill.

We hope you join our efforts to give law-abiding citizens the freedom to carry concealed firearms across state borders, by cosponsoring our bill. If you would like to be added as a cosponsor to this legislation, please have your staff contact Adrian Arnakis at 8-5388 or Adrian_arnakis@thune.senate.gov , or Brent Furer at 8-5060 or brent_furer@vitter.senate.gov. Thank you for your attention to this matter.

Sincerely,

John Thune
U.S. Senator

David Vitter
U.S. Senator

Please support Senator Thune and Senator Vitter's bill

"Respecting States Rights and Concealed Carry Reciprocity Act"

Our bill is simple. It will allow our citizens the right to carry concealed carry permits in states that allow concealed carry permits with the exception that the laws of the host state be obeyed.

- Our bill protects residents of states like Vermont and Alaska, which have unique conceal carry permit laws, by allowing them to also have the right to conceal carry in other states.

- Also, our bill protects state rights by not mandating the right to conceal carry in states that do not allow the practice.

Does our bill violate the right of states to enact concealed carry laws?

- No. This bill does NOT establish national standards for concealed carry, nor does it provide for a national carry permit.

- This bill simply allows citizens who are able to carry in their home state, to also carry in states that have concealed carry permits with the exception that the laws of the host state must be followed.

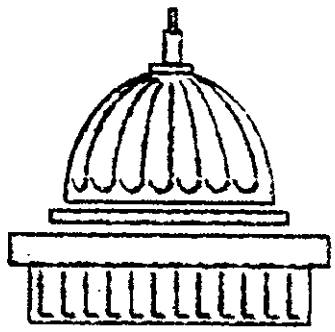
- If anyone is prohibited by federal law from carrying a firearm they will continue to be prohibited under this bill.

- Our bill also respects state laws by requiring that state laws concerning specific types of locations in which firearms may not be carried be followed.

NRA / ILA Firearms Laws for

ALASKA

As of Jun, 2004



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NRA-Institute for Legislative Action
11250 Waples Mill Road
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A SYNOPSIS OF STATE LAWS ON PURCHASE, POSSESSION AND CARRYING OF FIREARMS.

QUICK REFERENCE CHART

	Rifles and Shotguns	Handguns
Permit to Purchase	No	No
Registration of Firearms	No	No
Licensing of Owners	No	No
Permit to Carry	No	Yes*

* A permit to carry a concealed handgun is not necessary in Alaska, but permits are available to those who want to carry in states that recognize Alaska permits.

STATE CONSTITUTIONAL PROVISION

"A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. The individual right to keep and bear arms shall not be denied or infringed by the state or political subdivision of the State." Article 1, Section 19.

PURCHASE

No state permit is required to purchase a rifle, shotgun or handgun.

It is unlawful to sell or transfer a firearm capable of being concealed on one's person to anyone who has been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult. It is an affirmative defense that 10 years or more has elapsed since the unconditional discharge on the prior offense.

It is unlawful to knowingly sell or transfer a firearm to a person whose physical or mental condition is substantially impaired as a result of an intoxicating liquor or drug, or to sell a firearm to a person less than 18.

POSSESSION

No state permit is required to possess a rifle, shotgun or handgun.

It is unlawful for a person convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult to possess a "firearm capable of being concealed on his person" unless a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency.

It is unlawful to possess a firearm, without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer, on any public or private school property, on a school bus while being transported to or from school, or at a school-sponsored event, or while participating in a school-sponsored event, except that a person 21 years of age or older may possess an unloaded firearm in the trunk of a motor vehicle or encased in a closed container in a motor vehicle.

It is unlawful to possess a firearm in a courthouse or courtroom, grounds of a day care center or parking lot immediately adjacent to these structures, or within a domestic violence or sexual assault shelter.

It is unlawful to possess a firearm by a person who violates a domestic violence protective order. It is unlawful to possess a firearm while substantially impaired as a result of an intoxicating liquor or drug.

Loaded firearms may not be possessed in any place where intoxicating liquor is sold for consumption on the premises. Exempt from this prohibition is the owner or lessee or an employee in the course of his employment for the owner or lessee while on the business premise. A firearm is loaded if the firing chamber, magazine, clip or cylinder of the firearm contains a cartridge.

An unemancipated minor less than 16 years of age may not possess a firearm without the consent of his parent or guardian.

CARRYING

Any person 21 years of age or older may carry a handgun concealed on their person provided that, when contacted by a police officer, informs the officer of that possession and allows the police officer to secure the handgun for the duration of that contact.

A permit to carry a concealed handgun is available for those individuals who desire a means to carry a concealed handgun in states that honor Alaska's permit to carry. A person can obtain a permit to carry a concealed handgun if the person:

(1) is 21 years of age or older;

(2) is eligible to own or possess a firearm under state and federal law;

(3) has been a resident of the state for 90 days preceding application

for permit;
(4) has not been convicted of two or more class A misdemeanors within the preceding six years;
(5) is not currently or has not within three years been ordered by a court to complete an alcohol treatment or substance abuse program;
(6) has demonstrated competence with handguns.

The Department of Public Safety shall issue a permit to a person who applies in person at an office of the Alaska State Troopers and is not prohibited from possessing a handgun. A completed application must be submitted under an oath; the applicant must provide two complete sets of fingerprints and two frontal view color photographs taken within 30 days prior to submitting application. An applicant must not suffer a physical infirmity that prevents the safe handling of a handgun.

The permit fee cannot exceed $99.00 and the renewal or a replacement permit fee may not exceed $30.00. A permit is valid for five years. Applications, permits, and renewals are not public records and can only be used for law enforcement purposes.

The Department shall either approve or reject an application within 30 days of receipt. If the department has not received necessary fingerprint eligibility information from another agency by the end of this 30-day period, and the applicant is otherwise eligible, the department shall issue a conditional permit to the applicant subject to immediate revocation if the fingerprint information subsequently discloses that the applicant is ineligible for a permit. The department shall notify the applicant in writing the reason for the rejection. A person whose application is rejected may appeal to the commissioner. If commissioner rejects the application, a person may seek judicial review.

A person shall apply in person for renewal of a permit to carry within 90 days before the expiration of the permit and shall present a complete renewal form under an oath. A permit to carry shall be immediately revoked if the permittee becomes disqualified to receive and hold a permit. A person whose permit is revoked may appeal to the commissioner. If the commissioner upholds the revocation, a person may seek judicial review. If the permit is revoked, such a person cannot apply for a permit until at least five years after it is revoked.

A person carrying a concealed handgun may not carry it into any place prohibited by state or federal law. When entering the residence of another person, one must notify the resident that they are carrying a concealed handgun.

A municipality may not restrict the carrying of a concealed handgun by permit.

A permit holder from with a valid permit from other jurisdictions is considered an Alaska permit holder.

MACHINE GUNS

A machine gun is defined as a firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger. It is unlawful to manufacture, possess, transport or sell a machine gun or a silencer, but it is an affirmative defense to possess such devices if they are legally registered and possessed in compliance with all federal laws. It is unlawful to possess any rifle with a barrel length of less than 16 inches, a shotgun with a barrel length of less than 18 inches, or any rifle or shotgun with an overall length of less than 26 inches.

ANTIQUES AND REPLICAS

Alaska statutes are silent on antique and replica firearms. They are treated as ordinary firearms for possession and carrying purposes.

MISCELLANEOUS

It is unlawful to remove, alter, cover, or destroy the manufacturer's serial number on a firearm with the intent to render the firearm untraceable or to possess such a firearm.

It is unlawful to discharge a firearm with reckless disregard of damage to property or risk of physical injury to persons.

It is unlawful to discharge a firearm from a vehicle while the vehicle is being operated. It is unlawful to discharge a firearm from, on, or across a highway.

A civil action to recover damages or to seek injunctive relief may not be brought against a person who manufactures or sells firearms or ammunition if the action is based on the lawful sale, manufacture, or design of firearms or ammunition. However, this section does not prohibit a civil action resulting from a negligent design, a manufacturing defect, a breach of contract, or a breach of warranty.

SOURCES: A.S. §§ 9.65.155; 11.61.195; 11.61.200; 11.61.210; 11.61.220; 18.65.700; 18.65.705; 18.65.710; 18.65.715; 18.65.720; 18.65.725; 18.65.730; 18.65.740; 18.65.748; 18.65.755; 18.65.775; 18.65.778; 18.65.790

CAUTION: Firearm laws are subject to frequent change and court interpretation. This summary is not intended as legal advice or restatement of law. This summary does not include federal or local laws, ordinances or regulations. For any particular situation, a licensed local attorney must be consulted for an accurate interpretation. YOU MUST ABIDE WITH ALL LAWS: STATE, FEDERAL AND LOCAL.

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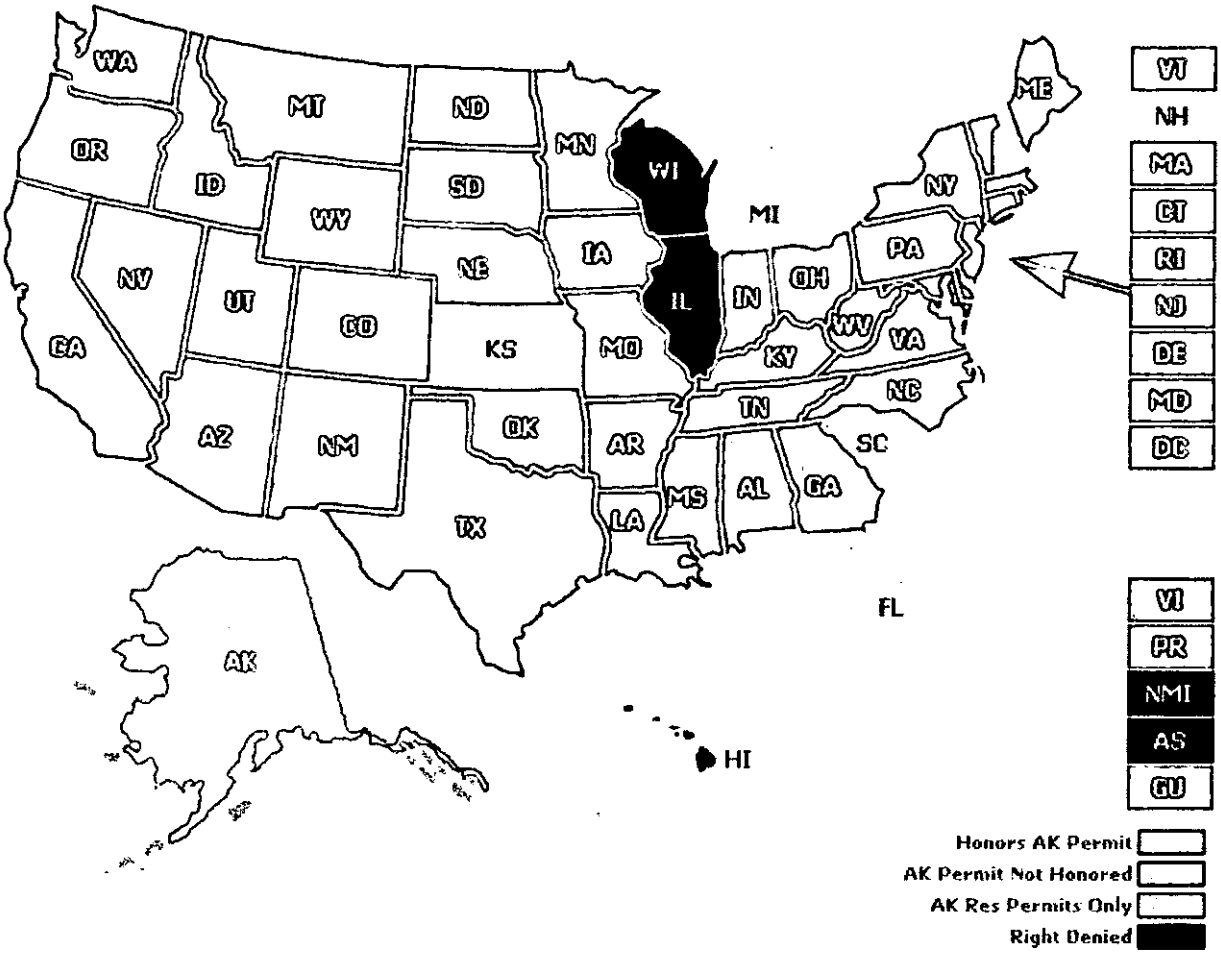

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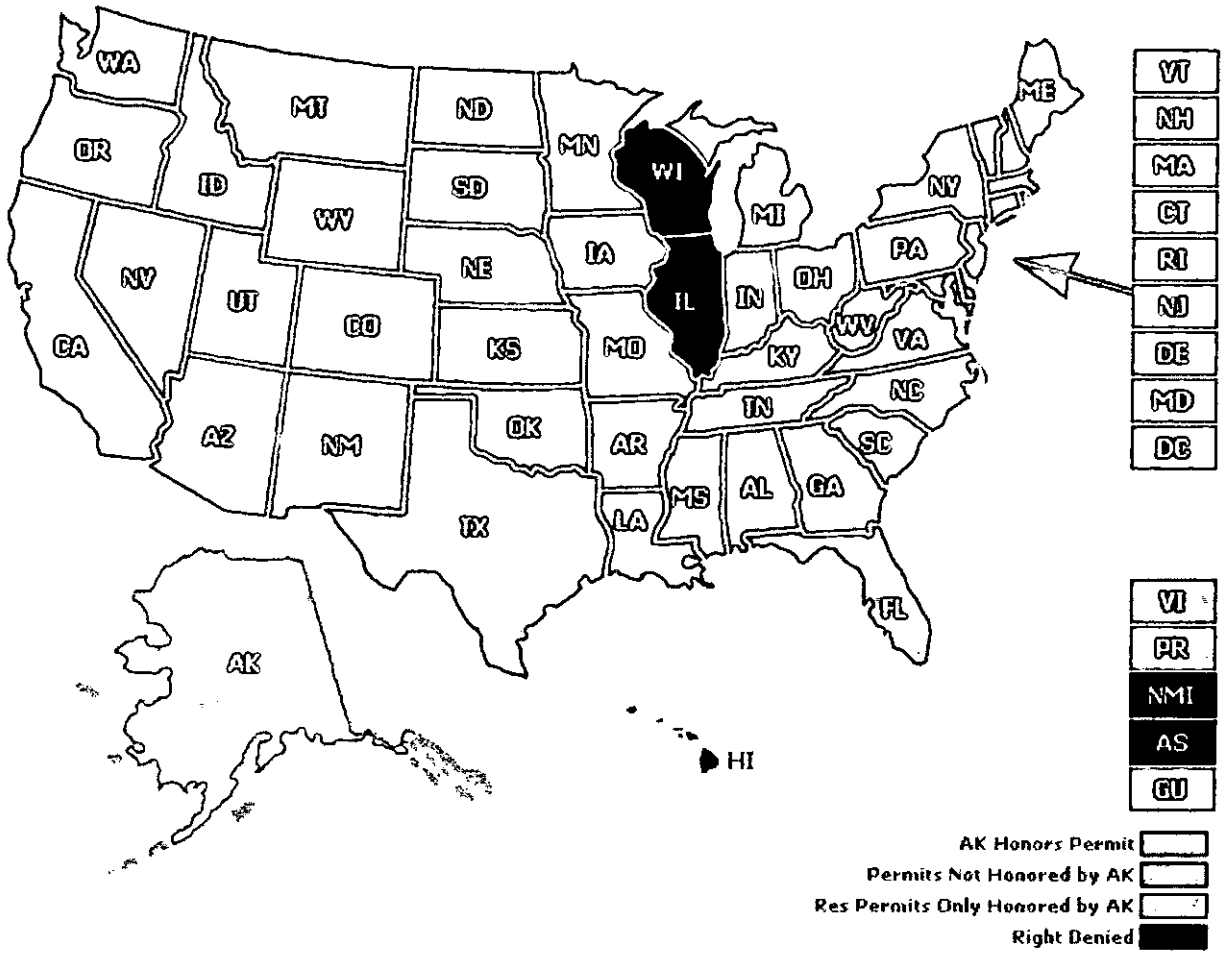

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Vermont

Right Denied:

Illinois, Wisconsin, American Samoa, N. Mariana Islands

SJR

21

ALASKA STATE LEGISLATURE

SENATOR DONALD C. OLSON, CHAIR

SENATOR ALBERT KOOKESH
SENATOR JOE THOMAS
SENATOR HOLLIS FRENCH
SENATOR LINDA MENARD

ALASKA STATE CAPITOL
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SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

SPONSOR STATEMENT
SJR 21 Const. Am: increase Number of Legislators

> " ....Each house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area...." Alaska Constitution Article VI, Section 6, titled Legislative Apportionment.

SJR 21 will put a constitutional amendment before the voters in the 2010 general election that would increase the size of the legislature to 48 representatives and 24 senators. Upon voter approval, the measure would apply to the 2012 determination of election district boundaries.

In the first 50 years of statehood, Alaska has not changed the 20 senator, 40 representative size of its legislative body, the smallest bicameral legislature in the nation. In this time span, the population of the state has more than tripled. Most significantly, the population increase is disproportionate, strongly favoring large urban areas over rural and small community areas. The task then of applying the proscriptions of Article VI, above, has correspondingly become more difficult and contentious. Except for the 1960 reapportionment, all subsequent reapportionments have faced successful legal challenges, requiring boundary adjustments and on several occasions, a court constructed plan.

Federal protections of the U.S. Voter Rights Act of 1965 for large minority concentrations further complicate Alaska's reapportionment process. Indeed, they can act to counter the Section 6 requirements. Rural election district distortions are evident in the current plan. There is a probability that the new population distribution of the 2010 census cannot reconcile Section 6 and the Voter Rights Act without increasing the size of the legislature.

Between 1960 and 2006, twenty nine states have changed the size of their legislative body. For the nine states with small populations similar to Alaska (509,000 to 1,429,000), the average size of their legislative bodies is 134 members.

Another measure of the effect of the state's growth and complexity on the work of the legislature is its budget responsibilities. Legislative expenditures for government programs and projects has risen from a figure of $104 million in FY 61 to somewhere in the neighborhood of $7 billion currently. This is an increase from $2700 per capita in 1961 nominal dollars to $10,000 per capita today.

For these reasons, I believe putting a proposal to increase the size of the legislature before the voters has merit and is timely.

SOUTHEAST ALASKA CONFERENCE OF MAYORS

RESOLUTION NO. 2010-02

A RESOLUTION OF THE SOUTHEAST ALASKA CONFERENCE OF MAYORS SUPPORTING THE EXPANSION OF THE ALASKA STATE LEGISLATURE PRIOR TO REAPPORIONMENT

WHEREAS, Southeast Alaska has enjoyed a long and proud tradition in helping shape Alaska's future; and

WHEREAS, Alaska's rural and coastal communities deserve a voice in the legislative process; and

WHEREAS, Alaska's unique cultural, geographic and demographic characteristics require representation that is understanding of and closely connected to our communities ; and

WHEREAS, population trends in our state will surely render a reapportionment process that vests greater legislative power in communities not well positioned to understand the unique characteristics of our region

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTHEAST ALASKA CONFERENCE OF MAYORS supports legislation that increases the size of the Alaskan Legislature prior to the 2012 election.

ADOPTED Feb. 2, 2010

Scott McAdams, Chair

Population trend for Election Districts in 2010

Election District	Pop. 2000	DOL 2008 Est.	2010 Extrapolation	Diff. From Average	SJR 21 w/ 48 Eds Diff. From Average
1 Ket.	15,031	13,832	13,532	-3,777	-892
2 Sit-Wran-Pet	14,991	14,104	13,882	-3,427	-542
3-Jun	15,203	15,207	15,208	-2,101	784
4-Jun	15,508	15,220	15,148	-2,161	724
5 SE islands	15,048	13,368	12,948	-4,361	-1,476
6 Interior Bush	14,906	14,564	14,479	-2,830	55
7 Fbks	15,494	16,725	17,033	-276	2,609
8 Fbks	15,552	16,597	16,858	-451	2,434
9 Fbks	15,723	17,323	17,723	414	3,299
10 Fbks	15,599	17,017	17,372	63	2,948
11.N. Pole	15,904	17,129	17,435	126	3,011
12 Valdez-Hwys	16,303	17,465	17,756	447	3,332
13 Mat-Su	16,231	22,529	24,104	6,795	9,680
14 Mat-Su	16,119	22,384	23,950	6,641	9,526
15 Mat-Su	16,137	22,477	24,062	6,753	9,638
16 Mat-Su	16,104	20,015	20,993	3,684	6,569
17 Anch	15,819	17,171	17,509	200	3,085
18 Anch	15,639	17,032	17,380	71	2,956
19 Anch	15,841	17,394	17,782	473	3,358
20 Anch	15,837	17,330	17,703	394	3,279
21 Anch	15,850	17,321	17,689	380	3,265
22 Anch	15,831	17,353	17,734	425	3,310
23 Anch	15,847	17,671	18,127	818	3,703
24 Anch	15,812	17,415	17,816	507	3,392
25 Anch	15,836	17,464	17,871	562	3,447
26 Anch	15,823	17,443	17,848	539	3,424
27 Anch	15,820	17,261	17,621	312	3,197
28 Anch	15,839	17,279	17,639	330	3,215
29 Anch	15,846	17,322	17,691	382	3,267

30 Anch	15,839	17,229	17,577	268	3,153
31 Anch	15,811	17,216	17,567	258	3,143
32 Anch	15,839	16,717	16,937	-372	2,513
33 Kenai	16,466	17,488	17,744	435	3,320
34 Kenai	16,409	17,477	17,744	435	3,320
35 Kenai	16,436	17,613	17,907	598	3,483
36 Kodiak	14,928	14,240	14,068	-3,241	-356
37 Bristol B- Chain	15,150	13,623	13,241	-4,068	-1,183
38 Bethel-YK	14,921	15,793	16,011	-1,298	1,587
39 Nome	14,966	15,862	16,086	-1,223	1,662
40 Kotz-Barrow	15,155	14,693	14,578	-2,731	154
TOTAL	627,413	679,363	692,351		
Average Population	15,673	16,993	17,309		14,424

By Sen. Olson Office

NCSL **Changes in the Sizes of Legislatures 1960-2006**

State	Size in 1960	Size in 2006	Year(s) of Change(s)*
Alabama	141	140	1974
Alaska	60	60	No change
Arizona	108	90	1966
Arkansas	135	135	No change
California	120	120	No change
Colorado	100	100	No change
Connecticut	330	187	1966, 1972
Delaware	52	62	1964, 1968, 1972
Florida	133	160	1962, 1964, 1966, 1972
Georgia	259	236	1968, 1972
Hawaii	76	76	No change
Idaho	103	105	1962, 1964, 1966, 1984, 1992
Illinois	235	177	1972, 1982
Indiana	150	150	No change
Iowa	158	150	1964, 1966, 1970
Kansas	165	165	No change
Kentucky	138	138	No change
Louisiana	144	144	No change
Maine	184	186	1962, 1968, 1972, 1984
Maryland	152	188	1962, 1966, 1974
Massachusetts	280	200	1978
Michigan	144	148	1964
Minnesota	202	201	1972
Mississippi	189	174	1962
Missouri	191	197	1962
Montana	150	150	1966, 1972
Nebraska	43	49	1964
Nevada	64	63	1962, 1966, 1982
New Hampshire	424	424	No change
New Jersey	81	120	1966, 1968
New Mexico	98	112	1964, 1966
New York	208	212	1964, 1966, 1972, 1982, 2004
North Carolina	170	170	No change
North Dakota	164	141	1962, 1964, 1966, 1972, 1976, 1982, 1992, 2004
Ohio	177	132	1962, 1964, 1966
Oklahoma	165	149	1964, 1972
Oregon	90	90	No change
Pennsylvania	260	253	1964, 1966
Rhode Island	144	113	1962, 1966, 2004
South Carolina	170	170	No change
South Dakota	110	105	1972
Tennessee	132	132	No change
Texas	181	181	No change
Utah	89	104	1964, 1966, 1972
Vermont	276	180	1966
Virginia	140	140	No change
Washington	148	147	1972
West Virginia	132	134	1964
Wisconsin	133	132	1972
Wyoming	83	90	1964, 1966, 1972, 1982, 1992

* The year is the election year in which a change took effect, not necessarily the year that the change was adopted.

State	2005 Population	Rank	Total Legislators	State Rank	Senate Size	State Rank	Approximate Senate District Size	Rank	House Size	State Rank	Approximate House District Size	State Rank
Alabama	4,557,808	23	140	24	35	16	130,223	19	105	16	43,408	21
Alaska	663,661	47	60	39	20	25	33,183	44	40	30	16,592	41
Arizona	5,939,292	17	90	35	30	20	197,976	10	60	26	98,988	8
Arkansas	2,779,154	32	135	26	35	16	79,404	30	100	18	27,792	32
California	36,132,147	1	120	29	40	12	903,304	1	80	22	451,652	1
Colorado	4,665,177	22	100	34	35	16	133,291	18	65	25	71,772	12
Connecticut	3,510,297	29	187	9	36	15	97,508	27	151	6	23,247	36
Delaware	843,524	45	62	38	21	24	40,168	41	41	29	20,574	38
Florida	17,789,864	4	160	17	40	12	444,747	3	120	13	148,249	3
Georgia	9,072,576	9	236	3	56	4	162,010	16	180	3	50,403	20
Hawaii	1,275,194	42	76	36	25	22	51,008	38	51	27	25,004	34
Idaho	1,429,096	39	105	32	35	16	40,831	40	70	24	20,416	39
Illinois	12,763,371	5	177	13	59	3	216,328	9	118	14	108,164	7
Indiana	6,271,973	15	150	18	50	6	125,439	21	100	18	62,720	14
Iowa	2,966,334	30	150	18	50	6	59,327	34	100	18	29,663	31
Kansas	2,744,687	33	165	16	40	12	68,617	33	125	10	21,957	37
Kentucky	4,173,405	26	138	25	38	14	109,826	26	100	18	41,734	23
Louisiana	4,523,628	24	144	22	39	13	115,990	24	105	16	43,082	22
Maine	1,321,505	40	186	10	35	16	37,757	42	151	6	8,752	45
Maryland	5,600,388	19	188	8	47	9	119,157	23	141	8	39,719	25
Massachusetts	6,398,743	13	200	6	40	12	159,969	17	160	5	39,992	24
Michigan	10,120,860	8	148	20	38	14	266,338	6	110	15	92,008	9
Minnesota	5,132,799	21	201	5	67	1	76,609	31	134	9	38,304	26
Mississippi	2,921,088	31	174	14	52	5	56,175	35	122	12	23,943	35
Missouri	5,800,310	18	197	7	34	17	170,597	14	163	4	35,585	27
Montana	935,670	44	150	18	50	6	18,713	48	100	18	9,357	44
Nebraska	1,758,787	38	49	40	49	7	35,894	43	Unicameral		NA	NA
Nevada	2,414,807	35	63	37	21	24	114,991	25	42	28	57,495	18
New Hampshire	1,309,940	41	424	1	24	23	54,581	36	400	1	3,275	49
New Jersey	8,717,925	10	120	29	40	12	217,948	8	80	22	108,974	6
New Mexico	1,928,384	36	112	31	42	11	45,914	39	70	24	27,548	33
New York	19,254,630	3	212	4	62	2	310,559	5	150	7	128,364	4
North Carolina	8,683,242	11	170	15	50	6	173,665	13	120	13	72,360	11
North Dakota	636,677	48	141	23	47	9	13,546	50	94	21	6,773	47
Ohio	11,464,042	7	132	28	33	18	347,395	4	99	19	115,798	5
Oklahoma	3,547,884	28	149	19	48	8	73,914	32	101	17	35,128	28

State	2005 Population	Rank	Total Legislators	State Rank	Senate Size	State Rank	Approximate Senate District Size	Rank	House Size	State Rank	Approximate House District Size	State Rank
Oregon	3,641,056	27	90	35	30	20	121,369	22	60	26	60,684	16
Pennsylvania	12,429,616	6	253	2	50	6	248,592	7	203	2	61,230	15
Rhode Island	1,076,189	43	113	30	38	14	28,321	45	75	23	14,349	42
South Carolina	4,255,083	25	170	15	46	10	92,502	28	124	11	34,315	29
South Dakota	775,933	46	105	32	35	16	22,170	46	70	24	11,085	43
Tennessee	5,962,959	16	132	28	33	18	180,696	12	99	19	60,232	17
Texas	22,859,968	2	181	11	31	19	737,418	2	150	7	152,400	2
Utah	2,469,585	34	104	33	29	21	85,158	29	75	23	32,928	30
Vermont	623,050	49	180	12	30	20	20,768	47	150	7	4,154	48
Virginia	7,567,465	12	140	24	40	12	189,187	11	100	18	75,675	10
Washington	6,287,759	14	147	21	49	7	128,322	20	98	20	64,161	13
West Virginia	1,816,856	37	134	27	34	17	53,437	37	100	18	18,169	40
Wisconsin	5,536,201	20	132	28	33	18	167,764	15	99	19	55,921	19
Wyoming	509,294	50	90	35	30	20	16,976	49	60	26	8,488	46
TOTAL	296,410,404		7,382		1,971				5,411			

Source: National Conference of State Legislatures, population figures based on the U.S. Bureau of the Census state and county quick facts for FY 2005. Compiled April 2007.

* Due to equal sizes, rankings may not range from 1 to 50.

Two legislative redistrictings - one in 2012 and perhaps another in 2014

Alaska could go through two legislative reapportionments after the 2010 census. The first would be the result of our own state districting process. Inclusive within this process will be contentious litigation that always results. And in Alaska, it has not been infrequent that the Court has taken control and redrawn the plan by appointed court masters.

Now comes the test! Any Alaska plan, or even election laws must be pre-cleared by the U.S. Justice Department civil rights division to ensure it complies with the requirements of the federal U.S. Voters Rights Act of 1965, and subsequent revisions. Alaska is in a special category with nine others states (*all in the Old South*). There were a number of reasons why we earned inclusion, but one was an "English language" test for voting in our state constitution. This was never implemented, and subsequently repealed. **Note:** In fact, Alaska did not even implement voter registration until the election of 1968.

Nevertheless, getting tangled up with U.S. Justice preclearance on the state 2012 plan could cause delay preventing resolution and implementation prior to the 2012 elections. The result of delay would be some kind of interim plan for 2012, i.e. use of the existing plan, the state proposed plan, or temporary court imposed plan.

The problem been with us since before statehood, and is built into the small size of our House and Senate

Alaska's increasingly skewered districting map is a natural result of a very small but fixed number of our 20 member Senate and 40 member House (*smallest in the nation*). The size of the House and Senate is fixed. However, the state's population has grown much faster in the urban areas, along the railbelt, and in coastal cities like Juneau, than in the smaller communities scattered along the extensive Alaska coastline and in the vast rural Interior of the state. This means districts in urban centers become more numerous and compact, but rural districts become fewer and must become huge and ungainly to gather sufficient population for a district, taking in regions completely unrelated and separated from each other.

For example, Sen. Johnny Ellis, D-Anchorage, can walk his downtown Anchorage district North and South, East and West, in just a few hours. Sen. Al Kookesh, D-Angoon, must catch a plane to Juneau (or ferry), catch Alaska Airlines to Anchorage, and then fly to Aniak of the Lower Kuskokwim or Holy Cross on the Lower Yukon. This district is half the size of Alaska.

- *Continued on next page*

We started with an enlarged hour of 40 districts that fit the Alaska socio-economic map perfectly

- Continued from previous page

At statehood our first district plan for the House fit the "constitutional socio-economics criteria" almost perfectly. We wonder whether constitutional crafters of this first plan (*done at the 1955 Constitutional Convention*) knew that an increase in the House from 24 members to 40 members would fit the existing socio-political map so well, making most happy. Nevertheless, it did just that "political job. It kept everyone happy, and that may have been especially important during the time of Congressional review and creation of the Statehood Act (*as well as our own Alaska local vote on statehood*).

> **Note:** *The constitutional committee charged with drafting the scheme was not without its bit of controversy and regional politics, i.e. Anchorage against everyone else, the latter reportedly wanting a plan, at least partially, radiating out from turban centers.*
>
> *So, to avoid the "others," meaning Anchorage delegates, reportedly Fairbanks Delegate George Cooper and Nenana/Yukon Delegate Jack Coghill, put together a little mid-night caucus in Delegate George Cooper's basement. Meanwhile, one of their faith kept the Anchorage delegation busy at the Fairbanks Second Avenue Mecca Bar.*

Note: As most states did at this time Alaska had a Senate based on regional geography.

This 1955 plan by "population count' was out-of-date by statehood, but another census was just around the corner. Further, everyone probably understood this, because the 1960 reapportionment plan had to do some serious revising, and yet produced little acrimony. *It was the only plan that has escaped court review and litigation.*

The point is that the first statehood districts fit the socio-economic map perfectly. However, from that day on every decennial redistricting forced the outlying and coastal districts into contortions, struggling to fit constitutional criteria and then the mandates of the ethnic criteria imposed by the 1965 U.S. Voters Right Act and subsequent revisions. Further, almost simultaneously the U.S. Supreme Court Tennessee case brought down the traditional regional Senates across the country. This was a political shock in itself

With a 20 member Senate and 40-member House, and a landmass that imposes huge barriers, we are now about out-of-gas in being able to meet the mandates of the U.S. Voters Rights Act. The issue is! Might the U.S. Justice Department question the size of our legislative bodies, and due to their small fixed size, our ability to provide ethnic representation required under the U.S. Voters Rights Act.

- Ongoing series of back grounders

In re 2001 REDISTRICTING CASES.

No. S-10504.

Supreme Court of Alaska.

March 21, 2002.

Petitions for review were filed as to superior court's orders regarding the Redistricting Board's proclamation plan. On consolidated petitions, the Supreme Court held that: (1) proposed House District 16 violated compactness requirement; (2) House District 5 was not constitutionally compact; (3) remand was required to permit Board to reconsider proposed House Districts 12 and 32; (4) unorganized geographic area had no constitutional right to be placed in a single house district; (5) dividing borough among two proposed house districts did not deny borough residents equal protection; (6) proposed Senate District S did not violate any group's equal protection rights; (7) provision of plan, under which the maximum population deviation in city was 9.5%, was unconstitutional; (8) Board failed to justify negative 6.9% deviation in House District 40; (9) Board did not violate the equal protection rights of military personnel by creating House District 18; and (10) assuming e-mail exchanges between some members of Redistricting Board violated Open Meetings Act, no remedy was appropriate.

Petitions for review granted; remanded with instructions.

Bryner, J., filed an opinion dissenting in part.

Carpeneti, J., filed a dissenting opinion.

1. States ⇐27(3)

Proposed House District 16, which contained a bizarrely-shaped appendage in the southwestern portion of the District, violated state constitution's compactness requirement; inclusion of appendage was unnecessary to further any other constitutional requirement and alternative plans considered by Redistricting Board contained more compact and otherwise constitutional versions of district. Const. Art. 6, § 6.

2. States ⇐27(3)

Absent finding that its current configuration was required by the Voting Rights Act, House District 5, which was substantially less compact than required by considerations of population equality and geography, would not be constitutionally compact. Voting Rights Act of 1965, § 2 et seq., 42 U.S.C.A. § 1973 et seq.; Const. Art. 6, § 6.

3. States ⇐27(10)

Redistricting Board was mistaken in its interpretation of doctrine of proportionality, such that Board's range of choices was unduly limited and remand was required to permit Board to reconsider proposed House Districts 12 and 32.

4. States ⇐27(4.1)

An inference of discriminatory intent may be negated by a demonstration that the challenged aspects of a redistricting plan resulted from legitimate nondiscriminatory policies, such as constitutional requirements of compactness, contiguity, and socio-economic integration. Const. Art. 6, § 6.

5. States ⇐27(4.1)

Doctrine of proportionality did not bar joinder of parts of municipality and borough in a single congressional district, but Redistricting Board had to take a hard look at options that it may have ignored based on its misinterpretation of the doctrine of proportionality.

6. Constitutional Law ⇐225.3(3)

States ⇐27(7)

Unorganized geographic area had no constitutional right to be placed in a single house district, as dividing area did not violate the constitutional requirement that districts be socio-economically integrated so long as each portion is integrated, as nearly as practicable, with the district in which it is placed, and dividing area did not, without more, constitute sufficient evidence of an equal protection violation such that Board was required to justify its action. Const. Art. 1, § 1; Art. 6, § 6.

7. Constitutional Law ⇨225.3(8)
States ⇨27(7)

Dividing borough among two proposed house districts did not deny borough residents equal protection or result in one house district not being socio-economically integrated; board offered an uncontroverted, non-discriminatory motivation for its action, given need for population to complete a district, and made a reasonable decision to favor dividing borough over further fragmenting another borough. Const. Art. 1, § 1; Art. 6, § 6.

8. Constitutional Law ⇨225.3(3)
States ⇨27(4.1)

Proposed Senate District S did not violate any group's equal protection rights; Redistricting Board combined two house districts to form Senate District S, in part, as a consequence of its decision to join two other house districts in another senate district to preserve an effective Native senate district to comply with the Voting Rights Act. Voting Rights Act of 1965, § 2 et seq., 42 U.S.C.A. § 1973 et seq.; Const. Art. 1, § 1.

9. Constitutional Law ⇨225.3(6)
States ⇨27(5)

Provision of Redistricting Board's plan, under which the maximum population deviation in city was 9.5%, violated constitutional standard of equality of population "as near as practicable;" although city was by definition socio-economically integrated, and its population was sufficiently dense and evenly spread to allow multiple combinations of compact, contiguous districts with minimal population deviations, Board failed to make any attempt to further minimize deviations. Const. Art. 6, § 6.

10. States ⇨27(5)

Redistricting Board failed to justify negative 6.9% deviation in House District 40 that resulted in a 12% statewide maximum population deviation in house districts; although House District 40 deviation was indirectly caused by Board's attempt to facilitate favorable review of its plan by the United States Department of Justice under the Voting Rights Act, Act did not require state to avoid retrogression of minority voting strength if doing so would create a maximum population deviation exceeding 10%. Voting Rights Act of 1965, § 2 et seq., 42 U.S.C.A. § 1973 et seq.

11. Constitutional Law ⇨225.3(8)
States ⇨27(7)

Redistricting Board did not violate the borough's geographic equal protection rights by failing to award it strictly proportional representation in the legislature; although failure to keep borough's house districts together when forming senate districts provided some evidence of discriminatory intent, Board had a valid non-discriminatory justification based on its forming an effective Native senate district to avoid retrogression under the Voting Rights Act. Voting Rights Act of 1965, § 2 et seq., 42 U.S.C.A. § 1973 et seq.; Const. Art. 1, § 1.

12. Constitutional Law ⇨225.3(3)
States ⇨27(6)

Redistricting Board did not violate the equal protection rights of military personnel by creating House District 18; neither military personnel nor members of any other group had any constitutional right to be divided among two or more districts to maximize their opportunity to influence multiple districts rather than control one. Const. Art. 1, § 1.

13. States ⇨67

Assuming e-mail exchanges between some members of Redistricting Board violated Open Meetings Act, public interest in requiring compliance with the Open Meetings Act did not outweigh the harm that would be caused to the public interest by voiding the entire Redistricting Plan on this basis and, thus, no remedy was appropriate. AS 44.62.310(f).

Before FABE, Chief Justice, MATTHEWS, EASTAUGH, BRYNER, and CARPENETI, Justices.

Order

In consideration of the consolidated petitions for review of the orders of the superior court, including its Memorandum and Order of February 1, 2002, and after hearing oral

argument on these petitions on March 15, 2002.

IT IS ORDERED:

1. All petitions for review of the superior court's orders regarding the Redistricting Board's Proclamation Plan of June 18, 2001, are GRANTED.

2. This case is REMANDED to the superior court with instructions to further remand it to the board for formulation of a final plan which complies with this order. Article VI, section 11 of the Alaska Constitution directs that this court expedite its redistricting decisions, "affording them priority over all other matters...." This order is made in compliance with this directive in lieu of this court's traditional but more lengthy and time-consuming opinion format.

3. Except insofar as they are inconsistent with this order, the orders of the superior court challenged by the petitioners are AFFIRMED.[1]

4. The stay entered by the superior court February 1, 2002 is VACATED.

[1] 5. House District 16 violates the compactness requirement of article VI, section 6 of the Alaska Constitution. House District 16 contains a bizarrely-shaped appendage in the southwestern portion of the district. The inclusion of this appendage is unnecessary to further any other requirement of article VI, section 6, and alternative plans considered by the board contained more compact and otherwise constitutional versions of House District 16.[2]

[2] 6. House District 5 is non-compact. The Craig plaintiffs acknowledge that a district including Cordova and extending as far south as Baranof Island would be compact.[3] But they argue that extending the district beyond Baranof Island to the southern boundary of the state violates the compactness requirement. Although we have in the past invalidated Southeast Alaska districts that included Cordova,[4] current population figures justify Cordova's inclusion in House District 5 to prevent substantial deviations in Southeast Alaska. But we agree with the Craig plaintiffs that House District 5 is substantially less compact than required by considerations of population equality and geography. In argument before this court, counsel for the board suggested that House District 5 must remain unchanged to comply with the federal Voting Rights Act. But the board did not make findings justifying the district on this basis. On remand, the board should either correct House District 5 or expressly find that the district's current configuration is required by the Voting Rights Act. Absent such a finding on remand, House District 5 will not be constitutionally compact.

[3,4] 7. House Districts 12 and 32 must be reconsidered on remand because they are based on a mistaken legal premise that constrained the board's view of the permissible range of constitutional options for these ar-

1. We commend the superior court for giving prompt and thorough attention to the many issues raised below. Under extreme time pressures, the superior court ably dealt with pretrial and discovery issues, conducted a three-week trial, and issued a thoughtful and well-reasoned opinion of 121 pages.

We also thank all parties and amici and their attorneys for their helpful briefs, provided under an accelerated briefing schedule, and their flexibility in satisfying procedural requirements for submitting these cases to this court on an expedited basis.

2. In *Hickel v. Southeast Conference*, 846 P.2d 38 (Alaska 1992), we adopted and observed the following priorities relating to redistricting:

> Priority must be given first to the Federal Constitution, second to the federal voting rights act, and third to the requirements of article VI, section 6 of the Alaska Constitution. The requirements of article VI, section 6 shall receive priority *inter se* in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.

Id. at 62. We adhere to these priorities in this order.

3. Board Plans 1 and 2 proposed such a district.

4. *Carpenter v. Hammond*, 667 P.2d 1204, 1215 (Alaska 1983) (holding that "inclusion of Cordova in House Election District 2" violated socioeconomic integration requirement, "[a]lthough the question [was] an extremely close one").

eas.[5] The board interpreted this court's decision in *Kenai Peninsula Borough v. State*[6] to preclude the board from pairing population from the Matanuska–Susitna Borough with the Municipality of Anchorage because both Anchorage and the borough had sufficient excess population to "control" an additional seat.[7] But *Kenai Peninsula Borough* does not entitle political subdivisions to control a particular number of seats based upon their populations. *Kenai Peninsula Borough* simply held that the board cannot intentionally discriminate against a borough or any other "politically salient class" of voters by invidiously minimizing that class's right to an equally effective vote.[8] *Kenai Peninsula Borough* recognizes that when a reapportionment plan unnecessarily divides a municipality in a way that dilutes the effective strength of municipal voters, the plan's provisions will raise an inference of intentional discrimination. But an inference of discriminatory intent may be negated by a demonstration that the challenged aspects of a plan resulted from legitimate nondiscriminatory policies such as the article VI, section 6 requirements of compactness, contiguity, and socio-economic integration.

Because the board was mistaken in its interpretation of the doctrine of proportionality, the board's range of choices was unduly limited. We therefore remand so the board can revisit the question of redistricting Southcentral Alaska unencumbered by this mistaken assumption.

[5] We do not direct the board to join parts of the Municipality of Anchorage and the Matanuska–Susitna Borough in a single district. We merely hold on the record before us that the doctrine of proportionality does not bar joinder. The board must take a hard look at options that it may have ignored based on its misinterpretation of the law.

[6] 8. The trial court correctly concluded that the Delta Junction area has no con-

5. *Cf. Interior Alaska Airboat Ass'n v. State, Bd. of Game*, 18 P.3d 686, 690 (Alaska 2001) ("[R]eview [of the reasonableness of a regulation] consists primarily of ensuring that the agency has taken a hard look at the salient problems and has genuinely engaged in reasoned decision making.").

6. 743 P.2d 1352 (Alaska 1987).

7. The Municipality of Anchorage has a population that would support 16.6 house seats. The Matanuska Susitna Borough's population would support 3.8 seats. Taken collectively, these municipalities—which by any measure meet article VI, section 6's relative socio-economic integration requirement—would support 20.4 seats. But under the board's interpretation of the doctrine of proportionality, the Municipality of Anchorage is entitled to control seventeen seats and the Matanuska–Susitna Borough is entitled to control four seats, for a collective total of twenty-one seats.

On remand it is likely that the board will consider whether to combine a portion of the excess population of these two municipalities to create a twentieth district. Doing so would leave a population excess of .4, and would raise the question what to do with that excess. One answer might be to overpopulate slightly each of the twenty districts, adding about 300 people to each district, a positive deviation from the ideal of about two percent. But this choice might be seen as undesirable, especially given the relatively high growth rate of the area, and if this choice is not taken, the question will be whether the .4 excess population can be combined with a neighboring area.

This would raise two issues. The first issue is whether this court's antidilution rule expressed in *Hickel*, 846 P.2d at 52, would permit such a combination. This rule holds that where possible the excess population of a municipality can only go to one other district. For example, in the scenario under discussion here (a joint Anchorage/Matanuska–Susitna district), the excess .4 populations of both municipalities would not fit into a single joint district, thus making it impossible to achieve literal compliance with the anti-dilution rule. We conclude, however, that this need to accommodate excess population would be sufficient justification to depart from the antidilution rule.

The second issue is whether any neighboring area that might be joined with the .4 excess population would be sufficiently integrated. Based on the briefs and oral arguments, it appears to us, under these circumstances, that any neighboring areas north, east, or south of the combined municipalities would meet the constitutional requirement of relative socio-economic integration.

8. *See Kenai Peninsula Borough*, 743 P.2d at 1370–73; *see also Karcher v. Daggett*, 462 U.S. 725, 754, 103 S.Ct. 2653, 77 L.Ed.2d 133 (1983) (Stevens, J., concurring) (explaining that group of voters must establish that it belongs to "politically salient class" as first element of claim of invidious discrimination); *Gaffney v. Cummings*, 412 U.S. 735, 754, 93 S.Ct. 2321, 37 L.Ed.2d 298 (1973) (recognizing potentially viable equal protection challenges "if racial or political groups have been fenced out of the political process and their voting strength invidiously minimized").

stitutional right to be placed in a single house district. Dividing the area does not violate the constitutional requirement that districts be socio-economically integrated so long as each portion is integrated, as nearly as practicable, with the district in which it is placed. Further, dividing an unorganized area such as the Delta Junction area does not, without more, constitute sufficient evidence of an equal protection violation such that the board must justify its action. Nevertheless, because this order requires reconsideration of the districts encompassing this area, on remand the board should take a hard look at alternatives, including constitutional alternatives that preserve socio-economically integrated areas.

[7] 9. Plaintiffs argue that dividing the Lake and Peninsula Borough among House Districts 36 and 37 denies the borough residents equal protection and results in House District 36 not being socio-economically integrated. Because the Kodiak Island Borough does not have enough population to support a house district, the board found it necessary to draw population from either the Lake and Peninsula Borough or the Kenai Peninsula Borough to form House District 36. The board's choice was permissible. The Upper Lakes region is as nearly as practicable socio-economically integrated with the Kodiak Island Borough through such links as their mutual membership in the Southwest Alaska Municipal Conference and their involvement in the commercial fishing industry. These areas have traditionally shared a senate district, and plaintiffs in this case requested that they continue to share a senate district due to the "close interaction and strong integration among all of the communities in Southwest Alaska."

Further, there is no equal protection violation. In *Hickel v. Southeast Conference*, we stated: "The division of a borough which otherwise has enough population to support an election district will be an indication of gerrymandering." [9] But this statement does not apply to this case because the Lake and Peninsula Borough falls far short of having enough population to support an election district. Moreover, the board offered an uncontroverted, non-discriminatory motivation for its action—it needed the population to complete District 36—and made a reasonable decision to favor dividing the Lake and Peninsula Borough over further fragmenting the Kenai Peninsula Borough.

[8] 10. Senate District S does not violate any group's equal protection rights. The board combined House Districts 37 and 38 to form Senate District S, and combined House Districts 35 and 36 to form Senate District R. This configuration split the historic Aleut/Alutiiq senate pairing and divided the Lake and Peninsula Borough into two senate districts. The board did this, in part, as a consequence of the board's decision to join House Districts 5 and 6 in Senate District C. This was necessary to preserve an effective Native senate district to comply with the Voting Rights Act. Although the board should not unnecessarily divide a borough between two senate districts, we conclude that the board offered acceptable reasons for doing so in this case.

[9] 11. The board failed to define Anchorage house districts that "contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty." [10] Under the board's plan, the maximum population deviation in Anchorage—i.e., the sum of the absolute values of the two Anchorage districts with the greatest positive and negative deviations—is 9.5%.[11] Before article VI, section 6, was amended in 1998, maximum deviations below ten percent were insufficient, without more, to make out a prima facie case that a plan or part thereof was unconstitutional. Section 6 was amended in 1998 and the present constitutional

9. 846 P.2d 38, 51 n. 20 (Alaska 1992).

10. Alaska Const. art. VI, § 6. Under the federal equal protection clause, a state must make an "honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." *Reynolds v. Sims*, 377 U.S. 533, 577, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964).

11. We further note that multiple combinations of Anchorage districts in the board's Proclamation Plan produce deviations ranging from 5.5% to 9.5%.

standard is equality of population "as near as practicable." Newly available technological advances will often make it practicable to achieve deviations substantially below the ten percent federal threshold, particularly in urban areas. Accordingly, article VI, section 6 will in many cases be stricter than the federal threshold. Here the board believed that deviations within ten percent in Anchorage automatically satisfied constitutional requirements; plaintiffs established that the board failed to make any attempt to further minimize the Anchorage deviations.

Because, as the board's counsel conceded at oral argument, the board made no effort to reduce deviations in Anchorage below ten percent, the burden shifted to the board to demonstrate that further minimizing the deviations would have been impracticable in light of competing requirements imposed under either federal or state law. We conclude that the board failed to offer an acceptable justification for the Anchorage deviations.

The board considered and rejected Anchorage plans with significantly lower maximum deviations, apparently because these plans did not respect the board's conception of neighborhood boundaries. But as we held in *Groh v. Egan*,[12] Anchorage neighborhood patterns cannot justify "substantial disparities" in population equality across Anchorage districts.[13] Anchorage is by definition socio-economically integrated, and its population is sufficiently dense and evenly spread to allow multiple combinations of compact, contiguous districts with minimal population deviations.[14] Accordingly, the Anchorage deviations are unconstitutional, and require the board on remand to make a good faith effort to further reduce the deviations.

[10] 12. The negative 6.9% deviation in House District 40 results in a 12% statewide maximum population deviation in house districts. The board has failed to justify this deviation. The board moved Pilot Station into House District 6 based upon the board's impression that House District 6 potentially needed a greater Native population to remain an effective Native district under the Voting Rights Act. The board then moved Shishmaref from House District 40 to House District 39 to make up the population shortfall resulting from the Pilot Station transfer. Thus, the House District 40 deviation was indirectly caused by the board's attempt to facilitate favorable review of its plan by the United States Department of Justice under section five of the Voting Rights Act.

But the Voting Rights Act does not require a state to avoid retrogression of minority voting strength if doing so would create a maximum population deviation exceeding ten percent.[15] The negative 6.9% deviation in House District 40 is therefore invalid and must be corrected.

[11] 13. The board did not violate the Matanuska Susitna Borough's geographic equal protection rights by failing to award it strictly proportional representation in the legislature. As explained above in paragraph seven, groups of voters are not constitutionally entitled to proportional representation absent invidious discrimination. Failure to keep a borough's house districts together when forming senate districts provides some evidence of discriminatory intent, just as failure to keep all of a borough's excess population in the same house district does.[16] But the board had a valid non-discriminatory jus-

12. 526 P.2d 863, 878–79 (Alaska 1974).

13. In *Groh*, we considered testimony concerning patterns of housing, income levels, and minority residency. We observed:

> While such patterns may form a basis for districting, they lack the necessary significance to justify the substantial disparities of 5.9, 6.5 and 8.6 percent. In an urban area such as Anchorage, more mathematical exactness can be achieved than in the sparsely settled portions of the state where pockets of culturally and economically divergent populations may be separated by geographic barriers.

526 P.2d at 879.

14. *See id.* at 878–79.

15. *See* Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412, 5413 (Jan. 18, 2001). Counsel for the board conceded this at oral argument.

16. *See Hickel*, 846 P.2d at 52 ("[W]here possible, all of a municipality's excess population should go to one other district in order to maximize effective representation of the excess group.").

tification in this case for pairing one of the borough's house districts north with a Fairbanks district: the "fifth" Fairbanks district had to be paired south so that House District 5 could be paired with House District 6 to form an effective Native senate district to avoid retrogression under section five of the Voting Rights Act.

[12] 14. The board did not violate the equal protection rights of military personnel by creating House District 18. Neither military personnel nor members of any other group have any constitutional right to be divided among two or more districts to maximize their opportunity to influence multiple districts rather than control one.

[13] 15. Assuming that the trial court was correct in finding that some of the board members' e-mail exchanges violated the Open Meetings Act,[17] we agree with the trial court that no remedy is appropriate. We hold that the superior court properly concluded that, based on the factors set out in AS 44.62.310(f), "the public interest[ ] in requiring compliance with the Open Meetings Act does not outweigh the harm that would be caused to the public interest by voiding the entire Redistricting Plan on this basis." Because we hold that the superior court permissibly refused to grant any remedy for the particular e-mail exchanges it found to violate the Open Meetings Act, we need not address whether these e-mail exchanges actually violated the Act. We further conclude that the superior court did not err by failing to find additional violations of the Act.

16. We hold that plaintiffs' due process challenges to the board's development of the Proclamation Plan have no merit.

17. Redistricting in Alaska is a task of "Herculean proportions." [18] The challenge of creating a statewide plan that balances multiple and conflicting constitutional requirements is made even more difficult by the very short time-frame mandated by article VI, section 10 of the Alaska Constitution. But these great difficulties do not absolve this court of its duty to independently measure each district against constitutional standards.[19]

The board, at great personal and professional sacrifice to individual members and staff, made extraordinary efforts in discharging its duties. This court's invalidation of some aspects of the board's plan should not be read as a general criticism of the board's work. On the contrary, the board is to be commended for its diligent, conscientious efforts to achieve the basic goal of redistricting—"adequate and true representation by the people in their elected legislature; true, just, and fair representation." [20]

Entered at the direction of the court.

BRYNER, Justice, dissenting in part.

I dissent from one aspect of the court's order: its conclusion that House District 5 cannot pass constitutional muster without further justification.

Although the issue is admittedly close, I believe that the proclaimed version of House District 5 and the earlier version proposed in Board Plans 1 and 2 are both constitutionally permissible alternatives. On the one hand, as today's order correctly observes, the version proposed in Board Plans 1 and 2 is undeniably more compact than the Proclamation Plan's version; but on the other hand, the Proclamation Plan's version could reasonably be seen as offering relatively superior socio-economic integration throughout Southeast Alaska. In my view, article VI, section 6, of the Alaska Constitution gives compactness and socio-economic integration equiva-

17. The Open Meetings Act is set out in AS 44.62.310 and AS 44.62.312.

18. *Egan v. Hammond*, 502 P.2d 856, 865–66 (Alaska 1972), *quoted in Hickel*, 846 P.2d at 50; *Kenai Peninsula Borough*, 743 P.2d at 1359; *Groh*, 526 P.2d at 875 (recognizing difficulty of creating equipopulous districts which conform to all article VI, section 6 requirements).

19. Alaska Const. art. VI, § 11 (conferring appellate jurisdiction on supreme court to review redistricting challenges "on the law and the facts"); *Groh*, 526 P.2d at 867 (holding that this court reviews redistricting plans de novo upon record developed in superior court), *cited in Kenai Peninsula Borough*, 743 P.2d at 1358.

20. 3 Proceedings of the Alaska Constitutional Convention (PACC) 1835 (Jan. 11, 1956), *quoted in Hickel*, 846 P.2d at 44.

lent stature as redistricting criteria; it thus seems to me that neither version of House District 5 can claim *constitutional* superiority. Because the board has broad discretion to select the most desirable among constitutionally permissible alternatives, I would uphold House District 5 as proclaimed.

In all other respects, I join in the court's order.

CARPENETI, Justice, dissenting.

The court today strikes down—directly or indirectly—over two-thirds of the election districts fashioned by the board.[1] I disagree with several individual aspects of today's Order, and discuss those points in this dissent. Fundamentally, though, I disagree with the Order because it fails to truly consider the statewide responsibilities of the board and the need for the board, at the end of the day, to prepare a plan that works across the entire state.

Proclamation House District 5

The Order invalidates Proclamation[2] House District 5 on the ground that it is noncompact. But Alaska's constitution "calls only for relative compactness;"[3] this is because the state's geography and population distribution make it impossible to draw conventionally compact districts that neatly approximate regular shapes like squares and circles. We have frequently allowed some departure from strict compactness in a given district in order to accommodate all of the constitutional criteria for all of the districts in the state.[4] We have previously noted the difficulty of drawing districts in Alaska and emphasized the need for flexibility so that all constitutional requirements may be satisfied as nearly as practicable: "'When Alaska's geographical, climatical, ethnic, cultural, and socio-economic differences are contemplated the task assumes Herculean proportions commensurate with Alaska's enormous land area. The problems are multiplied by Alaska's sparse and widely scattered population and the relative inaccessibility of portions of the state.'"[5]

In the "Board Plans"[6] advocated by the Craig plaintiffs and impliedly accepted as "compact" by today's Order, the proposed "Islands District" encompassing Prince of Wales Island begins at the Canadian border on the south, includes a 300-mile section of the mainland, almost all of Prince of Wales Island, all of Kupreanof and Kuiu Islands, almost all of Admiralty Island, about half of Chichagof Island, and then returns to the mainland to include a long, thin section of the mainland which ends in a long, thin appendage slicing the Haines Borough in two and incorporating Klukwan but bypassing Haines

1. The Order explicitly strikes down House Districts 5, 12, 16, 32, and the Anchorage Districts 17–31. Furthermore, the Order instructs the board to make changes to House Districts 6, 39, and 40, thereby directly striking down a total of twenty-two of forty House districts. These districts necessarily implicate twelve of twenty Senate Districts: District C (House Districts 5 and 6), District F (House District 12), District H (House District 16), District T (House Districts 39 and 40), and the Anchorage Districts I–P (House Districts 17–32).

This Order will indirectly necessitate changes to other districts, as well. With a conservative estimate of at least one other contiguous district being affected for each district explicitly struck down (not including the Anchorage districts, with the exception of District 32), four additional House districts are affected (District 1, District 35, District 36, and District 38). These four additional House districts affect another three Senate districts (District A, District R, and District S). In total, today's Order directly or indirectly affects forty-one of sixty districts. If the Order necessitates changes in all of the districts contiguous with those explicitly struck down, forty-seven of sixty districts are directly or indirectly affected.

2. Districts finally adopted by the Redistricting Board are called "Proclamation" districts.

3. *Carpenter v. Hammond*, 667 P.2d 1204, 1218 (Alaska 1983) (Matthews, J., concurring) (adopted by the full court in *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1361 & n. 13 (Alaska 1987)).

4. *See, e.g., Hickel v. Southeast Conference*, 846 P.2d 38, 52 & n. 23 (Alaska 1993).

5. *Id.* at 50 (quoting *Egan v. Hammond*, 502 P.2d 856, 865–66 (Alaska 1972)), *quoted in Groh v. Egan*, 526 P.2d 863, 875 (Alaska 1974) and *Kenai Peninsula Borough*, 743 P.2d at 1359.

6. "Board Plans" 1 and 2, which were among the four plans originally promulgated by the board, were not ultimately adopted by the board. As noted above in note 2, districts finally adopted by the board are known as "Proclamation" districts.

on its way to Klukwan. Proclamation House District 5, extending west to include Cordova, is not "substantially less compact" than the "Islands District" in the plan advocated by the Craig plaintiffs. As the options before the board were all relatively compact, the board had the discretion to choose among the differing plans. As Judge Rindner found, the board's decision to keep smaller, rural communities together was a reasonable choice: Proclamation District 5 did not have the appendage problem of Board Plans 1 and 2 and public testimony from small communities urged the board to create a district that did not include them with larger, urban communities. Indeed, the board's plan enjoyed the distinction of being endorsed by every legislator—Republican and Democrat, urban and rural, Native and Caucasian—in all of Southeast Alaska.

Correctly viewing redistricting as a process that requires the board to constantly look beyond the borders of the district being fashioned, the board made a reasonable choice in drawing Proclamation House District 5. The district is substantially more compact than a number of districts in the state,[7] is easily as compact as Board Plans 1 and 2 because it avoids the Klukwan appendage problem that infects those alternative plans,[8] and is sufficiently socio-economically integrated. The superior court's affirmance of the board's action in creating Proclamation District 5 should be upheld.

Proclamation House Districts 12 and 32

Judge Rindner carefully analyzed the problems presented by the formation of Proclamation House Districts 12 and 32. He found that Proclamation District 12 could not survive close scrutiny because of insufficient socio-economic integration between the northern and southern halves of the district, separated as they were by the Alaska Range and long-established habits of economic and social activity. The evidence showed that the northern communities interacted with each other and the southern communities interacted with each other, with almost no interaction between the northern and southern halves of the district. Judge Rindner's similarly careful consideration of the evidence concerning Proclamation House District 32 led him to the opposite conclusion with regard to that district. He found that "[b]ased on all of the evidence, ... District 32 contains as nearly as practicable a relatively integrated socio-economic area." Applying the correct legal standard on review, he said, "It is clear that the Board gave careful consideration and extensive deliberation to this district and took a hard look at the factors both in favor and against such a pairing." He therefore struck down Proclamation District 12 and upheld Proclamation District 32. Because Judge Rindner correctly understood and applied the relevant law, I dissent from this court's holding that Proclamation House District 32 must be remanded for further consideration.

Under *Kenai Peninsula Borough v. State*,[9] strict proportionality is not a constitutional requirement.[10] However, "the interest of individual members of a geographic group or

7. For example, Proclamation House District 40 covers the entire North Slope of the state; Proclamation House District 37 comprises the entire Aleutian Chain as well as part of the mainland; and Proclamation House District 6, the largest single district, extends from the Canadian border just north of Yakutat (a point about 350 miles east of Anchorage), reaches as far north as the Brooks Range and Arctic Village, encompasses almost all of the Yukon River drainage and most of the Kuskokwim River drainage, and extends as far west as Marshall and Russian Mission (to a point about 400 miles west of Anchorage). This district appears to be slightly larger than the State of Texas, which may be fitting given its horseshoe shape.

8. Indeed, a comparison of Proclamation House District 16—which the Order properly strikes because of an appendage that rendered it non-compact—and the "Islands District" in Board Plans 1 and 2—which the Order finds to be compact despite a substantially more prominent appendage—illustrates the correctness of the board's rejection of Board Plans 1 and 2 as an alternative to Proclamation District 5.

9. 743 P.2d 1352 (Alaska 1987).

10. *Id.* at 1370 n. 33 (stating that "We note that article VI, section 6 alone identifies the criteria governing reapportionment; if the framers had intended to make proportionality a criterion for the establishment of new districts, they presumably would have included it in this section or written a sister provision.").

community in having their votes protected from disproportionate dilution by the votes of another geographic group or community" is a significant constitutional interest.[11] By definition, a borough is socio-economically integrated.[12] That integration, the contiguous, and often compact, nature of boroughs, and the significant constitutional interest in protecting the equally effective votes of residents of an organized geographic area requires the board to attempt to draw districts that allow communities to control the whole number of seats to which they are entitled. We have previously stated that "where possible, all of a municipality's excess population should go to one other district in order to maximize effective representation of the excess group."[13] This principle is even more compelling when the "excess" population could constitute the majority of a new district.

The board, therefore, was properly concerned about placing excess populations from Anchorage and the Mat–Su Borough—each of which was sufficient to constitute the majority of a district—into a single district. This legitimate concern resulted in the board's ultimate decision to create a plan that allowed Anchorage, with a population supporting 16.6 House seats, to have the excess population placed in a seventeenth district, and Mat–Su, with a population supporting 3.8 House seats, to have its excess population placed in a different district. Splitting either of these boroughs' excess population, members of a "politically salient class," would clearly have resulted in diluting the voting power of the "excess" voters of each borough. Such dilution would have constituted evidence that the individual voters' rights to geographic equal protection had been violated by the board, and predictably would have led to litigation.[14]

While the board's decision to attempt to draw districts that gave boroughs control over the whole number of seats to which they were entitled was reasonable, this consideration cannot be elevated over the constitutional mandates of one-person, one-vote, contiguity, compactness, and socio-economic integration. As Judge Rindner found, Proclamation House District 12 is not sufficiently socio-economically integrated. The board's decision to value proportionality does not justify the creation of a district that is not socio-economically integrated. Accordingly, I agree that this district is unconstitutional.

Proclamation House District 32, on the other hand, is sufficiently socioeconomically integrated. Judge Rindner found, and I agree, that "District 32 contains as nearly as practicable a relatively integrated socio-economic area. This integration is not minimal but significant." As Proclamation House District 32 is sufficiently socioeconomically integrated, the board's decision to create this district and thereby protect the effectiveness of the vote of the "excess population" involved, was rational. The board should not be required to reconsider Proclamation House District 32.

Anchorage House Districts

We have long held that population deviations under 10% are "minor deviations" that do not require further justification; they are presumptively constitutional.[15] The superior court found that the board's attempt to preserve neighborhood boundaries in Anchorage was not improperly motivated, a conclusion that this court accepts. Yet today's Order

11. *Id.* at 1371.

12. *Hickel v. Southeast Conference*, 846 P.2d 38, 52 (Alaska 1993).

13. *Id.*

14. *Id.* at 52 n. 26 ("Dividing the municipality's excess population among a number of districts would tend to dilute the effectiveness of the votes of those in the excess population group. Their collective votes in a single district would speak with a stronger voice than if distributed among several districts.").

15. *Id.* at 48; *see also Groh v. Egan*, 526 P.2d 863, 877 (Alaska 1974) ("[I]n the absence of a showing that the manner of reapportioning a state was improperly motivated or had an impermissible effect, deviations of up to ten percent require no showing of justification."). Indeed, the United States Supreme Court has upheld deviations over 16%, where such deviations were justified by legitimate considerations. *Mahan v. Howell*, 410 U.S. 315, 328–30, 93 S.Ct. 979, 35 L.Ed.2d 320 (1973).

invalidates sixteen house districts in Anchorage on the ground that the board did not make a sufficient effort to further reduce deviations that we have consistently said are minor and need no further justification.[16] The order attempts to justify this surprising result on two grounds. Neither survives scrutiny.

First, the Order suggests that the constitutional change adopted by the voters in 1999 justifies dramatically stricter standards in redistricting. But a simple comparison of the language of the former provision and the current provision shows that the change made the standard more *flexible*, not more strict. Article VI, section 6 previously provided: "Each area shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty." That provision literally required that each district contain the same number of civilians as every other district: Each had to be "at least equal" to every other; once any district contained an excess of population, another district would fail to have "at least" that many persons. Whatever might be said about the feasibility of meeting this standard, it is clear that the standard was very high. In 1998[17] the citizens of Alaska voted to adopt new language for article VI, section 6. The new language provides, "Each [house district] shall contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty." Clearly, the new language—"as near as practicable"—created a more flexible standard than the language it replaced—"equal".[18]

Second, today's Order relies on *Groh v. Egan*[19] for the proposition that "Anchorage neighborhood patterns cannot justify deviations so close to the ten percent threshold." But in *Groh v. Egan* we were faced with a plan with a total deviation of *29%*.[20] We addressed three Anchorage districts, which respectively were underrepresented by 5.9%, 6.5%, and 8.6%,[21] in the context of a total deviation of 29%. In holding that neighborhood patterns cannot justify "substantial disparities," we were unmistakably referring to total deviations over 10%. By comparison,

16. The Order is particularly puzzling in that it squarely places the burden on the board to justify *de minimis* deviations, Order at 9, effectively but silently reversing longstanding precedent from this court. *Groh*, 526 P.2d at 877 (stating that in the absence of a showing of improper motive or impermissible effect, "deviations of up to ten percent require *no showing of justification*") (emphasis added). We relied on federal law in announcing this rule, citing both the Court's opinion in *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973), and Justice Brennan's dissent in that case to the effect that "a line has been drawn at 10%—deviations in excess of that amount are apparently acceptable only on a showing of justification by the State; deviations less than that amount require *no justification whatsoever*." *Id.* at 776, 93 S.Ct. 2332 (Brennan, J., dissenting) (emphasis added).

17. The new constitutional provision took effect January 3, 1999. Committee Substitute for Senate Bill (C.S.S.B.) 44, 20th Leg. 1st Sess. (1999).

18. The legislative history of the provision tends to confirm this view. A section-by-section analysis of the proposed constitutional amendment, prepared for the House Judiciary Committee, commenting on section 4 (which was to become article VI, section 6) stated, with regard to the "as nearly as practicable" language, "Since Alaska Supreme Court and U.S. Supreme Court decisions make clear that minor deviations from an ideal one-fortieth reapportionment per district are permissible, the 'as nearly as practicable' language is added." Sectional Analysis for HJR 44 0-LS0528/C, Original Bill File, House Judiciary Comm. (Feb. 4, 1998).

Virtually identical language is found in the Sectional Analysis prepared for the Senate Judiciary Committee on the same provision. With regard to the "as nearly as practicable" language, the analysis reads: "Since U.S. Supreme Court and Alaska Supreme Court cases make clear that minor deviations from an ideal one-fortieth of the state's population are permissible for house and senate districts, the 'as nearly as practicable' language is added." Sectional Analysis for CS FOR HJR 44(RLS), Original Bill File, Senate Judiciary Comm. (April 6, 1978).

19. 526 P.2d 863 (Alaska 1974).

20. *Id.* at 874, 878–79.

21. The *Groh* opinion does not divulge the Anchorage district with the greatest *over*representation. Accordingly, we do not know the "maximum population deviation in Anchorage" in the redistricting plan that *Groh* addressed. It is therefore not possible to construct the figure that would be comparable to the 9.5% "maximum population deviation in Anchorage" that today's Order describes. But it is likely that the comparable figure would have been substantially higher in the *Groh* case, for no Anchorage district in the present plan exceeds 4.8% deviation.

the greatest Anchorage deviation struck down today is 4.8%, and the maximum statewide deviation—a deviation figure that Anchorage has nothing to do with[22]—is 12%. *Groh v. Egan* simply does not support the court's invalidation of sixteen Anchorage house districts.

Here, the board's stated purpose of trying to maintain neighborhood boundaries within Anchorage, once it had fully complied with the one person, one vote requirement, resulted in the board's decision not to attempt to further minimize deviations within Anchorage below what we have previously determined to be *de minimis*.[23] It did so in order to preserve neighborhoods,[24] a proper motive.[25] It had no impermissible effect. In sum, I believe that the board's approach was entirely proper and conformed to all constitutional requirements. This court should uphold Judge Rindner's affirmance of the board.

Proclamation House District 40

Today's Order invalidates Proclamation House District 40 on the ground that the board incorrectly believed that the 6.9% population deviation in that district was required by the Voting Rights Act. Because I do not believe that is an accurate description of the reason that the board fashioned District 40 as it did, I dissent.

To understand what occurred in regard to District 40, some background information is necessary. Proclamation House District 40 encompasses a very large area—approximately 133,000 square miles—that is sparsely inhabited. The board had only two options to obtain sufficient population: adjoining District 6 or adjoining District 39.

The board considered but rejected the option of taking population from District 6, because District 6 is a majority Athabaskan district, whereas District 40 is a majority Inupiaq district. In *Hickel v. Southeast Conference*,[26] we recognized that combining these disparate populations may be "the single worst combination that could be selected if a board were trying to maximize socio-economic integration in Alaska."[27] Clearly, the board's decision not to take population from District 6 was reasonable and fully justifiable.

The board's other option was to take population from District 39. The closest community in that district is Shishmaref. But if the board were to have done that, the deviation in District 39 would have been −7.8%, greater than District 40's −6.9%.

The board could have lowered the 7.8% deviation by moving Pilot Station from District 6 to District 39 (its former district), but such a move would have increased the deviation in District 6 to −8.2%, again, a greater deviation.[28] Accordingly, the board conclud-

22. In this redistricting plan, the most overrepresented district is House District 40 (the North Slope) with a −6.89% deviation. The most underrepresented district is House District 33 (Kenai Peninsula), with a +5.06% deviation. Accordingly, the plan's statewide "total deviation" is 11.95%, rounded to 12%.

23. *Groh*, 526 P.2d at 877 ("We conclude that in the absence of a showing that the manner of reapportioning a state was improperly motivated or had an impermissible effect, deviations of up to ten percent require no showing of justification.").

24. The Order does not appear to challenge the conclusion that the board's purpose was to preserve neighborhoods, a conclusion that was supported by the evidence. For example, the board heard substantial expert testimony about the socio-economic characteristics of Anchorage neighborhoods, and a majority of the Anchorage Assembly endorsed, as the plan that best kept neighborhoods intact, a package of districts that became most of the final Proclamation districts.

25. *Groh*, 526 P.2d at 879 ("[Patterns of housing, income levels, and minority residency] may form a basis for districting.").

26. 846 P.2d 38 (Alaska 1993).

27. *Id.* at 53 (internal quotation marks omitted).

28. Attempts to lower the deviation in District 6 to acceptable levels were not feasible: District 6 is contiguous with the other effective Native districts, Districts 5 and 37 40. However, these districts are already underpopulated. While District 6 is also contiguous with the districts that include the urban areas of Kenai, Anchorage, Mat Su, and Fairbanks, these areas have minimal, if any, socio-economic integration with the Interior Rivers area, District 6. Given the higher population deviations that would have resulted from trying to reduce District 40's underpopu-

ed that District 40's population shortfall was justified by the difficulty of obtaining offsetting population blocks without violating the board's policies of achieving socio-economic integration and preserving political and Native corporation boundaries. Thus, while the board's initial concerns involved the Voting Rights Act, Judge Rindner found that "[a]ll Board members joined in the decision to approve the boundaries of House District 40, *believing that this choice would result in the lowest population deviation.*" (Emphasis added.)

Judge Rindner found that the board's −6.9% deviation in Proclamation House District 40 was justified. As he concluded, "[b]oth the size and the unavailability of easily moved population blocks make this deviation acceptable [and] justified." Judge Rindner noted that the board moved Pilot Station out of District 39 into District 6 to increase the Native population in District 6. As a consequence, the resulting deviation of Proclamation House District 40 was the lowest possible deviation. Although Judge Rindner found that moving Pilot Station from District 6 to District 39 would have had Voting Rights Act implications—which in themselves would not have been enough to justify a total deviation in excess of 10%[29]—the reason for the move was *not* to satisfy the Voting Rights Act but to achieve the lowest population deviation consistent with other constitutional requirements, including socio-economic integration.

For these reasons, I believe today's Order misapprehends the impact of the Voting Rights Act on the board's actions. Even ignoring the federal act entirely, the board had few options and exercised one that is fully consistent with constitutional requirements. Finally, as a point of reference, the 12% total statewide deviation that the board's plan contained is the *lowest* deviation in any redistricting plan in Alaska's history. I would uphold Judge Rindner's affirmance of the board's Proclamation House District 40.

Conclusion

I fully agree with the Order's observations that redistricting presents formidable challenges to a citizen board that operates under extraordinary time pressures, and that this board should be "commended for its diligent, conscientious efforts to achieve the basic goal of redistricting." It is because the task is so difficult, the time so short, and the job on remand so remarkably heavy that this court should not strike down or otherwise throw into question two-thirds of the districts unless they are truly unconstitutional. Because I believe that only Proclamation Districts 12 and 16 fail to meet constitutional requirements, I dissent from those parts of today's Order that do not affirm the trial court. I would affirm the decision of Judge Rindner in all respects.

Timothy W. HUBBARD, Appellant,

v.

Amy L. HUBBARD, Appellee.

No. S–9562.

Supreme Court of Alaska.

March 29, 2002.

In divorce proceedings, husband sought to have his paternity of minor child disestablished. The Superior Court, Third Judicial District, Anchorage, John Reese, J., found husband was equitably estopped from dises-

lation, the board's decision to keep Pilot Station in District 6, though originally for Voting Rights Act reasons that do not justify a deviation in excess of 10%, was reasonable. Additionally, it had the benefit of maintaining District 6, the only district in Alaska shown to have racially polarized bloc voting, as an effective Native district.

29. Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 42 U.S.C.1973c; Notice, 66 Fed.Reg. 5412, 5413 (Jan. 18, 2001) ("For state legislative and local redistricting, a plan that would require overall deviations greater than 10 percent is not considered a reasonable alternative.")

Out of Session:
Legislative Information Office
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Alaska State Legislature

In Session:
State Capitol
Juneau, AK 99801-1182
(800) 597-3707
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(907) 465-4821 (Fax)

SENATOR
DONALD C. OLSON

DISTRICT T

Alakanuk
Ambler
Anaktuvuk Pass
Atqasuk
Barrow
Brevig Mission
Browerville
Buckland
Chevak
Deering
Diomede
Elim
Emmonak
Gambell
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyuk
Mountain Village
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pilot Station
Pitka's Point
Point Hope
Point Lay
St. Mary's
St. Michael
Savoonga
Scammon Bay
Selawik
Shaktoolik
Shishmaref
Shungnak
Stebbins
Teller
Unalakleet
Wainwright
Wales
White Mountain

MEMORANDUM

February 2, 2010

To: Senator French, Chair

Senate Judiciary Committee

From: Senator Olson, Chair

Senate Community and Regional Affairs Committee

Re: SJR 21, Increasing the Size of the Legislature

I would appreciate a Judiciary Committee hearing of SJR 21 at your earliest convenience. Attached is a sponsor statement, the resolution, fiscal notes and back up information. Please advise me or my staff if there is any additional information you or the committee may require.

Thank you for your attention to this request.

SJR

22

Official Business

Alaska State Legislature

Senate

Office of the Secretary

State Capitol, Room 213
Juneau, Alaska 99801-1182
Phone: (907) 465-3701
Fax: (907) 465-2832
Email:senate_secretary@legis.state.ak.us

FOR YOUR IMMEDIATE ATTENTION

DATE: April 16, 2009

TO: Judiciary Committee
(Cindy, Room 417)

FROM: Office of the Senate Secretary

SUBJ: Referral Change

The Chair of the Committee noted above has waived the referral(s) on the following bills(s):

RETRIEVE

SENATE JOINT RESOLUTION NO. 22
Opposing litigation that seeks to eliminate the Kenai, Kasilof, and Chitina sockeye salmon personal use dip net fisheries; and requesting the governor to re-examine the disproportional influence of the commercial fisheries industries on fisheries management in the state.

Please give the bill file(s) to the page delivering this message for forwarding to the next Committee of referral.

Thank you.

SJR

28

LETTER IN SUPPORT OF SJR 28,

RELIGIOUS FREEDOM FOR THE ECUMENICAL PATRIARCHATE

Chairman French, and distinguished members of the Senate Judiciary Committee.

My name is Vasilios L. Copadis, I am a member of the Holy Transfiguration Greek Orthodox Church in Anchorage, AK. My wife and I have lived in Anchorage for over 32 years. We have been members of the Holy Transfiguration parish since the church reopened in 1984. In previous years I have served both as a member of the Parish Council and as Parish Council President. I was also a member of our church's Diocesan Council, which is an advisory board to the Bishop of our Diocese and is headquartered in San Francisco, CA. I am writing to you in support of Senate Joint Resolution 28, for the Religious Freedom for the Ecumenical Patriarchate.

The Ecumenical Patriarchate is located in Constantinople, which is modern day Istanbul, Turkey. Ever since the Treaty of Lausanne in 1923, the Turkish government has embarked on a series of maneuvers to rid the country of persons of Greek ethnicity, which is considered "ethnic cleansing". The treaty provided for the independence of the Republic of Turkey but also for the protection of the Greek Orthodox Christian minority and the mainly ethnically Turkish Muslin minority in the Thrace region of Greece. However, most of the Christian population of Turkey and the Muslim population of Greece had already been deported under the earlier exchange of populations between Greece and Turkey agreement which was signed by Greece and Turkey. Only the Greeks of Constantinople, the islands of Imvros and Tenedos were excluded (about 270,000 at that time), and the Turkish population of Western Thrace. Today only 2,000 to 3,000 Greek Orthodox citizens remain in Istanbul.

The Turkish State still does not recognize the "Ecumenical" title and status of the Patriarch and Patriarchate. This title was given to the Ecumenical Patriarch of Constantinople by the undivided Christian Church in the 6th century, and is purely an ecclesiastical title. The mission and jurisdiction of the Ecumenical Patriarchate has always been and always will be purely spiritual. Unfortunately, this title has been the source of much debate by the Turkish State, even though it is recognized and used by the rest of the world. The majority of the faithful under the immediate jurisdiction of the Ecumenical Patriarchate is outside of Turkey and encircles the globe, including more than 1.5 million Greek Orthodox faithful in the United States. The Ecumenical Patriarchate is also the First Church of the Orthodox Church worldwide, responsible for coordinating the Pan Orthodox affairs of the Orthodox Church. It is the spiritual center of 300 million Orthodox Christians worldwide.

More recently, the European Union (to which Turkey aspires to become a member of) under the 2003 EU-Turkey Accession Partnership, instructed the Turkish government to conform to European standards with respect to religious freedom and the protection of minorities. The Turkish State continues to violate the Lausanne Treaty by not legally recognizing the Ecumenical Patriarchate, and it has not made any progress towards the EU-Turkey 2003 Accession Partnership. Not having a legal identity is a major source of many other problems of the Ecumenical Patriarchate in Turkey, this includes no property rights.

Current government policies threaten the viability of the Patriarch's presence in Istanbul, and appear targeted to bring about the eventual exodus of the Greek Orthodox from Turkey entirely. The Turkish Authorities do not allow the Ecumenical Patriarchate to have any property rights in Turkey. Through various methods, the Turkish Authorities have confiscated thousands of properties including homes, apartment buildings, schools and land from Ecumenical Patriarchate and its community over the years. The most glaring property issue surrounds the Orthodox Theological School of Halki which was seized in 1971, when the Turkish Government nationalized all institutions of higher education.

The Theological School of Halki is the only institution of the Ecumenical Patriarchate for the training of its clergy. One cannot underestimate its importance for the survival of the Ecumenical Patriarchate. It's a "Catch 22" of sorts in the fact that in 1923 and again in 1970, the Governor of Istanbul illegally issued decrees imposing restrictions on the election of the Ecumenical Patriarch and the Metropolitans (Bishops) who elect him. These decrees stated that the Ecumenical Patriarch, and the hierarchs (Metropolitans and Archbishops) that vote for him, must be Turkish citizens! This would be akin to the country of Italy where the Vatican is located, decreeing that only Italian citizens can be elected Pope and that only Roman Catholic hierarchs who are Italian citizens can vote for someone to become Pope! It's ludicrous!!

Currently there are only 15 hierarchs in Turkey with Turkish citizenship. If the Halki Theological School is not allowed to reopen, then there can be no clergy trained. Without clergy, there will eventually be no one ascending to be hierarchs, and ultimately, there will be no one of Turkish citizenship left that can be elected as Patriarch....thus, Catch-22. In spite of numerous petitions and appeals to the Turkish government, including personal appeals by Presidents George H.W. Bush and Bill Clinton, the government of Turkey still refuses to allow the school to reopen. Consequently, if the school remains closed, it will be a case of institutional genocide, as it will assure the governmental extinction of the Ecumenical Patriarchate.

Recently, the European Commission for Democracy has made a ruling urging Turkey to recognize the status of the Ecumenical Patriarchate and its historical role as it was already defined in the 6th Century. It also calls for the reopening of the Theological School of Halki, and also to change the rule by which the Metropolitans and other hierarchs must be Orthodox Christians of Turkish nationality in order to be elected as Patriarch.

In spite of numerous attempts by His All Holiness Ecumenical Patriarch Bartholomew to start a dialogue with the Turkish Authorities regarding all of the above mentioned issues, there have been very few meetings. Additionally, the Ecumenical Patriarchate has written and sent over 30 letters to the Prime Minister and other Ministers and authorities in Ankara about the problems of the Ecumenical Patriarchate and its community, but there has never been even one reply to any of these letters. Without the resolution of many of these problems, Turkey will not be demonstrating the religious freedom necessary to enter the European Union.

In closing, I urge the committee to join 25 other states that have passed similar resolutions and vote in favor of this resolution. Thank you for your time.

Vasilios L. Copadis

MY PERSONAL EXPERIENCE AT THE ECUMENICAL PATRIARCHATE

When I was serving as a priest in Greece, I was given the opportunity to serve as the "on duty" priest at the monastery of the Holy Trinity at the well known theological school on the island of Halki, (which has been closed since 1971), a half-hour ferry ride from the city of Constantinople. It was my privilege to serve there for seven weeks. I arrived during Bright week (the week after Easter) and left at Pentecost (50 days later), thus it was my blessing to serve the *Pentecostarion* (time between Easter and Pentecost) there.

Before I left for Halki, I was advised that I should dress in "street clothes," i.e., not in clerical clothing. The country of Turkey does not allow clerics, foreign or otherwise, to dress as clerics in public. For me, that meant no cassock or rasso. Way back then I still had a business suit tucked in a closet at home, why I am not sure, but it came in handy for the trip and I made sure I was wearing it when I arrived in Turkey. After ordination, I had no use for the suit any longer, but inertia being what it is, I still had it. It was a good looking suit and it fit well. I will admit, though, that after two-plus years as a presbyter, it felt very strange to be in a suit again and I looked rather odd wearing it with my very long hair and long beard.

The locals on the island of Halki made sure I was aware that obedience to the country's laws not be taken lightly. That is, if I were to be arrested for whatever reason, I could disappear and never be heard from again. There's no *habeas corpus* there.

I learned I could relax the suit idea and instead wear simple black trousers and matching black long sleeved t-shirt with my black *kondo* (vest). I gave the suit to a grateful young Armenian man who was employed at the defunct theological school at Halki. He related to me how he couldn't keep a job in the city once his employers found out that he was a Christian. Sadly, this problem was not just his.

Once I shed the suit, I ended up looking the part of an eccentric hippy instead of an uncomfortable, out-of-place presbyter. A researcher I met at Halki suggested I looked akin to a 19th century Russian peasant.

His All-Holiness, Bartholomew, would visit the school regularly, often with guests. I had the privilege to meet with his All-Holiness several times. I found him personable and easy to communicate with. He was very warm and kind to me during my stay.

All during my stay, I learned of the plight of the Patriarch, the Ecumenical Patriarchate and the Orthodox Church in Turkey from those who had lived there all their lives. I learned of property confiscations, vandalism, personal threats and riots against Christians. It was disheartening and shocking to learn that just a few Christians live in Constantinople these days—Constantinople, the great Byzantine city. Countless numbers of Christians have been forced from their lives there.

The librarian on Halki, George, befriended me. He was a former tour guide and exceptional musician, although I cannot now remember the name of the mandolin-like instrument that was his favorite—it may have been the Oud. George received a blessing to take me on a tour of Constantinople. Our first stop, of course, was the Church of Holy Wisdom--*Agia Sophia*. The scale of this church is immense and, once more, the personal experience is what communicates

FLS

the grandeur, not to mention all the history and suffering that has taken place there since the fall of the city in 1453.

I stood in awe of the beauty and could only imagine what it must have been like when the Emperor of Rome was present before the Ottomans stormed the city on May 29, 1453. Imagine the Patriarch, a dozen visiting bishops, a small army of priests, seven or so deacons and two full choirs, perhaps two dozen or more in each, choir members with top-notch skills, adding to this the Emperor with all his retinue; billowing clouds of incense and bells. We have a description of what the envoys from Vladimir, Prince of Kiev, saw when visiting Agia Sophia, their report noted that the worship struck them as though they didn't know if they were in heaven or on earth. Even considering the current state of the Great Church, now held as a state museum, I could, in my mind's eye, envision their wonderment. George commented to me that it was against the law to pray in *Agia Sophia*. Only God knows how many silent, fervent prayers are offered there routinely.

I saw many beautiful and amazing sites in the city, but *Agia Sophia* always remains at the forefront of my mind. After the tour, George and I walked by the many shops that had been taken from Christians during some horrible uprisings against the Orthodox.

It is because of these firsthand experiences that I do not hesitate for a moment to testify for the adoption of the Alaska Senate Joint Resolution 28 this Friday, March 26, at 1:30PM. I encourage as many who feel sympathy and concord with the Patriarchate as I do, to follow suit. You can read more details of human and religious rights violations against the Ecumenical Patriarchate at http://archons.org/. The situation of the Patriarchate in Constantinople actually requires more than our sympathy, it requires our action as the continued existence of the Patriarchate is at stake. It is a sacred duty to speak in support of the Ecumenical Patriarchate. The Turkish government insists that it must approve of any new Patriarch and that candidate must be a Turkish citizen having served in the Turkish army. This cuts the field of candidates very thin indeed. How many unmarried Orthodox clergy can boast Turkish citizenship and military service?

As an aside, as I was leaving Constantinople by bus, I came across a twenty-something American couple who were leisurely traveling around the world. When I met them and we began to chat, I was attired in my "Russian peasant garb" and dark sunglasses. However, as soon as we crossed the Greek-Turkish border, I reached into my bag and pulled out my cassock and quickly attired myself properly. As is often the case with world travelers, we exchanged email addresses. Later, to my surprise, I read on their website that they had met a man who looked like a member of ZZ TOP and was suddenly transformed into an Orthodox priest before their very eyes. Now, I wonder who that might have been? +Fr. Leo

+Fr. Leo Lafferty 3/29/10

Cindy Smith

From: Diane Primis [dianeprimis@hotmail.com]
Sent: Sunday, March 28, 2010 9:43 PM
To: Sen. Hollis French
Subject: Resolution SJR 28 Relating to the Ecumenical Patriarchate and religious rights.

Dear Senator French,

I am a member of Holy Transfiguration Greek Orthodox Church in Anchorage and I strongly urge you to support the above Resolution. The continued existence of the Ecumenical Patriarchate is at stake, and what is decided here in Alaska has implications for Orthodox Christians in Alaska and worldwide.

Thank you.

Diane Primis

Hotmail: Trusted email with Microsoft's powerful SPAM protection. Sign up now.

2603

These state Religious Freedom resolutions are just one component of a multi faceted effort actively being undertaken by Orthodox Christians to preserve the existence of the Ecumenical Patriarchate.

In addition to this state initiative, active engagement is also taking place with the Office of the President, the United States Senate, the Unites States House of Representatives, the State Department, the European Union and the European Court of Human Justice. Every President since Jimmy Carter has called on the Turkish government to extend full religious freedom to the Ecumenical Patriarchate. Just last April, President Obama, in his address to the Turkish parliament, urged the government to re-open the Orthodox Christian Theological School of Halki, which the government closed in 1971.

These resolutions are an important part of our overall governmental and public affairs strategy. These resolutions represent the will of the citizens of our nation in all of these states and are a powerful statement to the Turkish government of the importance we place on religious freedom.

Later this year, sometime in the Fall, we will hand deliver all of the adopted resolutions to Secretary of State Clinton, who is also on record as calling on the Turkish government to extend religious freedom to the Ecumenical Patriarchate. In a separate trip in the Fall, we will hand deliver copies of the adopted resolutions to the Turkish Foreign Minister in Ankara.

The good news is that all of these efforts, especially including the adoption of these state resolutions, are beginning to produce positive results. The Turkish government has recently indicated that it will return a large orphanage to the Ecumenical Patriarchate which it confiscated a number of years ago. Also, there are positive signs that the government will soon allow the reopening of the Halki Theological School, which will enable the training of young men for the Priesthood in Turkey.

These resolutions are both a constant reminder and incentive to the Turkish government to fulfill its obligations for all of its citizens, so that they, as well as Orthodox Christians around the world, including Alaska, can enjoy full religious freedom. These resolutions are having a positive impact, and we hope to continue to secure their adoption until every state has done so.

Respectfully submitted,

Stephen Georgeson
National Coordinator
State Religious Freedom Resolutions Project
Greek Orthodox Church of America

ALASKA STATE LEGISLATURE

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Juneau, Alaska 99801-1182
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SENATOR KEVIN MEYER
SENATE DISTRICT O

SPONSOR STATEMENT FOR SJR 28

Relating to the Ecumenical Patriarchate and religious rights.

SJR 28 would urge the United States, the European Union, and the United Nations to encourage the government of Turkey to end its discrimination against the Ecumenical Patriarchate, one of the oldest Christian institutions in the world.

Just as the Pope is the spiritual leader of Roman Catholics worldwide, the Ecumenical Patriarch is the spiritual leader of Orthodox Christians. The Turkish government has expropriated Church property (including an orphanage the Church has held since 1902), closed the Orthodox Theological School of Halki, and prevented the Orthodox Christian Church from selecting any canonically eligible bishop throughout the world from becoming the Ecumenical Patriarch by requiring Turkish citizenship.

The Ecumenical Patriarchate is the spiritual home to approximately six million Orthodox Christians in the United States and 300 million worldwide. Alaskan Orthodox Christians have a strong relationship with the Ecumenical Patriarchate through their bishops. Russian Orthodoxy arrived in Alaska in 1794. There are currently 95 Russian Orthodox churches in the state with approximately 20,000 members. The Greek Orthodox Church in Anchorage was established in 1958 and currently has 200 members. There are three Antiochian Orthodox Churches located in Homer, Eagle River and Wasilla with a total of 440 members.

SJR 28 would ask that the Alaska State Legislature call on the government of Turkey to pledge to uphold the safeguard religious rights without compromise. To date, 25 State Legislatures have adopted similar resolutions.

Email Print

RELIGIOUS FREEDOM PROJECT FOR THE ECUMENICAL PATRIARCHATE

RELIGIOUS FREEDOM PACKET

COMPREHENSIVE BRIEFING ON THE RELIGIOUS FREEDOM CRISIS

U.S. STATES WHICH HAVE PASSED RELIGIOUS FREEDOM RESOLUTIONS FOR THE ECUMENICAL PATRIARCHATE

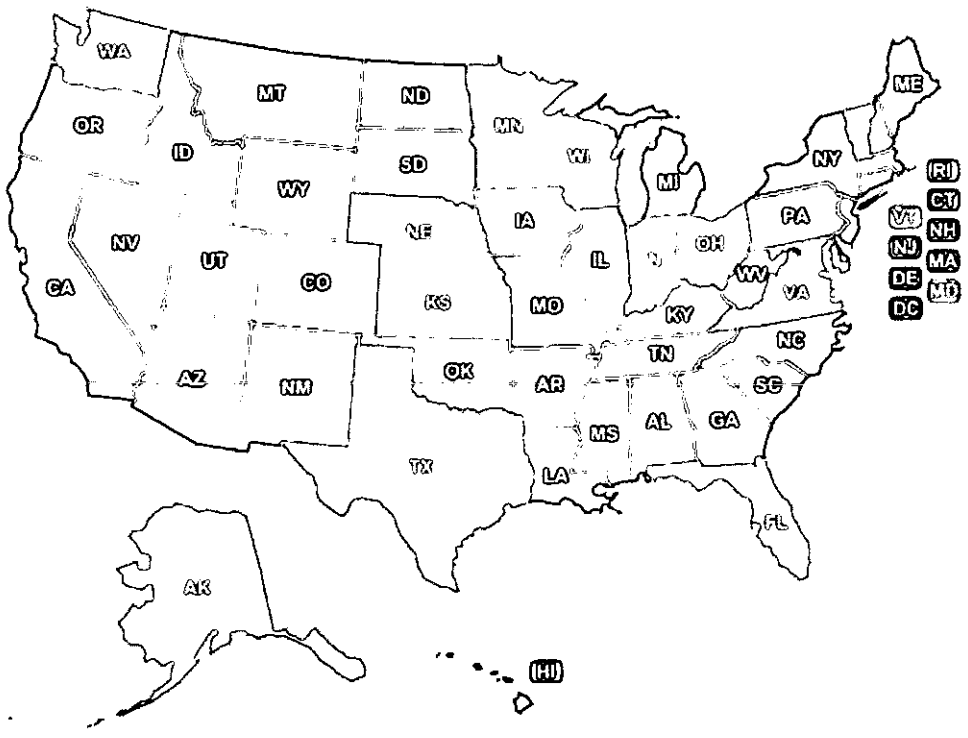
U.S. States Which Have Passed Religious Freedom Resolutions For The Ecumenical Patriarchate

The National Council of the Order of St. Andrew initiated in 2006 the Religious Freedom Resolutions project. The goal of this project, which represents one component of the overall, multi-faceted Religious Freedom Initiative, is the adoption of religious freedom resolutions in support of the Ecumenical Patriarchate in every state legislature. This project is an ongoing effort of the Order of Saint Andrew and represents an important part of the governmental and public affairs strategy of the Religious Freedom Initiative.

Stephen Georgeson serves as the national coordinator for the state resolutions project. He can be contacted at spgeorgeson@yahoo.com.

The Mother Church needs you! Learn what additional actions you can take to protect Religious Freedom for the Ecumenical Patriarchate. Visit archons.org/takeaction

To date, 29 such resolutions have been adopted by 25 states.



States highlighted in **LIGHT BLUE** indicate that the resolution has been introduced.
States highlighted in **GOLD** indicate final adoption and no further action is necessary.
States highlighted in **DARK BLUE** indicate no resolution has been introduced at this time.

U.S. State Resolution Status And Primary Sponsors

Alabama
SJR 73 - Read the resolution [PDF]
Adopted by House and Senate on 5/2007
Sen. Jabo Waggoner

Alaska
SJR 28 - Introduced on 2/18/2010
Senator Kevin Meyer
HR 15 - Introduced on 2/23/2010
Rep. Bob Lynn
Rep. John Harris

Arizona
HCM 2009 - Read the resolution [PDF]
Introduced on 1/17/2008
Adopted by House 3/18/2008
Adopted by Senate 5/22/2008
Rep. Mark Anderson

Arkansas
SCR 3 - Read the resolution [PDF]
Introduced on 1/22/2009
Adopted by Senate on 2/18/09
Adopted by House 3/12/2009
Senator David Johnson

California
SJR 17 - Read the resolution [PDF]
Introduced on 9/10/2007
Adopted by Senate 2/28/2008
Sen. Elaine Kontominas Alquist
Adopted by Assembly 8/30/2008

Colorado
No resolution has been introduced at this time.

Connecticut
No resolution has been introduced at this time.

Delaware
HR 9 - Introduced on 3/10/2009
Adopted on 3/19/2009
Rep. Nick Manolakos

District of Columbia
No resolution has been introduced at this time.

Florida
HM 1417 - Introduced on 3/2/2009
Rep. Peter Nehr

Georgia
HR 415 - Read the resolution [PDF]
Adopted by House 4/2007
Rep. Mike Cheokas
SR 1038 - Read the resolution [PDF]
Introduced on2/27/2008
Adopted by Senate 3/6/2008
Sen. David Adelman

Hawaii
No resolution has been introduced at this time.

Idaho
No resolution has been introduced at this time.

Illinois
HR 666 - Read the resolution [PDF]
Gubenatorial Resolution [PDF]
Introduced on 8/10/2007

Adopted on 10/4/2007
Rep. Sandra Pihos
Rep. Elizabeth Coulson
SR 100 - Introduced on 2/25/2009
Senator Antonio Munoz

Indiana
SR 5/SR 11 - Introduced on 1/8/2009
Senator Lonnie Randolph

Iowa
HR 27 - Introduced on 3/12/2009
Adopted on 3/23/2009
Rep. Wayne Ford
Rep. Pat Murphy

Kansas
SR 1835 - Introduced on 2/27/2009
Sen. Tim Owens

Kentucky
HR 244 - Read the resolution [PDF]
Adopted on 3/26/2008
Rep. Mary Lou Marzian

Louisiana
SR 109 - Read the resolution [PDF]
Adopted by Senate 6/2007
Sen. Edwin Murray

Maine
HP 924 - Read the resolution [PDF]
Introduced on 3/25/2009
Adopted by House 3/31/2009
Adopted by Senate 4/2/2009
Rep. Linda Valentino
Senator Margaret Craven
Senator Barry Hobbins

Maryland
HJR 5 - Introduced on 3/14/2008
Delegate Theodore Sophocleus

Massachusetts
Read the resolution [PDF]
Adopted on 4/16/2008
Senator Gale Candaras

Michigan
SCR 6 - Read the resolution [PDF]
Introduced on 3/19/2009
Adopted by House 3/19/2009
Adopted by Senate 3/25/2009
Senator John Pappageorge
Senator John Gleason
Senator Roger Kahn

Minnesota
SR 178 - Introduced on 4/2/2008
Sen. Yvonne Prettner Solon
Sen. Sandra Pappas

Mississippi
HCR 67 - Read the resolution [PDF]
Introduced on 3/19/2008
Adopted by House 3/31/2008
Adopted by Senate 4/16/2008
Rep. Alyce Clarke

Missouri
No resolution has been introduced at this time.

Montana
No resolution has been introduced at this time.

Nebraska
LR 273 - Read the resolution [PDF]
Introduced 1/6/2010
Sen. Gwen Howard

Nevada
ACR 31 - Read the resolution [PDF]
Adopted by Assembly and Senate on 5/6/2009
Assemblyman James Ohrenschall
Sen. William Raggio

New Hampshire
No resolution has been introduced at this time.

New Jersey
SJR 11 - Read the resolution [PDF]
Adopted by Senate and House 6/2006
Sen. Bob Smith
Sen. Joseph Kyrillos, Jr.

New Mexico
HM 39 - Read the resolution [PDF]
Introduced on 2/2/2010
Adopted by House 2/13/2010
Rep. Al Park

New York
No resolution has been introduced at this time.

North Carolina
No resolution has been introduced at this time.

North Dakota
No resolution has been introduced at this time.

Ohio
SCR 14 - Read the resolution
Introduced on 5/14/2009
Senator Joe Schiavoni
HCR 29 - Read the resolution
Introduced on 9/15/2009
Rep. Tom Letson

Oklahoma
SR 54 - Read the resolution [PDF]
Introduced on 2/19/2008
Adopted on 3/24/2008

Oregon
SJR 16 - Read the resolution [PDF]
Introduced on 5/4/2009
Adopted by Senate on 5/6/2009
Adopted by House on 6/1/2009
Sen. Rod Monroe, Sen. Bruce Starr, and Sen. Richard Devlin

Pennsylvania
HR 876 - Read the resolution [PDF]
Adopted by House 11/2006
Rep. Timothy Solobay
SR 188 - Read the resolution [PDF]
Introduced on 10/24/2007
Adopted by Senate 3/10/2008

Rhode Island
SR 895 - Read the resolution [PDF]
Adopted by Senate 3/2007
Sen. Lou Raptakis

Sen. Barry Stout

South Carolina
HR 4727 - Read the resolution [PDF]
Introduced on 2/20/2008
Adopted by House 4/17/2008
Rep. Leonidas Stavrinakis
SR 735 - Read the resolution [PDF]
Adopted by Senate 5/2007
Sen. Phil Leventis

South Dakota
No resolution has been introduced at this time.

Tennessee
SJR 535 - Read the resolution [PDF]
Adopted by Senate 6/2007
Adopted by House on 4/17/2008
Sen. Roy Herron

Texas
HCR 193 - Introduced on 4/23/2009
Rep. Dennis Bonnen
SCR 70 - Introduced on 5/4/2009
Senator Joan Huffman

Utah
SR 1 - Read the resolution [PDF]
Introduced on 1/23/2009
Adopted on 2/5/2009
Senator Patricia Jones
HR 2 - Read the resolution [PDF]
Introduced on 2/3/2009
Adopted on 2/19/2009
Rep. Gregory Hughes

Vermont
JRS 47 - Introduced on 2/9/2010
Senator Richard Sears
Senator Robert Hartwell

Virginia
HJ 126 - Introduced on 1/9/2008
Delegate Johnny Joannou
Delegate Manoli Loupassi

Washington
HJM 4003 - Introduced on 1/15/2009
Rep. Deb Wallace
Rep. Bill Hinkle

West Virginia
HCR 37 - Read the resolution [PDF]
Introduced on 2/11/2008
Adopted by House 3/3/2008
Adopted by Senate 3/8/2008
Delegate Samuel Cann
Sen. Joseph Minard

Wisconsin
SR 30 - Introduced on 3/13/2008
Sen. Ted Kanavas

Wyoming
No resolution has been introduced at this time.

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Deseret News

Utah senators support Greek Orthodox Church leader

By Lisa Riley Roche
Deseret News
Published: Thursday, Feb. 5, 2009 11:46 a.m. MST

The Senate approved a resolution Wednesday urging the government of Turkey to recognize the spiritual leader of the Greek Orthodox Church.

The sponsor of SR1, Senate Minority Leader Pat Jones, D-Holladay, said she was asked to carry the resolution by the Greek Orthodox Church of Greater Salt Lake City because of the "repressive actions of the Turkish government that restrict religious freedom around the world" including Utah.

Jones said the Ecumenical Patriarch Bartholomew serves as the spiritual leader to the 300 million members of the Greek Orthodox Church just as Pope Benedict does to Catholics and LDS Church President Thomas S. Monson does to Mormons.

Her resolution, which passed unanimously, will be sent to President Obama, leaders of Congress and members of Utah's Congressional delegation, the U.S. ambassador to Turkey and Turkey's ambassador to the United States.

Rep. Greg Hughes, R-Draper, is carrying a similar resolution in the House.

E-mail: lisa@desnews.com

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http://archives.chicagotribune.com/2006/nov/26/news/chi-0611260336nov26
Sunday, November 26, 2006
Chicago Tribune

John Kass

Ancient faith faces an uncertain future

Published November 26, 2006

Imagine the Vatican surrounded in a fiercely secular yet very Muslim Italy.

The Christian community there has dwindled to only a few thousand after decades of ethnic cleansing. Much of the church's property has been seized. The government has closed the only seminary and refuses to reopen it.

A law has been passed: Any future Roman Catholic pope must be born on Italian soil, even though there is no seminary to train the young priests, even as the Christian community shrinks to a handful. A cold shadow falls on the Western church.

I asked you to imagine this because it's going on, right now, but not in Rome.

It is happening in Istanbul, where Ecumenical Patriarch Bartholomew I, patriarch of Constantinople and spiritual leader of the world's Orthodox Church, is facing extreme pressure by the Turkish government.

This week, Pope Benedict XVI will travel to Turkey and pray with Bartholomew, and witness the liturgy in the Church of St. George.

The focus will be on the pope relying on the patriarch to help make inroads with Muslims, after comments the pope made this year about violence and Islam.

But I hope his visit will also draw attention to the desperate plight of the Orthodox Church, which has been largely ignored. There are an estimated 250,000 Orthodox Christians in the Chicago area, enough, you might think, for attention to be paid, especially now.

The pope will hear the liturgy as it was sung more than a thousand years ago, when there was only one church, before the split into East and West.

"They will exchange the kiss of peace, and they will bless the people, and they will recite together the `Our Father' in Greek, the original [scriptural] language," said Archbishop Demetrios, leader of the Greek Orthodox Church in America, who will lead the American delegation.

"Then the two of them will go out to the elevated balcony, if you remember it, and bless the people who will be gathered in the courtyard," the archbishop told me.

I do remember. I was there, at St. George, at the patriarchate this past summer, watching the baptism of my nephew. We had the honor of visiting with Bartholomew, who said with a smile that he reads the Chicago Tribune online.

Obviously, I have strong, personal and religious feelings about this and can't pretend otherwise, yet I mean no disrespect to Turkey or to Islam.

The streets in that quarter of Istanbul are narrow. The bus stops at the bottom of the hill. You

walk past a few shops, on up, and eventually, through the gates of the compound.

Once there, you begin to realize how central the patriarchate has been to Christianity, dating from about A.D. 300, when the Gospels of the New Testament were being selected, and later, when the Nicene Creed, a statement of faith recited by Catholics, Orthodox and other Christians, was created before the schism.

That the media ignores the patriarch's plight is astounding and hurtful to me. As is the realization that all that history could be gone if things don't change in Istanbul, in what was once called Constantinople, the heart of the Byzantine Empire.

At the patriarchate, one of the exterior doors is never opened. It has remained closed since 1821, when Greece fought for its independence from the Ottoman sultans, and the patriarch then was dragged out and hanged from that very doorway.

Today, Turkey is a fascinating, wonderful place, worthy of American tourism, worthy of American respect.

The people are friendly and hospitable, and the history is astounding. The Blue Mosque, the Topkapi Palace, the ancient covered market, still thriving. That it has remained a nation is testament to the intense will of Kemal Ataturk, founder of the modern secular Turkish state, which now must deal with growing Islamic fundamentalism.

All of this is important for Americans to grasp, as the West realizes, finally, that ignoring Islam is impossible.

For me, it was especially important to visit Hagia Sophia, literally, the Church of Divine Wisdom, the ancient domed structure that was turned into a mosque when the Turks took Constantinople in 1453.

It is an immense structure, larger even than its copy, St. Peter's Basilica in Rome, and is nearly 1,500 years old.

There, I thought of the worshipers fearfully singing the liturgy as the city walls were breached, as the slaughter began, as a Christian empire that had stood for more than 1,000 years perished.

Most icons were destroyed, but you can see the Virgin Mary on the wall near what had been the altar. A sign prohibits religious observance, but the guards don't stop you from praying.

Pope Benedict is also scheduled to visit Hagia Sophia, now tersely referred to as a museum.

As he visits there, the news images may be sent around the world to remind us of what was, and how what little is left is slipping away.

---

jskass@tribune.com

Alaska State Legislature

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State Capitol Building
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Senator Kevin Meyer
Senate District O

TO: Senator Hollis French, Chair
Senate Judiciary Committee

FROM: Senator Kevin Meyer

DATE: March 11, 2010

RE: Senate Judiciary Committee Hearing Request for SJR 28

This is a request for a Senate Judiciary Committee hearing for SJR 28, "Relating to the Ecumenical Patriarchate and religious rights."

The following documents are attached and will be sent electronically:

- Current version of the bill
- Sponsor Statement
- Back up information
- Staff member assigned to the bill: Christine R. Marasigan, 465-6876

This bill would encourage the government of Turkey to eliminate all forms of discrimination based on religion and to immediately grant the Ecumenical Patriarchate appropriate international recognition and the right to train clergy of all nationalities.

Please contact Christine if you have any questions regarding this legislation.

HB

6

26-LS0022\S.1
Luckhaupt
2/25/10

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 6( ), Draft Version "S"

Page 1, line 1, following "**animals**":

Insert "; **and relating to aggravating factors at sentencing involving assaultive behavior and cruelty to animals;**"

Page 3, following line 16:

Insert a new bill section to read:

"*** Sec. 5.** AS 12.55.155(c)(8) is amended to read:

(8) the defendant's prior criminal history includes conduct involving aggravated assaultive behavior, [OR] repeated instances of assaultive behavior, **repeated instances of cruelty to animals proscribed under AS 11.61.140(a)(1) and (3) - (5), or a combination of assaultive behavior and cruelty to animals proscribed under AS 11.61.140(a)(1) and (3) - (5)**; in this paragraph, "aggravated assaultive behavior" means assault that is a felony under AS 11.41, or a similar provision in another jurisdiction;

Renumber the following bill section accordingly.

Page 3, line 20, following the first occurrence of "Act":

Insert ", and to aggravating factors at sentencing under AS 12.55.155(c)(8) made by sec. 5 of this Act"

2616

26-LS0022\S
Luckhaupt
2/24/10

SENATE CS FOR CS FOR HOUSE BILL NO. 6( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES LYNN, Dahlstrom, Tuck

A BILL

FOR AN ACT ENTITLED

"An Act relating to cruelty to animals."

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

*** Section 1.** AS 11.61.140(a) is amended to read:

(a) A person commits cruelty to animals if the person

(1) knowingly inflicts severe and prolonged physical pain or suffering on an animal;

(2) with criminal negligence, fails to care for an animal and, as a result, causes the death of the animal or causes severe physical pain or prolonged suffering to the animal;

(3) kills or injures an animal by the use of a decompression chamber;

(4) intentionally kills or injures a pet or livestock by the use of poison; [OR]

(5) knowingly kills or injures an animal, other than as provided in (1) or (3) of this subsection, with the intent to intimidate, threaten, or terrorize another person;

(6) knowingly

(A) engages in sexual conduct with an animal; or

(B) under circumstances not proscribed under AS 11.41.455,

(i) photographs or films, for purposes of sexual gratification, a person engaged in sexual conduct with an animal; or

(ii) causes, induces, aids, or encourages another person to engage in sexual conduct with an animal; or

(7) intentionally permits sexual conduct with an animal to be conducted on any premises under the person's control.

*** Sec. 2.** AS 11.61.140(f) is amended to read:

(f) Except as provided in (g) of this section, cruelty to animals **under (a)(2), (5), (6), or (7) of this section** is a class A misdemeanor. The court may also

(1) require forfeiture of any animal affected to the state or to a custodian that supplies shelter, care, or medical treatment for the animal;

(2) require the defendant to reimburse the state or a custodian for all reasonable costs incurred in providing necessary shelter, care, veterinary attention, or medical treatment for any animal affected;

(3) prohibit or limit the defendant's ownership, possession, or custody of animals for up to 10 years.

*** Sec. 3.** AS 11.61.140(g) is amended to read:

(g) Cruelty to animals **under (a)(1), (3), or (4) of this section** is a class C felony**. Cruelty to animals is also a class C felony if the person is convicted under (a)(2), (5), (6), or (7) of this section and** [IF] the person has been previously convicted on **one** [TWO] or more separate occasions within 10 years of the date of the present offense of a crime under this section, AS 11.61.145(a)(1) or (2), or a law or ordinance of another jurisdiction having elements similar to those offenses. **For a conviction under this subsection, the** [THE] court may also

(1) require forfeiture of any animal affected to the state or to a custodian that supplies shelter, care, or medical treatment for the animal;

(2) require the defendant to reimburse the state or a custodian for all reasonable costs incurred in providing necessary shelter, care, veterinary attention, or medical treatment for any animal affected;

(3) prohibit or limit the defendant's ownership, possession, or custody of animals for up to 10 years.

* **Sec. 4.** AS 11.61.140 is amended by adding a new subsection to read:

(h) In this section, "sexual conduct" means any

(1) touching or fondling by a person, either directly or through clothing, of the genitals or anus of an animal or any transfer or transmission of semen by the person on any part of the animal for the purpose of sexual gratification or arousal of the person;

(2) contact, however slight, between the mouth, genitals, or anus of a person and the sex organ or anus of an animal, or any intrusion, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any intrusion of the genitals or anus of the person into the mouth of the animal for the purpose of sexual gratification of the person.

* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. The changes to penalties under AS 11.61.140(f) and (g), made by secs. 2 and 3 of this Act, apply to offenses occurring on or after the effective date of this Act.

26-LS1571\A
Luckhaupt
2/24/10

SENATE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Introduced:
Referred:

A RESOLUTION

Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning House Bill No. 6, relating to proscribing certain sexual conduct or sexual activities as cruelty to animals.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding changes to the title of a bill, are suspended in consideration of House Bill No. 6, relating to proscribing certain sexual conduct or sexual activities as cruelty to animals.

SENATE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced:
Referred:

A RESOLUTION

Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning House Bill No. 6, relating to proscribing certain sexual conduct or sexual activities as cruelty to animals.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding changes to the title of a bill, are suspended in consideration of House Bill No. 6, relating to proscribing certain sexual conduct or sexual activities as cruelty to animals.

Alaska State Legislature

Chairman
State Affairs Committee

Member
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" www.RepLynnBlog.com

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Alaska State Capitol, #104
Juneau, AK 99801-1182

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Sponsor Statement for HB 6

"An Act relating to proscribing certain sexual conduct or sexual activities as cruelty to animals."

HB 6 expands the current Alaska law on cruelty to animals to include "sexual conduct." The purpose of this bill is not just to protect animals from sexual assault but to protect children and other vulnerable humans from potential predators.

A compelling body of research confirms a link between animal cruelty and human violence. Studies also point to a connection between sexual abuse of animals and sexual abuse and other violent behavior toward humans. For example:

> High rates of sexual abuse of animals exist in the backgrounds of serial sexual homicide perpetrators, according to the FBI.
>
> Thirty-seven percent of sexually violent juvenile offenders have a history of animal sexual assault, according to a Utah State University study.
>
> Sexual relations with animals parallel sexual assault against women and children because in both instances there are issues of coercion, pain, and lack of consent, according to a University of Southern Maine study.

At least 35 other states outlaw acts of bestiality, with some classifying it as a felony, according to the Humane Society of the United States. Many states have language similar to HB 6.

This proposed "sexual conduct" offense would be a Class A misdemeanor, added to AS 11.61.140, Cruelty to Animals. This statute includes commonsense exemptions for conduct ranging from scientific research governed by accepted standards, to accepted veterinary and animal husbandry practices.

Contact: Mike Sica, 465-4965 **Revised: Feb. 3, 2010**

Alaska State Legislature

Chairman
State Affairs Committee

Member
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
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A Communication From
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Sectional Analysis for HB 6

"An Act relating to proscribing certain sexual conduct or sexual activities as cruelty to animals."

Sec. 1. Amends AS 11.61.140, Cruelty to Animals, to add the offense of **knowingly engaging** in sexual conduct or other sexual activities with an animal, ranging from photographing or filming the sexual conduct to causing or encouraging another person to engage in the sexual conduct (not covered under AS 11.41.455, Unlawful exploitation of a minor); or **intentionally permitting** the sexual conduct to be conducted on any premises under the person's control.

Sec. 2. Amends AS 11.61.140 to add a new subsection to include **a definition of "sexual conduct."**

###

Contact: Mike Sica, 465-4965

Revised: Jan. 19, 2010

Alaska State Legislature

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State Affairs Committee

Member
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Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
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A Communication From
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HB 6: Changes from Original Bill

"An Act relating to proscribing certain sexual conduct or sexual activities as cruelty to animals."

Three changes from the original Version A of House Bill 6.

Version A to Version R

Version R, which was heard by the House Judiciary Committee on Fri, March 20, 2009, narrowed the title by:

-- deleting in Version A, line 1: **"An Act relating to cruelty to animals."**
-- replacing it in Version R, with lines 1 and 2, **"An Act relating to proscribing certain sexual conduct or activities as cruelty to animals."**

Version R to Version E

Version E, which was adopted without objection by the House Judiciary Committee on Fri, March 20, 2009, added just one word to title by:

-- inserting in Version E, on line 1: the word **sexual** between the words **or** and **activities**

Version E to Version E.A

Version E was amended before passing unanimously 40-0 on the House Floor on April 17, 2009. Version E.A restructures and rewords Section 1 on page 2, to change the criminal standard from **"knowingly"** to **"intentionally"** (page 2, line 12-13) **"permits sexual conduct with an animal to be conducted on any premises under the person's control."**

Contact: Mike Sica, 465-4965

Revised: Jan. 19, 2010

FAQ for HB 6

"An Act relating to proscribing certain sexual conduct or sexual activities as cruelty to animals."

What prompted the filing of House Bill 6?

The Anchorage Daily News reported last spring that a child sex offender in Klawock allegedly taped the muzzle of a dog, tied it to a tree, and sexually assaulted it. Alaskans were shocked to learn there was no Alaska law prohibiting sex with animals. Ketchikan District Attorney James Scott was quoted in the news account as saying the state's "very real concern" was that, if a small child had been available and unattended at the time and place where this dog was taken, "that the small child would have been found taped (and) tied in the woods."

Is this really a problem in Alaska and the United States?

Chava Lee, the Executive Director of Gastineau Humane Society in Juneau, receives at least a handful of reports of humans having sex with animals every year. As the agency that enforces Alaska's animal cruelty law locally, Lee must tell complainants that, unless the animal is severely injured or killed, the mistreatment is *not* a crime. The population of Juneau is only about 30,000. Extrapolate the number of human-animal sex reports in Juneau across Alaska, where the population is more than 650,000, and there may be at least 100 incidents a year. If this mistreatment of animals was recognized as a crime, there would likely be even more reports in Alaska.

Nationally, examples of sexual molestation of animals connected to sexual crimes against humans can be found in news accounts across the country. An Animal Abuse Database found under the internet site, Pet-Abuse.Com, turns up an alarming number of horrific cases of sexual abuse and violence against humans co-occurring with acts of bestiality.

(more)

The evidence of humans engaging in sex with animals is overwhelming. Almost any internet search engine will lead you to page after page of very graphic and disturbing material describing and promoting human sexual abuse of animals. Detailed how-to-do-it guides for the sexual abuse of animals involving a variety of species can be found on the internet, along with information on laws, animal-transmitted diseases, personal advertisements, and "pro-zoophile" resources.

What exactly is animal sexual abuse?

Often referred to as "bestiality" or "zoophilia," animal sexual abuse is the sexual molestation of an animal by a human. This kind of animal abuse includes a wide range of behaviors such as vaginal, anal, or oral penetration; fondling; oral-genital contact; penetration using an object; and killing or injuring an animal for sexual gratification. Animal sexual abuse may or may not include physical violence other than sexual violation; and may or may not result in physical injury to the animal. Animal sexual abuse, like rape, is the eroticization of violence, control and exploitation.

Is it really animal abuse if there is no physical injury?

Yes. Many animals are physically restrained during the abuse. Not all cases of animal sexual abuse will involve physical injury to the animal, but all sexual molestation of an animal by a human should be considered abuse.

In his 1993 article, Dr. Frank Ascione, Professor of Sociology at Utah State University, stated "bestiality may be considered cruel even in cases when physical harm to an animal does not occur (this is similar to the case of adult sexual activity with a child where consent is presumed to be impossible)."

In a 1997 article, Piers Beirne, Professor of Criminology at the University of Southern Maine, points out, "for genuine consent to sexual relations to be present ... both participants must be conscious, fully informed and positive in their desires. Bestiality is by nature sexual coercion because animals are incapable of genuinely saying "yes" or "no" to humans in forms we can readily understand."

(more)

In human-animal relationships, the human has power and control over the animal, often in all aspects of the animal's care and well-being. Thus, a sexual "relationship" between human and animal cannot be considered consensual.

Is all this attention on animal abuse an intrusion on an individual's private sexual choices?

No. Unlike sexual interactions between consenting adult humans, animal sexual abuse is not simply about an individual's private sexual choice. As in the case of child sexual abuse and adult rape, animal sexual abuse is an activity in which one party has no choice and cannot consent or refuse. When he/she initiates a sexual activity in which the other partner has no choices and must participate, the sexual abuser leaves the realm of private action.

Is there a connection between animal sexual abuse and domestic violence, child abuse and other violent crimes?

Yes. The sexual abuse of animals is often linked to the sexual abuse of women and children (Kowal, 1998). According to Lenore Walker's (1984) interviews with battered women, bestiality was mentioned as one of the "unusual sex acts" desired by their partners. Child sexual abusers may also sexually abuse animals to enhance, expand or extend the abuse of the genuinely powerless and unsuspecting victim (Adams, 1994).

Research also indicates a connection between animal sexual abuse and other types of violent crimes. According to a 1986 study, 40 percent of the perpetrators of sexually motivated homicides, who had been sexually abused as children, also reported they have sexually abused animals (Ressler, et al. 1986).

Our interviews with Alaska officials who work in the areas of animal cruelty, law enforcement, corrections, domestic violence and sexual assault, confirm the compelling body of research that shows a connection between animal sexual abuse and human sexual abuse and violence.

(more)

Can animal sexual abuse be prosecuted under the existing Alaska animal cruelty law?

Only if the person knowingly inflicts severe and prolonged physical pain or suffering on an animal, or knowingly injures or kills an animal to intimidate, threaten, or terrorize another person.

Are there other Alaska laws that could be used to prosecute animal sexual abuse?

Only if the sexual abuse of an animal also involves a crime against a person (Unlawful Exploitation of a Minor), or involves the damage or loss of property (Criminal Mischief).

Is animal sexual abuse illegal in most states?

Yes. Thirty-five states outlaw acts of bestiality, with several classifying the crime as a felony, according to a database compiled by the Humane Society of the United States. Recent news reports indicate other states are also looking at criminalizing sexual abuse of animals.

Many states that currently outlaw acts of animal sexual abuse and bestiality have language that is similar to the wording in HB 6.

Why must the wording of this bill be so graphic?

Language must be precise so everyone understands exactly what constitutes the "sexual conduct" part of the crime being proposed under this bill. Although such language may be embarrassing and uncomfortable to read, words must be clear and concise when specifying a criminal offense.

What would be the penalty in Alaska under this bill?

Like most of the other offenses listed under the existing Cruelty to Animals statute, the crime of "sexual conduct" with an animal would be a Class A misdemeanor. Cruelty to Animals is a class C felony if the person is convicted three times under the statute within 10 years.

(more)

Will there be exemptions for accepted professional practices involving "sexual conduct" with animals?

Absolutely. The same defense to a prosecution under the current Cruelty to Animals law would apply to the offense proposed in HB 6. Such defensible conduct includes legitimate scientific research governed by accepted standards, the humane destruction of an animal, accepted veterinary and animal husbandry practices, and other behaviors listed under AS 11.61.140 (c).

(This FAQ was compiled by the office of Rep. Bob Lynn based on studies, research and interviews involving Alaska Legal Services, Alaska Legislative Research Services, Alaska departments of Corrections, Law, Public Health, Public Safety and Environmental Conservation, municipal police departments and law enforcement agencies involved in animal cruelty and domestic violence/sexual assaults, Alaska Farm Bureau, Gastineau Humane Society veterinary clinic in Juneau, Pet-Abuse.Com, Humane Society of the United States, American Humane, and various news accounts in Alaska and around the country, and other sources.)

STATE OF ALASKA

SARAH PALIN,
GOVERNOR

DEPARTMENT OF CORRECTIONS
OFFICE OF THE COMMISSIONER

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Juneau, AK 99811-2000
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FAX: (907) 465-3390

March 3, 2009

The Honorable Bob Lynn
Alaska House of Representatives
State Capitol Room 104
Juneau, Alaska 99811

Dear Representative Lynn:

Thank you for the opportunity to provide input on House Bill 6, "An Act Relating to the Cruelty of Animals." The connection between animal cruelty, including animal sexual abuse, and violence against people is well documented in the research and findings on domestic violence, sexual assault, child molestation and serial homicide. Although the Department of Corrections (DOC) does not yet have quantitative data on the sexual abuse of animals by sex offenders being managed in Alaska communities, there does appear to be information that is consistent with the research in this area.

Since the DOC began using the polygraph with sex offenders on probation and parole in March 2006, approximately 350 individuals have submitted to polygraph examination; however, we are still in the developmental stages of routine polygraph use. The bulk of our examinations to date (80%) have been for purposes of monitoring the offenders' current behaviors. This focus is for good reason, as these offenders are in the community and it is critical that we know everything we can about their current behaviors. Information about prior abuse of animals tends to come out during sex history polygraph examinations (sex history polygraph examinations are used to examine the offenders past sexual behavior). A routine question during these exams is whether the offender has had sexual contact with animals. Passing the sexual history polygraph examinations is directly tied to progress in treatment. As would be expected, comprehensive information about one's lifetime sexual behavior is not something that is provided without some motivation. The motivation to "come clean" on these issues usually comes as a function of making progress in treatment and sanctions applied for not passing the polygraph. Making progress in treatment tends to take a long time, particularly when treatment occurs only in the community and is less intense.

While DOC does not have a large quantity of data on this topic, we do have some information that is pertinent. The treatment providers and the polygraph examiners that currently provide services to sex offenders on supervision were queried. Three treatment providers were able to give percentages of offenders they had seen in their practices who had engaged in sexual behavior with animals. The range was from 4% to 18%. It should be noted that this information was gathered in the course of assessment and treatment sessions and did not include direct examination of the issue with polygraph. It's likely that more offenders would be identified as having animal victims if they were polygraphed on this issue. In a study of 180 sex offenders in community treatment, English, et al (2003) noted that 4.4% admitted to engaging in bestiality during the course of their lifetime pre-treatment and polygraph and 36.1% admitted post-treatment and polygraph. The sexual history polygraph exams resulted in 8.2 times more offenders admitting to bestiality. The authors have concluded that bestiality is far more prevalent than previously thought.

As noted, not very many sex history polygraphs have been completed. To date, there have been three cases in which the offender specifically admitted to sexually abusing animals (about 6% of the total sex history polygraphs done). Most likely, there are more cases that we have not yet identified. What was interesting to note, however, is that in all three cases the offenders not only had crossover behaviors involving animals, they had crossover behaviors into more than one age and/or gender group of humans. Specifically, one had both male and female child victims as well as adult male victims; a second had child and adult male and female victims; and a third had male and female child victims and also attacked incapacitated adult women. We know from the literature that some offender characteristics are associated with higher re-offense rates, including abuse of both genders and abuse of males. (Abel et al, 1988; Quinsey, et al, 1995).

It is important that sexual abuse of animals be given credence as a potential precursor to various forms of violence against humans. Our initial data would tend to suggest that offenders with a broader range of victim types have likely sexually abused animals at some point in their history. Generally speaking, the further away sexual offending behavior is from normative sexual behavior the higher the likelihood of recidivism. Once an offender crosses the line into bestiality there is little he won't do. Animals are vulnerable because they can't defend themselves and can't report an assault. Children and incapacitated or handicapped adults are also vulnerable and are likely targets for these offenders. Identifying men who sexually abuse animals will likely help DOC identify high risk sex offenders who target the most vulnerable in our communities.

If you require additional information or if we can be of further assistance, please feel free to contact my office.

Sincerely,

Joseph D. Schmidt
Commissioner

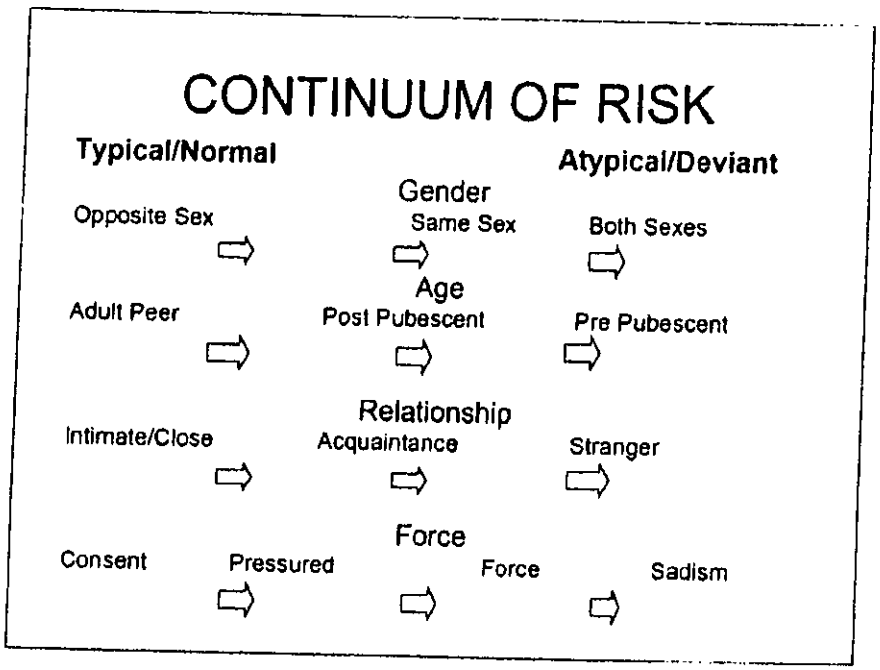
Enclosure: Continuum of Risk

References:

Abel, G., Becker, J., Cunningham-Rathner, J. Mittleman, M. & Rouleau, J. (1988). Multiple paraphilia diagnoses among sex offenders. *Bulletin of the American Academy of Psychiatry and the Law*, 16, 153-168.

English, K., Jones, L., Patrick, D., & Pasini-Hill, D. (2003). Sexual Offender Containment: Use of the Postconviction Polygraph. *Annals of the New York Academy of Sciences, 989, 411-427.*

Quinsey, V.L., Lalumiere, M.L., Rice, M.E., & Harris, G.T. (1995). Predicting sexual offenses. In J.C. Campbell (Ed.), *Assessing dangerousness: Violence by sexual offenders, batterers, and child abusers* (pp. 114-137). Thousand Oaks, CA: Sage.



The further away the offender is from what is typical the higher the risk of recidivism in general. Other non-typical items with higher rates of recidivism include bestiality and sexual acting out in prison.

A.M. Mander, PhD 2007

2633

ALASKA FARM BUREAU, INC.

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Jane Hamilton, Executive Director
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February 24, 2009

Representative Bob Lynn
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99807-1182

Dear Representative Lynn,

The Alaska Farm Bureau is committed to providing a safe and wholesome product to our consumers. Our farmers and ranchers raise their animals using good animal husbandry practices that provide a safe growing environment, free from cruel treatment.

We feel that all animals should be treated humanely and with respect. We, therefore, wholeheartedly support and endorse HB 6, protecting animals from sexual activity by humans.

We appreciate the specific references to accepted veterinary and animal husbandry practices being acknowledged as specific examples of normal treatment/conduct between humans and animals and not to be construed as sexual activity or cruelty to animals.

Thank you for keeping us involved with this legislation and giving our members a chance to speak to you abut this bill.

Please feel free to contact us at any time with questions and concerns regarding farming and ranching in Alaska.

Sincerely,

Bryce Wrigley,
President

PO Box 760 Delta Junction, Alaska 99737 Telephone: (907) 895-4752

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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

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Wrangell
Pres Wrangell Chapter

February 17, 2009

Representative Bob Lynn
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Lynn:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 6, an act relating cruelty to animals.

The APOA State Board's Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

Gastineau Humane Society

7705 GLACIER HWY. JUNEAU, ALASKA 99801 (907) 789-0260 FAX (907) 789-1795
WEBSITE: www.ghspets.org E-MAIL: customerservice-ghs@gci.net

March 20, 2009

Dear Representative Lynn and members of the Alaska State Legislature

Thank you for this opportunity to publicly extend my support of HB 6 "An act relating to proscribing certain sexual conduct or activities as cruelty to animals". This is a well crafted piece of legislation that speaks specifically to the crime of sexual misconduct and does not inhibit or criminalize veterinary practices or standard animal husbandry practices. I also wish thank Representative Lynn for introducing HB 6.

As the head of an animal control agency I can tell you that sexual deviancy against animals does exist. Alaska is unfortunately not unique in this behavior. In each case that has come to my attention, coercion, abuse, threat of physical harm or terrorizing a human during the practice of a sexual assault on an animal was present. The people who reported the crimes were afraid for their own safety or the safety of their children. The sexual abuse of the animal had been used to intimidate, threaten or terrorize them into submission.

The animal victims in each of these cases as well as those that happen throughout our state, had no choice and there was little that could be done to protect or defend them. Unfortunately because a crime in the legal sense was not committed, the human victims were also left with no voice, no advocate, and no recourse. There was no justice for either the abused animal or the humans who were threatened by the abuser.

Statistics gathered by the FBI, American Humane Association and other agencies who work with offenders show the high correlation between sexual abuse and torture of animals and sexual abuse and violence towards human beings. In fact, the statistics provided by Representative Lynn in the information packet are staggering.

While it is true that I work for an animal organization, and this piece of legislation is one that deals specifically with animals, there is no escaping the fact that this is a human issue as well. First and foremost, humans are the abusers. Further, statistics show that human abusers (who are often victims of abuse themselves), often began their own cycle of violence by abusing animals. Anything we can do to criminalize that act of abuse helps to break the cycle.

This piece of legislation will unfortunately not stop sexual abuse or sexual torture of animals simply by its passage. It will give the victims recourse under the law. Passing this piece of legislation is the right thing to do.

Submitted by Chava Lee
Executive Director
Gastineau Humane Society
7705 Glacier Highway
Juneau, AK 99801

THE HUMANE SOCIETY
OF THE UNITED STATES

OFFICERS

February 25, 2009

Dear Legislator:

The Humane Society of the United States, on behalf of our more than 18,000 members and supporters in Alaska, strongly supports passage of HB 6 (Rep. Lynn, R-31), to criminalize the sexual assault of animals. In addition to protecting the animals themselves from cruel treatment, this bill is needed to give law enforcement additional tools to protect human victims from sexually deviant crime.

STAFF VICE PRESIDENTS

Several studies have highlighted the link between the sexual abuse of animals and sex crimes against human victims. For example:

- 96% of juveniles who had engaged in sex with nonhuman animals also admitted to sex offenses against humans and reported more offenses against humans than other sex offenders their same age and race. (Fleming, William M., Jory, Brian and Burton, David L. *Characteristics of Juvenile Offenders Admitting to Sexual Activity with Nonhuman Animals*. Society and Animals. Vol 10., No.1, pp.31-45. 2002)

- The FBI researched the backgrounds of serial sexual homicide perpetrators and found high rates of sexual assault of animals. (Ressler, R. K. et al *Sexual homicide: patterns and motives*. Lexington, Mass.: Lexington Books. 1988)

- Up to 37% of sexually violent juvenile offenders had a history of animal sexual assault. (Monique R. Frazier, *Physically and Sexually Violent Juvenile Offenders: A Comparative Study of Victimization History Variables 99* (unpublished dissertation, Utah St. U. 1998) (on file with Utah St. U.).

Thirty-five states currently have criminal penalties for the sexual abuse of animals – twenty punish the crime as a felony.

HB 6 would make sexual conduct with an animal a Class A misdemeanor. Importantly, the bill would also provide penalties for inducing another person to engage in sexual conduct with an animal. Forcing another person to engage in sexual activity with an animal is one of the most abhorrent sex crimes imaginable, and such conduct fits the pattern of behavior common to sexually deviant criminals.

DIRECTORS

We strongly urge you to support passage of HB 6.

Sincerely,

Dave Pauli

Dave Pauli
Western Region Director

AMERICAN HUMANE

Protecting Children & Animals Since 1877

February 25, 2009

To the Alaska Legislature:

On behalf of the American Humane Association, the nation's oldest non-profit organization dedicated to protecting animals and children from maltreatment, we thank Representative Bob Lynn for introducing House Bill 6, a critical initiative to make the crime of sexual conduct with an animal a Class A misdemeanor.

The Link® between violence to people and violence to animals, and the concept that children who harm animals can become desensitized to violence and go on to commit antisocial acts against people, formed the very basis of our organization more than 130 years ago. To this day, American Humane continues to directly address the Link® between animal abuse and other forms of societal violence. Our strong support for House Bill 6 reflects our commitment to this issue.

HB 6 was drafted to address the horror many Alaskans experienced upon hearing last April's Anchorage Daily News report of a registered child sex offender who allegedly taped the muzzle of a black Lab, tied it to a tree, and sexually assaulted it in the woods of Ketchikan. Because Alaska lacks a law that prohibits sexual molestation of an animal by a human, the alleged offender was merely charged with the low-level property tampering offense of criminal mischief

For the welfare of both humans and animals, the law must treat all acts of violence against animals seriously. Because HB 6 addresses the dynamic of violence, control, and exploitation prevalent in animal sexual abuse, it would be a grave mistake to view HB 6 as a bill that just protects animals. Deliberate abuse of companion animals rarely occurs in isolated instances. Instead, animal abuse is often part of a vicious cycle of violence that escalates to human abuse.

Studies illustrate a strong connection between sexual abuse and conduct with animals. The studies are so compelling that it hardly comes as a surprise that the American Psychiatric Association has labeled "abuse of animals" among the symptoms of conduct disorder[1] and the FBI has found high rates of animal sex assaults in the backgrounds of serial sex homicide offenders.[2]

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[1] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM–IV)* (Vol, 4, 1994). Among the symptoms listed for conduct disorder are those categorized under "aggression to people and animals" (which includes cruelty to people or to animals, stealing with confrontation of the victim, and forced sexual activity). *See also* Juvenile Justice Bulletin, *Animal Abuse and Youth Violence*, September, 2001, at [illegible]

[2] Ressler, R.K., Burgess, A.W., Hartmen, C.R., Douglas, J.E., & McCormack, A., *Murderers Who Rape and Mutilate* (Journal of Interpersonal Violence, v. 1, 1986 p. 273-287).

A 2002 study of juvenile offenders reveals that 96% who admitted to engaging in sex with animals also admitted to committing sex offenses against humans.[3] Another study regarding the perpetrators of sexually motivated homicides reveals the perpetrators had not only been sexually abused as children, but also had sexually abused animals in the past.[4]

A 1998 study found that sexual abuse of animals is often linked to sexual abuse of women and children.[5] That same year, another study reported that bestiality was often forced upon several children who were also forced to participate in pornographic activities.[6] Additionally, a study of several interviews with battered women revealed that bestiality was the sex act of preference for 41% of the abusive partners seeking to further dominate and terrorize their victims.[7]

Sexual molestation of an animal by a human is not a matter of personal privacy. Not only is bestiality severely inhumane, it can cause extensive physical harm and even death to the animal. It is important to note that even in cases where such harm does not occur, bestiality is still a cruel activity because animals lack the ability to clearly consent or refuse. Dr. Frank Ascione, Professor of Psychology at the University of Utah, likens this dynamic to adult sexual activity with a child: "consent is presumed to be impossible."[8] Bestiality is no more a personal sexual activity than is sexual abuse of children or rape of adults.

It is time Alaska joined the thirty-three other states that currently prohibit and penalize bestiality as a form of cruelty toward animals.[9] To help ensure a more humane Alaska for future generations, please pass House Bill 6.

Sincerely,

Allie Phillips, J.D.
Director of Public Policy

Tracy Coppola, J.D., M.S.E.L.
Legislative Analyst

Office of Public Policy
www.americanhumane.org

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[3] Fleming, W.M., Jory, B.; Burton, D.L.., *Characteristics of Juvenile Offenders Admitting to Sexual Activity with Nonhuman Animals* (*Society and Animals*. 10 (1), 31-45), (2002).
[4] Ressler, et. al.
[5] Kowal, L.W.., *Recognizing Animal Abuse: What Veterinarians Can Learn from the Field of Child Abuse and Neglect*, Chapter 6: *Recognizing and Reporting Animal Abuse: A Veterinarian's Guide* (American Humane Association, p. 40-49) (1998).
[6] Itzin, C. *Pornography and the Organization of Intra-and Extra-Familial Child Sexual Abuse*, G.K. Kantor and J.L. Jasinski, Ed., Sage Publications,1998, pp. 58-79).
[7] Walker, L.E., *The Battered Woman Syndrome* (Springer Publishing, 1984).
[8] Ascione, Frank R., *Children Who are Cruel to Animal. A Review of Research and Implications for Developmental Psychology* (Anthrozoos, vol. 6, p. 226).
[9] The following felony statutes address bestiality: AZ ST 13-1411; DE ST T. 11 § 777; GA ST 16-6-6; ID ST 18-6605; 720 ILCS 5/12-35; IN ST 35-46-3-14; KS ST 21-3505; MASS GEN LAW CH 272 § 34; MCLA 750.158; MS ST 92-29-59; Okla. Stat. Tit. 21 § 886; RI GEN LAWS 11-10-1; SC ST 16-15-120; SD ST 22-22-42; VA ST 18.2-361; WA ST 16.52.205. The following misdemeanor statutes address bestiality: ACA 5-14-122; Cal. Penal Code 286.5; CRS 18-9-201-202 (subsequent offenses are felonies); IA ST 717C.1; LSA-RS 14:89; MD CRIM LAW CODE ANN 3-322; 17 MSRA 1031 (1); MN ST 609.294; MO ST 566.11; NE ST 28-1010; ND ST 12.1-20-12; NY PENAL LAW 130.20; GSNC 14-177; OR ST 167.333; 18 PCSA 3129; UT ST 76-9-301 8; WI ST 944.17.

Fact Sheet

Bestiality and Other Violent Crime

The FBI researched the backgrounds of serial sexual homicide perpetrators and found high rates of sexual assault of animals.
Ressler, R. K. et al *Sexual homicide: patterns and motives.* Lexington, Mass.: Lexington Books. (1988)

Up to 37% of sexually violent juvenile offenders had a history of animal sexual assault.
Monique R. Frazier, *Physically and Sexually Violent Juvenile Offenders: A Comparative Study of Victimization History Variables 99* (unpublished dissertation, Utah St. U. 1998) (on file with Utah St. U.).

96% of juveniles who had engaged in sex with nonhuman animals also admitted to sex offenses against humans and reported more offenses against humans than other sex offenders their same age and race.
Fleming, William M., Jory, Brian and Burton, David L. *Characteristics of Juvenile Offenders Admitting to Sexual Activity with Nonhuman Animals.* Society and Animals. Vol 10., No.1, pp.31-45 (2002)

In an Australian study, 100% of people who committed sexual homicide had abused animals, and 61.5% of animal abusers had also assaulted a human.
Clarke, J. P. *New South Wales police animal cruelty research project.* Sydney, Australia: Unpublished report, New South Wales Police Service (2002)

Respondents who had been convicted of committing crimes against people were more likely to have had sex with animals during their childhood or adolescence than other respondents. These findings support the sexually polymorphous theory that among these perpetrators sex and aggression have become mutually inclusive, and bestiality as a form of animal cruelty may be linked with interpersonal human violence.
Hensley, Christopher, Tallichet, Suzanne E., and Singer, Stephen D. *Exploring the Possible Link Between Childhood and Adolescent Bestiality and Interpersonal Violence.* Journal of Interpersonal Violence, Vol. 21, No. 7, 910-923 (2006)

THE HUMANE SOCIETY
OF THE UNITED STATES

Celebrating Animals | Confronting Cruelty

2100 L Street, NW Washington, DC 20037
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LEGISLATIVE RESEARCH REPORT

SEPTEMBER 1, 2008 REPORT NUMBER 09.004

STATE LAWS: BESTIALITY CRIMES AND PUNISHMENTS

PREPARED FOR REPRESENTATIVE BOB LYNN

BY CHUCK BURNHAM, LEGISLATIVE ANALYST

You asked about bestiality laws among the states. Specifically, you wanted to know which states have laws against bestiality and the penalties for violating those laws.

Our research located laws in thirty-two states that outlaw acts of bestiality.[1] Table 1 lists those states, their relevant statutory citations, and the criminal classification and maximum punishments for each violation. We include copies of the statutes listed in Table 1 as an attachment.

As you can see, the criminal classifications and punishments for bestiality vary substantially among the states. For instance, "indecency with an animal," a class A misdemeanor in Nebraska, is punishable by a maximum fine of $500 and three months in jail. By contrast, an "abominable and detestable crime against nature" with an animal in Rhode Island—materially similar to the Nebraska offense—is an unclassified felony punishable by seven to twenty years imprisonment. Not surprisingly, a number of states—Arizona, Illinois, Indiana, and Kansas, for example—impose dramatically increased penalties for crimes of bestiality where a minor is forced to take part in or otherwise witness the act. Similarly, some states increase penalties for repeat violators, for filming or photographing acts of bestiality, or for committing the act in public or in the presence of others.

I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

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[1] "Bestiality," more technically known as "zoophilia," is variously identified in states' laws as "buggery," "sodomy," "sexual assault of an animal," and as a "crime against nature," among other terms. For the purposes of this report "bestiality" refers to any sexual contact between a human and an animal. Although we believe our research to be thorough, there may be other state laws prohibiting bestiality that were not located by our efforts due to variability in wording and construction.

907-465-3991
907-465-3908 (fax)

Alaska Legislature
Legislative Research Services
w3.legis.state.ak.us/laa/research/research.php

State Capitol
Juneau, AK 99801

State Laws: Bestiality Crimes and Punishments

State	Citation	Crime	Criminal Classification	Punishment
Arizona	ARS 13-1403	Public sexual indecency involving bestiality when others are present	Class 1 Misdemeanor; Class 5 Felony if a child under age 15 is present	Class 1 Misdemeanor--maximum fine of $2,500 and/or 6 months in jail Class 5 Felony--maximum fine of $150,000 and/or 1.5 years in jail for first offense
	ARS 13-1411	Bestiality	Class 6 Felony; Class 3 Felony if the defendant causes a child under age 15 to sexually assault an animal	For first offense: Class 6 Felony--maximum fine of $150,000 and/or one year in jail Class 3 Felony--maximum fine of $150,000 and/or 3.5 years in jail In addition, the court may order psychological assessment and counseling and the costs for care of injured animals
Arkansas	ACA 5-14-122	Bestiality	Class A Misdemeanor	Maximum fine of $1,00 and/or one year in jail
California	Cal Penal Code 286.5	Sexually Assault of an Animal	Misdemeanor	Maximum fine of $1,00 and/or six months in jail
Colorado	CRS 18-9-201 to 202	Cruelty to Animals	Class 1 Misdemeanor; a subsequent offense is a Class 6 Felony; additional offenses are Class 5 Felonies	First offense: psychological evaluation and treatment, $500 to $5,000 fine and/or six months to 18 months in jail Second offense: $1,000 to $100,000 fine and/or 1 year to 1.5 years in jail Subsequent offenses: $1,000 to $100,000 fine and/or 1 year to 3 years in jail Court may assign offender psychological treatment plus costs of incarceration and treatment
Delaware	DCA 11-777	Bestiality	Class D Felony	Maximum eight years in jail
Georgia	OCGA 16-6-6	Bestiality	Unclassified	One to five years in jail
Idaho	IC 18-6605	Crime Against Nature	Unclassified	Minimum five years in jail

State Laws: Bestiality Crimes and Punishments (contd.)

State	Citation	Crime	Criminal Classification	Punishment
Illinois	720 ILCS 5/12-35	Sexual Conduct or Sexual Contact with an Animal	Class 4 Felony; Class 3 Felony if a person under age 18 is present or the animal is seriously injured or killed	Class 4 Felony: maximum $25,000 fine and one to three years in jail Class 3 Felony: maximum $25,000 fine and two to five years in jail In addition to the above penalties, court may impose upon offender prohibition from owning or residing with animals; psychological evaluation; and costs of care for animal(s) involved
Indiana	ISA 35-42-4-5	Vicarious Sexual Gratification; Fondling in the Presence of a Minor [directing, aiding, or inducing a minor under age 16 to engage in sexual contact with an animal]	Class C Felony; Class B Felony if child is under 14; Class A Felony if threat of deadly force is used or the minor victim is threatened or drugged	All felonies carry maximum fines of $10,000 and the following jail terms: Class C Felony: two to eight years with an advisory sentence of four years Class B Felony: six to twenty years with an advisory sentence of ten years. Class A Felony: twenty to fifty years with and advisory sentence of thirty years.
	ISA 35-46-3-14	Bestiality	Class D Felony	Maximum $10,00 fine and six months to three years in jail with an advisory sentence of 1.5 years
Iowa	IC 717C.1	Bestiality	Aggravated Misdemeanor	Aggravated Misdemeanor: fine of $626 to $6,250 and maximum two years in jail In addition, the court may order psychological evaluation and treatment at offender's expense
	IC 728.4	Rental or Sale of Hard-Core Pornography [bestiality on film]	Aggravated Misdemeanor; Class D Felony for second and subsequent violations	Aggravated Misdemeanor: fine of $626 to $6,250 and maximum two years in jail Class D Felony: fine of $725 to $7,500 and maximum five years in jail
Kansas	KSA 21-3505	Criminal Sodomy	Class B Nonperson Misdemeanor; Severity Level 3 Person Felony if a child aged 14-15 is caused to engage in the sex act	Class B Nonperson Misdemeanor: maximum fine of $1,000 and/or six months in jail Level 3 Person Felony: maximum $300,000 fine and/or 89 to 100 months in jail with a presumptive sentence of 94 months for first offense

State Laws: Bestiality Crimes and Punishments (contd.)

State	Citation	Crime	Criminal Classification	Punishment
Louisiana	LSA-RS 14:89	Crime Against Nature	Unclassified	Maximum $2,000 fine and/or five years in jail with or without hard labor
Maine	MRSA 17-1031(I)	Cruelty to Animals-Bestiality	Class D Crime; Class C Crime for the third and subsequent convictions	Class D Crime: maximum fine of $2,000 and/or one year in jail Class C Crime: maximum fine of $5,000 and/or five years in jail
Maryland	ACM Crime Law 3-322	Unnatural or Perverted Sexual Practice	Misdemeanor	Maximum fine of $1,000 and/or ten years in jail
Massachusetts	MGLA 272-34	Crime Against Nature	Unclassified	Maximum twenty years in jail
Michigan	MCLA 750-158	Crime Against Nature or Sodomy	Felony	Maximum 15 years in jail, or life in jail if the offender is a "sexual delinquent" at the time of the crime
Minnesota	MS 609.294	Bestiality	Misdemeanor; Gross Misdemeanor if committed in the presence of another person	Misdemeanor--maximum fine of $1,000 and/or ninety days in jail Gross Misdemeanor--maximum fine of $3,000 and/or one year in jail
Montana	MCA 45-5-505	Deviate Sexual Conduct	Unclassified	Maximum fine of $50,000 and/or 10 years in jail
Nebraska	RSN 28-1010	Indecency with an Animal	Class III Misdemeanor	Maximum fine of $500 and/or three months in jail
New York	NY Penal Law 130.20	Sexual Misconduct	Class A Misdemeanor	Maximum fine of $1,000 and/or one year in jail
North Carolina	GSNC 14-177	Crime Against Nature	Class I Felony	Three to eight months in jail with a presumptive sentence of four to six months
North Dakota	NDCC 12.1-20-02 and 12.1-20-12	Deviate Sexual Act	Class A Misdemeanor	Maximum fine of $2,000 and/or one year in jail
Oklahoma	OSA 21-866	Crime Against Nature	Unclassified	Maximum of ten years in jail
Oregon	ORS 167.333	Sexual Assault of an Animal	Class A Misdemeanor	Maximum fine of $6,250 and/or one year in jail
Pennsylvania	PCSA 3129	Sexual Intercourse with Animal	Misdemeanor of the Second Degree	Maximum fine of $5,000 and/or two years in jail

State Laws: Bestiality Crimes and Punishments (contd.)

State	Citation	Crime	Criminal Classification	Punishment
Rhode Island	GLRI 11-10-1	Abominable and Detestable Crime Against Nature	Unclassified	Seven to twenty years in jail
South Carolina	CLSC 16-15-120	Buggery	Felony	Maximum of five years in jail and/or $500 fine
South Dakota	SDCL 22-22-42	Bestiality	Class 6 Felony; Class 5 Felony if offender has previously been convicted of a sex crime	Class 5 Felony: maximum fine of $10,000 and/or five years in jail Class 6 Felony: maximum fine of $4,000 and/or two years in jail
Utah	UCA 76-9-301.8	Bestiality	Class B Misdemeanor	Maximum fine of $1,000 and/or six months in jail
Virginia	CV 18.2-361	Crimes Against Nature	Class 6 Felony	Maximum fine of $2,500 and/or one to five years in jail
Washington	RCWA 15.52.205	Animal Cruelty in the First Degree	Class C Felony	Maximum fine of $10,000 and/or five years in jail. Offender may not own or reside with animals, court may order counseling and reimbursement for animal's care
Wisconsin	WS 944.17	Sexual Gratification	Class A Misdemeanor	Maximum fine of $10,000 and/or nine months in jail

Notes: Although we believe our research to be thorough, there may be other state laws prohibiting bestiality that were not located by our efforts due to variability in wording and construction.
Sources: Animal Legal Defense Fund, "Animal Protection Laws of the United States of America and Canada," Stephen K. Otto ed., 3rd Edition, 2007; available online at *http://www.aldf.org/article.php?id=259*; and the *Lexus* database of state laws.

THE HUMANE SOCIETY OF THE UNITED STATES

ANIMAL SEXUAL ABUSE

35 states have laws prohibiting sexual abuse of animals (AZ, AR, CA, CO, CT, DE, GA, IA, ID, IL, IN, KS, LA, MD, MA, ME, MI, MN, MO, MS, MT, NE, NY, NC, ND, OK, PA, RI, SC, SD, TN, UT, VA, WA and WI).
In many states bestiality may not be illegal, however, it is a crime to have a child perform or simulate bestiality.

ARIZONA	13-1411	A. A person commits bestiality by knowingly doing either of the following: 1. Engaging in oral sexual contact, sexual contact or sexual intercourse with an animal. 2. Causing another person to engage in oral sexual contact, sexual contact or sexual intercourse with an animal. B. In addition to any other penalty imposed for a violation of subsection A of this section, the court may order that the convicted person do any of the following: 1. Undergo a psychological assessment and participate in appropriate counseling at the convicted person's own expense. 2. Reimburse an animal shelter as defined in section 11-1022 for any reasonable costs incurred for the care and maintenance of any animal that was taken to the animal shelter as a result of conduct proscribed by subsection A of this section. C. This section does not apply to: 1. Accepted veterinary medical practices performed by a licensed veterinarian or veterinary technician.

		2. Insemination of animals by the same species, bred for commercial purposes. 3. Accepted animal husbandry practices that provide necessary care for animals bred for commercial purposes. D. Bestiality is a class 6 felony, except that bestiality pursuant to Subsection A, paragraph 2 of this section is a class 3 felony punishable pursuant to section 13-604.01 if the other person is a minor under fifteen years of age. E. For the purposes of this section, "animal" means a nonhuman mammal, bird, reptile or amphibian, either dead or alive
ARKANSAS	5-14-122	(a) A person commits sodomy if such person performs any act of sexual gratification involving: (1) The penetration, however slight, of the anus or mouth of an animal or a person by the penis of a person of the same sex or an animal; or (2) The penetration, however slight, of the vagina or anus of an animal or a person by any body member of a person of the same sex or an animal. (b) Sodomy is a **Class A misdemeanor**.
CALIFORNIA	§ 286.5.	Any person who sexually assaults any animal protected by Section 597f for the purpose of arousing or gratifying the sexual desire of the person is guilty of a **misdemeanor**.
COLORADO		
CONNECTICUT	§ 53a-73a (2001)	A person is guilty of sexual assault in the fourth degree when: (3) such person engages in sexual contact with an animal or dead body; (b) Sexual assault in the fourth degree is a **Class A misdemeanor.**
DELAWARE	s 777	A person is guilty of bestiality when the person intentionally engages in any sexual act involving sexual contact, penetration or intercourse with the genitalia of an animal or intentionally causes another person to engage in any such sexual act with an animal for purposes of sexual gratification. Bestiality is a **Class D felony.**
GEORGIA	16-6-6	A person commits the offense of bestiality when he performs or submits to any sexual act with an animal involving the sex organs of the one and the mouth, anus, penis, or vagina of the other. Penalty: **Imprisonment for not less than one nor more than five years.**
IDAHO	18-6605	Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison **not less than five (5) years**.
ILLINOIS	720 ILCS 5/12-35 (new 2002)	A person may not knowingly engage in any sexual contact or cause, aid or another person to engage in any sexual contact with an animal. (c) A person may not knowingly permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control. (d) A

		person may not knowingly engage in, promote, aid, or abet any activity involving any sexual contact with an animal for a commercial or recreational purpose. (e) A person who violates this Section is guilty of a **Class 4 felony**. A person who violates this Section in the presence of a person under 18 years of age or causes the animal serious physical injury or death is guilty of a **Class 3 felony**. (f) The court must order that the defendant **not harbor animals or reside in any household where animals are present** for a reasonable period of time or permanently, if necessary; and relinquish and permanently forfeit all animals residing in the household to a recognized or duly organized animal shelter or humane society. (3) **Undergo a psychological evaluation and counseling at defendant's expense.** (4) Reimburse the animal shelter or humane society for any reasonable costs incurred for the care and maintenance of the animal involved in the sexual conduct or sexual contact in addition to any animals relinquished to the animal shelter or humane society.
INDIANA	IC 35-46-3-14	A person who knowingly or intentionally performs an act involving: (1) a sex organ of a person and the mouth or anus of an animal; (2) a sex organ of an animal and the mouth or anus of a person; (3) any penetration of the human female sex organ by an animal's sex organ; or (4) any penetration of an animal's sex organ by the human male sex organ; commits bestiality, a **Class D felony**.
IOWA	717C.1	A person who performs a sex act with an animal, is guilty of an **aggravated misdemeanor.** 3. Upon a conviction for a violation of this section, and in addition to any sentence authorized by law, the court shall require the person to submit to a **psychological evaluation and treatment at the person's expense**. The commission of bestiality in the presence of a minor under section 717C.1 by a person who resides in a home with a child, as a result of the acts or omissions of a person responsible for the care of the child **is considered child abuse**.
KANSAS	21-3505	Criminal sodomy is: (1) Sodomy between persons who are 16 or more years of age and members of the same sex or between a person and an animal; (3) causing a child 14 or more years of age but less than 16 years of age to engage in sodomy with any person or animal. (c) Criminal sodomy as provided in subsection (a)(1) is a class B nonperson misdemeanor. Criminal sodomy as provided in subsections (a)(2) and (a)(3) is a **severity level 3, person felony.**
		(1) The unnatural carnal copulation by a human being with another of the same

LOUISIANA	§ 89.	sex or opposite sex or with an animal....Penalty: **fined up to two thousand dollars, or imprisoned, with or without hard labor, for not more than five years, or both.**
MAINE	1031 (2001)	Commits bestiality on an animal means that a person: 1) Engages in a sexual act with an animal for the purpose of that person's sexual gratification; 2) Coerces anyone to engage in a sexual act with an animal; 3) Engages in a sexual act with an animal in the presence of a minor; 4) Uses any part of the person's body or an object to sexually stimulate an animal; 5) Videotapes a person engaging in a sexual act with an animal; or 6) For the purpose of that person's sexual gratification, kills or physically abuses an animal. **Violation of this paragraph is a Class D crime;**
MARYLAND	s 554	Every person who is convicted of taking into his or her mouth the sexual organ of any other person or animal, or who shall be convicted of placing his or her sexual organ in the mouth of any other person or animal, or who shall be convicted of committing any other unnatural or perverted sexual practice with any other person or animal, shall be fined not more than **one thousand dollars or be imprisoned in jail or in the house of correction or in the penitentiary for a period not exceeding ten years, or shall be both fined and imprisoned within the limits above prescribed in the discretion of the court.**
MASSACHUSETTS	Ch.272 Sec. 34	Whoever commits the abominable and detestable crime against nature, either with mankind or with a beast, shall be punished by imprisonment in the state prison for **not more than twenty years.**
MICHIGAN	750.158	Any person who shall commit the abominable and detestable crime against nature either with mankind or with any animal shall be guilty of a **felony,** punishable by imprisonment in the state prison not more than **15 years**, or if such person was at the time of the said offense a sexually delinquent person, may be punishable by imprisonment in the state prison for an indeterminate term, the minimum of which shall be **1 day and the maximum of which shall be life.**
MINNESOTA	609.294	Whoever carnally knows a dead body or an animal or bird is guilty of bestiality, which is a **misdemeanor.** If knowingly done in the presence of another the person may be sentenced to **Imprisonment for not more than one year or to payment of a fine of not more than $3,000 or both.**
		No person shall engage in any sexual conduct with an animal, or cause, aid or

MISSOURI	566.111	abet another person to engage in any sexual conduct with an animal. No person shall permit any sexual conduct with an animal on any premises under such person's charge or control. No person shall engage in, promote, aid or abet any activity involving any sexual conduct with an animal for commercial or recreational purposes. 3. Any person who violates this section shall be guilty of a **Class D felony**. Any person who violates this section in the presence of a minor or causes any animal serious physical injury or death while violating or attempting to violate this section shall be guilty of a **Class C felony**. 4. In addition to the penalty imposed, the court may: (1) prohibit the defendant permanently or for a reasonable time from harboring animals or residing in any household where animals are present; (2) order the defendant to relinquish and permanently forfeit all animals residing in the defendant's household to a recognized or duly incorporated animal shelter or humane society, and order the defendant to reimburse such shelter or humane society for all reasonable costs incurred for the care and maintenance of the animals involved in the violation of this section; and (3) order psychological evaluation and counseling of the defendant, at the defendant's expense.
MISSISSIPPI	§97-29-59	Every person who shall be convicted of the detestable and abominable crime against nature committed with mankind or with a beast, shall be punished by imprisonment in the penitentiary for a term of **not more than ten years.**
MONTANA	45-5-505	Deviate sexual conduct. (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct. (2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to **exceed $50,000, or both**. **45-2-101(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.**
NEBRASKA	§ 28-1010	A person commits indecency with an animal when such person subjects an animal to sexual penetration. Sexual penetration shall not require emission of semen indecency with an animal is a **Class III misdemeanor.**
NEW YORK	§ 130.20	A person is guilty of sexual misconduct when: He engages in sexual conduct with an animal or a dead human body. Sexual misconduct is a **class A misdemeanor**
NORTH CAROLINA	§ 14-177	If any person shall commit the crime against nature, with mankind or beast, he shall be punished as a **Class I felony**.
NORTH DAKOTA	12.1-20-1	A person who performs a deviate sexual act with the intent to arouse or gratify his sexual desire is guilty of a **class A misdemeanor**.

	2	"Deviate sexual act" means any form of sexual contact with an animal, bird, or dead person.
OKLAHOMA	§ 886 (1999)	Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is punishable by imprisonment in the penitentiary **not exceeding ten (10) years**.
PENNSYLVANIA	Title 18, Sec. 3129	A person who engages in any form or sexual intercourse with an animal commits a **misdemeanor of the second degree.**
RHODE ISLAND	11-10-1	Every person who shall be convicted of the abominable and detestable crime against nature, either with mankind or with any beast, shall be imprisoned not exceeding **twenty (20) years nor less than seven (7) years.**
SOUTH CAROLINA	§16-15-120	Whoever shall commit the abominable crime of buggery, whether with mankind or with beast, shall, on conviction, be **guilty of felony** and shall be imprisoned in the penitentiary for five years or shall pay a fine of not less than five hundred dollars, or both, at the discretion of the court.
SOUTH DAKOTA	§22-22-42 (2003)	No person, for the purpose of that person's sexual gratification, may: (1) Engage in a sexual act with an animal; or (2) Coerce any other person to engage in a sexual act with an animal; or (3) Use any part of the person's body or an object to sexually stimulate an animal; or (4) Videotape a person engaging in a sexual act with an animal; or (5) Kill or physically abuse an animal. Any person who violates any provision of this section is guilty of the crime of bestiality. Bestiality is a **Class 6 felony.** However, if any person has been previously convicted of a sex crime pursuant, any subsequent violation of this section is a **Class 5 felony**.
TENNESSEE		
UTAH	76-9-301. 8	A person commits the crime of bestiality if the actor engages in any sexual activity with an animal with the intent of sexual gratification of the actor. A crime of bestiality is a **class B misdemeanor.**
VIRGINIA	s 18.2-36 1	If any person carnally knows in any manner any brute animal, or carnally knows any male or female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge, he or she shall be guilty of a **Class 6 felony.**
WASHINGTON	RCW 16.52.205	A person is guilty of animal cruelty in the first degree (**class c felony**) when he or she:(a) Knowingly engages in any sexual conduct or sexual contact with an animal; (b) Knowingly causes, aids, or abets another person to engage in any sexual conduct or sexual contact with an animal;(c) Knowingly permits any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; (d) Knowingly engages in, organizes, promotes, conducts, advertises, aids, abets, participates in as an

		observer, or performs any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose; or (e) Knowingly photographs or films, for purposes of sexual gratification, a person engaged in a sexual act or sexual contact with an animal. In addition to the penalty imposed, the court may order that the convicted person do any of the following: (a) Not harbor or own animals or reside in any household where animals are present; (b) Participate in appropriate counseling at the defendant's expense; (c) Reimburse the animal shelter or humane society for any reasonable costs incurred for the care and maintenance of any animals taken to the animal shelter or humane society as a result of conduct proscribed in this section.
WISCONSIN	944.17	In this section, "in public" means in a place where or in a manner such that the person knows or has reason to know that his or her conduct is observable by or in the presence of persons other than the person with whom he or she is having sexual gratification. (2) Whoever does any of the following is guilty of a **Class A misdemeanor:** (c) Commits an act of sexual gratification involving his or her sex organ and the sex organ, mouth or anus of an animal. (d) Commits an act of sexual gratification involving his or her sex organ, mouth or anus and the sex organ of an animal.

ANIMAL ABUSE SEARCH RESULTS

There are 39 cases currently listed in the **United States** where a person of interest involved have a **history of interpersonal violence or the abuse occurred within the context of a domestic dispute or argument** with the abuse type(s) **Bestiality**. Results are displayed 25 per page.

Login or create an account for additional advocacy tools, including e-mail notifications when updates are posted to selected cases.

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Location / Date	Title	Name(s)
CA-Fresno Nov 7, 2008	**Dog sexually assaulted, sex offender charged** Bestiality	ALLEGED **Joe Luis Gloria**
IN-Bloomington Sep 6, 2008	**Sexual assault on woman, dog, videotaped** Bestiality	ALLEGED **Thomas L. Meador**
WA-Longview Jul 23, 2008	**Dog and foster child sexually assaulted** Bestiality	NOT CHARGED **Donald Joe Zeller**
LA-Baton Rouge Jun 18, 2008	**Dog sexually assulted by convicted sex offender** Bestiality	ALLEGED **Alex Chaney**
AK-Klawock Apr 9, 2008	**Dog tied to tree, sexually assaulted** Bestiality	ALLEGED **Harold Simpson**
CO-Delta Dec 11, 2007	**Dogs sexually assaulted, shelter volunteer charged** Bestiality	ALLEGED **Jay Baker**
OH-North Ridgeville Oct 31, 2007	**Dogs, sheep sexually assaulted** Bestiality	ALLEGED **Jonel Berlovan**
GA-Warner Robins Feb 2007	**Dog sexually assaulted, children molested** Bestiality	CONVICTED **John Charles Huff**
IL-Elwood Dec 7, 2006	**Dog repeatedly sexually assaulted** Bestiality	DISMISSED **Dwayne D. Page**
NJ-Moorestown Dec 6, 2006	**Cows and children sexually assaulted** Bestiality	ALLEGED **Robert Melia Jr.**
FL-Rockledge Dec 1, 2006	**Children, animal sexually assaulted** Bestiality	ALLEGED **Ivory Dickerson**
PA-South Beaver Township Nov 16, 2006	**Children sexually abused, bestiality porn** Bestiality	NOT CHARGED **Robert F. Harn**
CO-Glenwood Springs Nov 2006	**Possession of bestiality pornography** Bestiality	NOT CHARGED **Frank Alameno**
MI-Freeland Oct 20, 2006	**Sex with dead dog, assaulting an AC'O** Bestiality	CONVICTED **Ronald Kuch**
WI-Superior Oct 11, 2006	**Sex with dead deer** Bestiality	CONVICTED **Bryan James Hathaway**
OR-Lebanon May 18, 2006	**Dogs and children sexually abused** Bestiality	ALLEGED **Denise Ann Roberts** **Jesse Dale Roberts**
PA-Hermitage Apr 2006	**Possession of child, animal pornography** Bestiality	CONVICTED **Roger Ellsworth Henry**
AZ-Tucson Mar 28, 2006	**Dog found burned, maimed, sexually assaulted** Mutilation/Torture, Bestiality, Burning - Fire or Fireworks	CONVICTED **Wayne Allen Dean**

OR-Sherwood Feb 1, 2006	**Dog sexually assaulted by convicted sex offender** Bestiality	ALLEGED **Jason Dane Tapken**
TX-Brownsville Jan 23, 2006	**Child and dog sexually assaulted, videotaped** Bestiality	NOT CHARGED **Jesus De Leon**
CA-Ontario Oct 18, 2005	**Dog sexually assaulted** Bestiality	CONVICTED **Ubaldo Vasquez Huizar**
OH-Lafferty Sep 24, 2005	**Dog sexually assaulted** Bestiality	CONVICTED **John Paskel**
SC-Campobello May 22, 2005	**Puppy sexually assaulted** Bestiality	CONVICTED **Cory Michael Williamson**
LA-Hammond May 17, 2005	**Church cult cited in child rape and animal sex** Bestiality	NOT CHARGED Austin Aaron Bernard III Nicole Bernard Paul Fontenot *more...*
MI-Harrison Feb 17, 2005	**Bestiality and child pornography** Bestiality	ALLEGED **Rebekah J. Oakley-Pyle** **Malvin D. Pyle**

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ANIMAL ABUSE SEARCH RESULTS

There are 39 cases currently listed in the United States where a person of interest involved have a history of interpersonal violence or the abuse occurred within the context of a domestic dispute or argument with the abuse type(s) Bestiality. Results are displayed 25 per page.

Login or create an account for additional advocacy tools, including e-mail notifications when updates are posted to selected cases.

Pages: «Prev 1 2

Location / Date	Title	Name(s)
FL-Flagler Feb 2, 2005	**Dog, girl sexually assaulted, photos taken** Bestiality	NOT CHARGED Carla Maldonado **David Maldonado**
TX-Kerrville Feb 2005	**Possession of bestiality porn, soliciting a minor** Bestiality	NOT CHARGED **Jonathan Ward Brooke**
MI-Battle Creek Jan 26, 2005	**Sheep sexually assaulted** Bestiality	CONVICTED **Jeffrey Scott Haynes**
FL-Tampa Dec 22, 2004	**Dog stabbed, sodomized with stick** Bestiality, Stabbing	ALLEGED Lubuns Paul Dubeus
VT-Lyndonville Oct 16, 2004	**Dog sodomized and strangled** Bestiality, Choking / Strangulation / Suffocation	CONVICTED **Jeffrey Plourde**
FL-West Palm Beach Jan 8, 2004	**Dog sexually assaulted** Bestiality	ALLEGED **William McPhillips**
IN-Indianapolis Feb 20, 2002	**Distribution and display of beastiality pornography** Bestiality	ALLEGED **Loran Jay Adams**
VT-Richford Jan 15, 2002	**Dog sexually assaulted, videotaped** Bestiality	CONVICTED **Paul Corey** Tammy Paquin
OK-Oklahoma City Feb 14, 2001	**Bestiality** Bestiality	CONVICTED **Robert Malcomb Jr**
FL-East Lake Feb 11, 2001	**Llamas beaten, one sodomized** Beating, Bestiality	CONVICTED **Brandon R. Eldred** **Robert B. Pettyjohn**
CA-Fresno Jul 8, 1997	**Puppy beaten and tortured** Beating, Bestiality	CONVICTED **Reynaldo Chavez**
MI-Ypsilanti May 29, 1997	**Bestiality/Pedophilia** Bestiality	ALLEGED **Bernice Santure** **Carl Santure** **Harvey Santure** *more...*
WI-Janesville Apr 9, 1997	**Sexually abused, tortured and killed cats and dogs** Mutilation/Torture, Bestiality	CONVICTED **Barry Herbeck**
VA-Montgomery County Apr 1951	**Killing animals, having sex with their corpses** Bestiality	NOT CHARGED **Henry Lee Lucas**

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"Alaska lawmakers consider outlawing bestiality
Anne Sutton/The Associated Press
Updated Friday, March 20, 2009 at 6:45 p.m.

JUNEAU, Alaska - State lawmaker Bob Lynn said he was compelled to introduce a bill outlawing sex with an animal after he read a news story last April about a 26-year-old Klawock man.

The man was spotted by a local woman coaxing a Labrador retriever, a local family's pet, into the woods near a ball field. There he allegedly tied it to a tree, taped its muzzle shut with duct tape and had sex with it, witnesses told police at the time.

It's a subject that makes many people uncomfortable and elicits a lot of nervous jokes, but for the people in this Southeast Alaska community of 800 people, it was no laughing matter, said Klawock Mayor Don Marvin at a Friday hearing on the bill.

"When this incident happened, we had a community that was scared," Marvin said.

The man was a registered sex offender who had been twice convicted of raping a young boy. More recently he had served probation for assault after lunging at a child.

And while the incident with the dog was reported to the police, Marvin said nothing happened for two days while fearful parents escorted their children home from school.

The state has no law against such an attack, and Ketchikan District Attorney James Scott eventually charged the man with two counts of criminal mischief, which was later changed to a theft charge.

In requesting a $10,000 bail, Scott told the court that the state was concerned that if a small child had been available and unattended that day, "the small child would have been found taped (and) tied in the woods."

Lynn, an Anchorage Republican, wants to make Alaska the 36th state to ban bestiality by expanding the state's animal cruelty law to include sexual conduct. His bill would make the offense a class A misdemeanor that's punishable by up to a year in jail and a $10,000 fine.

The measure is backed by the Department of Corrections, the Alaska Farm Bureau, the Humane Society of the United States and the Alaska Peace Officers Association.

Rachel Dzuiba, a veterinarian at the Gastineau Humane Society in Juneau, said it would not only protect animals but also protect the public against a cycle of abuse and violence.

"The act of forcing a living creature to engage in a sexual activity without the ability of consent cannot simply be viewed as a personal choice - no more than forcing a child or an impaired adult would be," Dzuiba told the House Judiciary Committee.

The society's executive director, Chava Lee, said she has received several complaints at the Juneau animal shelter about sexual deviancy against animals.

"In each case that has come to my attention, coercion, abuse, threat of physical harm or terrorizing a human during the practice of a sexual assault on an animal was present," Lee said.

According to the national Humane Society, several studies highlight the link between the sexual assault of animals and sex crimes against humans, including:

- FBI research on the backgrounds of serial sexual homicide perpetrators that uncovered high rates of sexual assault of animals,

- A report in the Journal of Forensic Psychiatry that said twenty percent of children who sexually abuse other children also have histories of sexually abusing animals,

- A Utah State University study showing 37 percent of sexually violent juvenile offenders have a history of animal sexual assault.

The committee also heard testimony from Klawock Chief of Police Cullen Fowler who said the dog that had been allegedly assaulted did not require veterinary care but appeared to have suffered.

Fowler said the pressure of the taped muzzle cause blood vessels to burst in its eyes and the dog was sensitive to the touch, jumpy and afraid for a long time after the incident.

Lynn's aide, Mike Sica, said the bill is modeled on a law in Washington state. Criminal classifications and punishments vary widely among the states that outlaw bestiality. In Nebraska, "indecency with an animal" is a class A misdemeanor punishable by a maximum fine of $500 and three months in jail. But Rhode Island punishes what it terms an "abominable and detestable crime against nature" with seven to 20 years in jail.

Though no one testified against the bill, several committee members had concerns. Rep. Lindsay Holmes, D-Anchorage, said she was worried that someone could be charged with encouraging the crime when they were merely joking and no one was hurt. She asked the Department of Law to study the matter.

The bill goes next to the House Finance Committee, though the Department of Law said it would not result in an additional cost to the state. The bill is House Bill 6."

Distributed by Rep. Bob Lynn with permission by the Associated Press

HB 6 Relevant Statute

Sec. 11.61.140. Cruelty to animals.

(a) A person commits cruelty to animals if the person

(1) knowingly inflicts severe and prolonged physical pain or suffering on an animal;

(2) with criminal negligence, fails to care for an animal and, as a result, causes the death of the animal or causes severe physical pain or prolonged suffering to the animal;

(3) kills or injures an animal by the use of a decompression chamber;

(4) intentionally kills or injures a pet or livestock by the use of poison; or

(5) knowingly kills or injures an animal, other than as provided in (1) or (3) of this subsection, with the intent to intimidate, threaten, or terrorize another person.

(b) Each animal that is subject to cruelty to animals under (a) of this section shall constitute a separate offense.

(c) It is a defense to a prosecution under this section that the conduct of the defendant

(1) was part of scientific research governed by accepted standards;

(2) constituted the humane destruction of an animal;

(3) conformed to accepted veterinary or animal husbandry practices;

(4) was necessarily incidental to lawful fishing, hunting or trapping activities;

(5) conformed to professionally accepted training and discipline standards.

(d) In (a)(2) of this section, failure to provide the minimum standards of care for an animal under AS 03.55.100 is prima facie evidence of failure to care for an animal.

(e) This section does not apply to generally accepted dog mushing or pulling contests or practices or rodeos or stock contests.

(f) Except as provided in (g) of this section, cruelty to animals is a class A misdemeanor. The court may also

(1) require forfeiture of any animal affected to the state or to a custodian that supplies shelter, care, or medical treatment for the animal;

(2) require the defendant to reimburse the state or a custodian for all reasonable costs incurred in providing necessary shelter, care, veterinary attention, or medical treatment for any animal affected;

(3) prohibit or limit the defendant's ownership, possession, or custody of animals for up to 10 years.

(g) Cruelty to animals is a class C felony if the person has been previously convicted on two or more separate occasions within 10 years of the date of the present offense of a crime under this section, AS 11.61.145 (a)(1) or (2), or a law or ordinance of another jurisdiction having elements similar to those offenses. The court may also

(1) require forfeiture of any animal affected to the state or to a custodian that supplies shelter, care, or medical treatment for the animal;

(2) require the defendant to reimburse the state or a custodian for all reasonable costs incurred in providing necessary shelter, care, veterinary attention, or medical treatment for any animal affected;

(3) prohibit or limit the defendant's ownership, possession, or custody of animals for up to 10 years.

Alaska State Legislature

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State Affairs Committee

Member
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

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"Bob Lynn's Alaska Blog" www.RepLynnBlog.com

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Feb. 3, 2010

To: Senator Hollis French, Chair
Senate Judiciary Committee

Fr: Representative Bob Lynn

Re: HB 6
"An Act relating to proscribing certain sexual conduct or sexual activities as cruelty to animals."

Please schedule a hearing for House Bill 6 in the Senate Judiciary Committee at your earliest convenience. The bill expands the animal cruelty law in Alaska to include "sexual conduct."

Attached is a copy of the latest version HB 6 and supporting documents.

Thank you for considering my request for a hearing on HB 6, which I believe not only protects animals from sexual assault but also protects children and other vulnerable humans from sexual predators.

Contact: Mike Sica, 465-4965

HB 6 Animal Cruelty by Rep. Bob Lynn
Senate Judiciary Committee

List of expected witnesses to testify:

Off-net request from Klawock

Mayor Donald Marvin, City of Klawock
907-755-2261 (Office)

City Manager Leslie Issacs, City of Klawock
907-755-2261 (Office)

Off-net request if unable to be at Fairbanks LIO

Ronnie Rosenberg, Chairperson
Fairbanks North Star Borough Animal Control Commission
907-374-9511

Off-net request from Anchorage: available for questions, if necessary

Rose Munafo, sex offender programs, Alaska Dept. of Corrections
907-269-7416 (Office)

At the Senate Judiciary Committee Room

Chava Lee, executive director of Gastineau Humane Society in Juneau
789-0260 (office)

Dr. Rachel Dzuiba, veterinarian at Gastineau Humane Society in Juneau
463-5022 (office)

Contact: Mike Sica, 465-4965 **Revised:** Feb. 3, 2010

HB

36

26-LS0197\T
Bullard
4/14/10

SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 36(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JOHANSEN, MILLETT, AND PEGGY WILSON, Johnson, Kelly, Neuman, Keller, Muñoz

A BILL

FOR AN ACT ENTITLED

"An Act relating to ballot initiative proposal applications, to ballot initiatives and to those who file or organize for the purpose of filing a ballot initiative proposal, and to election pamphlet information relating to certain propositions."

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

*** Section 1.** AS 15.13.040(k) is amended to read:

(k) Every individual, person, nongroup entity, or group contributing a total of $500 or more to a group organized for the principal purpose of influencing the outcome of a proposition**, and every individual, person, nongroup entity, or group contributing a total of $500 or more to a group organized for the principal purpose of filing an initiative proposal application under AS 15.45.020 or that has filed an initiative proposal application under AS 15.45.020,** shall report the contribution or contributions on a form prescribed by the commission not later than 30 days after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and

employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that group by that individual, person, nongroup entity, or group during the calendar year.

*** Sec. 2.** AS 15.13.050(a) is amended to read:

(a) Before making an expenditure in support of or in opposition to a candidate or before making an expenditure in support of or in opposition to a ballot proposition or question **or to an initiative proposal application filed with the lieutenant governor under AS 15.45.020**, each person other than an individual shall register, on forms provided by the commission, with the commission.

*** Sec. 3.** AS 15.13.050 is amended by adding a new subsection to read:

(c) If a group intends to make more than 50 percent of its contributions or expenditures in support of or opposition to a single initiative on the ballot, the title or common name of the initiative must be a part of the name of the group. If the group intends to make more than 50 percent of its contributions or expenditures in opposition to a single initiative on the ballot, the group's name must clearly state that the group opposes that initiative by using a word such as "opposes," "opposing," "in opposition to," or "against" in the group's name.

*** Sec. 4.** AS 15.13.065(c) is amended to read:

(c) Except for reports required by AS 15.13.040 and 15.13.110 and except for the requirements of AS 15.13.050, 15.13.060, and 15.13.112 - 15.13.114, the provisions of AS 15.13.010 - 15.13.116 do not apply to limit the authority of a person to make contributions to influence the outcome of a ballot proposition. In this subsection, in addition to its meaning in AS 15.60.010, "proposition" includes

(1) an issue placed on a ballot to determine whether

(A) [(1)] a constitutional convention shall be called;

(B) [(2)] a debt shall be contracted;

(C) [(3)] an advisory question shall be approved or rejected; or

(D) [(4)] a municipality shall be incorporated;

(2) an initiative proposal application filed with the lieutenant governor under AS 15.45.020.

*** Sec. 5.** AS 15.13.110(e) is amended to read:

(e) A group formed to sponsor [AN INITIATIVE,] a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter, each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section.

*** Sec. 6.** AS 15.13.110 is amended by adding a new subsection to read:

(g) An initiative committee, person, group, or nongroup entity receiving contributions exceeding $500 or making expenditures exceeding $500 in a calendar year in support of or in opposition to an initiative on the ballot in a statewide election or an initiative proposal application filed with the lieutenant governor under AS 15.45.020 shall file a report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) and (b) of this section. If the report is a first report, it must cover the period beginning on the day an initiative proposal application is filed under AS 15.45.020 and ending three days before the due date of the report.

*** Sec. 7.** AS 15.13.400(4) is amended to read:

(4) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made**, and includes the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that is rendered to the candidate or political party,** and that is made for the purpose of

(i) influencing the nomination or election of a candidate**;**

(ii) [, AND IN AS 15.13.010(b) FOR THE PURPOSE OF] influencing a ballot proposition or question**; or**

(iii) supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020 [, INCLUDING THE PAYMENT BY A PERSON OTHER THAN A CANDIDATE OR POLITICAL PARTY, OR COMPENSATION FOR

THE PERSONAL SERVICES OF ANOTHER PERSON, THAT ARE RENDERED TO THE CANDIDATE OR POLITICAL PARTY];

(B) does not include

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;

(ii) ordinary hospitality in a home;

(iii) two or fewer mass mailings before each election by each political party describing the party's slate of candidates for election, which may include photographs, biographies, and information about the party's candidates;

(iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;

(v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party;

*** Sec. 8.** AS 15.13.400(6) is amended to read:

(6) "expenditure"

(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or

political party of compensation for the personal services of another person that are rendered to a candidate or political party; [OR]

(iv) influencing the outcome of a ballot proposition or question; **or**

(v) supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020;

(B) does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(C) includes an express communication and an electioneering communication, but does not include an issues communication;

*** Sec. 9.** AS 15.13.400(8) is amended to read:

(8) "group" means

(A) every state and regional executive committee of a political party; [AND]

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent of its money to or on

behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate; **and**

(C) any combination of two or more individuals acting jointly who organize for the principal purpose of filing an initiative proposal application under AS 15.45.020 or who file an initiative proposal application under AS 15.45.020;

*** Sec. 10.** AS 15.45.080 is amended to read:

Sec. 15.45.080. Bases of denial of certification. The lieutenant governor shall deny certification upon determining in writing that

(1) the proposed bill to be initiated is **not confined to one subject or is otherwise** not in the required form;

(2) the application is not substantially in the required form; or

(3) there is an insufficient number of qualified sponsors.

*** Sec. 11.** AS 15.45.090(a) is amended to read:

(a) If the application is certified, the lieutenant governor shall prepare a sufficient number of sequentially numbered petitions to allow full circulation throughout the state. Each petition must contain

(1) a copy of the proposed bill [IF THE NUMBER OF WORDS INCLUDED IN BOTH THE FORMAL AND SUBSTANTIVE PROVISIONS OF THE BILL IS 500 OR LESS];

(2) an impartial summary of the subject matter of the bill;

(3) a statement of minimum costs to the state associated with certification of the initiative application and review of the initiative petition, excluding legal costs to the state and the costs to the state of any challenge to the validity of the petition;

(4) an estimate of the cost to the state of implementing the proposed law;

(5) the statement of warning prescribed in AS 15.45.100;

(6) sufficient space for the printed name, a numerical identifier, the signature, the date of signature, and the address of each person signing the petition;

and

(7) other specifications prescribed by the lieutenant governor to ensure proper handling and control.

*** Sec. 12.** AS 15.45 is amended by adding a new section to read:

Sec. 15.45.195. Public hearings. (a) At least 30 days before the election at which an initiative is to appear on the ballot, the lieutenant governor or a designee of the lieutenant governor shall hold two or more public hearings concerning the initiative in each judicial district of the state. Each public hearing under this section shall include the written or oral testimony of one supporter and one opponent of the initiative.

(b) The lieutenant governor shall provide reasonable notice of each public hearing required under this section. The notice must include the date, time, and place of the hearing. The notice may be given using print or broadcast media. The lieutenant governor shall provide notice in a consistent fashion for all hearings required under this section.

(c) Penalties for a violation of this section may not include removal of an initiative from the ballot.

(d) If the lieutenant governor determines that it is technologically and economically feasible, the division shall provide a live audio and video broadcast of each hearing held under (a) of this section on the division's Internet website.

*** Sec. 13.** AS 15.58.010 is amended to read:

Sec. 15.58.010. Election pamphlet. Before each state general election, and before each state primary **or special** election at which a ballot proposition is scheduled to appear on the ballot, the lieutenant governor shall prepare, publish, and mail at least one election pamphlet to each household identified from the official registration list. The pamphlet shall be prepared on a regional basis as determined by the lieutenant governor.

*** Sec. 14.** AS 15.58.020(b) is amended to read:

(b) Each primary **or special** election pamphlet shall contain only the information specified in (a)(6) and (a)(9) of this section for each ballot measure scheduled to appear on the primary **or special** election ballot.

* **Sec. 15.** AS 24.05 is amended by adding a new section to article 4 to read:

Sec. 24.05.186. Legislative hearings on initiatives certified by the lieutenant governor. (a) A standing committee of the legislature, selected jointly by the presiding officers of the house and senate, shall hold at least one hearing on an initiative that the lieutenant governor has determined was properly filed under AS 15.45.160.

(b) The standing committee selected jointly by the presiding officers of the house and senate under (a) of this section shall hold at least one hearing under this section within 30 days after the convening of the legislative session preceding the statewide election at which the initiative proposition must appear on the election ballot under AS 15.45.190.

* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies only to an initiative, the application for which is filed with the lieutenant governor under AS 15.45.020 on or after the effective date of this Act.

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax

Pages (including cover sheet): 1

Date: April 2, 2010

To: Alpheus Bullard
From: Cindy Smith

RE: Draft CS for HB36

Please draft a CS with the following amendments to HB36:

1. **Language from CA.2 was adopted with a conceptual amendment to the amendment at page 8, line 3 adding the words "as determined by the presiding officers of the House and Senate".**

2. **Amend language at page 8 line 1 by deleting the word "consider" and replacing with "hold a hearing on"**

3. **Add language in CA.5**

Need this for tomorrow a.m.'s meeting!

C.

26-LS0197\CA.2
Bullard
4/13/10

AMENDMENT

OFFERED IN THE SENATE

TO: CSSSHB 36(FIN) am

Page 7, lines 30 - 31:

Delete **"Review of initiatives certified by the lieutenant governor by standing committees of the legislature"**

Insert **"Legislative hearings on initiatives certified by the lieutenant governor"**

Page 8, line 3:

Delete "conduct reviews"

Insert "hold at least one hearing"

2673

26-LS0197\CA.5
Finley/Bullard
4/14/10

AMENDMENT #4

OFFERED IN THE SENATE

TO: CSSSHB 36(FIN) am

Page 7, following line 17:

Insert a new subsection to read:

"(d) If the lieutenant governor determines that it is technologically and economically feasible, the division shall provide a live audio and video broadcast of each hearing held under (a) of this section on the division's Internet website."

26-LS0197\CA.2
Bullard
4/13/10

AMENDMENT #1

OFFERED IN THE SENATE

TO: CSSSHB 36(FIN) am

Page 7, lines 30 - 31:

Delete "**Review of initiatives certified by the lieutenant governor by standing committees of the legislature**"

Insert "**Legislative hearings on initiatives certified by the lieutenant governor**"

Page 8, line 3:

Delete "conduct reviews"

Insert "hold at least one hearing"

→ + "as determined by presiding officers of the house and senate —"

page 8, line 3

#2 page 8, line 1

"~~shall~~ hold a hearing"

"~~shall~~ consider"

delete

McGuire approved.

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MEMORANDUM April 14, 2010

SUBJECT: Membership of the State Personnel Board
CSHB 348(JUD) (Work Order No. 26-LS1360\S)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard RAB
Legislative Counsel

You asked that I address separation of powers concerns raised by the committee substitute described above.

CSHB36(JUD) provides that the governor would be required to appoint nominees from a list of at least three qualified persons submitted by the chief justice of the Alaska Supreme Court. This requirement, that the governor appoint board members from a list of persons selected by the chief justice, subject to the right of the governor to request additional nominations, raises a constitutional question as to whether the legislature may so constrain the governor's ability to choose whom to appoint to an executive board.

The power to appoint members of state boards, commissions, and councils is an executive function to be exercised by the governor. In Bradner v. Hammond, 553 P.2d 1, 5 - 6 (Alaska 1976), the Alaska Supreme Court recognized that the Alaska constitution envisioned a strong executive and "that the appointment of executive officers is an executive function. . . ." The legislature may prescribe qualifications for the members of boards and commissions that are reasonably related to either the position or to the aim of the legislation and do not interfere with the governor's appointment power or with qualifications set out in the constitution. Various state courts have reached this same conclusion and have upheld legislative designations of qualifications for public offices, such as memberships on a board or commission. See, e.g., State v. Matassarin, 217 P. 930 (Kansas 1923); State v. Eischen, 76 N.W.2d 385 (Minn. 1956); Humane Society of the United States v. New Jersey Fish and Game Council, 362 A.2d 20 (1976); Hurd v. Freeland, 442 P.2d 344 (Okla. 1966); State v. Wells, 112 N.W.2d 601 (S.D. 1961); State v. Millsap, 605 S.W.2d 366 (Tex. App. 1980).

However, the Department of Law, which has generally taken a position very protective of the governor's prerogatives, has asserted that the legislature may not restrict the governor's appointment powers, such as by requiring the governor to select from a list of

names provided by particular groups.[1] The Department of Law has repeatedly argued that such limitations on the governor's appointment power are unconstitutional infringements upon the governor's authority. Letter to Walter J. Hickel, Governor, from Charles E. Cole, Attorney General, June 11, 1991 (file no. 883-91-0071); 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; 1980 Inf. Alaska Atty. Gen. Op. (file no. J-66-164-80), September 17. However, courts in other states have held that statutes requiring a governor to make appointments to a state board from a list of nominees submitted by other parties are constitutional. Kentucky Association of Realtors v. Musselman, 817 S.W.2d 213 (Ky. 1991); Opinion of the Justices, 316 A.2d 174 (N.H. 1974); Seidenberg v. New Mexico Board of Medical Examiners, 452 P.2d 469 (N.M. 1969); Hurd v. Freeland, 442 P.2d 344 (Okla. 1966); Marks v. Frantz, 298 P.2d 316 (Kan. 1956); Ingard v. Barker, 147 P. 293 (Id. 1915).

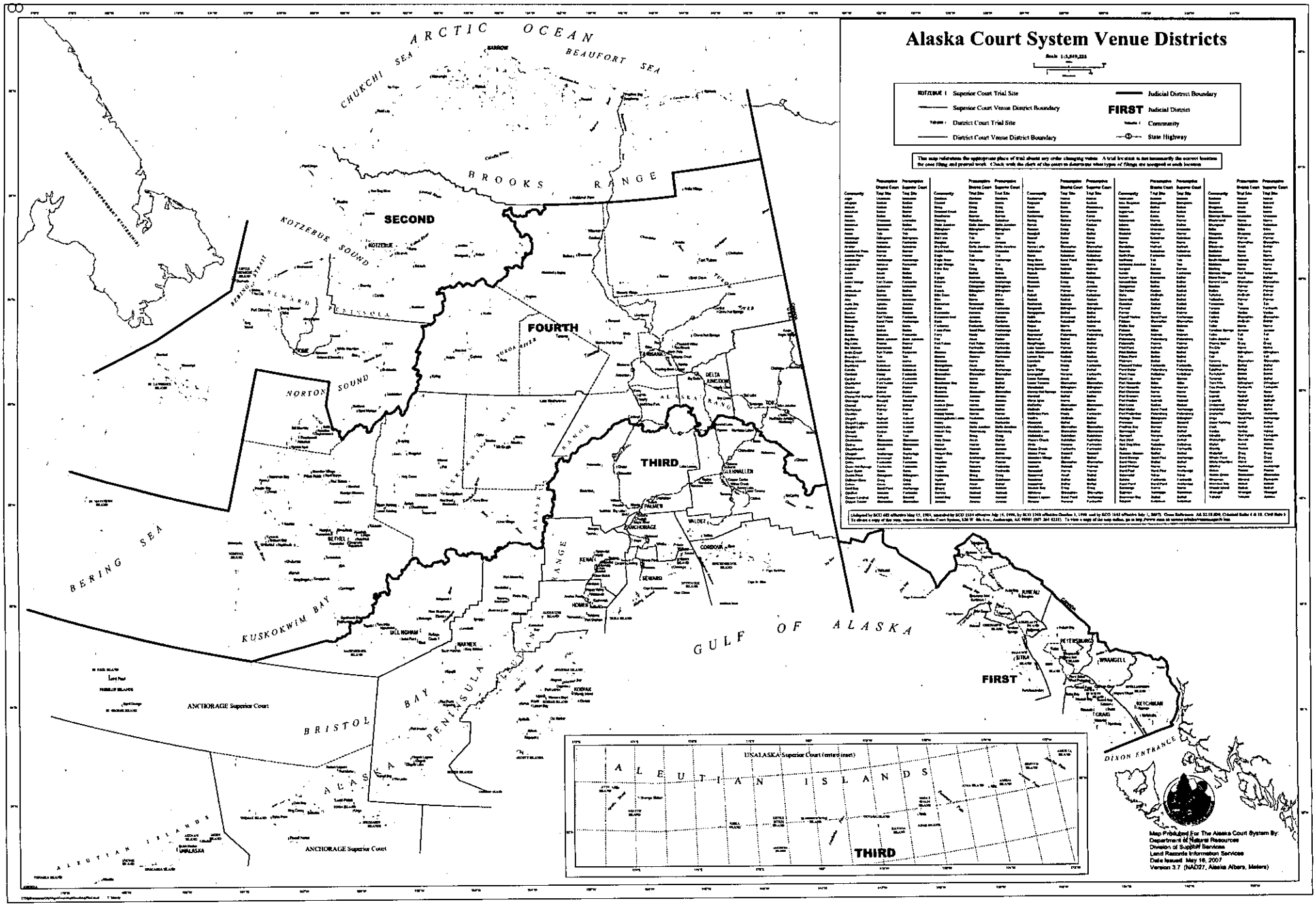
Nonetheless, at least three Alaska attorney general opinions or letters of advice have accepted that the legislature may prescribe reasonable qualifications for gubernatorial appointments to boards or commissions. 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; Memorandum to Governor Hammond from R. Pegues, August 13, 1979; 1988 Inf. Alaska Atty. Gen. Op. (file no. 883-88-0079), May 24.

In this instance, I cannot say how a court would interpret the reasonableness of a statutory requirement that the governor appoint members of the board from lists of nominees chosen by the chief justice of the Alaska Supreme Court.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:plm
10-238.plm

[1] Note however that certain members of several state boards and commissions are currently chosen by the governor from lists submitted by other persons. These boards and commissions include the Professional Teaching Practices Commission (AS 14.20.410), the Alaska Public Offices Commission (AS 15.13.020), the Alaska Historical Commission (AS 41.35.310), the State Officers Compensation Commission (AS 39.23.500), the Workforce Investment Board (AS 123.15.550), and the Alaska Retirement Management Board (AS 37.10.210).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Scale 1:5,849,225
KOTZEBUE 1 Superior Court Trial Site
Superior Court Venue District Boundary
Yakutat 1 District Court Trial Site
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Judicial District Boundary
FIRST Judicial District
Yakutat 1 Community
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This map substitutes the appropriate place of trial absent any order changing venue. A trial location is not necessarily the correct location for case filing and pretrial work. Check with the clerk of the court to determine when types of filings are assigned to each location
Community
Presumptive Superior Court Trial Site
Presumptive District Court Trial Site
Adopted by SCO 483 effective May 15, 1985, amended by SCO 1324 effective July 15, 1996, by SCO 1343 effective October 1, 1996 and by SCO 1641 effective July 1, 2007). Cross Reference: AS 22.10.020, Criminal Rules 4 & 18, Civil Rule 3
To obtain a copy of this map, contact the Alaska Court System, 820 W. 4th Ave., Anchorage, AK 99501 (907 264 0233). To view a copy of the map online, go to http://www.state.ak.us/courts/publicmaps.htm
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GULF OF ALASKA
JUNEAU
KETCHIKAN
WRANGELL
PETERSBURG
SITKA
CRAIG
FIRST
DIXON ENTRANCE
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ALASKA PENINSULA
ALEUTIAN ISLANDS
UNALASKA
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UNALASKA Superior Court (enlarged inset)
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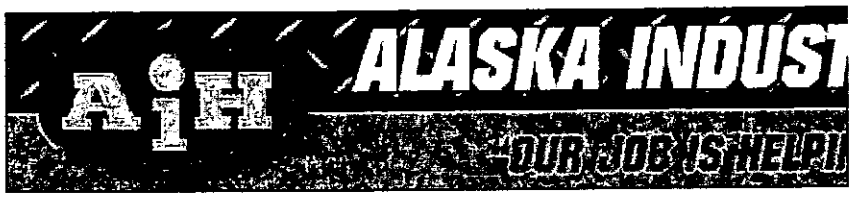

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Our view: Campaign disclosure

Lawmakers should make sure two good bills don't languish

Published: April 12th, 2010 07:14 PM
Last Modified: April 12th, 2010 07:15 PM

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Our view: Campaign disclosure
Our view: LNG export
Our view: School aid
Who's up / Who's down
Our view: That's a lot of bacon

The House has passed one bill. The Senate has passed the other. Each chamber should finish the work to guarantee an open elections process, one with all the money players identified and the issues laid out before everyone. The House approved House Bill 36, which covers initiatives. This bill:

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- Requires reporting of contributions and expenditures by groups and individuals backing or opposing a ballot initiative.

- Requires signature gatherers for an initiative to carry a copy of the initiative so that prospective signers could read just what it is the sponsors are trying to get on the ballot.

- Requires the lieutenant governor to hold at least eight public hearings, two in each of the state's four judicial districts, to include pro and con testimony on the initiative and public questions and comments.

- Requires review by an appropriate legislative committee of any initiative approved for the ballot. Lawmakers would have no authority to change or reject an initiative, but would hold hearings for testimony about the effects and costs of any initiative.

This is all to the good. Disclosure requirements will force all the moneyed friends and foes of an initiative to stand up and be counted. No anonymous donors. No front groups.

Formal hearings should provide a further vetting of initiatives and their consequences, with plenty of opportunity for open debate across the state.

Whenever lawmakers amend the initiative process, there's a natural wariness that they may be limiting the access of Alaskans to their constitutional right to the initiative process. That's not the case here. The more disclosure, the better. And the more public vetting of an initiative, the better.

ADVERTISEMENT

The Senate has approved Senate Bill 284, which covers campaign disclosures by corporations, unions and any other group that got a green light for campaign spending in the Supreme Court's January decision affirming corporate personhood. This bill:

- Requires corporations and other groups -- as "persons" -- to report what they're giving and what candidate or cause they support or oppose, and the names or principal officers of the groups or any donors to the group.

- Requires names and addresses of corporations and other groups behind a campaign ad.

- Requires full disclosure on any ads about who the top five contributors to that ad or group sponsoring it are -- in print that's readable or audio that's easily understood.

- Prohibits foreign nationals from contributing to Alaska campaigns.

In light of the Supreme Court decision, this is necessary legislation to keep Alaska elections open. The court amplified corporate power. The least Alaska can do in response is to make sure we can identify the sources of that power and their interests as we decide how to vote.

Both bills have strong support. The House initiative bill passed 35-5; the Senate disclosure bill passed 19-1. But Alaskans shouldn't take final passage and the governor's signature for granted. Good legislation has gotten lost before in the last days of deal-making before adjournment.

Lawmakers should make sure these bills become law.

BOTTOM LINE: Campaign disclosure laws should be on the books this spring.

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April 12, 2010

Honorable Hollis French
Chairman
Senate Resources Committee
Capitol Building
Juneau, AK 99801

Re: HB-36, Ballot Initiative Process

Dear Senator French,

I am writing to urge passage of House Bill 36 dealing with the ballot initiative process. The use of the ballot initiative process during the past several years has shown that changes to this important law are needed.

As currently written, the law contains loopholes that do not provide effective disclosure to Alaskans of exactly who or what groups are seeking to change Alaska statues. In contrast to the lax rules of disclosure for ballot initiatives, the disclosure requirements for political campaigns and for lobbying are extensive. As currently written, State Statures can be proposed, funded and passed to become State Law without input or debate by the Legislature or the Administration, and without the public even being aware of who is behind the initiative.

We urge that HB-36 be passed at the earliest possible time.

Sincerely,

Steven C. Borell, P.E.
Executive Director

Cc: Finance Committee Members

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MEMORANDUM February 25, 2010

SUBJECT: Questions relating to CSSSHB 36(JUD)
(Work Order 26-LS0197\S)

TO: Representative Bill Stoltze
Co-Chair of the House Finance Committee
Attn: Ben Mulligan

FROM: Alpheus Bullard
Legislative Counsel

You have asked three questions relating to the above-described bill.

1. Would a ban on paying ballot initiative circulators per signature be upheld by an Alaska Court?

The pay-per-signature prohibition contained in CSSSHB 36(JUD)[1] would, as drafted, likely be upheld by a state court against a challenge under the First Amendment.

---

[1] Section 10 of CSSSHB 36(JUD) amends AS 15.45.110(c) to read:

> (c) A circulator may not receive payment or agree to receive payment [THAT IS GREATER THAN $1 A SIGNATURE], and a person or an organization may not pay or agree to pay an amount, **based on the number of registered voters who sign a petition. This subsection does not prohibit a person or an organization from employing a circulator and**
>
> **(1) paying an hourly wage or salary;**
>
> **(2) establishing express or implied minimum signature requirements for the circulator;**
>
> **(3) terminating the petition circulator's employment if the circulator fails to meet certain productivity requirements; or**
>
> **(4) paying discretionary bonuses based on the circulator's reliability, longevity, and productivity** [THAT IS GREATER THAN $1 A SIGNATURE, FOR THE COLLECTION OF SIGNATURES ON A PETITION].

The circulation of initiative petitions involves core political speech, and is, therefore, protected by the First Amendment. The United States Supreme Court held in Meyer v. Grant, 486 U.S. 414 (1988), that a complete prohibition against paying petition circulators limited core political speech and severely burdened sponsors' First Amendment rights by (1) limiting the number of voices who could convey the petition sponsors' message, (limiting the size of the audience the sponsors would reach), and (2) making it less likely that the initiative petition's sponsors would garner the number of signatures necessary to place the matter on the ballot (limiting the sponsors' ability to make the matter the focus of statewide discussion). Id. at 423 - 424. Similarly, a prohibition against paying election-related petition circulators on any other basis than time worked was also found to create a severe burden on political speech in Citizens for Tax Reform v. Deters, 518 F.3d 378 (U. S. App. 6th Cir. 2008).

If the pay-per-signature prohibition in this bill is challenged, an Alaska court will review the evidence presented to determine the weight of the burden placed on initiative sponsors by the prohibition, and whether the state's interests justify the prohibition.[2] The bill's proposed prohibition prohibits only the "per-signature" method of paying petition circulators. It does not prevent initiative sponsors from establishing express or implied minimum signature requirements for the circulator, terminating the petition circulator's employment if the circulator fails to meet certain productivity requirements, or paying discretionary bonuses based on the circulator's reliability, longevity, and productivity. Because the prohibition is narrowly drafted to prohibit only a specific form of payment, it is likely to be interpreted by a court as imposing a lesser burden on the political speech of petition sponsors than the prohibitions at issue in Meyer or Citizens for Tax Reform. Like an Oregon prohibition against paying initiative circulators by the signature upheld in

---

[2] In Timmons v. Twin Cities Area New Party, 520 U.S. 351 (1997), the Supreme Court established the relevant framework for a court to employ in resolving these competing interests:

> When deciding whether a state election law violates First and Fourteenth Amendment associational rights, we weigh the character and magnitude of the burden the State's rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary. Regulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions. No bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms.

Id. at 358 - 359 (internal quotation marks and citations omitted).

Prete v. Bradbury, 438 F.3d 949 (9th Cir. 2006),[3] it simply "prohibits one method of payment." Id. at 962.

2. Can the legislature limit out-of-state contributions and expenditures for initiatives in the same manner as for candidates?

No. Imposing contribution limits for ballot initiatives, or prohibiting or limiting out-of-state contributions or expenditures made in support of or in opposition to ballot initiatives, would likely be interpreted by a court as an unconstitutional burden on the freedom of speech under the First Amendment to the Constitution of the United States, and article I, section 5 of the Constitution of the State of Alaska.

Campaign finance laws have been found permissible under the First Amendment because they address the problems of political corruption, and the United States Supreme Court has deemed this a sufficient reason to restrict speech. See Buckley v. Valeo, 424 U.S. 1 (1976) (upholding, in large part, the constitutionality of the Federal Election Campaign Act of 1971). However, campaign finance statutes that apply to initiatives and referenda in the same manner as candidate campaigns have been overturned, since an expenditure or a contribution made on behalf of an initiative campaign is not believed to pose the same potential for corruption as does a contribution to a candidate. "Speech relating to ballot initiatives (where quid pro quo corruption is not a significant danger) is entirely protected." State v. Alaska Civil Liberties Union, 478 P.2d 597, 606 - 607 (Alaska 1999). "[B]allot initiatives do not involve the risk of '*quid pro quo*' corruption present when money is paid to, or for, candidates." Buckley v. American Constitutional Law Foundation, 525 U.S. 182 (1999), citing Meyer v. Grant, 486 U.S. 414 (1988), citing First National Bank of Boston v. Bellotti, 435 U.S. 765, 786 (1978). Absent the threat of quid pro quo corruption, a court is unlikely to support any limitation on contributions and expenditures relating to an initiative no matter which state the contribution or expenditure is made from.[4]

---

[3] In this case, an Oregon court upheld an initiative pay-per-signature prohibition using the Timmons framework. The court examined the effect of the prohibition on (1) the pool of petition circulators, (2) the cost of gathering signatures, and (3) the invalidity rate of the signatures gathered. The court found that the prohibition did not severely burden initiative sponsors' speech because it (1) did not limit the pool of circulators, (2) restrict the size of the sponsors' potential audience, or (3) make it any less likely that the sponsors would be able to gather the necessary number of signatures to place their initiative on the ballot, and that this lesser burden was justified by the state's important regulatory interest in preventing fraud and its appearances in its electoral processes.

[4] A federal law, 2 U.S.C. 441(e), already prohibits a foreign national, directly or indirectly, from making a contribution or donation of money or other thing of value in connection with a federal, state, or local election.

3. Does CSSSHB 36(JUD)'s public hearing requirement create a constitutional issue?

The bill's public hearings requirement would present a constitutional problem if it burdened the First Amendment rights of an initiative proponent or an initiative opponent. However, nothing in the provision appears to either burden the speech of an initiative supporter or opponent.

The bill requires the lieutenant governor, or a designee of the lieutenant governor, to hold two or more public hearings concerning the initiative in each judicial district of the state.[5] Each hearing must include the written or oral testimony of one supporter of the initiative and one opponent of the initiative. No initiative proponent or opponent is required to appear. The hearings provide an opportunity for the public to hear testimony from a person supporting the initiative and a person opposing the initiative. Neither an initiative proponent nor opponent is required to participate. If an initiative proponent or opponent does desire to participate in a hearing held under the provision, the individual need not bear the costs and difficulties of attending the hearings, because the provision allows for testimony to be presented telephonically or in writing. No person's First Amendment right to speak on an initiative is burdened by the provision's hearing requirement.

If you have further questions, please do not hesitate to contact me.

TLAB:plm:ljw
10-073.plm

[5] There are four judicial districts in the state.

ALASKA STATE LEGISLATURE

REPRESENTATIVE KYLE JOHANSEN
MAJORITY LEADER

SPONSOR STATEMENT – HOUSE BILL 36
Version C.A

Alaska's lawmaking process is highly public and strives to be transparent. Shown by the passage of an omnibus ethics bill in 2006, Alaskan voters want to know who is contributing to candidate campaigns. Initiative-created law has the same authority and effect as law created by elected officials; therefore voters should be allowed to know who is making law through the initiative process. House Bill 36, also known as the Open and Transparent Initiative Act (OTIA), seeks to identify people and/or groups who financially contribute to initiative campaigns by requiring disclosure earlier in the process than is currently required. These guidelines are similar to those imposed upon elected officials. In addition, OTIA mandates that the Lieutenant Governor hold at least 2 public hearings in each judicial district (8 hearings total) and requires signature-gatherers to carry a full copy of the proposed initiative so potential signers have the opportunity to read all of the language rather than a short summary.

Initiative committees in Alaska are not held to high enough disclosure standards. There are loopholes in the current disclosure process that allow groups to hide contributors. There is a lack of public hearings and input. These shortcomings are not acceptable, and the Open and Transparent Initiative Act seeks to close these loopholes, repair the initiative process, and restore the faith of Alaskans in our election process.

Session: State Capitol, Juneau, AK 99801-1182 • (907) 465-3424 • Fax (907) 465-3793
Interim: 50 Front Street, Suite 203, Ketchikan, AK 99901 • (907) 247-4672 • Fax (907) 225-8546

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ALASKA STATE LEGISLATURE

REPRESENTATIVE KYLE JOHANSEN
MAJORITY LEADER

SECTIONAL ANALYSIS – HOUSE BILL 36
Version C.A

Section 1. Requires an individual, person, non-group entity, or group that contributes a total of $500 or more to a group organized for the principal purpose of influencing a bill proposed for inclusion on the ballot as an initiative under AS.15.45.020, to report the individual's, person's, non-group entity's, or group's contribution or contributions on a for prescribed by the Alaska Public Offices Commission (APOC) not later than 30 days after the contribution is made.

Section 2. Provides that each person other than an individual shall register with APOC before making an expenditure in support or opposition to a proposed initiatives bill filed with the lieutenant governor under AS 15.45.020.

Section 3. Requires a group to include the name of an initiative in the name of their group if they intend to spend more than 50 percent of their funds towards a single initiative on the ballot.

Section 4. Expands the meaning of "proposition" under AS 15.13.065(c) to include an initiative proposal application filed with the lieutenant governor under AS 15.45.020.

Section 5. Conforms subsection AS 15.13.110 (e) to the enhanced initiative reporting requirements found in the bill's section 6.

Section 6. Establishes new reporting requirements for initiative committees, persons, groups, or non-group entities making certain contributions or expenditures in support or opposition to an initiative proposal application filed with the lieutenant governor under AS 15.45.020 or an initiative that has been approved for placement on the ballot.

Section 7. Expands the definition of "contribution" applicable to state election campaigns to include certain purchases, payments, promises, or obligations to pay, loans or loan guarantees, deposits or gifts of money, goods, or services for which a charge is ordinarily made that is made for the purpose of supporting or opposing an initiatives proposal application filed with the lieutenant governor under AS 15.45.020.

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Section 8. Expands the definition of "expenditure" applicable to state election campaigns to include certain purchases or transfers of money or anything of value, or promises or agreements to purchase or transfer money or anything of value, incurred or made for the purpose of supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020.

Section 9. Changes the definition of group to include those organized to file an initiative proposal application under AS 15.45.020.

Section 10. Echoes 15.45.040 in saying that if an initiative is not confined to a single subject, it will not be certified for the ballot.

Section 11. Requires that each initiative petition contains a copy of the proposed initiative bill.

Section 12. Requires that the Lieutenant Governor (1) hold hearings in each judicial district of the State and (2) provide reasonable notice of each public hearing. Provides a time frame for the Lieutenant Governor to hold public hearings, which is after the measure is to appear on the ballot and at least 30 days prior to the election.

Section 13. Requires an election pamphlet to be prepared and mailed to each household for any special election at which a ballot proposition is scheduled to appear on the ballot.

Section 14. Provides that an election pamphlet for a special election at which a ballot measure is scheduled to appear on the ballot shall contain (1) the full text of the measure, (2) the ballot title and summary of the proposition, (3) a statement of the costs to the state of implementing the law proposed in the initiative, (4) a neutral summary of the proposition, (5) statements submitted that advocate voter approval or rejections of the proposition not to exceed 500 words, and (6) any additional information on voting procedures that the lieutenant governor considers necessary.

Section 15. Requires a standing committee of the legislature review initiatives that the lieutenant governor has approved for placement on the ballot.

Section 16. Provides that the provisions of the Act apply to an initiative proposed by filing an application with the lieutenant governor under AS 15.45.020 on or after the effective date of the Act.

From Ketchikan Daily News; Sat/Sun March 14-15 2009.

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Initiatives deserve same vetting as bills

By KYLE JOHANSEN

POINT OF VIEW

House Bill 36, also known as the Open and Transparent Initiative Act, is an attempt to tackle an enormous problem we have here in Alaska: Our initiative process is used as a way for special interests to maneuver around the lawmaking body to enact laws without regard for the public as a whole. The right to petition government belongs to the citizens of Alaska. It is imperative that the process be protected from abuse. HB36 offers those safeguards. I am taking this opportunity to review the changes I believe need to happen to protect our initiative process.

Currently, initiative sponsors are not required to hold public hearings. However, the Legislature is required to hold public hearings on all bills that are voted on as a body. Most bills receive multiple committee referrals and spend hours being publically vetted. Though bills passed by the Legislature and initiatives passed by the people have the same effect, they are not held to the same public-hearing requirements. Mandating a proposed initiative go through a public hearing process is an essential element for developing sound public policy. HB36 requires that a standing committee review the proposed initiative. This allows the affected state agencies to come forward and express how the initiative will affect their operations. When a bill is in front of the Legislature, the affected state agencies come before the appropriate committee and explain the implementation of the policy. Initiatives that are passed by the people are law, and the agencies that have to administer those laws should be afforded the same ability.

Prohibiting initiatives that are substantially similar to a failed initiative says that the people have spoken. We have seen the same initiatives proposed year after year, with a lack of regard for the public's will. If an initiative fails, the public has spoken. However, people's attitudes, beliefs, and perceptions can change. That is why I think it is appropriate that failed initiatives be restricted from the ballot for one election cycle to save the state money, time, and resources.

Signature-gatherers are commonly paid on a per-signature basis. In Alaska, they are not supposed to receive more than $1 per signature. Twenty-four states have an initiative process, and many have banned the practice of paying per signature because of fraud. Petition circulators in other states have been caught using disingenuous practices to gather more signatures to receive a bigger paycheck. If petition circulators did not collect payment based on the number of signatures, they would be less inclined to commit fraud.

Petition circulators are allowed to solicit signatures for more than one initiative at a time. This means that someone can have multiple clipboards outside the grocery store, shuffling them around while trying to convince you to sign their petitions. It is easy to confuse which petition was explained to you and which petition you have agreed to sign. Petition circulators should be allowed to collect signatures for only one initiative at a time to reduce confusion, deceptive practices, and misleading information.

Unlike the current initiative process, HB36 will go through many public committee hearings where it will be vetted, debated and amended. This is a chance for the public to weigh in on the bill, for lawmakers to ask questions and clarify issues of concern, for changes to be proposed, and many other aspects to be publicly debated so the best public policy is put forward. As a reminder, this is not required of initiative legislation. What you see is what you get, and unfortunately, what you don't see is what you get as well.

I encourage you to read the legislation yourself. Please form your own opinion based on the facts of the bill itself, rather than regurgitate information given to you by parties with their own agenda. HB36 can be found at www.legis.state.ak.us/basis.

[Republican Kyle Johansen represents Ketchikan in the Alaska House.]

Fighting for Second Amendment rights

Initiative and Referendum in the 21st Century

Final Report and Recommendations of the NCSL I&R Task Force

NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

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July 2002

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EXECUTIVE SUMMARY

On December 7, 2001, the National Conference of State Legislatures assembled a task force to review the growing use of initiatives and referendums around the country and to examine their effect on representative democracy at the state level.

The Initiative and Referendum Task Force found that opportunities for abuse of the process outweigh its advantages and does not recommend that states adopt the initiative process if they currently do not have one.

The task force also developed recommendations that would enable initiative states to make their processes more representative. For states that are intent upon adopting an initiative process, the task force offers a set of guidelines to enhance the process and to avoid many of the pitfalls currently experienced by the initiative states. The task force urges such states to consider giving preference to a process that encourages citizen participation without enacting specific constitutional or statutory language—specifically, the advisory initiative or the general policy initiative.

The 34 recommendations contained in this report acknowledge that the initiative process has outgrown the existing laws that govern it. After listening to expert testimony from a wide variety of witnesses and compiling data from all 50 states, the task force concluded that the initiative has evolved from its early days as a grassroots tool to enhance representative democracy into a tool that too often is exploited by special interests. The initiative lacks critical elements of the legislative process and can have both intended and unintended effects on the ability of the representative democratic process to comprehensively develop policies and priorities.

As a result, the task force suggests that initiative states reform drafting, certification, signature-gathering and financial disclosure statutes; adhere to single subject rules; and improve practices regarding voter education. It also recommends that initiatives be allowed only on general election ballots.

It is the task force's intent that the discussion and adoption of the reforms in this report lead to a more thoughtful lawmaking process, improve interaction between initiative proponents and legislatures, and ultimately produce better public policy and reinforce representative democracy.

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Task Force Recommendations

The following 34 recommendations were adopted unanimously at the final meeting of the NCSL Initiative and Referendum Task Force in Denver, Colorado, on April 26-27, 2002.

The task force does not recommend that states that currently do not have an initiative process adopt one. The task force believes that representative democracy is more desirable than the initiative. The disadvantages of the initiative as a tool for policymaking are many, and the opportunities for abuse of the process outweigh its advantages. However, if a state is intent upon adopting an initiative process, the first four recommendations lay out the task force's view of an effectively structured process.

The remaining recommendations deal with specific elements of the initiative process and are intended as guidelines to improve existing procedures. The task force believes that the adoption of these recommendations will improve the initiative process to the benefit of both state government and voters and will result in improved public policy making via the initiative.

General Recommendations Regarding the Initiative Process

Recommendation 1.1: States that are considering adopting an initiative process should give preference to one that encourages citizen participation without enacting specific constitutional or statutory language. Specifically, states should consider:

A. First, adopting the advisory initiative; or
B. In the alternative, adopting the general policy initiative.

Recommendation 1.2: If states wish to adopt an initiative process and neither the advisory initiative nor the general policy initiative are adopted, they should adopt an indirect initiative process.

Recommendation 1.3: If states adopt a direct initiative process, they should adopt only a statutory initiative process, not a constitutional amendment initiative process.

Recommendation 1.4: If states adopt a constitutional amendment initiative process, they also should adopt a statutory initiative process.

Involving the Legislature in the Initiative Process

Recommendation 2.1: States that currently have a direct initiative process should consider adopting an indirect process as well, and provide incentives to encourage its use.

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Recommendation 2.2: After a specified percentage of signatures has been gathered for an initiative petition, the legislature should provide for public hearings on the initiative proposal.

Recommendation 2.3: When appropriate, the legislature should place an alternative legislative referral on the ballot with an initiative that appears on the ballot.

The Subject Matter of Initiatives

Recommendation 3.1: States should encourage the sponsors of initiatives to propose them as statutory initiatives when possible, rather than as constitutional amendments.

Recommendation 3.2: States should adopt the single subject rule to enhance clarity and transparency in the initiative process.

Recommendation 3.3: If an initiative measure is rejected by voters, states should prohibit an identical or substantially similar initiative measure from appearing on the ballot for a specified period of time.

The Drafting and Certification Phase

Recommendation 4.1: States should require a review of proposed initiative language by either the legislature or a state agency. The review should include non-binding suggestions for improving the initiative's technical format and content, and should be considered public information.

Recommendation 4.2: States should require the drafting and certification of a ballot title and summary for each initiative proposal. Ballot titles must identify the principal effect of the proposed initiative and must be unbiased, clear, accurate, and written so that a "yes" vote changes current law.

Recommendation 4.3: States should require the drafting of a fiscal impact statement for each initiative proposal. The statement should appear on the petition, in the voter information pamphlet, and on the ballot.

Recommendation 4.4: States should establish a review process and an opportunity for public challenge of technical matters, including adherence to single subject rules, and ballot title, summary and fiscal note sufficiency, to be made prior to the signature-gathering phase.

The Signature Gathering Phase

Recommendation 5.1: States should require that initiative proponents file a statement of organization as a ballot measure committee prior to collecting signatures. States should void any signature that is gathered before a statement of organization is filed.

Recommendation 5.2: States should provide for safeguards against fraud during the signature gathering process. Safeguards should include:

A. Prohibiting the giving or accepting of money or anything else of value to sign or not sign a petition.
B. Requiring a signed oath by circulators, stating that the circulator witnessed each signature on the petition and that to the best of the circulator's knowledge, the signatures are valid.
C. Requiring circulators to disclose whether they are paid or volunteer.

Recommendation 5.3: States should provide for an adequate but limited time period for gathering signatures. The deadline for submission should allow a reasonable time for verification of signatures before the ballot must be certified.

Recommendation 5.4: States should establish a limit on the length of time that verified signatures are valid.

Recommendation 5.5: States should require a higher number of signatures for constitutional amendments than is required for statutory initiatives.

Recommendation 5.6: To achieve geographical representation, states should require that signatures be gathered from more than one area of the state.

Recommendation 5.7: Each state should establish a uniform process for verifying that the required number of valid signatures has been gathered.

Voter Education

Recommendation 6.1: States should provide to the public a manual describing the initiative and referendum process.

Recommendation 6.2: States should encourage public education and discussion about measures on the ballot.

Recommendation 6.3: States should produce and distribute a voter information pamphlet containing information about each measure certified for the ballot.

Recommendation 6.4: In addition to a printed voter information pamphlet, states should consider alternative methods of providing information on ballot measures, such as the Internet, video and audio tapes, toll-free phone numbers, and publication in newspapers.

Financial Disclosure

Recommendation 7.1: States should require financial disclosure by any individual or organization that spends or collects money over a threshold amount for or against a ballot measure.

Recommendation 7.2: After a title has been certified for an initiative measure, states should require that proponents and opponents of the initiative measure file a statement of organization as a ballot measure committee prior to accepting contributions or making expenditures.

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Recommendation 7.3: States should make the disclosure requirements for initiative campaigns consistent with the disclosure requirements for candidate campaigns.

Recommendation 7.4: States should prohibit the use of public funds or resources to support or oppose an initiative measure. This should not preclude elected public officials from making statements advocating their position on an initiative measure.

Voting on Initiatives

Recommendation 8.1: States should allow initiatives only on general election ballots.

Recommendation 8.2: States should adopt a requirement that creates a higher vote threshold for passage of a constitutional amendment initiative than for passage of a statutory initiative.

Recommendation 8.3: States should require that any initiative measure that imposes a special vote requirement for the passage of future measures must itself be adopted by the same special vote requirement.

Recommendation 8.4: States should ensure that statutory initiative measures require the same vote threshold for passage that is required of the legislature to enact the same type of statute.

Recommendation 8.5: States should adopt a procedure for determining which initiative measure prevails when two or more initiative measures approved by voters are in conflict.

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INTRODUCTION

Initiative and referendum operated quietly in the background of state politics for much of the 20th century, but during the last decade, it has come back into vogue. More initiatives are circulated, more make it to the ballot, and more money is spent in the process than ever before. Consider the numbers: 183 statewide votes on initiatives in the 1970s, 253 in the 1980s, and 383 in the 1990s, more than double the total from the 1970s. California alone accounts for 130 of the total 819 measures during that 30-year period; Oregon can claim 107. Between them, these two states account for nearly 30 percent of all initiatives from 1970 to 1999. It is no wonder that people in California and Oregon are beginning to voice concerns about the initiative process.

Initiative advocates say the resurgence of the initiative is good for states—it means citizens are using it as a tool to implement new laws and reforms that the legislature is unable or unwilling to enact. Besides accomplishing policy change, supporters also say that initiatives increase citizen involvement with government—people are not only more aware of state policy issues, but they are also more likely to vote. For these reasons, movements have begun to establish an initiative process in some of the states that currently do not have such a process.

However, in some states where the initiative is heavily used, there is growing public frustration with initiatives, and some people are beginning to speak out against the process. Legislatures are struggling to find ways to prevent fraud in the signature-gathering process; disclose information about who pays for initiative campaigns; and add flexibility to the process to accommodate more debate, deliberation and compromise than presently exists. Equally concerning to many is the disadvantage that, unlike our legislatures' process of representative government, decisions made through the initiative process do not provide an opportunity to accommodate minority interests. Most importantly, initiatives ask voters to make simple yes-no decisions about complex issues without subjecting the issue to detailed expert analysis and without asking voters to balance competing needs with limited resources. In short, the initiative affects the ability of representative democracy to develop policies and priorities in a comprehensive and balanced manner.

The problems with the initiative process are not easy to solve for a number of reasons. The courts have made it difficult to regulate both petition circulators and initiative campaign finance, and almost any reform can be a difficult political issue because proponents of the initiative generally are hostile to legislative attempts to change the process.

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The initiative is a vital and popular part of democracy in half the states (refer to appendix A for a list of initiative states), but it is clear that the initiative has outgrown the existing state laws governing it. NCSL's Initiative and Referendum Task Force set out to first gather the facts and data necessary to paint an accurate picture of how the initiative process works in each state. It identified and focused on problems in the process, then considered ways that the process might be made more open and flexible. The task force feels strongly that the changes it recommends in the initiative process would equally benefit both voters and the legislative process, and that, in the end, a reformed initiative process might produce better public policy.

The task force met three times during a five-month period. Meetings were held on:

- December 7-8, 2001, in Washington, D.C.;
- February 8-9, 2002, in Washington, D.C.; and
- April 26-27, 2002, in Denver, Colorado.

The task force took great care to ensure that it heard testimony from experts and activists on a wide array of issues and from as many points of view as possible. Presenters included both supporters and critics of the initiative process, citizens who use the initiative process, and election administrators. The experts who testified before the task force were:

David Broder, *Washington Post*, Washington, D.C.;
Lois Court, Save our Constitution, Colorado;
Neal Erickson, Office of the Secretary of State, Nebraska;
Wayne Pacelle, Humane Society of the United States, Washington, D.C.;
John Perez, Speaker's Commission on the California Initiative Process, California;
Honorable Joe Pickens, State Representative, Florida;
Larry Sokol, Speaker's Commission on the California Initiative Process, California;
M. Dane Waters, Initiative and Referendum Institute, Washington, D.C.; and
Joseph F. Zimmerman, State University of New York-Albany, New York.

In addition to the experts who testified before the task force, the task force members themselves are experts on the initiative process. The perspectives and suggestions that each member brought to the table contributed to the extensive body of knowledge the task force developed about how the initiative works around the country. Finally, the task force also relied on a wide array of written materials on the initiative process. These include reports from earlier initiative reform commissions and task forces, and the many books and academic papers that are listed in appendix B and in the reference section of this report.

The task force adopted 30 recommendations for legislatures in the initiative states that are seeking guidance on how their initiative process might be improved. Four additional recommendations are meant for states that may be thinking about adopting an initiative process. Although the task force does not recommend that non-initiative states adopt such a procedure, these four recommendations are offered for those states that have, nonetheless, made the decision to go forward.

All the recommendations were based on a set of observations and conclusions about representative and direct democracy that were adopted by the task force at its first meeting. These principles reflect the task force members' belief that it is important to carefully balance the pure democratic impulse of the initiative with the deliberative, consensus-

building practices of representative democracy. It also is the belief of task force members that the adoption of this set of recommended reforms by initiative states will lead to a more thoughtful lawmaking process, improved interaction between initiative proponents and legislatures, and ultimately, better public policy.

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Observations and Conclusions About Representative and Direct Democracy

Adopted by the NCSL I&R Task Force on April 27, 2002

We offer in the following observations regarding representative and direct democracy.

1. Representative democracy is the foundation of America's system of government.

2. Representative democracy has provided a stable and flexible system of government that has served America well for more than 200 years.

3. Direct democracy, as envisioned in the initiative and referendum system, was first instituted as a check on representative democracy. It was meant to enhance representative government, not to supercede or abolish it.

4. As intended by its founders, the initiative and referendum process was meant to give citizens a tool to break what they perceived as the hold of special interests over some state legislatures.

5. In most of the 24 states where it exists, the initiative is a popular part of the lawmaking process.

6. The initiative brings to the fore issues that may not receive legislative attention or final action and engages citizens in a debate of important public policy issues.

Based on these observations, we draw the following conclusions about direct democracy.

1. The initiative has evolved from its early days as a grassroots tool to enhance representative government. Today, it is often a tool of special interests.

2. The initiative process, as it exists today, lacks some of the critical elements of the representative system of government, including debate, deliberation, flexibility, compromise and transparency.

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3. The initiative process does not involve all the checks and balances that representative government does.

4. The initiative can affect the ability of representative democracy to develop policies and priorities in a comprehensive and balanced manner.

5. As the initiative process and the way it is used have evolved over time, a review of the laws governing it is merited.

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NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Banning Payment-per-Signature for Initiative Petition Circulators

Updated May 28, 2008

It is common for initiative sponsors to pay circulators on a per-signature basis to gather petition signatures. Payments typically range from $1 to $3 per signature, and occasionally are as high as $10 per signature. Critics argue that this encourages fraud—since a circulator who collects more signatures will earn more money, circulators who are paid per signature are more likely to commit acts of fraud such as forging signatures or misrepresenting the content of the petition in order to encourage people to sign.

Presently, six states (Montana, Nebraska, North Dakota, Oregon, South Dakota and Wyoming), have laws which ban initiative sponsors from paying petition circulators per signature. Instead, they may pay a flat fee or an hourly salary. These laws have been challenged in the courts with mixed results. North Dakota and Oregon's provisions have been upheld by the U.S. 9th and 8th Circuit Courts, respectively. However, similar provisions in Idaho, Maine, Mississippi, Ohio and Washington were held unconstitutional by federal district courts. The Ohio case was upheld by the U.S. 6th Circuit Court of Appeals in March 2008.

Montana (MCA §13-27-102(2)(b))
"A person gathering signatures for the initiative, the referendum, or to call a constitutional convention...may not be paid anything of value based upon the number of signatures gathered" (2007 Mont. Laws, Chap. 481)

Nebraska (NRS §32-630(3)(g))
No person shall pay a circulator based on the number of signatures collected.
(2008 Neb. Laws, L.B. 39)

North Dakota (N.D. Cent. Code §16.1-01-12(11))
"It is unlawful for a person to...[p]ay or offer to pay any person, or receive payment or agree to receive payment, on a basis related to the number of signatures obtained for circulating an initiative, referendum, or recall petition. This subsection does not prohibit the payment of salary and expenses for circulation of the petition on a basis not related to the number of signatures obtained, as long as the circulators file their intent to remunerate prior to submitting the petitions..."
Upheld in 2001 by the U.S. 8th Circuit Court of Appeals, Initiative & Referendum Institute v. Jaeger.

Oregon (Or. Const. Art. IV §1b)
"It shall be unlawful to pay or receive money or other thing of value based on the number of signatures obtained on an initiative or referendum petition. Nothing herein prohibits payment for signature gathering which is not based, either directly or indirectly, on the number of signatures

obtained. [Created through initiative petition filed Nov. 7, 2001, and adopted by the people Nov. 5, 2002]"
Upheld in February 2006 by the U.S. 9th Circuit Court of Appeaks, Prete v. Bradbury.

South Dakota (new section added to §12-13 during the 2007 legislative session, HB 1156)
No person may employ, reward, or compensate any person to circulate a petition for an initiated measure, referred law, or proposed amendment to the South Dakota Constitution based on the number of registered voters who signed the petition. Nothing in this section prohibits any person from employing a petition circulator based on one of the following practices:
(1) Paying an hourly wage or salary;
(2) Establishing either express or implied minimum signature requirements for the petition circulator;
(3) Terminating the petition circulator's employment, if the petition circulator fails to meet certain productivity requirements; and
(4) Paying discretionary bonuses based on reliability, longevity, and productivity.
Any violation of this section is a Class 2 misdemeanor.

Wyoming (Wyo. Stat. §22-24-125)
"A circulator of an initiative or a referendum petition or a person who causes the circulation of an initiative or a referendum petition may not receive payment for the collection of signatures if that payment is based upon the number of signatures collected. Nothing in this section prohibits a circulator of an initiative or a referendum petition or a person who causes the circulation of an initiative or a referendum petition from being paid a salary that is not based upon the number of signatures collected."

Dollar-Amount Limitations on Payment per Signature

In Alaska, circulators may not be paid more than $1 per signature (AS §15.45.110(c)).

Source: National Conference of State Legislatures
May 2008
For more information, contact Jennie Drage Bowser at 303-856-1356.

Held Unconstitutional:

Idaho
Held unconstitutional in 2001 by a U.S. District Court. Idaho Coalition United for Bears v. Cenarrusa.

Maine (Me. Rev. Stat. tit. 21-A §904-A (REPEALED))
Held unconstitutional in 1999 by the U.S. District Court of Maine. On Our Terms '97 PAC v. Secretary of State of State of Maine.

Mississippi (Miss. Code Ann. §23-17-57(3))
Held unconstitutional in 1997. Term Limits Leadership Council v. Clark, 984 F.Supp. 470 (S.D. Miss. 1997)

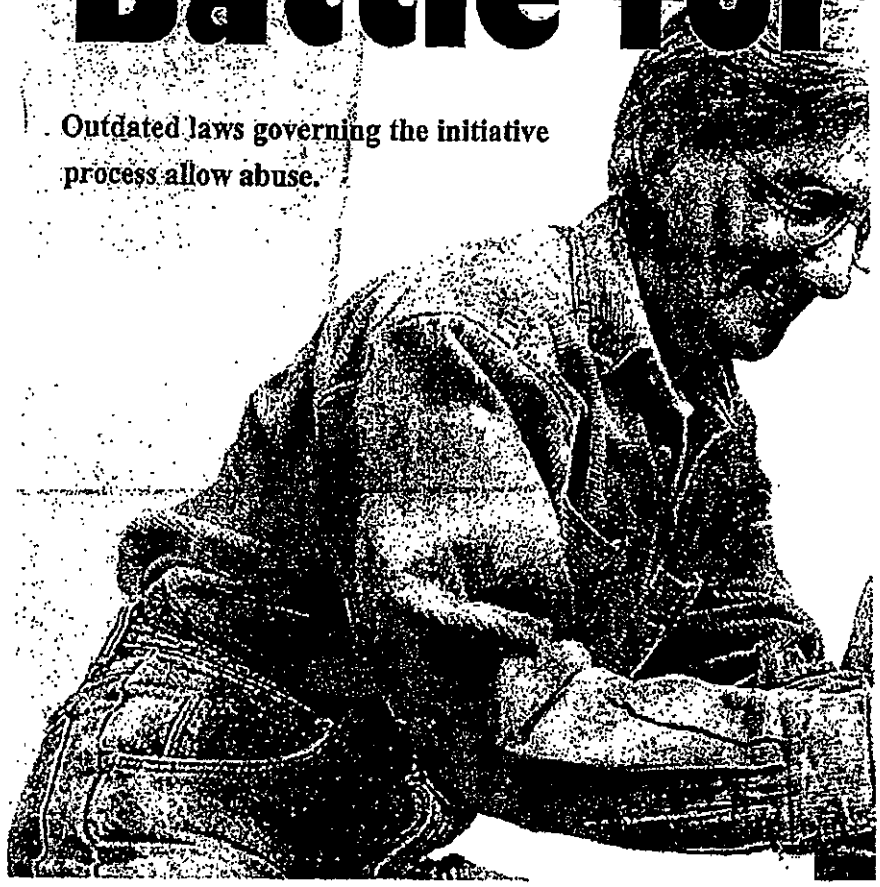
Ohio (Ohio Code §3599.111)
Made it a felony to pay petitioners in any manner except upon their time worked.
Declared unconstitutional on December 1, 2006 by a U.S. District Court Judge. Citizens for Tax Reform v. Deters, 1:05-cv-212 (Cincinnati). Upheld by the 6th Circuit Court of Appeals in March 2008.

Washington (REPEALED)
Held unconstitutional in 1994 by a federal district court, LIMIT v. Maleng.

Source: National Conference of State Legislatures
May 2008
For more information, contact Jennie Drage Bowser at 303-856-1356.

Battle for

Outdated laws governing the initiative process allow abuse.



BY JENNIE DRAGE BOWSER

One of the little-noticed stories of the 2008 election was the escalating tug-of-war between legislatures and activists over the rules governing the citizen initiative process.

The struggle has ramped up dramatically since the 2006 election. Legislatures in the 24 states that allow initiatives have shown a keen interest in improving the process ever since the use of the citizen petition to place issues on the ballot skyrocketed in the 1990s. And recent legislative activity has been higher than ever before.

States have passed about double the number of bills addressing the initiative process in the 2007-2008 biennium (a total of 47 so far, with legislatures still in session in a handful of states) compared to the previous two biennia (22 in 2005-2006 and 32 in 2003-2004).

Why the heightened interest?

The process has changed tremendously in the past two decades. The initiative "industry"—individuals and firms that make a living from the initiative process by researching and drafting proposals, gathering signatures or campaigning for or against initiatives—has exploded. The average number of initiatives on ballots nationwide has doubled from 31 a year in the 1970s to 62 a year in the 2000s. And laws governing the process haven't kept pace.

Some state laws, for example, do not specify which official has the authority to investigate and prosecute abuses, while others lack the capacity to verify that circulators meet the legal qualifications.

Colorado Representative Andy Kerr was one of the co-sponsors of an unsuccessful referendum on the 2008 ballot that would have made qualifying constitutional initiatives harder, but statutory initiatives easier.

REPRESENTATIVE ANDY KERR COLORADO

Jennie Drage Bowser is NCSL's expert on ballot measures.

He sees flaws in the initiative process, particularly in a state that had more measures on the ballot in 2008 than any other state.

"Citizens have a lot of power to change and propose laws and constitutional amendments," he says. "But the way the process is set up in Colorado, our constitution can be changed frequently without these amendments being fully vetted first."

HARD SELL

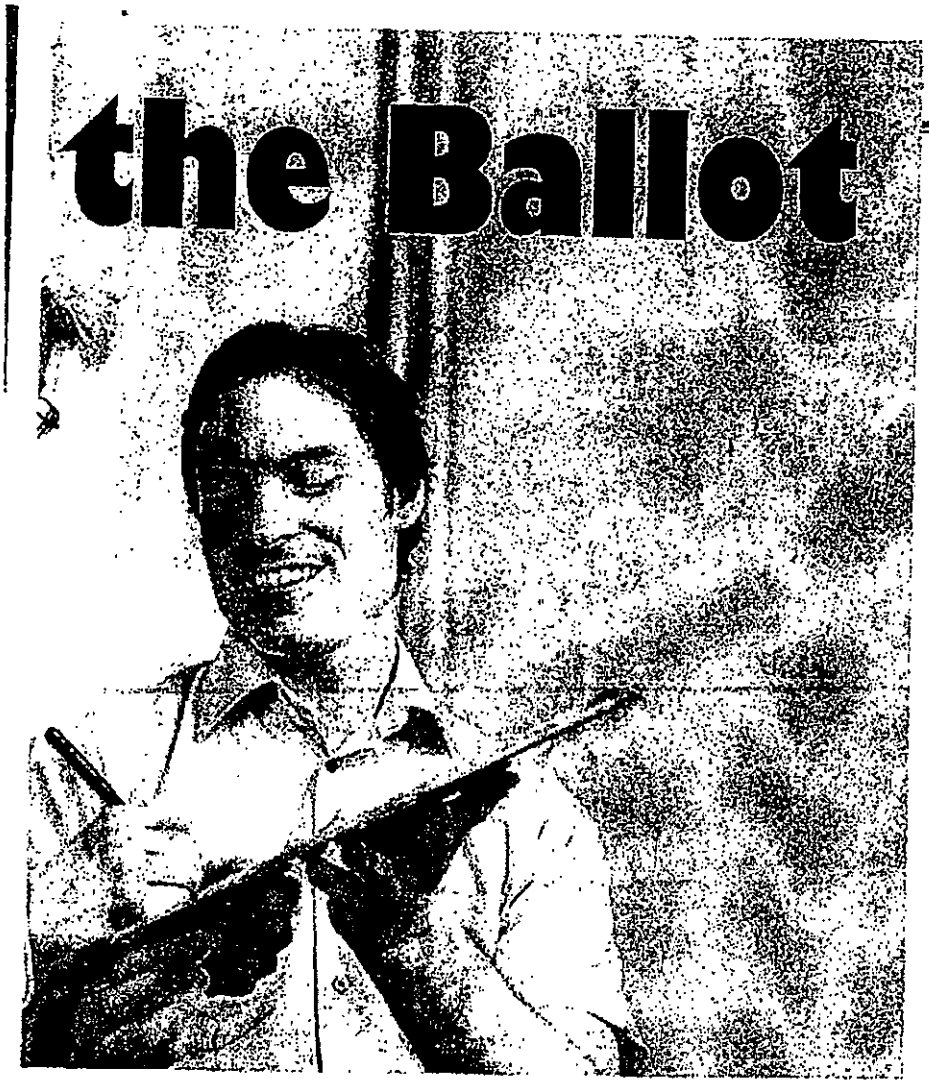
It is difficult, however, for legislatures to limit the number of initiatives qualifying for ballots, and whether or not they should is a controversial question. Increasing the number of signatures required, tinkering with time limits and restricting the subject matter involves amending state constitutions. And that requires voter approval.

It isn't always easy to convince voters that changing the process is a good idea, as Kerr learned in November.

Making the process more difficult rarely slows down well-funded petition efforts that can afford to hire and pay an army of circulators. It's the grassroots efforts, which depend on volunteers, that suffer from higher signature thresholds and shorter petition timeframes.

Details of the process in state law are what legislatures can, and with increasing frequency do, change without voter approval. States have clarified rules for petition formats, restructured timelines to allow for the added administrative burdens of processing a high volume of petitions, and spelled out more clearly the procedures for evaluating and counting signatures. Voter education is an area ripe for reform, too, particularly as technological advances make it easier to use multimedia and multi-lingual approaches to explain measures on the ballot.

2704



SIGNATURE-GATHERING FRAUD

Along with the explosion in the number of initiatives is the issue of fraud. The courts removed at least half a dozen measures from the ballot in 2006 for deceit in gathering signatures. In a Montana case, a court wrote that the "signature-gathering process was permeated ... by a pattern of deceit, fraud and procedural noncompliance."

Specific instances of fraud in Montana, Nevada and Oklahoma included circulators who opened the phone book and forged the signatures of listings onto their petitions. Others inserted carbon paper and a second petition beneath the one they asked voters to sign, thus obtaining a signature on another petition without the signer's knowledge. One circulator told voters they needed to sign in three different places if they supported the issue. In reality, they were unwittingly signing three separate petitions. And accusations of circulators who misrepresent or conceal the content of their petition are common.

Kristina Wilfore is executive director of the Ballot Initiative Strategy Center, which serves as a clearinghouse for progressive ballot measures. She says policing the process is tough.

"Part of the problem is that the state officials in charge of watching over the process aren't equipped, funded or modernized enough to catch the few bad apples that are responsible for the vast majority of what eventually gets on the ballot," she says.

Wilfore says that it was only a few years ago that she began to hear about extreme abuses in the process by a handful of signature-gathering companies.

Signature-gathering is now dominated by a few professional firms that hire people who make a living moving from state to state. In more than one initiative state, they are not required to register. That means they cannot be identified or prosecuted for fraud because signatures can't be traced to particular circulator. Wilfore calls the signature-gathering process "one of the most neglected areas" of the initiative process when it comes to state laws and regulations.

Efforts to curb abuse include new laws to ban paying signature gatherers on a per-signature basis, and instead require an hourly wage. Six states now prohibit payment-per-signature, with three of those laws adopted in the 2007-2008 legislative session. Other new laws require circulators to offer people a chance to read the proposal in full before signing, set age and residency requirements for circulators, and apply criminal penalties for forgeries and fraud in knowingly submitting a petition with invalid signatures.

ACTIVISTS STRIKE BACK

Initiative supporters are rarely happy when the legislature enacts changes that add to the cost or complexity of the initiative process. In some states, they have fought back by trying to get measures on the ballot that would make the initiative process easier.

But voters don't necessarily support them. In 2006, Colorado voters rejected Amendment 38, an initiative that would have significantly reduced regulation of the initiative process. And petitions easing regulation of the initiative process were circulated but failed to qualify this year in Arizona, Massachusetts, Oregon and Washington.

Legislatures started calling for reform of the initiative process in the early 2000s. It's not just state legislatures that are calling for reform these days, however. Cities and academic groups and even pro-initiative groups have joined the call for change.

Given the number of initiatives on statewide ballots over the past two decades, it's clear the initiative is not going away. It will continue to be a vibrant process in most of the states that allow it. But it's up to legislatures to ensure the process promotes ethical behavior among those involved, and that the rules surrounding it allow for as much transparency and deliberation as possible without restraining a process whose popularity is not likely to decline. It's not an easy task, and is certain to be one that legislatures grapple with well into the next decade.

2705

Guest Opinion - Representative Kyle Johansen

Let's fix Alaska's ballot initiative process

A citizen's right to petition their government is a right reserved to the people of Alaska granted by Article 11 of the Alaska State Constitution. The concept of the initiative is based on the principle of direct democracy – the people's ability to change law and policy themselves rather than having to do so through their elected representative. This right is held so close to Alaskans, and it is important to guard this process from abuse.

In the past few election cycles, it has become wildly apparent to Alaskans that their initiative process does not serve the best interests of the people. Special interests have hijacked the citizen's initiative. Sources of funds are hidden. Contributor's identities are veiled. Alaskans deserve better. Alaskans deserve an open and transparent process.

I have introduced legislation that does just that. House Bill 36 will make the initiative process more open to the public, including public hearings and more financial disclosures. The current laws governing the initiative process are easy to skirt, and special interests have used the system to their advantage. The initiative process is a tool that belongs to the people of Alaska, and as such, it should be safeguarded from special interests with self-serving goals.

The financial disclosure process for initiatives is flawed. It is easy for groups to hide sources of money, and to the extent that the voters don't even know about the main funders behind an initiative until the election has come and gone.

This is completely unacceptable, and Alaskans should be outraged that this has been allowed to occur. Allowing financial disclosure loopholes of this magnitude undercut the integrity of our initiative process. House Bill 36 proposes changes to fix these flaws and repair the loopholes. House Bill 36 changes the date of when financial disclosures must begin. Rather than being able to collect money for months and months before having to disclose the source of funds, groups would have to begin financial disclosures as soon as they file their initial paperwork with the Lieutenant Governor's office. Although initiative groups have to collect a number of signatures in different regions before officially being declared a measure on the ballot, the groups are still influencing public policy. Initiative groups should be filing financial disclosures as soon as they receive their first red cent.

Signature gatherers are an instrumental part of the initiative process. They collect the constitutionally-required signatures necessary to qualify initiatives for the ballot. We often see them outside of the grocery store or any high-traffic zone. Their goal is to gather signatures. Period. They are often paid on a commission basis, so they are motivated to gather as many signatures as possible. They are not paid to answer questions or explain issues. If signature gatherers were paid on an hourly wage basis, they would be more open to take the time to explain the issue or answer questions posed by voters. House Bill 36 proposes that signature gatherers be paid on an hourly or salary basis so that they wouldn't be shuffling people as fast as they can to make their dollar. Restricting the use of per-signature commission is yet another attempt to promote the sharing of information so that voters can make the most informed decision at the ballot box.

Public hearings are a necessary and essential part of the political process. Public hearings are the venue where questions are posed, ideas are vetted, and information is freely shared. Public hearings are the foundation of the lawmaking process. All potential laws that govern our behavior, our property, and our interests are all vetted in a public forum, right? Wrong. There are no public hearing requirements for ballot measures. Laws created via the Legislature and laws created via initiative are equal – they are the laws we are required to live by. However, initiative-created law does not go through a public process that enables citizens to ask questions, criticize, give suggestions, or clarify issues.

Holding public hearings would greatly strengthen the initiative process because they would provide more information to the public. The public deserves to know the ins and outs of initiatives, just as the ins and outs of legislation are hashed out in committee meetings. House Bill 36 solves this problem by requiring public hearings throughout Alaska. Because of the geographical challenges and dispersed population of our state, a total of ten public hearings are required, two hearings per judicial district. These hearings provide a public forum so voters can ask questions, analyze the issues, and voice their support or opposition. These public hearings won't cost the initiative sponsors a dime; the venue can be provided by the state, and if initiative sponsors cannot afford to travel to the different districts to participate in the hearing personally, they can teleconference. House Bill 36 provides a win-win situation: more information provided to the public, while not costing the ballot measure groups anything but their time.

In addition to the public hearing requirement, House Bill 36 also requires a standing committee of the legislature to review ballot measures. This does not allow the legislature to change the ballot measure because that would be encroaching on a citizen's right to petition their government. Instead, the legislative review allows another public venue for questions to be asked and concepts to be discussed. Also, the legislative review provides a forum for the affected agencies to discuss how the proposed initiative would be administered.

The loopholes with the initiative process have become apparent all over the country, not just in Alaska. About half of the states in the Union have the initiative process, and many of those states are modifying their initiative process with tighter financial disclosures, public hearing requirements, and restructuring signature-gathering methods. These modifications are seen as ways to reinforce the citizen initiative process – to protect it – not to impose onerous and meaningless requirements.

Providing more information to the public is the purpose of House Bill 36. There is no fine print. There is no catch. House Bill 36 returns the power of the initiative back to the rightful owners: Alaskans.

2706

ALASKA STATE LEGISLATURE

REPRESENTATIVE KYLE JOHANSEN
MAJORITY LEADER

12 April 2010

Senator Hollis French
State Capitol, Room 417
Juneau, Alaska 99801

Re: House Bill 36

Dear Senator French,

House Bill 36, which focuses on Ballot Initiative Reform, is currently in the Senate Judiciary Committee. We have sponsored this legislation to help bring more clarity to the initiative process, and to provide the public with more information about initiatives. We see HB 36 as an Alaska solution to a problem that has plagued the initiative states for year.

This letter serves a request to have HB 36 heard in your committee at your earliest convenience.

Regards,

Representative Kyle Johansen | Representative Charisse Millett | Representative Peggy Wilson

Session: State Capitol, Juneau, AK 99801-1182 • (907) 465-3424 • Fax (907) 465-3793
Interim: 50 Front Street, Suite 203, Ketchikan, AK 99901 • (907) 247-4672 • Fax (907) 225-8546

Coffman Cove • Hollis • Ketchikan • Meyers Chuck • Saxman • Thorne Bay

HB

49

ALASKA STATE LEGISLATURE

Interim:
716 West 4th Avenue, Suite 640
Anchorage, Alaska 99501
Phone (907) 269-0200
Fax (907) 269-0204
Rep_Craig_Johnson@legis.state.ak.us

Session:
State Capitol Building, Room 126
Juneau, Alaska 99801-1182
Phone (907) 465-4993
Fax (907) 465-3872
Toll-free (866) 465-4993

REPRESENTATIVE CRAIG JOHNSON
HOUSE DISTRICT 28

SPONSOR STATEMENT

CS for House Bill 49(JUD) am

"An Act further limiting the exercise of eminent domain"

HB 49 strengthens the individual's property rights by protecting privately owned recreational structures from the exercise of eminent domain for recreational purposes.

Eminent domain is an important right of the government. However, it should only be used for the most judicious of purposes, and every effort should be made to minimize its impact to the right of the individual to own private property.

AS 09.55.240 limits the government's authority to exercise eminent domain and seize personal residences by clearly outlining its legitimate use (namely the construction and/or expansion of roads, schools, and public buildings) and by prohibiting its exercise for the purpose of economic development or to generate increased government revenues.

HB 49 affords privately owned recreational structures the same protection from government seizure already granted to personal residences in AS 09.55.240.

The right to own private property is one of the most important rights of Alaskans. By prohibiting government seizure of privately owned recreational structures for recreational purposes, HB 49 strengthens that right and ensures the continued use of land in the greatest of ways – that of private ownership.

Co-Chair, House Resources Committee
Member of Rules, State Affairs, Transportation Committees

Alaska Association of REALTORS
The Voice of Real Estate in Alaska
4205 Minnesota Drive
Anchorage, Alaska 99503
(907) 563-7133

February 4, 2009

The Honorable Craig Johnson
Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99801

RE: House Bill 49 - "An Act relating to the prohibition of the exercise of the power of eminent domain against a recreational structure for the purposes of developing a recreational facility or project."

Dear Representative Johnson,

The Alaska Association of REALTORS® with over 1,600 members statewide supports House Bill 49, which relates to eminent domain and recreational structures.

The Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

We favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes which are very common throughout Alaska.

The Association encourages the passage of House Bill 49.

Sincerely,

Art Clark
AAR President

ALASKA STATE LEGISLATURE

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Rep_Craig_Johnson@legis.state.ak.us

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Juneau, Alaska 99801-1182
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Toll-free (866) 465-4993

REPRESENTATIVE CRAIG JOHNSON
HOUSE DISTRICT 28

MEMORANDUM

TO: Senator Hollis French, Chair
Senate Judiciary Committee

FROM: Representative Craig Johnson

DATE: March 10, 2009

RE: Hearing Request for HB 49, Limitation of Eminent Domain

I respectfully request a hearing in the Senate Judiciary Committee for House Bill 49, "An Act relating to the prohibition of the exercise of the power of eminent domain against a recreational structure for the purposes of developing a recreational facility or project."

House Bill 49, as amended, passed the House without a single dissenting vote.

Attached is a copy of the sponsor statement, a copy of the current version of the bill, CS for HB 49(JUD) am, the changes made to the previous version 26-LS0269\R, zero fiscal note, and letter of support.

If you have any questions or need additional information, feel free to contact me or my aide, Debra Higgins, at 465-4993.

Thank you for your consideration.

Co-Chair, House Resources Committee
Member of Rules, State Affairs, Transportation Committees

HB

52

Kristen Peterson

From: Hannah McCarty
Sent: Wednesday, April 07, 2010 8:08 AM
To: Kristen Peterson
Subject: HB 52

Hey Kristen – forgot to say that Doug Wooliver from Courts will be there to answer questions re fiscal note on HB 52 as well.
Thanks,

Hannah McCarty
Rep. Beth Kerttula
State Capitol
Juneau, AK 99801
(907) 465-4766
(907) 465-4748 Fax

2713

Kristen Peterson

From: Hannah McCarty
Sent: Tuesday, April 06, 2010 2:02 PM
To: Kristen Peterson
Cc: Nicole Carlson; Hannah McCarty
Subject: Testify

Hi Kristen – Here is the list of who is going to testify for our two bills that are up in SJUD tomorrow. I am copying Nicole because Gerad Godfrey will be calling in OFFNET from Anchorage.

HJR 48

1) Gerad Godfrey – Chair - Violent Crimes Compensation Board – offnet calling from Anchorage
2) Lauree Morton - Program Coordinator II for Council on Domestic Violence and Sexual Assault – here in JNU

HB 52

1) Mindy Lobaugh – constituent who requested the bill – here in JNU

Thanks,

Hannah McCarty
Rep. Beth Kerttula
State Capitol
Juneau, AK 99801
(907) 465-4766
(907) 465-4748 Fax

Representative Beth Kerttula

House Minority Leader

Sponsor Statement

House Bill 52

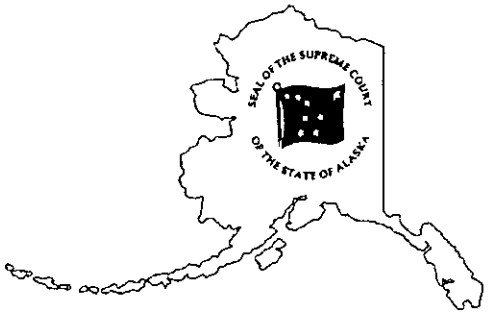
"An Act authorizing psychological counseling for jurors serving in criminal trials who are traumatized by graphic evidence or testimony."

The jury system is a fundamental component of the American legal system. Jurors are asked to carry out a civic duty, yet there is the possibility of experiencing excessive levels of stress and no support is offered to help jurors cope with normal reactions to abnormal events, at its worse resembling a milder version of Post Traumatic Stress Disorder. Categorized as secondary trauma, jurors become traumatized through the traumatic experience of victims.

House Bill 52 would allow judges to offer 10 hours of post-trial group counseling to a juror who serves in a criminal trial involving extraordinarily graphic, gruesome, or emotional evidence or testimony. This bill would not apply to every juror in every case. Counseling sessions are necessary in only a small percentage of trials but are nonetheless highly valuable when needed.

The public's impression of the administration of justice is largely based on jury service. Offering counseling to jurors will ensure that care it taken of citizens' welfare, while also enhancing positive public attitudes toward jury service. As the government compels citizens to report for jury duty, it should minimize the burden it places on jurors. With public trust and confidence as a fundamental goal of courts nationwide, judges, court administrators and court staff must be concerned with the juror experience and the effect of the experience upon those called to serve. Jurors are unprepared for some consequences and courts do not currently provide any assistance in finding help from mental health professionals. In order to protect the integrity of the legal system I think courts are obligated to help improve the jury experience, including addressing juror stress. Proper counseling helps people cope with their normal reactions to abnormal events and provides tools to adapt to those reactions. I greatly appreciate your support of House Bill 52.

Alaska State Legislature ✧ District 3 ✧ Juneau
State Capitol ✧ Juneau, Alaska 99801-1182 ✧ (907) 465-4766 ✧ Fax (907) 465-4748
Rep.Beth.Kerttula@legis.state.ak.us ✧ www.kerttula.net



ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8265
FAX (907) 264-8291

Doug Wooliver
Administrative Attorney

March 25, 2010

The Honorable Bill Stoltze
Co-Chair, House Finance Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Stoltze:

I spoke with Ben this morning about a scheduling conflict that I have this Friday. I need to be in the House Finance Committee in case there are questions about the court system's fiscal note on HB 52, which is Representative Kurttula's bill on post-trial juror counseling. At the same time, I need to be in the House Judiciary Committee for testimony about and amendments to HB 324, which is the governor's rewrite of the bail statutes. (Chris Christensen, who might otherwise be able to fill in for me, also has a conflict as he must be in the Senate Finance Committee during the time you will be hearing HB 52.)

Although I plan to be available to come to the House Finance Committee should there be questions on the court's fiscal note, I thought there might be fewer questions if I better explained the analysis behind the note.

As you probably know, HB 52 allows a judge to offer a juror up to 10 hours of psychological counseling, without charge, in certain specified cases following "extraordinarily graphic, gruesome, or emotional evidence or testimony." In order to assess the fiscal impact of this bill, I needed to estimate how often judges would be likely to offer counseling and what kind of counseling they would be likely to offer.

As I do with almost all legislation that may impact the court system, I circulated HB 52 among our trial court judges for their estimates of impact. For this bill, I asked them how often they see cases that meet the criteria set out in the bill. All of those who responded said that they did not see them very often. None thought they saw as many as one a year. Also, most noted that in those cases where the trial was particularly difficult, there tended to be only one or two jurors who were really impacted.

However, almost all judges remembered a few trials where some of the jurors were very distraught and for whom the judges would have offered counseling had it been available.

Based on that information, and for purposes of this note, I estimated that 10 jurors a year would receive 10 hours of individual counseling at an average cost of $150 an hour. But individual counseling is not the only type of counseling available, and, in some cases, may not be the most appropriate. Another option is group counseling.

A common type of counseling for groups who share a traumatic experience is called Critical Incident Stress Debriefing. This is much cheaper than individual counseling and involves a relatively brief session with the entire group that occurs immediately following the traumatic event, in this case at the conclusion of deliberations. These sessions last an hour or two and cost between $300 and $500 an hour. This group counseling might or might not be followed up with individual counseling for those who need further support.

But whichever counseling option courts select for particular cases, our estimate is that we will spend roughly $15,000 a year on juror counseling. And although this is necessarily an estimate, I believe that it is a reasonable one based on judicial comments and the counseling options available.

I hope that this is helpful. Please let me know if you have any questions.

Sincerely,

Doug Wooliver
Administrative Attorney
Alaska Court System

March 8, 2009

Alaska State Legislature
State Capitol
Juneau, AK 99801

RE: Support for House Bill 52

Members of the Legislature,

First, I would like to thank the legislature for considering House Bill 52, which will grant some form of counseling for Jurors in a criminal trial. My reason for requesting and supporting this legislation is because of my experiences as a juror on a murder trial. I know I am not the only one who feels this way. Details of the trial are still painful to recall, but if my remembering can help even one future juror begin healing far earlier than I did through this early counseling/intervention, then that may bring me another measure of peace; to know something good can come from something so completely gruesome.

I have lived in Alaska for over 15 years. It is a place of peace and great beauty. However three years ago I answered a jury summons and, suddenly, for two weeks, my mind was saturated with facts no person should have to carry around. It was like watching a horror movie for seven hours (or so) a day and not being allowed out of the theatre except to sleep and get ready for the next day's movie.

I learned in great detail how two men plotted to torture an innocent woman to death. A woman, who served her community, loved her family and had no idea what awaited her. I sat in the same room with the murderers and experienced and watched a level of emotion in that court room that was intense and overwhelming. It was slow torture for me. Every night I cried at home and felt so alone because I had taken an oath as a juror and could not share any details of the horrors I was hearing even with my closest friend and confidant, my husband. For two weeks I took it in. Each night was a challenge to sleep and each morning a test in determination to stay strong and walk into the court room.

What did I learn from my court experience? That there are many ways to break into a house; that breaking a person's neck is not as simple as they make it on television; that you can never be sure what another person's distorted view of you could be; that someone could be lying in wait for you to come home alone so as to abduct you and burn you alive.

I also learned you cannot imagine the challenges you will face as a juror on a criminal trial. That even though what you hear in court did not happen to you, knowing that it did happen to someone, seeing the parties involved and having them see you are more intense than you can expect. That getting over it and moving on is not as simple in practice as it is in theory for a juror.

When the trial was over I approached our Judge, for whom I have great respect as she was the only saving grace of this awful experience. I asked if there was any form of counseling or other resources available to help in transitioning out of this trial. She stated the court system does not provide for counseling or any other kind of support following a criminal trial.

I asked her with tears in my eyes, how am I supposed to get all this out of my head? I feel like I have lived this event and I don't know what to do with it. I wanted my peaceful life back; I want to be able to feel the peace I had before the trial. She apologized and said there was nothing she can offer.

I believe if there had been some form of counseling available to provide jurors tools for processing and releasing the intense and graphic details of a criminal trial, then healing could have started a lot earlier for me and the people I served with. I tried to repress the experience. It wasn't until over a year later when the anxiety and stress became too overwhelming that I finally turned to counseling and was diagnosed with post traumatic stress disorder. Today, I am pleased to report, I have found better tools to help me move on and the beauty of Alaska has returned to my life.

As jurors we live through the details of these violent and disturbing trials essentially in silence. Trying very hard to rationalize and process what we're seeing and hearing. This has an impact... an impact on people such as what I am still dealing with today. I believe passing this bill is a very important step in supporting the jurors of violent trials and helping them find a path back to peace. I urge you to support House Bill 52 and the constituents who have or will serve on jury duty.

Again, thank you for your time and consideration.
Very Sincerely,

Mindy Lobaugh
1013 Bonnie Doon Dr.
Juneau, Alaska 99801

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

VIOLENT CRIMES COMPENSATION BOARD

SEAN PARNELL, GOVERNOR

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FAX: (907) 465-2379

February 22, 2010

Representative Beth Kerttula
State Capitol
Juneau, AK 99801

Dear Representative Beth Kerttula:

Thank you for considering HB 52, "An Act authorizing psychological counseling for jurors serving in criminal trials who are traumatized by graphic evidence or testimony." We understand that certain criminal trials can generate serious levels of stress among jurors that can last weeks or months after the trial is over. Traditionally, jurors in a critical trial end their service without ascertaining whether or not the events of that trial have had any psychological impact. For years, there have been cases of post-trial jurors experiencing their own mental pain and difficulty focusing back on their daily lives. Symptoms of juror stress manifest themselves as a number of physical and psychological reactions, including increased anxiety and frustration, disrupted eating and sleeping routines, nausea, depression, and anger and hostility. In many instances, talking to jurors about their symptoms validates their feelings and helps them understand that what they are experiencing is normal and can in itself bring considerable stress relief.

After exposure to a highly graphic criminal case jurors can develop stress by having to relive the traumatic experiences of the victim. For some, it is difficult to suddenly step back into their own world without some form of closure. We believe this is a unique opportunity for courts to have a positive interaction with individuals from the communities they serve. A juror who is asked to fulfill their civic duty should be protected from the potentially negative health effects of the trial process.

In general, post-trial group counseling could reduce stress and offer information on mental health services for those who might need it, provide closure, promote confidence in the judicial system, and enhance satisfaction. We support HB 52 because it would offer traumatized jurors access to group counseling services to help counteract the negative effects which may result from jury service.

Sincerely,

Gerad Godfrey
Chairman

Printed on recycled paper by Alaska Litho, Inc.

February 19, 2010

Representative Beth Kerttula
State Capital
Juneau, AK 99801

Dear Representative Kerttula:

I'm writing to extend my utmost support for your legislation – HB 52 - "An Act authorizing psychological counseling for jurors serving in criminal trials who are traumatized by graphic evidence or testimony."

As a juror on the 2003 Joshua Wade trial in Anchorage, I can attest to the need for counseling after a trial involving a heinous crime against an individual. Unlike prime time TV where crimes are committed, investigated and solved in 60 minutes, real life murder trials are gruesome, disturbing and in our case, debated in a court room over the course of nearly four months. Blood spatter patterns, rape, death by repeated blows to the head with a rock, torture, dehumanization – I would argue that these may be things judges, prosecutors, police officers, forensic specialists are trained and equipped to psychologically handle, but the average citizen called to jury duty is not.

At the conclusion of our trial, we were given specific instruction on how to process the evidence, on how to deliberate, on how to come to deliver a verdict according to the instruction presented by the court. We were not however, given any instruction on how we might move past the sound of the victim's mother wailing in the courtroom; of the pictures that we were shown day after day of a woman's raped and beaten body; of the testimony from expert witnesses stating that for blood to have traveled "x" feet from a body, it would have had to have been beaten with "y" severity.

Fortunately, I have a friend and colleague who does trauma counseling. At the conclusion of the Wade trial, this individual did one group counseling session (gratis) for all of us; she then saw me (again, gratis) for several other sessions so that I could further process, and move beyond the prior 4 months. Not all jurors will be as fortunate to have access to free services.

Thank you for your leadership in recognizing and addressing the needs of ordinary citizens who find themselves on an extraordinary jury. While it is our duty to serve, I believe that it is also the duty of the court to provide a means of support at the conclusion of a particularly heinous trial.

With thanks,

Anne M. Gore

Anne M. Gore * 9400 Main Tree Drive * Anchorage AK 99507

Robert H. Edwardson
3842 Killewich Drive
Juneau, AK 99801
March 1, 2009

The Honorable Beth Kerttula
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Representative Kerttula:

Thank you for sponsoring *HB 52, "An Act authorizing psychological counseling for jurors serving in criminal trials who are traumatized by graphic evidence or testimony."* Throughout my years of as an emergency responder and law enforcement professional, I have witnessed responder trauma caused by reactions to critical incidents. It is appropriate that jurors, as an important component of the law enforcement and judicial systems, become entitled to the same assistance enjoyed by other members of our law enforcement team.

Proper counseling prepares people for their normal reactions to abnormal events. It also provides tools to adapt to those reactions. Loss of sleep, reliving events and disruption of normal routines are just some of the examples of normal reactions to critical incidents that people may not intuitively understand. They may attribute their seemingly abnormal reactions weakness in their own character, or by misattributing their changed behavior to concurrent, yet unrelated events in their lives. Their normal coping skills may be ill prepared to help them, and may actually cause them to turn use mal-adaptive coping mechanisms such as self-medication, or withdrawal from their emotional support networks when they most need them. I can attest that some responders suffer negative life-altering changes by ignoring proper counseling.

Ultimately, the public benefit of providing counseling is the facilitation of jurors' orderly return to daily life, prepared to appropriately respond to their experience. And although they may remain forever changed by vicarious trauma, they will have the skill to properly deal with their reactions. Thank you for your efforts, you have my support.

Sincerely,

Robert (Rob) Edwardson,
CWO2, USCG (Ret)
CISM Basic, Peer and Advanced
Lifelong Alaska Resident

February 24, 2010

Representative Beth Kerttula
State Capitol
Juneau, AK 99801

Dear Representative Kerttula:

I believe this is an important bill. As a social worker, I often work through very emotionally difficult situations and problems with clients. This can lead to professional grief, a topic social workers are familiar with and so often form support networks to help them process the challenges of the profession. There are times when I have been very shaken and traumatized by the work I do and I lean on the supports I have developed. However, jurors might not even be aware of the concept of professional grief and likely won't have the networks they need to process what they have been through. I think professional grief can be due to cumulative stress or one particularly stressful event. I think that not only should the counseling be offered, but that jurors participating in traumatic cases should also be advised that counseling should be considered, even if they don't think they will need it.

Professional grief can bring about responses that might not seem to be associated with the cause of the grief. In addition, professional grief often takes the form of hidden grief and is internalized and unexpressed. Individuals experiencing it might feel irritable, angry, anxious, helpless, or guilty without relating it to the experience. Jurors should be made aware of the possibility of professional grief and the importance of working through it.

Please let me know if you have any other questions. Thank you and good luck!

Jeannette Lacey Dunn, MSW

Hannah McCarty

From: Lina LePage [mishi@alaska.net]
Sent: Thursday, February 25, 2010 7:33 PM
To: Hannah McCarty
Subject: [Fwd: Fw: HB 52]
Attachments: untitled-[1.2]; HB 52 Juror Counseling Bill.pdf; 10-02-04 Sponsor Statement HB 52.docx

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Hi Hannah,
I just now read this message from my friend Jeanette as I was out of town.
Hopefully it is not too late for input/feedback. I am a mental health clinician (MSW), and I also once participated in a murder trial as a juror three years ago.
I thought at the time that post-trial psychological counseling for jurors was a necessity, and I am very pleased to find out that Rep. Kerttula has introduced a bill to that effect.
I witnessed and experienced great distress from vicarious traumatization as a result of being exposed to graphic images and verbal renditions of the gruesome details involved in a very violent death. In addition, all of us jurors experienced a lot of pressure and stress from the many days of deliberation and from the civil responsibility of deciding of a man's fate. Many jurors were shaken and in tears when all of this was over, and I remember the strong feeling of disconnection I experienced when we were released from our duty after 3 weeks of intense involvement. I thought to myself, "we didn't sign up for this", and this was true, we were "chosen" participants. We were in some sort a "captive audience" trying to fulfill our civic responsibility, which involved being exposed to some disturbing evidences.
Vicarious traumatization can lead to Post Traumatic Stress Disorder,and as a result jurors can experience flashbacks,loss of sleep, nightmares or night terrors, and a heightened level of anxiety. Post-trial counseling would be a valuable means to preventing and reducing the trauma jurors of violent acts are subjected to, and it would only make sense for the Court system to prevent harm to citizens who are voluntarily exposing themselves to traumatic evidences out of civic duty.
I hope this bill passes,

Thanks,
Lina LePage

---------- Original Message ----------
Subject: Fw: HB 52
From: "Jeannette Lacey" <j.laceydunn@yahoo.com>
Date: Mon, February 22, 2010 9:40 pm

Hello Everyone,
Please see the attachments regarding a bill introduced by Rep. Kerttula related to providing counseling for jurors who participate in traumatic hearings. She is looking for input and feedback. There is a hearing this Friday. I know she would appreciate your thoughts. You can email Hannah, her aide, at Hannah McCarty@legis.state.ak.us or you can call the office at 907-465-4767. Please forward on to others who might be able to give feedback. Thank you very much for your time!

Jeannette

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Juror Stress: Symptoms, Syndromes, and Solutions

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Abstract: *As civic duties go, jury service can be among the most stressful experiences that a citizen can undergo. This article describes the common sources of juror stress, including jury summons, jury selection, understanding and coping with complex or disturbing evidence and testimony, jury deliberation, and the pressure to arrive at a just verdict. The article then goes on to delineate a number of intervention models for helping jurors manage stress reactions and prevent the development of more serious traumatic stress syndromes. Finally, some recommendations are offered for professionalizing jury service that would act in the interests of civil and criminal justice. [International Journal of Emergency Mental Health, 2008, 10(3), pp.203-218].*

Key words: *forensic psychology, criminal justice, juror stress, jury system, legal stress, stress management*

Imagine you awaken one night with a mysterious pain. You make your way to the nearest emergency room and ask to see a doctor. You're told that, instead, you will be examined by 12 citizens who have been pulled off their jobs and ordered to the emergency room to decide your case. When you begin explaining your symptoms and medical history, someone in the back of the room stands up and objects that your past illnesses and treatments are irrelevant and that this medical decision panel must make their treatment decision based solely on their current examination findings. You're asked a series of yes-no questions and when you try to explain further, are told to only answer the question as it's been asked. After they've finished with you, the 12 citizens retire to a separate room to deliberate your case. When you try to protest that this is no way to practice medicine, they tell you to feel lucky to live in a country where you can receive a "fair" examination and have your diagnosis and treatment decided by 12 of your peers.

Sound ridiculous? Yet, these kinds of complex life-altering decisions are made every day in courts throughout the United States and many other countries by juries with no more knowledge of the law than the above hypothetical panel has of medicine. While the merit of this kind of justice system is a topic for another venue, this article will focus on what those 12 souls may go though in trying to do the best they can in negotiating the justice system. This article will delineate some of the major stresses and stress syndromes associated with jury service and offer some recommendations for helping jurors cope with the ordeals of their service and the pressures associated with certain kinds of trials.

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Juror Stress: Scope of the Problem

A core feature of the American civil and criminal justice systems is the right of a defendant to a trial by jury. Serving as a juror is considered a civic duty and a citizen's failure to respond to this call may result in judicial sanctions and penalties. Other than the occasional traffic citation, jury service is one of the primary means by which the average, law-abiding citizen comes into contact with the American judicial system. Most jurors take their responsibilities seriously and carry out their jury service to the best of their abilities. But until recently, little consideration has been given to the psychological impact of jury service on the jurors themselves (Butler, 2007; Hafemeister, 1993).

Ironically, much of this attention has come from the observations of judges who have to deal with stressed-out juries on a regular basis and who are subject to their own judicial stresses and challenges (Miller et al., 2007; Zimmerman, 2006), which will be the subject of a future article in this series. On a practical level, heightened awareness of juror stress may result in a shrinking pool of citizens who are willing to report for jury service. As greater numbers of citizens manage to avoid jury service, juries become less and less representative of their communities, leading to a deterioration of public trust and confidence in jury verdicts, making still more people reluctant to serve, and so on, in a vicious cycle. In addition, extreme juror stress levels may compromise their ability to render a fair judgment or impel jurors to make premature decisions, resulting in the appeals of many more verdicts than necessary and, in some cases, the corruption of justice (Butler, 2007; Curridan, 1995; Hafemeister, 1993; Hafemeister & Ventis, 1992; Sturgess, 1990).

The Jury Process

The odyssey of jury service typically begins when a citizen receives a *jury summons*. The very term, "summons" can make the citizen feel like he or she is already guilty of something and conveys to the recipient that this service is not optional; indeed, failing to report for jury duty can result in the citizen being held in contempt of court, possibly fined and jailed, and ultimately being forced to appear. The summons either orders the citizen to report to the courthouse on a specific date or instructs them to call the courthouse over several days to see when their service is required. Some jurisdictions give citizens the option of postponing jury service for a limited period of time.

When arriving at the courthouse, prospective jurors are typically herded into a large auditorium where they are given a brief orientation, by video or live speaker, to the civil and criminal justice systems. They wait to be called for empanelment, which may be almost immediately or at any time throughout the day. In some jurisdictions, if a juror is not empaneled on that day, his or her service is done; in other jurisdictions, they must return day after day until selected for a jury or rejected during jury selection.

Jury selection involves the careful examination, or *voir dire*, of each prospective juror by the opposing attorneys in the case. Ostensibly, the goal is to select jurors who can make an impartial decision, free of personal biases that might taint their careful, objective weighing of the issues. In reality, voir dire often represents a way for attorneys from either side to "stack" the jury with individuals who most likely will be favorable to their case (Kressel & Kressel, 2002). Since a wide range of jury characteristics may affect their thinking about a given case, voir dire questions may range from opinions about points of law ("Do you believe the death penalty is ever an appropriate punishment?") to personal habits or preferences ("How many hours a week do you think is normal for someone to be looking at internet pornography?"). Typically, the initial weeding-out is accomplished by means of a written interrogatory, or questionnaire, and those prospective jurors who pass this first hurdle are then interviewed in vior dire. The law also allows a limited number of jurors to be rejected on a "peremptory" basis, which means the attorney doesn't have to give a reason, and which usually occurs to exclude a juror because of some personal feature such as ethnicity or social background. The acceptance/rejection ratio of jury selection explains the "cattle-call" nature of summoning vast numbers of potential jurors to the courthouse on any given day.

After a jury is empaneled, the case generally begins. Depending on the nature of the case, jurors spend anywhere from a few days to many weeks hearing complex and conflicting testimony from plaintiff and defendant (in a civil case), prosecutor and defendant (in a criminal case), fact witnesses (who have observed or have personal knowledge about something pertinent to the case), and expert witnesses (professionals with specialized training who can render opinions about technical issues of the case). Attorneys naturally try to present evidence that will be most favorable to their side of the case to "sway" the jury (Kressel & Kressel, 2002).

Traditionally, jurors are not allowed to take notes or ask questions and are supposed to process all this material in their heads to prepare for deliberation. Perhaps responding to the realities of human cognition, some jurisdictions now permit limited questions by jurors during the trial in order to help clarify crucial points that they will deliberate on. In most trials, jurors get to go home at the end of each day but are not allowed to discuss the case with anyone. In some high-profile cases, juries may be *sequestered* – literally isolated in a hotel room between court appearances, and deprived of newspapers, TV, or any contact with the outside world that might taint their view of the case.

After testimony and each attorney's closing statements are completed, the jury retires to a separate room for their deliberation, which may take a couple of hours or many days. Since, in most cases, verdicts must be unanimous, this can be an extremely grueling process, as jurors may change their minds several times throughout the deliberations and their decision-making processes may be influenced by anything from new insights on the case to what will get them out of there the quickest. Prior to deliberation, the judge usually provides a set of jury instructions as to which aspects of the case they just heard can be considered and which parts they should disregard; admittedly this kind of cognitive compartmentalization can be extremely difficult to accomplish ("Do not assign any weight to the bereaved mother's spontaneous crying and unsolicited comment about how she misses her murdered daughter.")

At any point in the trial prior to the actual reading of the verdict, the two sides of the case can arrive at an agreement that obviates the need for a jury. A number of juries have been in the position of sweating over a weeks-long trial, spending several more hectic days in heated deliberations, only to be told at the last moment that the case has been settled and "thank you for your service." It is hard to imagine a more frustrating set of circumstances than to have placed one's whole life on hold, to have had one's thoughts and emotions wrenched by days of testimony that ranged from the soporific to the horrific, to have deliberated earnestly and hard, only to be told, often at the brink of a unanimous decision, the judicial version of "never mind." Perhaps the only thing worse are cases where the judge "sets aside" the jury's verdict after it has been read because he or she decides that these 12 citizens could not possibly have reached this conclusion if they had properly considered all the pertinent facts and points of law in the case. In these circumstances, juries understandably feel like bad little schoolchildren who failed their class assignment. Even where the court accepts the jury's verdict, they know it's not over yet, because most serious verdicts are appealed.

Positive Aspects of Jury Service

Although this article will focus on the negative psychological effects of jury service, to be fair, a number of surveys and studies have found that most American and Canadian jurors view their service positively (Butler, 2007; Casey, 1998; Diamond, 1993). For many citizens, this is the most important thing they have done in terms of having a real impact on their communities. Individuals who may feel that they plod meaninglessly through life and receive scant acknowledgement for their efforts at their jobs or at home are suddenly thrust into a position of trust, treated like adults, and accorded great respect, with the weight of another human being's fate placed in their collective hands. Jurors often emerge with much enhanced respect for the legal system after seeing how seriously and carefully most cases are tried, with learned attorneys in expensive suits vying for their decision through meticulously researched and cogently presented arguments, all parties forced to follow strict rules of evidence under the watchful gaze of an enrobed judge sitting on high. This experience often inculcates in jurors a sense of empowerment and engagement with civic life; in fact, serving on a jury makes people more likely to vote. Many jurors surveyed say they would like to serve again (Butler, 2007; Casey, 1998).

However, some of the positive feelings reported on juror surveys may be the result of rationalization and cognitive dissonance: having been conscripted to legal servitude for days or weeks at a time, suffered loss of income and restrictions in their family time, many jurors may feel compelled to justify to themselves that this all must have been for some greater good in order not to feel like chumps (Butler, 2007). And, as will be discussed below, this positive perception of jury service is far from universal; indeed, from the results of other surveys and studies, one can only conclude that, for many jurors, their service amounts to a descent into hell.

Stresses of Jury Service

Even short of hell, many jurors experience stresses that range from mild to severe. While trials containing complex and/or grisly evidence may be understood to be inherently stressful, even more mundane cases can take a grueling toll.

For all the lip service about their noble mission, courts can be surprisingly unaccommodating to jurors who are often relegated to the bottom of the courtroom pecking order. This may be due to a strong social identification factor: Judges and lawyers share a common level of education, training, and experience; indeed, many judges were once practicing lawyers and career shifts in the other direction are not uncommon either. Thus, they understand that they are in a different social and demographic league than most jurors who tend to come from a more working-class and nonprofessional population – i.e. the type of people who cannot easily get out of jury duty. In addition, the same judges and lawyers tend to interact with one another repeatedly in the same kinds of cases, whereas jurors are here for one case, and then gone. Thus, it is easy for the courtroom "regulars" to unconsciously treat the newcomers as transients who are there to do their jobs and then scram (Butler, 2007; Curridan, 1995).

A survey by the National Center for State Courts (Casey, 1998) asked a large sample of jurors or alternate jurors from a wide range of civil and criminal cases (e.g. robbery, drunk driving, malpractice, and personal injury) to rate the level of perceived stress they experienced from a list of stressors. The top ten sources of stress for jurors serving on non-death-penalty cases were: deciding on a verdict; jury deliberations and discussions; disruptions to daily routines; fear of making a mistake; violent crimes; the jury selection process; crimes against children; answering questions in front of other people; sentencing a criminal defendant; and dissension/differences among jurors. Looking at the top items on the list should remind us that, even in relatively routine cases, most jurors take their responsibilities very seriously and are acutely aware that they are making decisions that will greatly affect people's lives, what Bornstein and colleagues (2005) refer to as the "burden of justice." It is this very sense of responsibility that often makes their jobs so stressful (Hafemeister, 1993).

But how stressful? Most surveys have found that about 40% of jurors report stress levels hovering around the mild to moderate range, but that clinically significant anxiety or depressive disorders are rare (Antonio, 2006; Bornstein, Miller, Nemeth, Page, & Musil, 2005; Casey, 1998; Kaplan & Winget, 1992; Kelly, 1994; Casey, 1998; Shuman, Hamilton, & Daley, 1994). So, even though most jurors aren't actually being "driven crazy" by their ordeal, the stresses of jury service can have a sufficient effect on their daily lives to demand serious attention.

Sources of Juror Stress

Jurors experience stressors from a variety of sources associated with their service. A review of the relevant literature (Antonio, 2006; Bell & Feldman, 1992; Bishop, 1992; Bornstein & Nemeth, 1999; Bornstein et al., 2005; Butler, 2007; Casey, 1998; Diamond, 1993; Fishfader, Howells, Katz, & Terese, 1996; Goleman, 1991; Greene & Bornstein, 2000; Hafemeister, 1993; Haney, Sontag, & Costanzo, 1994; Kelley, 1994; McAree, 2004; Miller, Flores, & Dolezilek, 2007; Mott, Hans, & Simpson, 2000; Rauch, 1992) suggests that these can be divided into two main categories, those associated with the judicial process of jury selection and empanelment, and those associated with the content and conduct of the trial itself.

Court Procedures

Physical setting. The physical environment in various courthouses throughout the country ranges from reasonably comfortable to atrocious. Stress factors cited by jurors include poor temperature controls, limited access to food and bathroom facilities, cramped and overcrowded waiting areas ("cattle pens"), and the inconvenience of getting to and from the courthouse (lack of public transportation, poor parking, courthouse in bad neighborhood).

Payment. For all the high-minded talk of how jurors are a vital component in our system of justice, the daily compensation rate for jurors – typically far below minimum wage – can only be seen as diluting the supposed high regard that the court has for them. "I couldn't get someone to clean my toilets for this kind of money," is a typical complaint. A few jurors have commented that they tore up the check when it came or sent it back with a nasty note.

Life disruption. A near-universal complaint of jurors and prospective jurors is the disruption of work and family schedules necessitated by their service. Under the mantle of civic responsibility, jurors may lose days or weeks from work and have to delegate childcare and other household responsibilities. Although employers, as an expression of good citizenship, are supposed to give their employees days off with compensation to attend jury duty, in most cases the worker absorbs a pay loss. Adding insult to injury, when the term of jury service extends more than a few days, the worker may return to find that his or her job has been filled by someone else.

For the self-employed, the situation can be even worse. Salespeople live by their commissions and most small businesses can't afford to close down for even a few days. Even in medium-sized companies, the worker may not have anybody to take his or her place if he or she is in court; clients and customers may quickly go elsewhere. Some jurors report that they have had their businesses ruined by a lengthy term of service.

And it's not just work. Time away from spouses and children strains family relationships; women jurors especially appear to feel the strain of isolation very acutely. Not being allowed to discuss the case when he or she comes home from court deprives the juror of a main source of tension reduction that most people have for unloading their daily stress, and further marginalizes the rest of the family who see their loved one in distress but are unable to do anything to help them (Feldman & Bell, 1991; Hafemeister, 1993; Slind-Flor, 1992).

As previously noted, in some high-profile cases, to avoid "contamination" of the jury by media, casual conversation, etc., jurors may be sequestered, which essentially amounts to enforced isolation during the trial. Because of state and local budgets, accommodations are rarely first-class. This heightened isolation from work, family, and friends may cause many jurors to feel that they are being treated like "criminals," "POW's," or "terrorists at Guantanomo Bay," as some jurors have put it. It is these conditions that most often lead some jurors to fear they are losing their minds (Antonio, 2006).

But, at least for American jurors, the ordeal is over when the trial ends, at which time they are free to talk, write books, or expound on TV about their role in a famous trial (although most jurors just want to go home and forget it). No such consideration is afforded their northern brethren, as the Canadian Criminal Code makes it an offense for their jurors to ever disclose information regarding jury proceedings. Canadian jurors cite this ban as one of the most difficult things to deal with (Butler, 2007; Hafemeister, 1993). On the other hand, this permanent gag order may free these jurors from the relentless media intrusion that often dogs American jurors in high-profile cases and which often seems designed to provoke a media-worthy lurid reaction from jurors.

For example, after the high-profile Rodney King beating trial, jurors were assailed by the press to the point that local police warned them not to remain in their homes because of all the publicity they were garnering. These jurors felt compelled to defend their decision to friends and family and felt that they were being condemned in the press for the rioting that took place after the verdict. One juror received a bomb threat at her workplace. Another juror bought a gun for protection, while still another slept with an axe. Many jurors compared their experience to having been raped; they suffered anxiety, hypervigilance, tearfulness, exhaustion, sleep and weight loss, and disruption of family relationships. A few of the jurors sought professional counseling, but most suffered in silence (Davis, 1993).

Jury selection process. For many jurors, especially those that value their privacy, filling out detailed questionnaires and answering sometimes very personal questions in front of a group of strangers can be extremely uncomfortable. Many jurors have reported feeling as if they were the ones on trial. For example, in financial fraud cases, lawyers may want to know what the juror's salary is or whether he or she has ever "thought about" cheating on their taxes. In sex-related cases, jurors may be queried about their sexual preferences or whether they have ever "thought about" cheating on their spouse. Simply refusing to answer could technically result in the juror being cited for contempt of court, but few judges would be willing to subject the juror to further duress. More commonly, embarrassed jurors will simply lie and tell the questioning attorney whatever they believe will make the lawyer move on. The result may be the empanelment of a jury containing several members who have been seated under false pretenses, thereby compromising the whole rationale of jury selection.

Perhaps for these kinds of reasons, while American lawyers can question potential jurors to screen out those they don't like during the voir dire process, in Canada this kind of jury selection process is considered prejudicial and all eligible jurors are assigned on a first-come-first-serve basis. The absence of a rigorous juror screening process has been found in surveys to increase stress on those Canadian jurors who are seated (Butler, 2007). It would be an interesting empirical question to see which system is associated with the greatest psychological morbidity and satisfaction with jury service.

Trial Factors

Death penalty cases. Understandably, the decision to find a defendant guilty of a crime warranting the death penalty is one that most American jurors take very seriously,

reflecting the "burden of justice" (Bornstein et al., 2005) that jurors feel more intensely, the more serious the trial (e.g., capital murder vs. grand larceny). In some jurisdictions, the jury determines guilt or innocence in a capital crime and the judge imposes a sentence. In other courts, the jury may first decide on guilt and then deliberate a second time to determine the sentence, usually either death or life imprisonment. Findings from the Capital Jury Project (Antonio, 2006) and other studies have shown jurors who render a death penalty verdict to suffer from a variety of stress reactions, including *posttraumatic stress disorder* (PTSD) at higher rates than those who render a life sentence.

Some jurors describe nightmares that replicate how the victim was killed or that relate to details of the crime scene, many of the images coming from photographs viewed at trial. Some jurors report feeling physically sick during and after the trial. Jurors may express regret at their final punishment decision, often feeling that the wrong decision was reached. In some cases, jurors regret the death sentence; but in a few others they wish death had been meted out instead of life imprisonment. Many jurors who harbor second thoughts post-trial feel they were pressured or "brainwashed" by other jurors to go along with the majority decision: "I should have stuck to my guns, but everybody else was so sure of their side and we all just wanted to get out of there."

Fear of reprisal by the defendant or his cohorts is a common theme reported among jurors serving on capital trials. Many report that the defendant would sit in court and stare intimidatingly at individual jurors during the trial. Nightmares of such possible reprisals by the defendant are commonly reported, more frequently by women. Other jurors are simply afraid of running into either the victim's or defendant's family in or around the courthouse. Some fear wider censure by their own families, friends, and communities for making the "wrong" decision in socially sensitive cases. Most jurors who have served on capital cases are determined not to repeat the experience.

Interestingly, in the Capital Jury Project study (Antonio, 2006), a number of jurors specifically expressed the need for some kind of post-trial counseling and half thought it should be made available by courts themselves. Others took the initiative and sought counseling on their own after the trial had ended, either from a family member, clergyman, or mental health clinician (Antonio, 2006).

Grisly evidence. One of the distressing aspects of murder trials or those where there has been significant bodily injury is the frequent necessity for juries to view gruesome hospital or crime scene photos depicting death and or mutilation, as well as to hear sometimes horrifying testimony of how victims were assaulted, tortured, raped, and/or killed (Bishop, 1992, Boone, 2008). Remember that police officers, criminal attorneys, judges, and specially trained mental health counselors who work with the court system all have years of experience dealing with disturbing evidence, yet, even in these hard-boiled veterans, particularly heinous crimes (often those involving child victims) may evoke destabilizing emotional reactions that require intervention in the form of critical incident debriefing or other mental health contact (Miller, 1998c, 1999, 2006a, 2006b, 2007a, 2007b, 2008a, 2008b, 2008c).

How much greater must the reaction be to this kind of evidence by untrained, inexperienced jurors who are being assailed by grisly evidence throughout the trial. This is frequently compounded by the fact that prosecution and defense counsel each have their own agendas that they may play off the jury. For example, the prosecution may specifically try to shock the jury by literally throwing the exhibit (crime scene photo, bloody clothing, murder weapon) in front of the jury precisely to spur an emotional reaction that will hopefully lead to a conviction (another variation of this is to abruptly display an image of the disturbing exhibit on a huge projection screen in the ominously darkened courtroom). For its part, the defense team will initially try to exclude evidence they consider "inflammatory" or, alternatively, if it is presented, may try keep it exposed as long as possible or present it repeatedly in order to try to desensitize the jury to its presence. Sometimes this works and jurors get used to seeing the bloody knife and the photographic stab wounds lying on the evidence table day after day. But sometimes the tactic backfires and the jurors grow increasingly sensitized, rather than immunized, with each exposure.

Studies are near-unanimous in reporting high rates of anxiety, depression, and PTSD symptoms in jurors sitting on capital murder, aggravated kidnapping, aggravated sexual assault, aggravated assault, and child abuse cases (Antonio, 2006; Feldman & Bell, 1993; Hafemeister, 1993). Some of this may relate to the concept of *vicarious trauma*, in which those who work frequently and closely with victims of violence come to empathically absorb and internalize some of the psychic pain and begin to show PTSD symptoms themselves (Davis & Friedman, 1985; Figley, 1983; Fullerton, Carroll, Ursano, & Wright, 1992; Miller, 1998a, 1998b, 2008c; Moon,

1999; Talbot, Dalton, & Dunn, 1995; White, Lawrence, Biggerstaff, & Grubb, 1985; Yassen, 1995). These kinds of reactions may have implications for adjudication of the case if jurors make extreme decisions based primarily on their emotions rather than on a rational analysis of the evidence, or if they become so numbed to the savagery of the crime through repetitive testimony or evidence presentation that they come to diminish the seriousness of the criminal act in their deliberations (Miller et al., 2007).

Complex Evidence. Another feature of murder trials or other violent felony trials is that they tend to be long and contain vast amounts of complex and ambiguous evidence. In most courts, jurors are forbidden to take notes or ask questions, although some jurisdictions are very recently beginning to allow limited forms of these activities. Thus, the juror is placed in the position of having to process complex technical information and conflicting eyewitness narratives presented by two different sides who are each trying to spin the evidence to the fullest extent that the court will allow, with the juror permitted to take no (or limited) notes and ask no (or limited) questions. Add to this the fact that much testimony is just plain boring or literally incomprehensible and there is evidence that jurors forget a great deal of what they hear in court (Rosehan, 1994). If this were a college course, what grade do you think the jurors would get? Yet, they are charged with the task of taking this information and using it to render what, in some cases, is literally a life or death decision about someone's fate.

Complicating the process is the fact that, in the case of a college course, the students are all more or less equivalent in background in terms of education, training, and native intelligence, and have probably all completed at least some prerequisite coursework for the present class. But jury members come from all walks of life and will have vastly differing levels of sophistication in handling complex testimony and in understanding the legal instructions they're given (Antonio, 2006; Bornstein et al., 2005; Butler, 2007; Miller et al., 2007; Steele & Thornburg, 1991). Because most professional people in their 30s to 50s, as well as most mothers with childcare responsibilities, can probably find some reason to get out of jury duty, most juries will contain a disproportionate number of very young, very old, less educated, and less family-grounded individuals. In deliberations, less comprehending jurors may feel intimidated by seemingly more savvy members who, for their part, may be frustrated with their slower compatriots' failure to grasp their arguments or see things their way.

Indeed, an entire industry of *jury persuasion*, often trafficking under the euphemism of *trial consulting*, has sprung up precisely to capitalize on juries' frequent cluelessness and to help attorneys use this to their own advantage (Kressel & Kressel, 2002; Posey & Wrightsman, 2005; Vinson & Davis, 1996). For example, we know from cognitive psychology and everyday experience that most people make decisions not by carefully weighing evidence and using inductive reasoning to arrive at a conclusion. Rather, they make an immediate judgment which is typically based on emotion and first impressions and lies within their pre-existing frame of reference and comfortable world-view. Then, they selectively scan the available data to cherry-pick information that will self-justifyingly support their original position. Hence, most jurors strive to reach verdicts which do not conflict strongly with the views they've held at the beginning of the trial; that is, they strive to reduce cognitive dissonance (Feigenson, 2000; Nisbett & Ross, 1980; Petty & Ciacioppo, 1986; Singer, 1998; Sunby, 1997).

Thus, lawyers know that it is good trial strategy to build your case around a small number of fundamental principles about which most jurors are surmised to feel strongly and that consequently act as screens or filters to interpret, distort, or reinforce information presented during the trial. Tactically, the more an attorney can frame his or her case in terms of the jurors' own personal experience, the greater the likelihood of winning the case (Kressel & Kressel, 2002; Murphy, Loveland, & Munsterman, 1992; Vinson & Davis, 1996). Finally, human beings form impressions about other human beings more strongly than they do about abstract data. When jurors can understand the content of the testimony, they usually factor this into their decisions. But when the complexity of the subject matter exceeds their comprehension, they rely on the perceived sincerity and persuasiveness of the witness (Cooper, Bennett, & Sukel, 1996).

Today's poor, benighted jurors may be forgiven their blunders if only because the complexity of the world as a whole has changed much in just a few centuries, while the human brain and human nature have not. No less an authority than retired Supreme Court justice Sandra Day O'Connor (2003) has lamented this modern state of affairs:

> The world is a very different place now than it was in 1220 or in 1789 or fifty years ago. We therefore

should not be surprised to learn that aspects of the jury system that worked well in those times work less well today and need some repairs. What should surprise us is that so little of the necessary repair work has been done.

There are three aspects of the jury system that need particular attention. First, *the conditions of jury service.* When citizens are called for jury service, they often view it as a burden rather than a privilege. And for good reason: when they arrive at the courthouse they frequently are treated more like sheep than people, and the system can seem designed to disrupt their lives to a maximum degree. Second, *jury selection.* The process of selecting a jury out of the citizens called for jury service on a particular day has changed from a necessary safeguard against potentially biased jurors to a way for highly paid jury consultants to attempt to ensure a jury favorable to the side paying their fees. And third, *the conduct of the trial itself.* Too often, jurors are allowed to do nothing but to listen passively to the testimony without any idea what the legal issues are in the case, and without being permitted to take notes or participate in any way, finally to be read a virtually incomprehensible set of instructions and sent to the jury room to reach a verdict in a case they may not understand much better than they did before the trial began (O'Connor, 2003, pp. 217-218; cited in Posey & Wrightsman, 2005, pp. 218).

Jury deliberation. This is where it all comes together, where the jurors are supposed to put their heads together and come up with a decision that follows the law and respects the evidence in the case. They have already been instructed that there are specific things they are and are not allowed to include in their thinking about the case; they may or may not understand these rules. A number of surveys have shown that the interactions and dynamics of these 12 strangers, thrown together from diverse cultures and walks of life, with widely varying cognitive skills and personalities, can often be the biggest source of stress for jurors during the trial. While many jury deliberations proceed tolerably, and in some instances may even be enjoyably challenging, others are described by jurors as the worst experience they've ever had (Antonio, 2006; Butler, 2007).

The types of stresses during jury deliberation can be multiple and can range from little personal irritations from another juror's mannerisms or tone of voice, to a particularly obnoxious, ignorant, or intimidating juror who just ticks everybody else off and makes the process so much more unpleasant. Not to be overlooked is the physical setting, with poorly ventilated jury chambers resembling sweaty locker rooms after a few hours. The deliberation process itself can be contentious and the juror who evinces a minority opinion may find him- or herself reviled and alienated for "not letting us get on with this." Some jury deliberations have reportedly almost broken into fistfights, and breakdowns in decorum with inadvertent or intentional spewing of stereotypes and prejudices are not uncommon, as the mounting stress brings out the ugly side of the deliberators (Bornstein et al., 2005; Butler, 2007; Casey, 1998).

Juror Stress: Symptoms and Syndromes

Butler (2007) points out that if a research committee were to propose a study on the human stress response that incorporated the factors reviewed above, they would no doubt be fired from their university and banned from research for the rest of their lives. Another, perhaps more germane, way to look at it is that the kind of working environment that many jurors are subjected to during their service would be strictly illegal in all regulated American public and private organizations, and discovery of such conditions would subject the organization to civil penalties and criminal prosecution.

Juror stress symptoms can be conceptualized along three dimensions: (1) symptom type; (2) symptom severity; and (3) symptom time course.

Symptom Type

Juror stress symptoms tend to replicate those reported more generally in the stress and trauma literature (Antonio, 2006; Bell & Feldman, 1992; Bornstein et al., 2004; Butler, 2007; Casey, 1998; Costanzo & Costanzo, 1994; Davis, 1993; Feldman & Bell, 1993; Kaplan & Winget, 1992; Kelley, 1994; Shuman et al., 1994) and include the following:

Physical symptoms. Impaired sleep, headaches, heart palpitation, high blood pressure, cutaneous reactions (hives and rashes), ulcers, impaired sexual functioning, muscle tension, tremors, chest pain, faintness.

Psychological symptoms. Intrusive recollections, nightmares, emotional numbing and detachment, anxiety, depression, increased alcohol consumption.

Symptom Severity

Juror stress appears to show the standard *dose-response ratio* seen with other stressors, that is, the greater the level of stress, the more severe the symptoms (Butler, 2007). For example, jurors serving on "traumatic" trials, including rape, murder, and aggravated kidnapping, were found to experience more severe symptoms than jurors on "non-traumatic" trials such as burglary or drug possession (Shuman et al., 1994). In particular, the jurors on traumatic trials were many times more likely to experience depression (Miller et al., 2007).

Symptom Time Course.

In the Capital Jury Project (Antonio, 2006), jurors' stress reactions were found to occur in three main stages: during the trial; immediately after the sentence was announced; and in the days, weeks, or months after the trial ended.

During the trial. Interestingly, only a few of the jurors reported that the full impact of their jury experience was felt while the trial was occurring; most jurors seemed to go "on automatic" to function while the trial was in progress. The major source of stress at this time was determining the actual punishment decision. Other stressors included having to view disturbing crime scene evidence and the isolation of not being able to speak to their families about the case.

Immediately after the trial. In many cases, the stress response came as a "delayed reaction" right after the trial was over. Most of the jurors in this category reported crying at some point, either from the strain of their recent ordeal or out of sheer relief that it was over. Two female jurors in this sample were concerned about the effect the verdict would have on the victim's family.

Days, weeks, or months after the trial. Most of the jurors reported that serving in a capital murder trial affected them long after the trial ended. Some jurors experienced changes in their relationships and lifestyles. Many reported difficulty forgetting what they heard or saw during the trial, and a few reported classic symptoms of PTSD, including nightmares, intrusive recollection, and emotional numbing (Antonio, 2006).

Alleviating Juror Stress

Several authorities have proposed recommendations for making the juror system less stressful and more humane, based on their analyses of juror responses to surveys and general experience (Antonio, 2006; Bornstein et al., 2005; Casey, 1998; McAree, 2004; Miller et al., 2007; Nordgren & Thelen, 1999). I have divided these recommendations into procedural measures and clinical approaches.

Court Procedural Measures

These issues relate to changing the courtroom setting and the conditions of jury service (Antonio, 2006; Bornstein et al., 2005; Casey, 1998; McAree, 2004; Miller et al., 2007; Nordgren & Thelen, 1999) and include the following:

Improve jury notification and reporting for service. Provide sufficient time for prospective jurors to respond to jury summons. Many courts now provide the option of deferring jury service one or more times, as long as the summonee reports within a specified period of time (usually about 6 months). Giving jurors time to arrange their affairs provides a sense of control that may increase juror cooperation and motivation to participate. Provide basic information with regard to how to respond to the summons, where to report, directions, relevant phone numbers, etc. Provide safe transportation and security escort between the courthouse and transportation (parking lot, bus stop). Remember, anything the court can do that makes it easier, not harder, for jurors to report for jury duty will increase compliance rates. Consider adjusted compensation rates for self-employed jurors or jurors whose employers will not compensate the worker for his or her service time.

Explain the trial process. All too often, the initial orientation to the legal system consists of a short, prepackaged video played on a screen in a busy auditorium that may be all but incomprehensible to most of the stressed and harried audience in the pre-panel "cattle call" room. Felons' confessions may be thrown out if police cannot affirmatively demonstrate that the suspect made a knowing and informed waiver of his or her Miranda rights at the time of arrest. Similarly, considering that people's legal fates are at stake, shouldn't prospective jurors be required to demonstrate that they understand the relevant law and legal procedures? Judges should take the initiative to explain things to the jurors in a clear, understandable fashion and solicit their feedback with regard to their understanding.

Also, give jurors a head's-up as to what to expect in general from the trial on which they are being selected to serve. Obviously, the nature of the trial, whether criminal (murder, robbery, rape, drug possession) or civil (personal injury lawsuit, contract dispute, family law case), should be explained. Many jurors state that they would have liked to have been forewarned that the trial could include gruesome photographs, foul language, pornographic material, and/or graphic descriptions of criminal acts. This may be contested by some judges and attorneys who are leery of discussing any type of evidence that has not yet been determined admissible. Additionally, many attorneys may actually be counting on the emotional shock value of certain evidence to sway jurors' opinions and don't want them desensitized by previous discussion; other attorneys may not want to "tip their hand" about sensitive forthcoming evidence. Courts should strive to work out some compromise solution that preserves the rules of evidence while assuring that jurors will be in a proper mental state to hear the case.

Facilitate the jury selection process. One aspect of the trial system that should be clearly explained is the necessity for attorneys to ask jurors probing questions during voir dire. This should include an explanation of the purpose of the voir dire examination, an explanation of the difference between peremptory challenges and challenges for cause, introductory information on the particular case, an estimate of how long the trial may last, and an indication of whether the jury will be sequestered and, if so, for how long and why.

Be sensitive to jurors' privacy concerns. Responses from jurors indicate that some judges and attorneys may view voir dire as a fishing expedition to gain as much information as possible about each juror rather than just enough information to determine if a juror can be fair and impartial. Questions about mental illness, substance abuse, extramarital affairs, job and salary history, or past run-ins with the law may be shrugged off by some potential jurors but shocking to others. Many jurors may be understandably concerned about who will get their personal information or will have access to court records. Any juror questionnaires should be collected at the end of the selection process and the procedures for assuring juror privacy should be explained.

Basic, commonsense recommendations include reducing waiting time, providing comfortable accommodations, and endeavoring to treat prospective jurors with the kind of respect the court pays lip service to when intoning the sacred civic duty to uphold our system of justice.

Maintain control of the courtroom and trial process. When people are under pressure in an unfamiliar environment, they want the grownups to be in charge. Jurors report that much of their stress occurs when they perceive the judge as losing control of the courtroom. Intimidating, bickering, or grandstanding attorneys should be reined in, and TV cameras should be removed if they interfere with the trial process. Loud or obtrusive witnesses or courtroom audience members should be quieted or ejected. Taking control doesn't mean being a tyrant; judges should always be civil with attorneys, jurors, and witnesses, but they should make it clear that they will tolerate no breaches of procedure or decorum in their courtroom. Control also means keeping the trial process humming along so things don't bog down; ironically, boredom is often as much a threat to juror concentration as overstimulation. Finally, in high-profile cases, jurors should be given some guidance on how to deal with the media.

Modulate the presentation of disturbing evidence and testimony. As noted above, viewing grisly evidence or listening to emotionally disturbing testimony is reported by many jurors as being among the most stressful aspects of their service. Although gruesome evidence is typically associated with criminal trials, civil trials involving claims of negligent injury or medical malpractice often contain their share of hideous material. I recall testifying in one civil case where the plaintiff's claim of developing PTSD after seeing a loved one killed in a traffic accident was bolstered by full-color accident scene photos detailing what the speeding vehicle had done to the victim's head and body. Again, the purpose of preparing juries for disturbing testimony is not necessarily to lessen the import of the criminal or civilly negligent act, or to bias their view of the evidence in any way, but simply to alert them that such potentially disturbing material is coming. Indeed, juries who are shocked and overwhelmed by blatantly violent or pornographic material may be less capable of rendering a fair decision.

Allow greater juror participation in the trial process. Under traditional trial procedures, jurors are expected to play a passive role, quietly listening and absorbing the presented evidence and testimony in preparation for their deliberations. Recalling the point made at the beginning of this article, in no other field – medicine, law enforcement, emergency services, business and industry, government, the military – are critical decisions made in the context of deliberate restriction of relevant information. While certain aspects of a legal trial are

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unique, such as the importance of controlling bias, research on juror decision making increasingly shows that this passive role – no note-taking allowed, no questions asked by the jury – is unnatural and uncomfortable for most jurors, hindering their ability to remain objective, to concentrate on evidence and testimony, and to integrate new, unfamiliar material; just imagine trying to pass a high school or college course under these conditions. Conversely, studies show that juror comprehension and satisfaction are increased if jurors are allowed a more active role in trials (Cooper et al., 1996; Dann, 1993; Heuer & Penrod, 1994; Rosehan, 1994).

Accordingly, many courts are now permitting limited note-taking by jurors and the asking of limited questions. The latter usually takes the form of having the juror write the query on a piece of paper which is then passed to the judge for review. If he or she determines that it is an appropriate question, the judge will then read it to the witness (or sometimes have the bailiff or court reporter read it). In my experience, this has almost always occurred in the context of expert witness testimony, where the jury has a legitimate question concerning some technical matter that the expert has just expounded upon. Given that jury verdicts may well be determined by their understanding of such complex material, anything that will increase their understanding should well serve the purposes of a fair and just verdict.

Facilitate jury deliberations. Arguably, the jury deliberation process is the most critical aspect of juror activity in the trial because it is here that the fate of the stakeholders is decided. Most jurors rank the process of deciding on a verdict and the fear of making a mistake among the top sources of stress in their trials. One problem often cited is their lack of a clear understanding of the judge's jury instructions, and research has demonstrated generally low comprehension of juror instructions in general (Greene & Bornstein, 2000; Steele & Thornburg, 1991). Accordingly, it is crucial for judges to ascertain that their juries understand the relevant instructions.

After days of listening to complex, confusing, disturbing, and/or boring testimony, just throwing a group of strangers into a room and expecting them to arrive at a just decision may be more a reflection of naive optimism than reality. The conduct of jury deliberations can range from polite and civil to something resembling a dog fight. Most jurors report that they would have liked some guidelines for their deliberations. Especially in tense criminal trials or where jurors are having difficulty getting along, judges should be prepared to provide some guidelines for cooperative and collaborative deliberation, such as listening to one another's points without interruption, disagreeing respectfully, and not taking arguments about the case personally. Business people take hours of courses and training seminars on decision-making processes, conflict resolution strategies, and how to conduct productive meetings (Miller, 2008d) – shouldn't juries be given some guidance on this as well? If jury sequestration is a possibility in this trial, prepare jurors for this in advance, from the outset of jury selection.

Clinical Measures

The following recommendations entail more of an interface between judicial and mental health professionals in terms of providing specific interventions to help jurors cope with stress. There are some things that judges and court personnel can do; other approaches require the direct or consultative role of a qualified mental health professional (Antonio, 2006; Bienen, 1993; Bornstein et al., 2005; Casey, 1998; Dabs, 1992; McAree, 2004; Miller et al., 2007).

Pre-trial interventions. This is the proactive aspect of juror stress management. The purpose of pre-trial interventions is to prepare jurors ahead of time for the stress they may experience during the course of a trial. These measures include informal discussions or prepared educational modules about the potential effects of stress, how to recognize symptoms, and how to utilize a range of coping techniques. The techniques themselves are familiar from stress management applications in other fields, such as law enforcement and emergency services (Miller, 2008a, 2008b).

Juror stress debriefing. Sometimes it may not be clear how stressful a trial has been until it has ended, at which time appropriate follow-up mental health services may be required (Goleman, 1991). Although court-sponsored services for crime victims exist in all 50 states (Miller, 2008c) and psychological services for law enforcement have existed in most jurisdictions for decades (Miller, 2006b), prior to 1990 there were few institutionalized programs through the courts for providing any kind of mental health services for jurors (McAree, 2004). Following several highly-publicized trials containing horrific evidence, including the Jeffrey Dahmer serial cannibalism trial, the trial of the Oklahoma City bombers, and the Pam Basu trial, in which a mother was dragged and mutilated during a carjacking, courts have begun offering psychological services to jurors (Bell & Feldman, 1992;

Feldman & Bell, 1991, 1993; Hafemeister, 1993; Hafemeister & Ventis, 1992), largely in the form of one or more clinical varieties of *critical incident stress debriefing* (CISD) approaches, part of the larger domain of *critical incident stress management* (CISM), familiar to most readers of this journal (Everly & Mitchell, 1997; Miller, 1998c, 1999; Mitchell & Everly, 2003).

Developed in the field of public safety and emergency services, the debriefing model has now been applied to a wide range of crises, including crime victimization, natural disasters, and victims of terrorism (Miller, 1998c, 2008c). As developed in the emergency services field, CISD debriefing is a peer-led, clinician-guided process, usually consisting of one or more mental health professionals and one or more peer debriefers, i.e. fellow police officers, firefighters, paramedics, or crisis clinicians who have been trained in the CISD process and who may have been through critical incidents and debriefings in their own careers. The purpose of the debriefing is to normalize and detoxify the immediate traumatic stress reactions being experienced by the subjects and to strengthen resistance to further psychological disability. This is done through a semiformal seven-stage process, including the introduction, fact, thought, reaction, symptom, education, and reaction phases, designed to ease the process of ventilating distress, but then reseal psychological stability and encourage natural healing, aided, if necessary, by follow-up referral to additional mental health services.

Recent applications have expanded the use of CISD techniques with civilian groups. Bell & Feldman (1992) and Feldman & Bell (1991, 1993) developed a post-trial debriefing model specifically for jurors and other court personnel that is essentially similar to the crisis debriefings utilized for victims of crimes, natural disasters, or similar traumas. In general, effective debriefing sessions reduce stress, offer information on mental health services for those who might need it, provide closure, promote confidence in the judicial system, and enhance satisfaction.

As with most interventions, controversy exists. Bornstein and colleagues (2005) conducted a study that measured jurors' stress before and after a post-trial debriefing and found that, while jurors overwhelmingly said that they found the debriefing intervention helpful, their measured stress levels and symptom indices were similar at pre- and post-debriefing. Juror stress levels were lower at one month post-trial regardless of whether they had received the debriefing service or not. This, in fact, is an intriguing finding that runs through the stress debriefing efficacy literature: participants frequently say it helps, but formal measurements of distress or symptoms remain unchanged (Arendt & Elklit, 2001).

As with stress debriefing in other contexts, a major part of the problem with using this intervention with jurors probably relates to the appropriateness of its application; mental health clinicians who advise the courts should guide court officials to use this technique only where it is legitimately needed (Casey, 1998). For example, for trials that involve relatively low levels of stress, jurors may need only general discharge instructions from the trial judge prior to being dismissed. In general, informal meetings with the trial judge can provide a sense of closure for the jurors. In more stressful trials, the judge may choose to hold a more lengthy discussion with the jurors or bring in a mental health professional to conduct a formal debriefing. This may be the case in particularly gruesome trials or those which attract a great deal of media attention. However, surveys indicate that some judges like to handle these sessions on their own, only rarely calling in a mental health professional (Bornstein et al., 2005; Casey, 1998; McAree, 2004). Other judges seem to recognize that this is out of their league and are only too happy to find a mental health professional who will take over – if there are any available who do this kind of work (Miller et al., 2007).

Some recommendations for optimizing the juror debriefing session (Bornstein et al., 2005; Miller et al., 2007) include:

- Consider the best time of day for the debriefing. The afternoon the trial ends may leave jurors feeling drained; all they want to do is go home. Set up a separate day for the session, perhaps giving jurors a few days to recoup.
- Make the jurors feel comfortable. Debriefing should be voluntary and there should be no stigma attached. Nothing that goes on in the session should be on the record – the trial is over; this is solely for the jurors' well-being.
- Unlike public safety professionals, jurors may not quite know how to proceed, so prime the conversational pump to get people talking, but maintain control over the discussion, so that it helps, not hurts. Encourage productive venting, not unhealthy spewing or accusing. Keep the focus on the positive.
- Positive focus includes normalizing juror stress. This should be conceptualized as a normal reaction by

normal people to an abnormally challenging situation. Reassure the jurors that they did their best at a difficult job in making a crucial decision.

- Cover any lingering questions jurors may have. Address concerns about safety and fears of retribution. Help jurors deal with the media. Seek juror feedback as to how things could be improved in the future so that they feel part of the solution.

In cases where the judge suspects that jurors are experiencing significant stress or showing symptoms of a serious mental disorder, they can refer the juror to a qualified mental health professional for more individualized counseling – again, courts should be proactive in identifying clinicians in the community who can serve as resources for these services.

Combined interventions. One criticism that has been leveled against debriefing-type interventions is that their standard, one-size-fits-all format lacks the flexibility to deal with diverse types of people and problems. While the CISM model continues to expand and adapt to new challenges, Nordgren & Thelen (1999) have developed a multifaceted intervention program they call *Graduated Jury Stress Management* (GJSM) which contains five intervention levels that are administered according to the stress level of the individual juror. Although GJSM is designed to be a post-trial intervention, some aspects of it (i.e. written instructions) could also be adapted as a pre-trial intervention:

- *Level 1: Basic Information.* Jurors who have not yet evinced any problems simply receive written educational materials about stress reactions and potential coping strategies.
- *Level 2: Stress Management Instruction.* This applies to jurors with mild stress levels. The judge individually gives these jurors basic stress management information along with the standard post-trial discharge instructions.
- *Level 3: "Flexible Defusing."* Jurors with moderate stress receive a 15-20 minute debriefing during which a mental health professional explains normal stress reactions, offers coping strategies, and assesses individual jurors to determine if further clinical services are necessary.
- *Level 4: "Jury Stress Debriefing."* This intervention is adapted from the CISD model commonly utilized with emergency workers and is applied to jurors who are showing significant levels of stress.
- *Level 5: Individual Psychotherapy.* This may range from a few sessions to ongoing treatment and is intended for jurors who are showing extreme stress reactions and/or clinical symptoms of a mental disorder. Not uncommonly, these may have been jurors who had difficulties in functioning prior to the trial and the trial stresses have exacerbated their preexisting or dormant psychopathology.

Clearly, Nordgren & Thelen's GJSM (1999) appears to formalize the stages of intervention that most clinicians would apply to the treatment of traumatic stress cases. But, as effective as these proactive and responsive clinical measures might be, and as best we may try to make procedural changes within the existing American jury system, perhaps real efforts to increase accuracy and efficiency and reduce stress within the jury system can only come when more fundamental changes are considered.

Conclusions and Recommendations

Based on a review of the literature and my own clinical and forensic experience, the following recommendations for improving the civil and criminal justice systems in the United States are offered.

Let judges judge. Just as we maintain strict training and credentialing criteria for authorizing people to call themselves doctors and attorneys and to practice medicine and law, we should do the same for those who practice jurisprudence; we should let the judges judge. Many countries already do this. In some court divisions, such as family court, judges, not juries, often decide cases. In many other cases, defendants have the option of waiving a jury trial and opting for a *bench trial*, which is having the judge hear the case and render a verdict.

Utilize professional jurors. Okay, even doctors have assistants to perform routine clinical tasks and lawyers use paralegals for similar purposes because there just aren't enough physicians and attorneys to go around. But these paraprofessional staff still receive some degree of training and certification to do what they do. So why not recruit reasonably intelligent and educated citizens on a voluntary basis, provide them with specialized training in the law, decision-making, and interpersonal skills, and credential them as *Certified Jurors* or some such appellation.

There could even be board-certified subspecialties within the Certified Juror field, such as "certified medical juror," "certified mental health juror," "certified business-economics juror," "certified industrial-mechanics juror," and so on. The next step would be to compensate them for their service (just as medical assistants and paralegals get paid a fair wage) and utilize them as part of a rotating pool of professional jurors who can objectively decide cases with a basic prerequisite of knowledge and training both in the law and in the subject matter of the case.

Meanwhile, professionals within the legal system, and the mental health clinicians who advise them, must strive to make jury service as efficient, accurate, and comfortable as possible. Whether in the emergency room or the courtroom, people's lives are at stake, in one way or another. We must assure that those who are called to make the crucial decisions are afforded the proper conditions to do so in a manner that serves justice.

REFERENCES

Antonio, M.E. (2006). "I didn't know it'd be so hard." Jurors' emotional reactions to serving on a capital trial. *Judicature, 89*, 282-288.

Arendt, M. & Elklit, A. (2001). Effectiveness of psychological debriefing. *Acta Psychiatrica Scandinavica, 104*, 423-437.

Bell, R.A. & Feldman, T.B. (1992). Crisis debriefing of juries: A follow-up. *American Journal of Preventive Psychiatry and Neurology*, Fall, pp. 55-59.

Bienen, L.B. (1993). Helping jurors out: Post-verdict debriefing for jurors in emotionally disturbing trials. *Indiana Law Journal, 68*, 1333-1355.

Bishop, K. (1992). When a jury hears details too gruesome to bear. *New York Times*, January 31, p. B7.

Boone, R. (2008). Idaho killer's jury views letters from tortured kids. *South Florida Sun-Sentinel*, August 15, p. 8A.

Bornstein, B.H., Miller, M.K., Nemeth, R.J., Page, G.L. & Musil, S. (2005). Juror reactions to jury duty: Perceptions of the system and potential stressors. *Behavioral Sciences and the Law, 23*, 321-346.

Bornstein, B.H. & Nemeth, R.J. (1999). Jurors' perception of violence: A framework for inquiry. *Aggression and Violent Behavior, 4*, 77-92.

Butler, D. (2007). Trial by jury: the hours are long, the benefits are lousy, and the work is highly stressful. *The Ottawa Citizen*, January 27, pp. 1-6.

Casey, P. (1998). *Through the eyes of the juror: A manual for addressing juror stress*. Williamsburg, VA: National Center for State Courts.

Cooper, J., Bennett, E.A. & Sukel, H.L. (1996). Complex scientific testimony: How do jurors make decisions? *Law and Human Behavior, 20*, 379-394.

Costanzo, M. & Costanzo, S. (1994). The death penalty: Public opinions, legal decisions, and juror perspectives. In M. Costanzo & S. Oskamp (Eds.), *Violence and the law* (pp. 246-272). Thousand Oaks, CA: Sage.

Curridan, M. (1995). Jury reform. *American Bar Association Journal*, November, p. 72.

Dabs, M.O. (1992). Jury traumatization in high profile criminal trials: A case for crisis debriefing? *Law and Psychology Review, 16*, 201-216.

Dann, B.M. (1993). "Learning lessons" and "speaking rights": Creating educated and democratic juries. *Indiana Law Journal, 68*, 1229, 1238-1247.

Davis, R.C. & Friedman, L.N. (1985). The emotional aftermath of crime and violence. In C.R. Figley (Ed.), *Trauma and its wake: The study and treatment of posttraumatic stress disorder* (pp. 90-112). New York: Brunner/Mazel.

Davis, S.O. (1993). The last angry woman: Why King trial juror Lindy Miller no longer believes in truth, justice and the American way. *Los Angeles Magazine*, November, pp. 58-64.

Diamond, S.S. (1993). What jurors think: Expectations and reactions of citizens who serve as jurors. In R.E. Litan (Ed.), *Verdict: Assessing the civil jury system* (pp. 282-305). Washington, DC: Brookings Institution.

Everly, G.S. & Mitchell, J.T. (1997). *Critical incident stress management (CISM): A new era and standard of care in crisis intervention*. Ellicott City, MD: Chevron.

Feigenson, N. (2000). *Legal blame: How jurors think and talk about accidents*. Washington, DC: American Psychological Association.

Feldman, T.B. & Bell, R.A. (1991). Crisis debriefing of a jury after a murder trial. *Hospital and Community Psychiatry, 42*, 79-81.

Feldman, T.B. & Bell, R.A. (1993). Juror stress: Identification and intervention. *Bulletin of the American Academy of Psychiatry and the Law, 21*, 409-417.

Figley, C.R. (1983). Catastrophes: An overview of family reactions. In C.R. Figley & H.I. McCubbin (Eds.), *Stress and the family: Coping with catastrophe* (Vol. 2, pp. 3-20). New York: Brunner/Mazel.

Fishfader, V.L., Howells, G.N., Katz, R.C. & Teresi, P.S. (1996). Evidential and extralegal factors in juror decisions: Presentation mode, retention, and level of emotionality. *Law and Human Behavior, 20*, 565-572.

Fullerton, C.S., McCarroll, J.E., Ursano, R.J. & Wright, K.M. (1992). Psychological responses of rescue workers: Firefighters and trauma. *American Journal of Orthopsychiatry, 62*, 371-378.

Goleman, D. (1991). For many jurors, trials begin after the verdict. *New York Times*, May 14, pp. C1.

Greene, E. & Bornstein, B.H. (2000). Precious little guidance: Jury instruction on damage awards. *Psychology, Public Policy, and Law, 6*, 743-768.

Hafemeister, T.L. (1993). Juror stress. *Violence and Victims, 8*, 177-186.

Hafemeister, T.L. & Ventis, W.L. (1992). Juror stress: What burden have we placed on our juries? *State Court Journal, 16*, 35-46.

Haney, C., Sontag, L. & Costanzo, S. (1994). Deciding to take a life: Capital juries, sentencing instructions, and the jurisprudence of death. *Journal of Social Issues, 50*, 149-176.

Heuer, L. & Penrod, S. (1994). Juror note taking and question asking during trials. *Law and Human Behavior, 18*, 121-135.

Kaplan, S.M. & Winget, C. (1992). The occupational hazards of jury duty. *Bulletin of the American Academy of Psychiatry and the Law, 20*, 325-333.

Kelley, J.E. (1994). Addressing juror stress: A trial judge's perspective. *Drake Law Review, 43*, 97-125.

Kressel, N.J. & Kressel, D.F. (2002). *Stack and sway: The new science of jury consulting*. Cambridge, MA: Westview.

McAree, D. (2004). Reaching out to juries rocked by evidence. *National Law Journal*, October, pp. 1-2.

Miller, L. (1998a). Our own medicine: Traumatized psychotherapists and the stresses of doing therapy. *Psychotherapy, 35*, 137-146.

Miller, L. (1998b). Psychotherapy of crime victims: Treating the aftermath of interpersonal violence. *Psychotherapy, 35*, 336-345.

Miller, L. (1998c). *Shocks to the system: Psychotherapy of traumatic disability syndromes*. New York: Norton.

Miller, L. (1999). Critical incident stress debriefing: Clinical applications and new directions. *International Journal of Emergency Mental Health, 1*, 253-265.

Miller, L. (2006a). Critical incident stress debriefing for law enforcement: Practical models and special applications. *International Journal of Emergency Mental Health, 8*, 189-201.

Miller, L. (2006b). *Practical police psychology: Stress management and crisis intervention for law enforcement*. Springfield, IL: Charles C Thomas.

Miller, L. (2007a). Crisis intervention strategies for treating law enforcement and mental health professionals. In F.M. Dattilio & A. Freeman (Eds.), *Cognitive-behavioral strategies in crisis intervention* (3rd ed., pp. 93-121). New York: Guilford.

Miller, L. (2007b). Law enforcement traumatic stress: Clinical syndromes and intervention strategies. In L. Territo & J.D. Sewell (Eds.), *Stress management in law enforcement* (2nd ed., pp. 381-397). Durham, NC: Carolina Academic Press.

Miller, L. (2008a). Stress and resilience in law enforcement training and practice. *International Journal of Emergency Mental Health, 10*, 1-16.

Miller, L. (2008b). *METTLE: Mental toughness training for law enforcement*. Flushing, NY: Looseleaf Law Publications.

Miller, L. (2008c). *Counseling crime victims: Practical strategies for mental health professionals*. New York: Springer.

Miller, L. (2008d). *From difficult to disturbed: Understanding and managing dysfunctional employees*. New York: Amacon.

Miller, M.K., Flores, D.M. & Dolezilek, A.N. (2007). Addressing the problem of courtroom stress. *Judicature, 91*, 60-69.

Mitchell, J.T. & Everly, G.S. (2003). *Critical incident stress management (CISM): Basic group crisis intervention* (3rd ed.). Ellicott City: ICISF.

Moon, E. (1999). How to handle the high cost of caring. *Professional Counselor*, February, pp. 18-22.

Mott, N.L., Hans, V.P. & Simpson, L. (2000). What's half a lung worth? Civil jurors' accounts of their award decision making. *Law and Human Behavior, 24*, 401-419.

Murphy, T.R., Loveland, G.K. & Munsterman, G.T. (1992). *Managing notorious cases*. Williamsburg, VA: National Center for State Courts.

Nisbett, R. & Ross, L. (1980). *Human inference: Strategies and shortcomings of social judgment*. Englewood Cliffs: Prentice Hall.

Nordgren, C. & Thelen, M.W. (1999). Helping jurors manage stress: A multilevel approach. *Judicature, 82*, 256-263.

Petty, R.E. & Cacioppo, J.T. (1986). Communication and persuasion: Central and peripheral routes to attitude change. New York: Springer-Verlag.

O'Connor, S.D. (2003). *The majesty of the law: Reflections of a supreme court justice*. New York: Random House.

Posey, A.J. & Wrightsman, L.S. (2005). *Trial consulting*. New York: Oxford University Press.

Rauch, K.D. (1992). After the verdict: Healing jurors who have been traumatized by violent testimony. *Washington Post*, April 14, p. Z10.

Rosehan, D.L. (1994). Note taking can aid juror recall. *Law and Human Behavior, 18*, 53-61.

Shuman, D.W., Hamilton, J.A. & Daley, C.E. (1994). The health effects of jury service. *Law and Psychology Review, 18*, 267-307.

Singer, A. (1998). Understanding and shaping jurors' decisions with litigation psychology research. In E. Pierson (Ed.), *1998 Wiley expert witness update: New developments in personal injury litigation* (pp. 73-105). New York: Wiley.

Slind-Flor, V. (1992). Counties begin to help jurors cope afterward. *National Law Journal*, January 20, pp. 3, 28.

Steele, W.W. & Thornburg, E.G. (1991). Jury instructions: A persistent failure to communicate. *Judicature, 74*, 249-252.

Sturgess, G. (1990). Dire days for voir dire: Too many trials, too few willing jurors place great strains on justice system. *Legal Times*, September 10, p. 1.

Sunby, S.E. (1997). The jury as critic: An empirical look at how capital juries perceive expert and lay testimony. *Virginia Law Review, 83*, 1109-1188.

Talbot, A., Dutton, M. & Dunn, P. (1995). Debriefing the debriefers: An intervention strategy to assist psychologists after a crisis. In G.S. Everly & J.M. Lating (Eds.), *Psychotraumatology: Key papers and core concepts in posttraumatic stress* (pp. 281-298). New York: Plenum.

Vinson, D.E. & Davis, D.S. (1996). *Jury persuasion: Psychological strategies and trial techniques* (3rd ed.). Little Falls, NJ: Glasser LegalWorks.

White, J.W., Lawrence, P.S., Biggerstaff, C. & Grubb, J.D. (1985). Factors of stress among police officers. *Criminal Justice and Behavior, 12*, 111-127.

Yassen, J. (1995). Preventing secondary traumatic stress disorder. In C.R. Figley (Ed.), *Compassion fatigue: Coping with secondary traumatic stress dis order in those who treat the traumatized* (pp. 178-208). New York: Brunner/Mazel.

Zimmerman, I.M. (2006). Helping judges in distress. *Judicature, 90*, 10-15.

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Representative Beth Kerttula

House Minority Leader

Thank you!
Beth

DATE: April 1, 2010

TO: Senator Hollis French
Chair, Senate Judiciary Committee

FROM: Representative Beth Kerttula

RE: House Bill 52 POST-TRIAL JUROR COUNSELING

I respectfully request that the Senate Judiciary Committee schedule House Bill 52 Post- Trial Juror Counseling for a hearing.

Please find attached:

- House Bill 52
- Fiscal Note
- Sponsor statement
- Letters of Support
- Journal Article

Thank you for your consideration. If you have any questions, please do not hesitate to call me or my aide, Hannah McCarty (x4767).

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HB 88

Representative Jay Ramras
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House District 10

House of Representatives

Memo

To: Senator Hollis French
Chair Senate Judiciary Committee

CC: Cindy Smith, Senate Judiciary Committee Aide

From: Representative Jay Ramras

Date: April 18, 2009

Re: CSHB 88 (FIN): EXTEND BAR ASS'N BOARD OF GOVERNORS

Please schedule CSHB 88 (FIN): EXTEND BAR ASS'N BOARD OF GOVERNORS to be heard in the Senate Judiciary Committee.

Attached to this memo please find the following documents:

- Sponsor Statement
- CSHB 88 (FIN): EXTEND BAR ASS'N BOARD OF GOVERNORS
- Fiscal Note
- Legislative Budget and Audit Committee: Board of Governors Alaska Bar Association Sunset Review
- Theresa Nangle Obermeyer, Ph.D. e-mail to Jane Pierson, dated January 30, 2009
- Office Contact: Margaret Dowling, 465-6841

Thank you.

Representative_Jay_Ramras@legis.state.ak.us

ALASKA STATE LEGISLATURE
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Sponsor Statement
HB 88
"An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

The Alaska Bar Association was established in 1955. The Bar Association's primary functions are to screen applicants for admission, thereby ensuring all successful applicants are fit to practice law, and to provide discipline by investigating grievances against members of the Bar. The Bar Association also performs a wide variety of other functions including offering classes for continuing legal education, lawyer referral services, and fee arbitration.

The Board consists of twelve members, nine attorneys elected by the active membership of the Bar Association, and three non-attorney, public members appointed by the Governor and confirmed by the Legislature.

The Division of Legislative Audit, in its November 4, 2008, report concluded that "the board, through the Alaska Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for the investigation of complaints and has established a disciplinary process designed to promote licensed individuals to act in a competent and professional manner." The Division of Legislative Audit further recommended that the termination date of the board be extended to June 30, 2017.

The Board of Governors of the Alaska Bar Association is currently scheduled to terminate on June 30, 2009, and would have one year to conclude its administrative operations unless the legislature acts this session. House Bill 88 will extend the termination date for the Board of Governors of the Alaska Bar Association for another eight years.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit

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November 4, 2008

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

BOARD OF GOVERNORS OF THE
ALASKA BAR ASSOCIATION
SUNSET REVIEW

November 4, 2008

Audit Control Number
41-20057-08

The audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, under AS 08.03.010(c)(2), the Board of Governors of the Alaska Bar Association is scheduled to terminate on June 30, 2009.

In our opinion, the termination date for this board should be extended. The regulation and licensure of attorneys contributes to the protection of the public's welfare. We recommend the legislature extend the termination date to June 30, 2017.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology.

Pat Davidson

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Governors of the Alaska Bar Association (board). Under AS 44.66.050(a), the legislative committee of reference is to consider this report during the legislative oversight process to determine whether the board's termination date should be extended. Currently, AS 08.03.010(c)(2) requires the board to terminate on June 30, 2009. If the legislature takes no action to extend the termination date, the board will have one year from that date to conclude its operations.

Objectives

There are four central objectives of our report. They are:

1. To determine if the termination date for the board should be extended.

2. To determine if the board is operating in the public's interest.

3. To determine if the board has exercised appropriate oversight of licensed members of the Alaska Bar Association (Bar).

4. To provide a current status on the recommendations made in the prior report.

The assessment of the operations and performance of the board was based on criteria set in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board.

Scope and Methodology

Our review focused on the continuing legal education requirement, discipline function provided by the Bar, as well as board proceedings. Our audit reviewed board operations and activities from July 1, 2006 through June 30, 2008.

We reviewed and evaluated the following:

- Applicable statutes, Alaska Bar Rules, Alaska Rules of Professional Conduct, and Bar bylaws

- Board minutes

- Bar annual reports

- Attorney discipline files
- Audited financial statement of the board

In addition, we conducted interviews of the board president, staff, including the executive director, board counsel, director of continuing legal education, and comptroller.

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ORGANIZATION AND FUNCTION

The practice of law in the State of Alaska is regulated by the Board of Governors of the Alaska Bar Association (board). The board consists of 12 members including nine attorneys elected by the active membership of the Alaska Bar Association (Bar) and three non-attorney public members that are appointed by the governor and confirmed by the legislature in joint session.

The powers and duties of the board are conferred by the Alaska Integrated Bar Act (AS 08.08), the Alaska Bar Rules, and the Rules of Professional Conduct which are promulgated by the Alaska Supreme Court. The purpose of the board includes the following: to cultivate and advance the science of jurisprudence, to promote reform in the law and in judicial procedure, to facilitate the administration of justice, to encourage continuing legal education (CLE) for the membership, and to increase the public service and efficiency of the Bar.

Exhibit 1

The Board of Governors of the Alaska Bar Association (as of October 20, 2008)
Mitch Seaver, President *First Judicial District*
Sidney K. Billingslea, President-elect *Third Judicial District*
Don McLean, Vice-president *Public Member*
Jason A. Weiner, Treasurer *Second/Fourth Judicial District*
Christopher R. Cooke, Secretary *Third Judicial District*
Carl Ekstrom *Public Member*
William A. Granger *Public Member*
Donald W. McClintock *Third Judicial District*
Allison Mendel *Third Judicial District*
Hanna Sebold *First Judicial District*
Krista S. Stearns *Third Judicial District*
John J. Tiemessen *Second/Fourth Judicial District*

The two primary functions of the Bar are the admission and discipline of its members. To accomplish these and other functions, the Bar operated with a 2008 budget of $1,983,738. Funding is provided primarily by membership dues ($410 per year), admission fees, lawyer referral fees, CLE charges, administrative discipline fees, and interest income.

Admission Function The board is responsible for screening applicants for admission to the Bar. The board certifies to the Supreme Court that all successful applicants are fit to practice law. The board appoints an executive director who is responsible for directing all staff functions, including the oversight of the admissions function.

Discipline Function The board is responsible for investigating grievances against all members of the Bar. The board appoints the discipline counsel. This counsel is responsible for oversight of all disciplinary actions taken against the Bar's membership and provides an ethics course that is required for all applicants. The board selects hearing committee members from a group of individuals in each judicial district

appointed by the Chief Justice of the Supreme Court. The board is also responsible for issuing reprimands when warranted, and for recommending the Supreme Court impose disbarment, suspension, probation, or public censure when appropriate.

Miscellaneous Functions The Bar also performs a wide variety of miscellaneous functions that include providing classes for and accrediting CLE providers, a lawyer referral service, client mediation, and fee arbitration with clients. In conjunction with the Alaska Legal Services Corporation, the Bar sponsors the Alaska Pro Bono Program. The Bar provides a number of other member services including attorney liability protection, group insurance, the *Alaska Bar Rag*, ethics opinions, and alcohol and drug counseling. In addition, the association provides grants through the Alaska Bar Foundation from earnings of interest on the lawyers trust account program. These grants are used to support legal services for the economically disadvantaged and improve the administration of justice.

The Bar's office is located in Anchorage and is currently staffed by 19 full-time and job-share employees.

The board's decision involving examination and discipline may be appealed to the Alaska Supreme Court. The Alaska Supreme Court issues the order of admission to the Bar and lawyer disciplinary sanctions involving disbarment, suspension, probation, and public censure.

REPORT CONCLUSIONS

In our opinion, the termination date of the Board of Governors of the Alaska Bar Association (board) should be extended. The regulation and licensing of qualified attorneys contributes to the protection of the public's welfare.

The board, through the Alaska Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for the investigation of complaints and has established a disciplinary process designed to promote licensed individuals to act in a competent and professional manner. Chapter 58, SLA 2005 amended AS 08.03.020(c) to increase from four to eight years the period for which a board scheduled for termination may be continued or reestablished by the legislature. As such, we recommend that the legislature extend the termination date of the board to June 30, 2017.

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FINDINGS AND RECOMMENDATIONS

In the prior audit, *Board of Governors of the Alaska Bar Association, Follow Up, September 15, 2006*, (Audit Control No. 41-20050-06), there were three recommendations, one of which has been fully implemented. The implemented recommendation was to adopt a due date for timely issuance of annual reports. The recommendation was resolved at the board's September 7, 2006 meeting where the board voted to amend their Standing Policies, setting April 15 as the due date for the completion of the preceding year's annual report. Review of the 2006 and 2007 annual report documentation confirmed they were completed prior to the April 15 due date.

The recommendation to adopt mandatory minimum continuing legal education (CLE) for attorneys is partially implemented and is reiterated as Recommendation No. 1

The final recommendation, which relates to the Alaska Bar Association (Bar) developing a database of disciplined lawyers, has not been addressed and is reiterated as Recommendation No. 2. In addition, review of board meeting proceedings resulted in noted deficiencies. The deficiencies are further discussed in Recommendation No. 3

Recommendation No. 1

The board should recommend to the Alaska Supreme Court that mandatory minimum CLE for attorneys be adopted.

Prior Finding

CLE for attorneys is voluntary rather than required. The Supreme Court adopted voluntary CLE under Bar Rule 65 in 1999. It encouraged all active members of the Bar to complete at least 12 credit hours of approved CLE, including one credit hour of ethics. Incentives, such as reduction of Bar dues and eligibility to participate in the Lawyer Referral Service, are authorized to those who comply with the Bar rule.

Forty-one legal jurisdictions in the United States have a mandatory CLE requirement for attorneys desiring to practice law in their jurisdiction. Mandatory CLE requirements range from 8 to 27 credit hours per year with the majority of the jurisdictions requiring between 12 and 15 hours. Specific course requirements vary.

Most professions require continuing education to maintain licensure in Alaska. For example, Alaska-licensed dentists, doctors, pharmacists, and psychologists are required to meet minimum continuing education standards.

Overall, we believe a mandatory minimum CLE requirement will enhance the membership's continued professional competence and raise the public's confidence in attorneys. The board should encourage the Supreme Court to adopt an Alaska Bar Rule requiring mandatory minimum CLE.

Legislative Audit's Current Position

The board voted at their September 7, 2006 meeting to send the mandatory CLE rule, as published, to the Alaska Supreme Court. Based on this rule, the Alaska Supreme Court amended Alaska Bar Rule 65 through Supreme Court Order No. 1640, to require all members to complete three credit hours of mandatory ethics continuing legal education (MECLE) per year. In addition to MECLE, all members are encouraged to complete nine credit hours of approved voluntary continuing legal education (VCLE). Members must certify with the Bar that they have completed the required MECLE and provide the number or an estimated number of completed VCLE.

The Supreme Court Order No. 1640 also added Alaska Bar Rule 66 for the suspension of members who have not complied with completing the required MECLE or members who failed to report the MECLE and VCLE for the year. These rules became effective January 1, 2008.

The mandatory ethics requirement does not fully achieve the goal of promoting competency and professionalism in members of the Bar. Although ethics education is part of the goal, requiring CLE, as opposed to encouraging VCLE, will strengthen the public's confidence that attorneys are professional and competent. Therefore, we reiterate our prior recommendation.

Recommendation No. 2

The board should consider developing a database of disciplined lawyers in the Bar's website.

Prior Finding

While current procedures are adequate, the board could increase efficient and effective communication of lawyer discipline to the public by publishing their discipline list on the Bar's website.

Board procedures provide for public notice of all attorneys who have been disbarred, suspended, put on probation, publicly censured, or reprimanded. Currently, the board publishes the names of these attorneys in four major newspapers throughout the State, the local newspaper where the attorney practiced, the *Alaska Bar Rag*, and in the board's annual report. Notice of all disciplines imposed by the court, all orders granting reinstatements, and all public reprimands are also transmitted to the American Bar Association National Lawyer Regulatory Data Bank. These are long-standing means of providing public notice; however, 15 states currently also publish their lawyers discipline list on their websites.

The board should consider developing a database for the Bar's website of the disciplines imposed against lawyers. It would be an effective medium in addition to the others used to inform the public of lawyers who have been disciplined. It would enhance public notification and client protection through increased accessibility of discipline information.

Legislative Audit's Current Position

In their response to the prior recommendation, the board agreed that having public discipline information available on its website was a desirable goal and that they would work to that end. Although some steps have been taken towards the possible implementation of our recommendation, attorney discipline information is not yet available from the Bar's website.

The board stated in the prior recommendation that the new discipline module of the replacement database, including online reporting of public discipline would be operational in the summer of 2007. However, due to changing priorities, the Bar has not started implementing the discipline module, though it is tentatively scheduled for early 2009.

Legislative Audit's position remains unchanged. We continue to believe the board should develop a database of disciplined lawyers to which access is provided the public via the Bar's website.

Recommendation No. 3

The board should adhere to existing public notice requirements for all meetings or modify the bylaws to clearly address conference call board meeting procedures and public notice requirements.

The board, as the governing body of the Bar, is vested with the power and authority to adopt regulations and policies concerning activities, affairs, and organization of the Bar, as well as collect and disburse all monies of the organization. In order to achieve these responsibilities, the board meets at least four times during the year. In addition to the four regular meetings, the president may, or upon written request of three governors, call emergency meetings. Public notice for regular and emergency meetings must be provided at least thirty and three days prior to the meeting, respectively. The proceedings for these board meetings are outlined in the Bar bylaws under Article IV specific to the board.

Since June 30, 2006, there were eight regular and five conference call board meetings. None of the conference call meetings met the public notice requirements for board meetings. There appears to be some confusion by the board as to the public notice requirements for conference call meetings.

The bylaws do not identify conference call meetings as a unique type of board meeting with unique public notice requirements; therefore the board should adhere to the public notice requirements for regular board meetings. Adequate public notice of meetings is necessary to allow for maximum public participation in public activities.

If the board believes the conference call meetings are inherently different from regular meeting then the bylaws should be modified to clearly address conference call board meetings to ensure the appropriate procedures are followed and the public receives adequate notice for such meetings.

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AUDITOR'S COMMENTS

The sunset process allows for an objective and independent review of various boards and commissions to determine if the public need for protection continues to exist and if the entity is satisfying that need. The overall conclusions of our review are that the Board of Governors of the Alaska Bar Association (board) is operating in the public interest and that there is a continuing public need for the attorney admission and discipline functions of the Alaska Bar Association (Bar). Nevertheless, an overall evaluation of the basic approach to these functions should be undertaken from time to time. Whether the discipline function is to be controlled by government or by attorneys is a policy-level determination that should be carefully considered by the Supreme Court, the board, and the legislature. The following comments are intended to assist in such consideration.

Self-regulation, whether by industry or profession, has always been viewed skeptically by the citizenry. There is often a perception of conflict of interest in whether actions are for the benefit of the organization's membership or for the citizens' benefit. The attorney discipline system of the Bar is a self-regulatory function that may suffer from this public perception.

The board is comprised of twelve members, of which nine are attorney members elected by the Bar's membership and three public members appointed by the governor. As the majority is elected by the membership, the Bar's discipline activities will likely be perceived as self-regulation.

We believe that the attorney discipline system in Alaska could be a government function. The American Bar Association concurs and, in fact has recommended that the disciplinary function of state bars be under the direct control of the Supreme Court. The American Bar Association's *Model Rules for Lawyer Disciplinary Enforcement,* August 1993,[1] recommended the following:

> *The disciplinary system should be controlled and managed exclusively by the state's highest court and not the state or local bar association...the disciplinary process should be directed solely by the disciplinary policy of the court and its appointees and not influenced by internal politics of the bar association... the disciplinary system should be free from even the appearance of conflicts of interest or impropriety.*

The following options should be considered in a move away from attorney self-regulation:

- Disciplinary investigations performed by judicial branch employees.

[1] The *Model Rules for Lawyer Disciplinary Enforcement,* August 1993 was amended on August 5, 1996, on February 8, 1999 and on August 12, 2002. The 1993 recommendation is in the commentary under Rule 2.

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- Disciplinary function placed under the Supreme Court with a Disciplinary Board appointed by the court.

There should be no general fund net cost to either of these options. They would be paid for by attorney licensing fees, the same as they currently are, and as they are for other occupations. Fees are established such that full costs are recouped.

From a citizen's perspective, there are no advantages to allowing the legal profession to self-regulate. However, there will always be the disadvantage of at least the perception of inadequate discipline. In a move away from self-regulation, the legal profession and the State's citizens would likely benefit.

ANALYSIS OF PUBLIC NEED

The following analyses of the Board of Governors of the Alaska Bar Association (board) activities relate to the public-need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but to address the areas we were able to cover within the scope of our review.

Determine the extent to which the board, commission, or program has operated in the public interest.

The board admits applicants to practice law through an examination process that was designed in consultation with a national expert. The board also admits members by motion for reciprocity. This option is limited to attorneys in the active practice of law for five of the last seven years in states with which Alaska has a reciprocal agreement.[2]

Additionally, the Alaska Bar Association (Bar) also provides services that are more typically provided by professional associations rather than regulatory agencies. These include:

- The Bar has a committee to administer the Lawyers' Fund (fund) for Client Protection. This fund receives $10 from each active member's annual dues. The fund is used to reimburse clients for losses[3] caused by dishonest conduct[4] of a lawyer which is not covered by insurance or fidelity bond, whether of the lawyer or the client. The maximum amount payable to any individual is the lesser of $50,000 or 10% of the fund amount at the time of the award. The aggregate maximum amount that may be paid to all claimants under a fee arbitration case arising from the dishonest conduct of a particular lawyer is $200,000.

- Since 1976, the Bar has maintained a fee arbitration process allowing a client to resolve attorney fee disputes that have not been determined by statute or court rule or decision. For fee disputes of $5,000 or less, the process provides for a single arbitrator. Disputes over $5,000 are heard by a three-member panel that consists of two attorneys and one

[2] As of June 30, 2008, the Alaska Bar Association has reciprocal agreements with 33 states.

[3] Reimbursable losses are losses of money, property, or other things of value caused by the lawyer when: (1) acting in a fiduciary capacity customary to the practice of law, such as a administrator, executor, trustee, guardian or conservator; (2) acting as an escrow holder; or (3) filed within three years after the claimant knew or should have known of the dishonest conduct of the lawyer (Alaska Bar Rule 45).

[4] Alaska Bar Rule 45 defines dishonest conduct as,

> *. . .wrongful acts committed by a lawyer in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value.*

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public member. Failure by an attorney to participate in this process may be grounds for disciplinary action.

- The Bar also offers a mediation process that attempts to resolve the differences between attorneys and their clients. This process is not used when the issues are of a very serious nature such as allegations of intentional dishonesty, material misrepresentation, or the alleged conduct could lead to suspension or disbarment. Mediation requires the approval of both parties and the Bar counsel. The agreement is considered a contract and is legally enforceable in court.

- The Bar operates a lawyer referral service funded by enrollment fees from participating members. Members of the public can call an instate toll free number and obtain the names of three attorneys who have listed themselves as practicing law in a certain field. Lawyer referral service statistics are shown in Appendix D.

- The Bar provides grants to support legal services for the economically disadvantaged. Through the Alaska Bar Foundation, the earnings from the interest on Lawyers Trust Account are used to improve the administration of justice.

- The Bar jointly sponsors the Alaska Pro Bono Program with the Alaska Legal Services Corporation in which attorneys provide free legal advice to low-income Alaskans.

- The Bar also has a Lawyer Assistance Committee that provides assistance and counseling to members of the Bar, their families, or business associates when it appears a Bar member has substance abuse problems.

Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The operations of the board are funded entirely by the membership through dues, admission fees, continuing legal education charges, lawyer referral fees, convention fees, and interest income. In September 2005, the board adopted an amendment to Bylaw III, Section 1(a) which states that, "*the annual membership fee for an active member is the amount approved by the board.*" Thus, the board can set the dues amount in accordance with the operating expenses and number of Bar members.

The 2008 budgeted revenue is $1,983,738. The Bar has cumulative net assets of $3,496,544 as of the end of calendar year 2007. The net assets include approximately $1.1 million for the Lawyers' Fund for Client Protection. This fund is for clients who have suffered monetary losses as a result of dishonest acts by their lawyer. These funds are designed to protect the public and cannot be used for general operating expenses.

The maintenance of substantial net assets is not consistent with the other professions regulated by the State, under the jurisdiction of the Department of Commerce, Community, and Economic Development (DCCED) – Division of Corporations, Business, and Professional Licensing. Those professional fees are required by statute to be set so the total fee collections approximately equal the actual regulatory cost of the occupation. As the Bar is not included in DCCED's organizational structure, the ability to pool resources and meet funding shortages is not available. Although the Bar's funding needs are greater, the net assets are still substantial.

In order to address the cumulative net assets, the board voted at the end of 2007 to reduce the active members' due from $550 to $410, effective in the 2008 membership year. The Bar anticipates that with the reduction in membership dues net assets will be reduced by approximately $400,000 per year.

Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

Although the board has a Statutes, Bylaws, and Rules Committee, consisting of 12 members responsible for drafting proposed revisions of the statutes, bylaws, and rules which govern the activities of the Bar, the board has not recommended any statutory changes during July 1, 2006 through June 30, 2008. However, the board has been active in the process of evaluating and revising the Alaska Bar Rules, bylaws, and Rules of Professional Conduct that govern Bar policies and procedures.

Determine the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

The Bar's membership is involved in its operations. This operation may include service on one of the ten standing committees or five Alaska Bar Rules committees. It may include participation in one of 23 sections or groups of members with similar specialization (bankruptcy, criminal law, etc).

In addition to the above committees, members of the Bar may be appointed to serve in an adjunct organization, such as the Alaska Legal Services Corporation. Also, special committees are established from time to time by the president with the advice and consent of the board.

The Bar publishes all proposed changes to the Alaska Bar Rules in its quarterly publication, the *Alaska Bar Rag,* which is distributed to all members of the Bar and to interested members of the public. Members are asked to submit any and all comments on proposed rule changes for review by the board.

The board advertises board meetings on the Alaska Public Online Notice system and on the Bar's website. Members of the general public are encouraged to make comments and adequate time is allotted at all meetings.

Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

In addition to the three public members who serve on the board, non-attorneys serve on disciplinary hearing committees and fee arbitration panels throughout the State.

As mentioned above, the Bar publicly advertises meetings of the board. Time is allotted at all board meetings for public comments. However, some board meetings did not have adequate public notice. Further discussion on public notice of the conference call board meetings is in Recommendation No. 3.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

The Bar is an instrumentality of the State, but is not administratively assigned to any department. However, the Alaska Supreme Court exercises a great degree of oversight. Two complaints specifically involving the actions and activities of the board were filed with and investigated by the Office of the Ombudsman during July 1, 2006 through June 30, 2008. The investigations were closed due to the Ombudsman not having jurisdiction over the activities of the Bar.

There were no complaints filed with the Office of Victim's Rights against the board from July 1, 2006 through June 30, 2008.

The board has a lawyer discipline process for investigation of grievances alleging attorney misconduct. If a grievance does not result in an investigation being opened by the bar counsel, the complainant may ask for that decision to be reviewed by the board discipline liaison. Additionally the Supreme Court may review decisions made by the bar counsel or the liaison, though this is done rarely.

Sanctions are imposed on those found in violation of the Rules of Professional Conduct. The Supreme Court reviews only the most serious disciplinary actions, such as public censure, disbarment, suspension, or probation. Other disciplinary cases are not subject to Supreme Court review. These sanctions would include written private admonition and board reprimand. This process for professional discipline was developed through a cooperative effort of the Alaska Supreme Court, the board, Bar staff, and a review team from the American Bar Association's Standing Committee on Professional Discipline.

The Bar receives an average of 228 complaints annually. Analyses of the complaints filed during July 1, 2006 through June 30, 2008 shows that all were reviewed, but relatively few were pursued beyond the initial investigation. Approximately 80% of the grievances received were not accepted for investigation due to lack of merit. The Bar estimates that 10 to 15 appeals are reviewed annually by the board discipline liaison, and 1 or 2 reviews by the Supreme Court.

Over 650 grievances were filed during 2006, 2007, and 2008,[5] resulting in 143 cases being opened and the remaining grievances were not accepted. The investigations resulted in thirty-two cases[6] with sanctions against a total of twenty-one attorneys. Four attorneys were disbarred, seventeen were suspended, three were publicly and two were privately reprimanded, five received private admonition, and one was publicly censured. Discipline statistics are shown in Appendix B. Closure of grievance cases with sanctions such as disbarment, suspension, public censure, public reprimand, and admonition appear reasonable.

Board procedures provide for public notice of all attorneys who have been disbarred, suspended, put on probation, publicly censured, or reprimanded. The names of these attorneys are published in four major newspapers throughout the State, the local newspaper where the attorney practiced, the *Alaska Bar Rag*, and in the board's annual report. Notice of all disciplines imposed by the court, all orders granting reinstatements, and all public reprimands are transmitted to the American Bar Association's National Lawyer Regulatory Data Bank. However, as discussed in Recommendation No. 2, the board does not publish the names of lawyers who were suspended, disbarred, publicly reprimanded or censured on their website.

Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.

The board admits applicants to practice law through an examination process that was designed in consultation with a national expert. Admission is contingent on the following:

- Passing the Alaska Bar Examination.
- Passing the Multi-state Professional Responsibility Examination.
- Passing character investigation to determine if the applicant is of good moral character.
- Attendance[7] of a mandatory three hour ethics presentation by the board.

[5] Complaints received for 2008 include January 1 through June 30.
[6] A single attorney may have multiple cases filed against them.
[7] This requirement may be fulfilled by watching the ethics videotape and signing an affidavit.

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The board also admits members by motion for reciprocity. This option is limited to attorneys in the active practice of law for five of the last seven years in the 33 states with which Alaska has a reciprocal agreement.

Examination and admission statistics are shown in Appendix C.

Per Bar Rule 65, in order to promote competence and professionalism, the Alaska Supreme Court and the Bar encourage all members to engage in continuing legal education (CLE).

Supreme Court issued Order No. 1640, which amended Bar Rule 65, to require all active Bar members to complete three credit hours per calendar year of approved mandatory ethics continuing legal education (MECLE). In addition, all active Bar members are encouraged to engage in nine hours per calendar year of approved voluntary continuing legal education (VCLE). This order became effective January 1, 2008.

The Supreme Court Order No. 1640 also added Alaska Bar Rule 66 for the suspension of members who have not complied with completing the required MECLE or members who failed to report the MECLE and VCLE for the year.

The Bar offers CLE for its membership and maintains an educational library. The majority of live CLE programs are presented and video taped in Anchorage. For lawyers located outside of Anchorage, the Bar has regularly scheduled video replays in Juneau, Fairbanks, and Kenai. Also available are DVDs and CLE materials for purchase through the Bar's online CLE library catalog.

In 2006, the Bar partnered with the online CLE provider LegalSpan to develop online CLE seminars and live webcasting of selected programs. The Bar presented 10 live webcasts in 2007. All of the video taped live seminars are also available as online CLE through LegalSpan.

Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

The board allows special accommodations for applicants who have been determined to have disabilities.

We did not find any evidence that the board was not complying with state personnel laws, including affirmative action in qualifying applicants for licensure. In no instance did the board deny an applicant a license based on personal attributes.

Determine the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the Findings and Recommendations and Auditor's Comments sections of this report.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

Article I Section 3 of the Bar bylaws sets out the purposes of the Bar which are:

1. To cultivate and advance the science of jurisprudence.
2. To promote reform in the law and in judicial procedure.
3. To facilitate the administration of justice.
4. To encourage legal education for the membership.
5. To increase the public service and efficiency of the Bar.

To achieve these purposes, the Bar has established and maintains various committees and performs certain functions. For example, the Bar maintains a Law Related Education Committee to present programs to the community and school system to aid in the understanding of the law and legal system. The committee is divided into subcommittees in Anchorage, Fairbanks, Juneau, Kenai, Matanuska-Susitna, and other communities where the board president sees the need to appoint a subcommittee.

The board appoints three attorneys to serve staggered six-year terms on the Alaska Judicial Council (Council). The Council recommends candidates for judicial office and conducts studies for the improvement of the administration of justice in Alaska. Council members survey, investigate, and evaluate incumbent justices and judges standing for retention. The evaluation is published in the Lieutenant Governor's Official Elections Pamphlet. They are also involved in screening of applicants for the state public defenders' office.

The Bar's CLE committee, consisting of 15 members, assists the CLE director in overseeing the presentation of substantive legal education programs to educate Alaskan lawyers about developments in the field of law, and emphasize their ethical responsibilities. The Bar has conducted 68 live, 2 satellite, 15 webcasts, and 36 conventions for CLE presentations for 3,926, 4,820, and 1,976 attorney participants from calendar year 2006 through 2008,[8] respectively.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

[8] Data is presented as of June 30, 2008.

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The board does not duplicate the activities of another governmental agency. However, many of its activities are those typically performed by a professional association. As discussed earlier, some of these more typical private sector activities include such things as fee arbitration, referral services, and sponsorship of a pro bono program.

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APPENDICES

Alaska Bar Association
Funds

The Alaska Bar Association (Bar) maintains three separate funds for accounting and reporting purposes. These include a General Fund, the Lawyers' Fund for Client Protection, and the Court System Library Fund. The following describes these funds and their purpose.

- General Fund – This fund is the Bar's operating fund. It accounts for the financial resources and transactions not accounted for in other funds.

- Lawyers' Fund for Client Protection – In accordance with Alaska Bar Rules promulgated by the court system, this fund is maintained solely for the purpose of making reimbursements to clients who have incurred non-insured losses of money or property as a result of dishonest conduct by attorneys. Related trustee counsel compensation may be paid from this fund under certain circumstances.

- Court System Library Fund – This fund is maintained by the Bar, pursuant to a cooperative agreement with the Alaska Court System and the Anchorage Bar Association. The purpose of the fund is to account for the portion of receipts generated from copying services provided in the Anchorage Law Library that are to be used for purchasing legal research resources for the Alaska Court Libraries as designated by the State Law Librarian.

The financial information of Bar funds is from the Bar's audited financial statements for 2007.

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Appendix A

Alaska Bar Association
Statement of Financial Position
Calendar Year 2007

Assets	General Fund	Lawyers' Fund for Client Protection	Court System Library Fund	Total All Funds
Current Assets				
Cash	$ 534,056	$ 137,534	$ 23,472	$ 695,062
Investments	2,133,208	907,611	–	3,040,819
Accounts receivable	1,016,821	–	–	1,016,821
Accrued interest receivable	27,514	8,158	–	35,672
Due from general fund	–	58,287	–	58,287
Prepaid Expenses	92,744	–	–	92,744
Total Current Assets	3,804,343	1,111,590	23,472	4,939,405
Property and Equipment, at cost				
Office furniture and equipment	452,421	–	–	452,421
Leasehold improvements	94,898	–	–	94,898
Video tape library and equipment	7,587	–	–	7,587
Historical artifacts	3,750	–	–	3,750
Subtotal Property and Equipment	558,656	–	–	$ 558,656
Less accumulated depreciation	(486,130)	–	–	(486,130)
Total Property and Equipment	72,526	–	–	72,526
Total Assets	**$ 3,876,869**	**$ 1,111,590**	**$ 23,472**	**$ 5,011,931**
Liabilities and Net Assets				
Current Liabilities				
Deferred dues and fees	1,281,715	29,260	–	1,310,975
Accounts payable and accrued expenses	126,423	–	–	126,423
Due to other funds	72,965	–	–	72,965
Due to Bar Foundation	1,274	–	–	1,274
Total Current Liabilities	2,112,876	29,260	–	1,511,637
Net Assets				
Unrestricted (designated by the Board of Governors)				
Designated for Working Capital	800,000	–	–	800,000
Designated for Asset Acquisition	124,874	–	–	124,874
Undesignated	1,465,868	1,082,330	23,472	2,571,670
Permanently restricted	3,750	–	–	3,750
Total Net Assets	2,394,492	1,082,330	23,472	3,500,294
Total Liabilities and Net Assets	**$ 3,876,869**	**$ 1,111,590**	**$ 23,472**	**$ 5,011,931**

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Appendix A

Alaska Bar Association
Revenues Compared with Expenses
Calendar Year 2007

	General Fund	Lawyers' Fund for Client Protection	Court System Library Fund	Total All Funds
Revenues				
Dues	$ 1,686,571	$ 29,043	$ -	$ 1,715,614
Admission Fees	150,850	-	-	150,850
Continuing Legal Education	136,404	-	-	136,404
Lawyer Referral Fees	41,593	-	-	41,593
Annual Meeting	134,557	-	-	134,557
Earnings on Investments	126,973	43,425	205	170,603
Other	235,298	14,727	2,140	252,165
Total Revenues	2,512,246	87,195	2,345	2,601,786
	-	-	-	-
Expenses	-	-	-	-
Admissions	182,457	-	-	182,457
Board of Governors	47,822	-	-	47,822
Discipline	664,488	-	-	664,488
Fee Arbitration	66,780	-	-	66,780
Lawyer Referral	52,504	-	-	52,504
Continuing Legal Education	327,828	-	-	327,828
Administration	492,382	-	-	492,382
Annual Meeting	112,091	-	-	112,091
Other	288,028	157,902	12	445,942
Total Expenses	2,234,380	157,902	12	2,392,294
	-	-	-	-
Increase (decrease) in net	-	-	-	-
unrestricted assets	277,866	(70,707)	2,333	209,492
	-	-	-	-
Unrestricted Net assets at	-	-	-	-
beginning of year:	-	-	-	-
Designated for Working Capital	775,000	-	-	775,000
Designated for Asset Acquisition	130,239	-	-	130,239
Undesignated	1,207,637	1,153,037	21,139	2,381,813
Total at Beginning of Year	2,112,876	1,153,037	21,139	3,287,052
	-	-	-	-
Unrestricted Net assets at	-	-	-	-
end of year:	-	-	-	-
Designated for Working Capital	800,000	-	-	800,000
Designated for Asset Acquisition	124,874	-	-	124,874
Undesignated	1,465,868	1,082,330	23,472	2,571,670
Total at End of Year	$ 2,390,742	$ 1,082,330	$ 23,472	$ 3,496,544

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Appendix A

Alaska Bar Association
General Fund Revenues Compared with Expenses
Calendar Years 2006 through 2007

	2006	2007
Revenues		
Dues	$ 1,702,211	$ 1,686,571
Admission Fees	174,750	150,850
Continuing Legal Education	131,979	136,404
Lawyer Referral Fees	42,242	41,593
Annual Meeting	123,905	134,557
Earnings on Investments	105,092	126,973
Other	148,861	235,298
Total Revenues	2,429,040	2,512,246
Expenses		
Admissions	175,898	182,457
Board of Governors	42,364	47,822
Discipline	646,385	664,488
Fee Arbitration	63,311	66,780
Lawyer Referral	50,785	52,504
Continuing Legal Education	360,525	327,828
Administration	460,255	492,382
Annual Meeting	122,746	112,091
Other	226,520	288,028
Total Expenses	2,148,789	2,234,380
Increase (decrease) in net unrestricted assets	280,251	277,866
Unrestricted Net assets at beginning of year:		
Designated for Working Capital	700,000	775,000
Designated for Asset Acquisition	129,375	130,239
Undesignated	1,003,250	1,207,637
Total at Beginning of Year	1,832,625	2,112,876
Unrestricted Net assets at end of year:		
Designated for Working Capital	775,000	800,000
Designated for Asset Acquisition	130,239	124,874
Undesignated	1,207,637	1,465,868
Total at End of Year	$ 2,112,876	$ 2,390,742

Alaska Bar Association
Lawyers' Fund for Client Protection Revenues Compared with Expenses
Calendar Years 2006 through 2007

	2006	2007
Revenues		
Dues	$ 28,623	$ 29,043
Earnings on Investments	44,047	43,425
Unrealized (Loss) Gain on Investments	5,413	11,547
Other	2,368	3,180
Total Revenues	80,451	87,195
Expenses		
Claims Awarded	71,672	127,235
Other	1,920	30,667
Total Expenses	73,592	157,902
Increase (decrease) in net unrestricted assets	6,859	(70,707)
Unrestricted Net assets at beginning of year:		
Undesignated	1,146,178	1,153,037
Total at Beginning of Year	1,146,178	1,153,037
Unrestricted Net assets at end of year		
Undesignated	1,153,037	1,082,330
Total at End of Year	$ 1,153,037	$ 1,082,330

Appendix A

Alaska Bar Association
Court System Library Fund Revenues Compared with Expenses
Calendar Years 2006 through 2007

	2006	2007
Revenues		
Earnings on Investments	$ 190	$ 205
Share from Copiers	1,856	2,140
Total Revenues	2,046	2,345
Expenses		
Other	12	12
Total Expenses	12	12
Increase (decrease) in net unrestricted assets	2,034	2,333
Unrestricted Net assets at beginning of year:		
Undesignated	19,105	21,139
Total at Beginning of Year	19,105	21,139
Unrestricted Net assets at end of year		
Undesignated	21,139	23,472
Total at End of Year	$ 21,139	$ 23,472

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Appendix B

Board of Governors of the Alaska Bar Association
Discipline Statistics
Calendar Years 2006 through 2008[9]

Disposition of Closed Disciplinary Cases	2006	2007	2008
Disbarment by Supreme Court	–	2	2
Suspension by Supreme Court	7	5	5
Public Censure by Supreme Court	–	1	–
Public Reprimand by Disciplinary Board	2	1	1
Private Reprimand by Disciplinary Board	2	–	1
Private Admonition by Discipline Counsel	4	1	2
Dismissed	31	21	5
Closed After Mediation	–	–	–
Total Closed Cases	**46**	**31**	**12**
Status of Open Cases at Year End			
Attorney on Probation	1	1	1
Pending Supreme Court	1	3	7
Pending Disciplinary Board	5	8	–
Pending Hearing Committee	5	–	12
Pending Stipulation	–	3	8
Pending Approval to File Formal Hearing	10	11	7
Pending Written Private Admonition	–	–	–
Abeyance due to Court Case	9	9	9
Pending Bar Counsel Investigation/Decision	23	33	40
Pending Complainant Reply	1	1	10
Pending Respondent Response	3	17	21
Pending Mediation	–	–	–
Total Open Cases	**58**	**86**	**115**

Source: Data for 2006-2007 was obtained from annual reports of the Alaska Bar Association. The 2008 data is from Alaska Bar Association's quarterly Discipline Reports to the Alaska Supreme Court for January 1, 2008 through June 30, 2008.

[9] The amounts reported for 2008 includes activity from January 1 through June 30, 2008.

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Appendix C

Board of Governors of the Alaska Bar Association
Bar Examination and Admission Statistics

Examination Statistics

Examination Dates	Number Taking Exam	Number Passing Exam	Percent Passing Exam
July 2006	82	52	63%
February 2007	54	26	48%
July 2007	75	52	69%
February 2008	37	27	73%
Total	**248**	**157**	**63%**

Admission Statistics

Calendar Year	Admission By Examination	Admission By Reciprocity	Total Admissions
2006	85	30	115
2007	70	43	113
2008[10]	40	14	54
Total	**195**	**87**	**282**

Source: Alaska Bar Association's 2006-2007 Annual Reports and 2008 information provided by the Alaska Bar Association's executive director.

[10] Admissions through June 30, 2008.

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Board of Governors of the Alaska Bar Association
Attorney Referrals
January 1, 2006 through June 30, 2008
(Unaudited)

Practice Categories	2006	2007	2008
Administrative	194	219	128
Admiralty	18	12	7
Adoption	16	35	15
Arts	2	3	4
Bankruptcy	52	79	63
Commercial	112	149	76
Construction	29	63	15
Consumer	315	275	152
Criminal: Felony	92	166	55
Criminal: Misdemeanor	114	170	75
Divorce/Dissolution/Custody	784	809	402
Eminent Domain	4	–	4
Environmental	6	–	–
Foreign Language	–	2	3
Guardian/Conservator	64	11	18
Immigration	28	52	18
Insurance	51	61	23
Labor Relations	355	392	194
Landlord/Tenant	63	30	49
Malpractice	197	244	96
Negligence	380	556	211
Patent/Copyright	5	41	8
Public Interest	3	1	1
Real Estate	175	257	112
Social Security Insurance Cases	22	48	2
Traffic	49	8	3
Trusts/Wills/Estates	144	222	107
Workers' Compensation	192	229	110
Total	**3,468**	**4,134**	**1,951**

Source: Data for 2006-2007 was obtained from Annual Reports of the Alaska Bar Association. The 2008 data provided by the Alaska Bar Association's executive director is for 6 months of attorney referrals.

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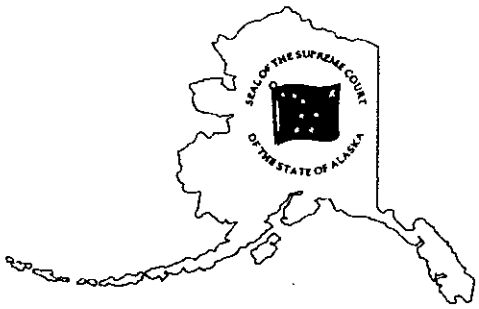

ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

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November 20, 2008

Pat Davidson
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

RECEIVED
NOV 25 2008
LEGISLATIVE AUDIT

Re: Preliminary Audit Report
Board of Governors of Alaska Bar Association
Sunset Review, November 8, 2008

Dear Ms. Davidson:

Thank you for the opportunity to offer a written response to the findings and recommendations contained in the above-referenced preliminary audit report. This response represents the views of the Administrative Office of the Alaska Court System (AOC).

The AOC takes no position on the findings and recommendations directed at the Board of Governors of the Alaska Bar Association. We agree with the conclusion that the Board protects the public by ensuring that persons licensed to practice law are qualified. We also concur in the recommendation to the legislature that the termination date of the Board be extended to June 30, 2017.

However, we take issue with the auditor's comments beginning on page 11. Those comments go beyond the scope of the audit by making conclusory observations about the merits of self-regulation by the Bar, and suggesting that attorney discipline in Alaska could be a government function. Specifically, it is suggested that the following options be considered:

- Disciplinary investigations performed by Alaska Court System employees
- Place disciplinary function under the Supreme Court with a Disciplinary Board appointed by the court

The historical record shows that attorney discipline has always been a matter of importance to the supreme court. In fact, when the supreme court first asserted control of the Bar over the Bar's strenuous objection in 1964, it did so by promulgating rules governing the discipline of attorneys, among other things. See *In the Matter of an Application for an Order Vacating ALASKA SUPREME COURT ORDERS NO. 64, 68, 69, 70 and 71, and Other Relief*, 395 P.2d 853 (Alaska 1964). Public confidence in the process of attorney discipline is essential.

Equally important, however, is the need to keep separate the prosecutorial and adjudicative functions inherent in attorney discipline. Under our system of government, it is imperative that those who have the duty of charging transgressors and proving their guilt do not have the final say in determining that guilt. As currently designed, the system of attorney discipline keeps a wall between those two roles. It is the Bar which has the duty to investigate and prosecute allegations of attorney misconduct, to make preliminary findings, and to recommend punishment. It is the supreme court which makes the final determination of guilt or innocence, and which makes the final determination regarding appropriate punishment.

The fundamental problem with placing the attorney discipline function within the court system is that the entity responsible for investigating and prosecuting attorney misconduct would also be the entity responsible for making the ultimate determination of guilt or innocence. As the final adjudicative body for cases decided under the Alaska Constitution, it is inappropriate for the supreme court to exercise both executive and judicial powers in disciplinary matters.

There may be other states in which the supreme court exercises both prosecutorial and adjudicative authority. However, that does not mean that it is good public policy to do so, or that doing so is consistent with the fundamental principles under which our system was intended to operate. Administrative convenience is not an adequate justification for this consolidation of government power.

If it is ever determined that the current system of attorney discipline does not work adequately and needs to be changed, a better model would be the one utilized by the Judicial Conduct Commission. This commission is part of the judicial branch of government, not the court system, and as such it is independent of the supreme court. The commission engages in investigatory and prosecutorial tasks when allegations of judicial misconduct are made, and makes recommendations to the supreme court. The supreme court exercises the judicial function, serving as the final arbiter of guilt or innocence.

It is true that a separate disciplinary entity such as this could be paid for by Bar dues and have no cost to the general fund at this time. However, the persons staffing said agency would be new state employees. The legislature has demonstrated an intent in recent years to limit the addition of permanent, full-time state employees, and absent concrete evidence that the current system does not adequately serve the public interest, it may be disinclined to create a new state bureaucracy.

Thank you for providing the opportunity to comment on this audit. Please feel free to contact me if you have any questions.

Very truly yours,

C. S. Christensen III
Deputy Administrative Director

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ALASKA BAR ASSOCIATION

December 2, 2008

RECEIVED
DEC 02 2008
LEGISLATIVE AUDIT

Pat Davidson
Legislative Auditor
c/o Division of Legislative Audit
4341 B Street, Ste. 400
Anchorage, AK 99503

Dear Ms. Davidson:

Thank you for the thorough sunset review of the Alaska Bar Association and the opportunity to respond to your preliminary audit report.

Sunset and Fiscal Note

The Board concurs with extending the sunset date of the Alaska Bar Association Board of Governors until June 30, 2017.

There will be no fiscal note attached to any bill filed with the legislature to extend the sunset date of the Board of Governors, as the Bar Association will not be seeking any state funding for its operational costs. The Bar Association has obtained state funding only during the limited time frame between 1981 and 1986, and only for the per diem and travel expenses of the three public members who sat on the Board. For the past 22 years, the Bar Association has paid those expenses without state funding.

As noted in the audit, the operations of the Bar Association are funded entirely by Bar members through bar dues, admission fees, Continuing Legal Education seminar fees, Lawyer Referral Service charges, convention fees, and interest income. Ironically, a decision to sunset the Bar would have a multi-million dollar fiscal impact to the state.

Response to Recommendation No. 1: The Supreme Court has adopted an MCLE rule and will review the program in three years.

The Alaska Supreme Court adopted an MCLE rule in December 2007, effective January 1, 2008. Bar Association members will be required to report for the first time by February 1, 2009.

The MCLE rule requires that all active Bar members complete at least three hours of ethics CLE per year and report that they have done so. Members must also report whether they have completed nine hours of general CLE, and if they have not done so, they must report the estimated hours of general CLE that they did complete.

In their commentary to the rule, the Supreme Court stated that "To protect the public, ensure that lawyers remain mindful of their obligations to their clients, and to address the area about which the Association receives the majority of questions from and complaints about lawyers, the Supreme Court is imposing a mandatory requirement for ethics CLE on all active Bar members."

The Court also stated that "At the end of three years, the Supreme Court will again assess the project's results, including recommendations and statistics provided by the Association, and will determine whether an expanded mandatory CLE program is necessary."

At the end of the three year period, the Association will have the benefit of its experience in administering the mandatory ethics and reporting program. It will be able to determine what issues and problems have arisen and will also allow the Association time to educate Bar members about complying with the educational and reporting requirements.

The Association has hired a part-time MCLE Administrator to administer the program. In addition, the Association is offering a free ethics CLE program on November 5, 2008, in accordance with the Supreme Court's wish that the Association provide at least three hours a year of ethics CLE at no cost to members. This program will be available in a variety of formats: live, via webcast or on DVD.

Response to Recommendation No. 2. We agree that Lawyer Public Discipline History should be available on the Alaska Bar Association website.

The legislative auditor notes that the Alaska Bar Association has joined a consortium of other state and local bars aimed at replacing our database with a new member management system. This will include a module specifically for lawyer discipline data. This system will provide a means to post public discipline information on the Bar's website.

It has been the Bar's goal since the website was first launched in 1998 to post public discipline information.

Like many computer programming projects, the implementation of the new database is taking longer than originally anticipated. Issues include the need to modify and test programs that are unique to Alaska. The new MCLE requirement also took priority over the implementation of other program modules, such as discipline.

In addition, the fact that only a minority of states publish their lawyers discipline list on their websites indicates the difficulty many states have in automating this information. Timeliness and accuracy are essential to this process.

The Board agrees that having public discipline information available on our website is a desirable goal and we will continue to work to that end. We anticipate that the new discipline module, including online reporting of public discipline, will be operational in the coming 12 – 18 months.

Response to Recommendation No. 3. We agree that the Bylaws of the Alaska Bar Association should be modified to specifically include conference call meetings of the Board and to provide for reasonable public notice of those meetings.

From time to time the Board of Governors finds it necessary to call meetings between regularly scheduled Board meetings to take up specific items which should not be delayed until the next Board meeting. The Board limits its action to those items listed in the call of the meeting.

Bar staff recognizes that the conference call meetings since June 30, 2006 did not meet the 30 day public notice requirement for Board meetings. However, the need for a conference call meeting of the Board is often realized only a week or two in advance, and therefore, it could not meet the 30 day notice requirement.

The staff will draft a proposed amendment to the Bylaws, to be taken up by the Board of Governors, to provide that the President may call a conference call meeting of the Board as appropriate to conduct business as necessary between regularly scheduled Board meetings. This will recognize conference calls as a unique type of Board meeting, and, in

accordance with AS 44.62.310(e), the proposed Bylaw will state that "reasonable public notice" will be given.

The Bylaws will also be amended to clarify that Board of Governors meetings, as well as Association meetings, are governed according to Roberts Rules of Order, Newly Revised. The Board has operated under these rules, but this will be clearly stated in the Bylaws.

Matters "not accepted" for investigation.

Page 17 states that 80% of the grievances received were not accepted for investigation due to lack of merit. While formal investigations were not conducted, these matters were thoroughly reviewed by discipline section staff counsel with expertise in attorney grievance matters and both complainants and respondent attorneys were informed in writing of the reasons that the matters were not accepted for investigation.

Concluding Comments: Lawyer self-regulation has been effective and efficient in Alaska.

The overall conclusion of the audit is that the Board effectively serves the public interest through its lawyer admission and discipline process. We also believe that lawyer self-regulation is working very effectively and efficiently in Alaska. To its credit, the Alaska Bar Association has one of the most aggressive and effective discipline systems in the country.

In 2006, the Bar Association conducted an e-mail and phone survey of the members of the National Organization of Bar Counsel whose members staff disciplinary jurisdictions nationwide. Of the 48 states the Bar was able to contact, 26 indicated that they were not state government agencies.

As reported in our December 16, 2005 response, 13[1] jurisdictions, in addition to Alaska, indicated that they were not state government agencies under their supreme courts; 13[2] generally indicated that they were considered creations of their supreme courts, but either not

[1] Alabama, Arizona, Hawaii, Idaho, Kentucky, Montana, Nevada, North Carolina, Oregon, South Dakota, Utah, Washington, and Wyoming.

[2] Arkansas, Florida, Idaho, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, North Dakota, Pennsylvania, and West Virginia.

considered state government agencies or state employees; and, 22[3] indicated that they were state government agencies under their supreme courts.

Based on this survey, Alaska is not unique in its approach to attorney discipline. Indeed, because the Bar Association performs these vital functions under the supervision of the Alaska Supreme Court, its system is similar to those in place in a significant number of other state jurisdictions.

We believe that there would be significant additional costs to both the court and the Bar Association if the attorney discipline system in Alaska was carried out by a government agency. Currently, the Bar Association has one bar counsel, two assistant bar counsel, one paralegal, two legal secretaries, and two other employees of the Bar who provide support to the discipline system in addition to their other Bar duties.

Currently these employees have the benefit of shared costs of office space, conference room, computer system, telephone system, copy machines, etc. with the rest of the Bar staff. In addition, the Bar's system administrator provides computer support to all Bar employees. If the discipline employees were split off from the Bar Association, they would lose the benefit of this shared functionality and they would have to purchase and maintain separate space and equipment.

Currently discipline hearings are heard by a members of a volunteer committee made up of attorneys and public members. If discipline were split off from the Bar Association, the state would need to staff this function with state hearing officers.

Currently bar counsel supervises the assistant bar counsel and discipline staff, as well as handling such other discipline matters as reinstatement, etc. He also handles approximately 800 calls a year giving informal ethics advice to members of the Bar. If a new state agency had less than three lawyers on staff, this valuable service would not be feasible and the current caseload would likely see a dramatic increase in processing time. The discipline section would also lose the assistance of the two staff persons who provide other support to the discipline section.

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[3] California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Louisiana, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and Wisconsin.

Meanwhile, the Board of Governors would still need to have its own staff counsel, so the Bar Association would still have the expense of a lawyer and legal secretary on its staff.

There would also be additional expense if there was a Disciplinary Board separate from the Board of Governors. Currently, the Board of Governors acts as the Disciplinary Board at its regularly scheduled board meetings. The budget for the Board travel is included in the Board of Governors budget, and is not included as part of the discipline budget, so Discipline Board meetings would be a new expense.

The cost to Bar members to support additional staff, separate offices and equipment and separate Boards would mean a significant increase in bar dues, the addition of a separate disciplinary assessment, or that these expenses come out of the state general fund.

We believe that the subjective benefit of splitting out the discipline function from the Bar is outweighed by the practical and economic realities.

It is also our belief that the present management system of the Bar provides a blend of private and governmental functions, insuring both accountability and good management. For example, the Bar is an instrumentality of the state and subject to legislative audits. Its meetings are open to the public. Members of the public sit on discipline hearings and fee arbitration panels as well as on the Board of Governors. Its rule making and discipline functions are overseen by the Supreme Court, which assures a sound investigative and judicial process of discipline. Finally, the statewide lawyer membership on the Board also ensures that the Bar Association is both responsive to the needs of its members, and qualified to address such issues as admission standards and peer review.

Reserves of the Alaska Bar

The Board has a policy to hold a working capital reserve in an amount equal to four month's expenses ($212,500/month or $850,000.) However it is not unusual for a non-profit association to hold a reserve in an amount equal to six to nine months of expenses. (Ranging from $1,275,000 - $1,912,000.)

Unlike state agencies, the Bar cannot request supplemental appropriations from the Legislature or pool resources if an unexpected event occurs which would incur significant financial expense. The Board also needs to be able to "save" for the financial viability of planned projects or events. For example, the Bar is in the process of replacing its entire database, a multi-year project that will cost nearly $200,000.

Between 1981 and 2005, Bar dues had only been raised twice: from $310 to $450 in 1994; and, from $450 to $550 in 2005.

At the October 2007 meeting, the Board of Governors approved the first bar dues reduction in the history of the Alaska Bar Association. To make the reduction, the Board voted to change a twenty-five year old budget policy that increased the unappropriated capital to offset future year deficits, deferring an increase in bar dues. Now the Board will budget on a "pay as you go" basis. This resulted in an approved draw down of the then $1.2 million unappropriated capital by approximately $400,000 for 2008. Active members of the bar saw their 2008 dues decrease to $410. 2008 inactive member dues were $135.

The Board reviewed the 2009 budget at the October 2008 meeting and voted to set 2009 active member bar dues at $450 (plus $10 for the Lawyers' Fund for Client Protection) and inactve dues at $150. This will result in an estimated loss in 2009 of $340,697, leaving a projected estimate of unappropriated capital of $670,536 at the end of 2009.

Lawyers' Fund for Client Protection

Every year, Bar members each pays ten dollars to the Lawyers' Fund for Client Protection. This is a trust fund which serves as a safety net primarily for clients who have suffered monetary losses as a result of dishonest acts by their lawyers. This Fund currently has $1,122,144. These funds are designed to protect the public and cannot be used for general operating expenses.

To date in 2008, $28,100 in claims was awarded to clients of attorneys who were found to be dishonest in their dealings with the clients. $127,235 was awarded in 2007 and $31,972 was awarded in 2006.

As an instrumentality that predates the ratification of the Alaska Constitution, the Alaska Bar maintains these funds under Article IX, Sec.

7 of the Alaska Constitution. It is unclear whether the Bar could continue to do so if portions of its powers were split to a state agency.

Again, thank you for the opportunity to comment on the audit report. We trust that our response has been helpful, and that it demonstrates the Board's continuing commitment to improving the legal profession and service to the public.

Sincerely,
Alaska Bar Association

Deborah O'Regan

for Mitchell Seaver
President

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Jane Pierson

From: Theresa Nangle Obermeyer [tobermeyer@gci.net]

Sent: Friday, January 30, 2009 3:30 PM

To: Jane Pierson

Subject: Response to Alaska Bar Association Audit #41-20057-08

1/6/09

Theresa Nangle Obermeyer, Ph.D.

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Alaska Legislative Audit #41-20057-08 Alaska Bar Association Sunset June 30, 2009 recommends Alaska Bar Association extension. The Audit is online at http://www.legaudit.state.ak.us/pages/digests/2008/20057dig.htm

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ALASKA BAR ASSOCIATION SHOULD BE SUNSET JUNE 30, 2009 during Alaska 50th Anniversary of Statehood year for the foreseeable future while Alaska Legislature has time to analyze the two essential functions of admissions and discipline. Alaska has unique circumstances as the only state without a law school or any elected attorney. Legislative Audit #41-20057-08 is a "white wash." Sunset should be reevaluated by 26th Alaska Legislature 2nd Session. Please review the "Summary" of the Audit "four objectives of our report" including the termination date extension of Board of Governors Alaska Bar Association (Board), whether the Board is operating in the public interest, to determine if the Board has exercised appropriate oversight of licensed attorneys, and to provide current status on the recommendations made in the prior report. Board of Governors Alaska Bar Association demonstrate none of these objectives at the present time. Ms. Patricia Davidson, Alaska Legislative Auditor, is unable to write the essence of the lack of accountability of Alaska Bar Association as she is a public employee without legal recourse. Alaska Bar Association Audit is the most important of all the State of Alaska Audits done because if any other Alaska professional has a problem with licensure in his/her profession, the applicant must hire a licensed Alaska attorney in order to appeal. Only Alaska Legislature can create accountability of Alaska Bar Association. Major issues follow:

1. American and Alaskan Jurisprudence

Please specifically review Page 19 of Alaska Bar Association Audit #41-20057-08. Article I Section 3 of the Alaska Bar Association Bylaws sets out the purposes of the Alaska Bar which are:

"1. To cultivate and advance the SCIENCE OF JURISPRUDENCE." (Emphasis added.) "Jurisprudence is the philosophy of the law or science . . . which has for its function to ascertain the principles on which legal rules are based . . . (in order to) produce the greatest advantage to the community" according to Black's Law Dictionary. Please see "In Re Obermeyer II

8/23/00" and In the Matter of the Application of Thomas S. Obermeyer 717 Pacific Reporter 2d 382, 57 American Law Reports 4th 1195 (Alaska 4/18/86), both of which can be found at http://www.state.ak.us/courts "Appellate Courts" "Alaska Case Law Precedent since 1960," Thomson-West page, "By Party Name" "Obermeyer." THESE CASES ARE AMERICAN AND ALASKAN JURISPRUDENCE.

2. Alaska Bar Association Admission by Reciprocity Gives More Rights to Out of State Attorneys than Alaska Attorneys

The current Alaska Bar Rules of Alaska Bar Association give an Alaska law license to any applicant by reciprocity if he/she has been licensed by written Bar Exam in the 33 of 50 reciprocal states, pays $1,500, and gets three letters from clients in the preceding state that the applicant has practiced law there for 5 out of the last 7 years. Alaska Active Out of State attorneys number over 18% of the Total Alaska attorneys or 530 out of 2,938 per Todd Communications Alaska Directory of Attorneys Fall, 2008 Page 2. **July, 2006-June, 2008 per the "Audit" Page 31, 45% of Alaska Bar Association admission has been by reciprocity – most of whom have never set foot on Alaska soil judging by their current addresses.** Why do these out of state applicants want reciprocity here? Obviously, these attorneys are making money off Alaska. Another almost 30% of Alaska In State Active Attorneys work for the Government per Directory Spring, 2008 Page 64.

Alaska Bar Exam, "a test of minimal competency," has an average 63% passage rate July, 2006-June, 2008 per Page 31 of the Audit. Alaska has as high requirements as any state in the U.S. for sitting for this Alaska Bar Exam but presumably has the lowest passage rate of the 50 states of Bar Association applicants, all of whom went to American Bar Association accredited law schools.

If 45% of Alaska Bar admissions currently are by reciprocity to those who overwhelmingly are not Alaska residents, what will the number be if Alaska Legislature goes along with the Audit recommendation and continues Alaska Bar Association without review until June 30, 2017 or eight long years?

3. Current licensure by exam or reciprocity does not assure competence, ethical behavior, protection, or service to the public. Board of Governors Alaska Bar Association (Board) offers no alternatives.

Massachusetts Supreme Judicial Court has allowed a Massachusetts Bar applicant who graduated from an on-line law school owned by testing-prep company, Kaplan, Inc., to sit for Massachusetts Bar Exam. See Ross E. Mitchell vs. Board of Bar Examiners, SJC-10157, September 3, 2008 – November 20, 2008. The applicant was allowed to take and pass the California Bar Exam, a state which allows applicants to sit for this Exam from unaccredited law schools. What does this tell the Alaska public about bar exams? About competency to practice? About ethics? About dealing with clients, peers, and the courts in a timely and courteous way? If the practice of law boils down to one exam, one score on one sheet of paper, does it truly protect the public and inspire confidence, when a legal education was acquired at whatever rate of speed on-line? Mr. Mitchell has made both Alaska's licensure practices and American Bar Association accredited law schools' three years of Socratic Method teaching archaic. At Alaska Statehood 1959 and after, some attorneys and judges obtained Alaska law licenses by clerking for the court without having gone to law school at all. The on-line law degree points out that there are alternatives to practice that Alaska Bar Association is unwilling to visit.

Unlike all the other 49 states, Alaska Bar Association Board of Governors offers no alternative methods of admission like a possible clerkship at a law firm or for a judge, even after the Alaska Bar applicant has faithfully obtained American Bar Association 3 year law school education. Furthermore, the Alaska Bar Rule 2.2(b)(3) disallows admission by reciprocity if applicants have failed Alaska Bar Exam in the last five years even if licensed by written Bar Exam in a reciprocal state. This harms Alaska residents who live and work in Alaska and only highlights the unfairness of reciprocity applicants from 33 states who have never sat for the Alaska Bar Exam simply paying

$1,500 to be licensed here. On point is Ms. Marla Greenstein, who as Executive Director, Alaska Commission of Judicial Conduct since 1982, was admitted by reciprocity in 1997 without having ever taken the Alaska Bar Exam. There are others including Ms. Angela O'Brien, licensed by reciprocity on September 30, 2008, who live in Alaska but have not taken Alaska Bar Exam. Alaskans currently would be fools to take Alaska Bar Exam with our low passage rate by going through our established Alaska Bar Association channels. The shrewd approach is to circumvent Alaska Bar Exam and become licensed in Alaska by reciprocity which is easier. Ms. Greenstein, Ms. O'Brien, and the others only had to have been licensed by written Bar Exam in a state that has reciprocity with Alaska and presumably proved in some perfunctory way that they had practiced five of seven years in their state of previous admission.

By contrast, Thomas S. Obermeyer, Alaska resident for 30 years and Attorney, licensed since 1990 by similar Missouri Bar Exam, a state that presumably has reciprocity with Alaska, has dedicated himself in good faith having paid for, studied for, and taken Alaska Bar Exam 34 times most recently "failed" on October 30, 2008 over an almost 25 year period in an effort to create fair Alaska law licensure. Tom has only chosen to go through the established process to obtain his Alaska law license and begin with his legal career. The lack of assistance given to Tom Obermeyer over such a long period of time shows how outrageously unfairly one Alaska Bar applicant could have been treated while seemingly everyone else is given favorable treatment.

4. Fairness to Alaska Bar Applicants for Admission

Please review attached "Draft Bill Authorizing Admission of Reciprocal Applicants to Alaska Bar Association" which can be downloaded at http://www.tobermeyer.info/pdfs/26thAKLeg1stSess2009.pdf and the precedent, "Laws of Alaska 1966 HB 520 Chapter 144 An Act-Authorizing the Department of Labor to enter into reciprocal agreements with other states regarding wage claims; and providing for an effective date," that can be downloaded at http://www.tobermeyer.info/pdfs/LawsofAK.pdf. The current practice of Board of Governors Alaska Bar Association penalizes local licensed attorneys who are admitted by Bar Exam in the 33 reciprocal states. "DRAFT Bill Authorizing Admission of Reciprocal Applicants to Alaska Bar Association" would change this practice that currently gives more rights to attorneys who have never landed on Alaska soil. Do Alaskans want those from other states to have more rights than we have? Does the "DRAFT Bill" protect the Alaska public?

5. The current Financial Position, Revenue, and Expense statements of Alaska Bar Association are jumbled and combined to confuse and hide actual expenses in the "ivory tower" Atwood Building #1900 in Anchorage.

The Audit fails to delineate details of operating expenses and personnel assigned to each activity, and it fails to list salaries of Executive Director, Bar Counsel, other attorneys and staff. RESULT: THE QUASI-GOVERNMENTAL ALASKA BAR ASSOCIATION HAS NO GOVERNMENTAL SUPERVISION. Auditor Patricia Davidson did not so much as discuss the details of Alaska Bar Association Operating Budget information in her Appendices. The salaries and travel of the Alaska staff attorneys of Alaska Bar Association especially Ms. Deborah O'Regan and Mr. Stephen Van Goor, who have been employed at Alaska Bar Association since 1980 and whose salaries the Obermeyers have been paying since 1984, are not included. **By contrast, when bills authorizing governmental activity are introduced in Alaska Legislature, attached are fiscal notes with personnel costs.**

The Alaska Supreme Court should take over the Alaska Bar Association as a governmental body for the foreseeable future.

Admissions

If Alaska Supreme Court administers both exams and admission by reciprocity, there would be better communication between Alaska Bar Association Board of Governors and the Court, fewer

admissions by reciprocity, more fairness and alternative options for admissions, better treatment of Alaska applicants, and more public trust. This would be an interim solution that should be tried for a year at a time with analysis by Alaska Legislature to see if it is working.

Alaska State Court justices/judges should be more fully scrutinized as well. I will update http://www.tobermeyer.info/asj.html which shows Alaska justices/judges got 50% salary increases per CSSB237 in 2006. Another increase was implemented by 25th Alaska Legislative 2nd Session SCS CSHB 417(FIN) Section 20 (a) (b) and (c). Research should be undertaken to analyze how many State of Alaska justice/judges are appropriate based on Alaska population and Alaska Bar Association membership. At the moment, becoming Alaska State Court justice/judge is much more coveted than actively practicing law as an Alaska attorney advocate. There is "Alaska Judicial Retirement System" through Alaska Retirement Management Board under Alaska Department of Revenue. Is there Alaska Judicial Retirement System Board? There should be more analysis of our Alaska State Court justices/judges by Alaska Legislature.

Discipline

Ms. Davidson indicates that discipline should be controlled by Alaska Supreme Court. Suspensions and disbarments are already submitted to the Supreme Court, but complete supervision of discipline should be imposed by the court. In many states there is a separate Office of the Disciplinary Counsel with a separate Board.

In the Alaska Bar Audit there is no discussion of "Citizen Complaints" against Alaska attorneys to Alaska Bar Association. The reader is expected to believe that there are no Alaska citizen initiated complaints at all to Alaska Bar Association. I have direct experience in this area per http://www.tobermeyer.info/pdfs/VanGoor41505.pdf about the lack of any discipline whatsoever at Alaska Bar Association regarding the 30 lengthy complaints that I filed at Alaska Bar Association 1993-2003. I would be pleased to produce the three boxes of comprehensive timely stamped filings with lengthy transcripts of my 30 complaints against licensed Alaska attorneys which resulted in my worse treatment by more Alaska attorneys. In other words, I am positive today that every complaint I filed was used against me.

Regarding Alaska Attorney "Discipline Function" per Page 3 of the Audit, I am aware that very high profile Alaska attorneys who have been convicted in courts of law of criminal offenses after pleading "No Contest" have not been disciplined by Alaska Bar Association including Mr. Robert C. Ely and Mr. Mitchell Gravo. Former Alaska Attorney General Gregg Renkes resigned February 5, 2005 over a highly publicized conflict of interest but was never disciplined. He is a licensed Alaska Active Out of State attorney today. I have observed Board of Governors "throwing the book" at a handful of unknown Alaska attorneys in private practice whose ethical lapses are grave but these attorneys do not have criminal convictions from a court of law. I have not observed any semblance of consistency in "Attorney Discipline" for sanctions for similar offenses. All are approved by Alaska Supreme Court which is ultimately responsible for equitable fairness and justice in the practice of law.

The current discipline procedures of Alaska Bar Association are probably a primary reason why Alaska has the highest number of government attorneys in the U.S. in addition to the fact the Alaska attorney government employment is exceedingly lucrative offering excellent benefits and outstanding retirement packages. Alaska Legislature should get the salaries and benefits packages for the 576 or more State of Alaska attorneys out of a total 705 including State of Alaska, Municipal, and U.S. Government attorneys. State of Alaska attorneys are 82% of the total of all Alaska In State Government attorneys. In Spring, 2008 30% of the total of 2,395 Alaska In State attorneys were employed by the Government according to Todd Communications Alaska Directory of Attorneys. Fall, 2008 stopped publishing the number which probably exceeds 30% at this time.

Continuing Legal Education

So far, voluntary CLE in Alaska has been a farce. Regarding "Findings and Recommendations" of Audit #41-20057-08, no specific recommendation was made about how many hours of Mandatory Continuing Legal Education (MCLE) should be required for practicing Alaska attorneys. Ms. Davidson wrote on Page 7 of the "Audit" that 41 of the 50 states have MCLE. To date, 3 clock hours of Mandatory Ethics Continuing Legal Education (MECLE) began on January 1, 2008 and "has teeth" in that there are sanctions for non-compliance to be imposed after January 1, 2009 per Alaska Supreme Court Order No. 1640. Alaska Legislature should ask for a full report on how the newly concluded December 31, 2008 MECLE went. To my knowledge, all other professions in Alaska have much longer and expensive mandatory requirements for continuing licensure. Alaska Bar Association should do so as well. At least twelve hours of mandatory MCLE would improve the profession greatly in Alaska. It would also assure collegiality among lawyers and impose a sense of purpose and ethical public service. Ethics training is important but most attorneys know right from wrong long before they deviate from the norm.

I follow actively Alaska Bar Association activities and this Audit is the first I have known that a "Bar CLE Committee consisting of 15 members assists CLE director" Page 19 exists. What I know is that Ms. Barbara Armstrong, CLE Director since about 1980, was President, American Continuing Legal Education Association, about 10 years ago when Alaska Bar did not require Continuing Legal Education and many years prior to January 1, 2008 MECLE three clock hours implementation.

There is a Law Related Education (LRE) Committee of Alaska Bar Association which to my knowledge only gives money to K-12 education. I applied for three grants including "Keep the Kids in School Initiative Anchorage School District," "Alaska Permanent Fund Board Confirmation Committee," and "Fair Alaska Law Licensure" on January 10, 2007 to Ms. Barbara Hood, Alaska Teaching Justice Network. All were rejected by Ms. Barbara A. Jones, Chair, LRE Committee on January 31, 2007. In 2008 I was unable to find out when the LRE grant applications were due. I intend to apply again by January 16, 2009 but will be applying to Ms. Deborah O'Regan, Executive Director, instead of the Chair, LRE Committee. Ms. O'Regan is in control of the entire process.

Ethics Reform was presumably implemented in 25th Alaska Legislature 1st Session. There can be no Ethics Reform unless Alaska Bar Association is improved. I filed Complaint AGO File No. 661-08-0157 in September, 2007 which was a paper copy of Alaska Permanent Fund Board Confirmation Committee per http://www.apfboardconfirmation.org to Ms. Julia Bockmon, State of Alaska Attorney General's Office, requesting an investigation. Instead, I got a letter dated November 30, 2007 from Ms. Bockman copying Mr. Michael J. Burns, Attorney who has never attempted to be licensed to practice law in Alaska, former Chair, University of Alaska Board of Regents, and current Executive Director, Alaska Permanent Fund, stating "Further statements regarding the existence of your complaint or our investigation may result in penalties for violation of the Executive Branch Ethics Act." In other words, I was threatened with economic sanctions for filing the complaint.

Conclusion

Alaska Bar Association offices and personnel should become a State of Alaska governmental agency under direct supervision of Alaska Supreme Court with annual governmental budgets subject to Alaska Legislative scrutiny for the immediate future. This decision should be subject to review yearly.

Alaska Legislative Audit #41-20057-08 does little to dig into the details of the operation of the Alaska Bar Association. The Audit does not recognize that Alaska Bar Association fails in several of its intended purposes as stated on Page 19 because Alaska Bar has the benefit of governmental protection without direct daily governmental oversight. Alaska Bar does not advance jurisprudence and justice; increase public service and efficiency of the bar; promote reform in the law and procedure; or mandate substantive legal education. The Audit proposes more public notice and participation of public in teleconference meetings but the public is afraid of Alaska Bar so public

notice and participation of the public in teleconferences will have no effect. Nothing could serve the public more than to make Alaska Bar functions a matter of total government control. Are the employees of the Alaska Bar Association staff, Bar Counsel, Executive Director, etc., the beneficiaries of State retirement and medical benefits? This should have been explained fully in the Audit but is not addressed.

Public participation currently is discouraged at all levels. When my husband, Thomas Obermeyer, Missouri Attorney since 1990, appeared before the Senate Judiciary Committee in May, 2007 regarding sunset of the Alaska Bar Association, he was the only person to appear. Bar Counsel Stephen Van Goor was on line by teleconference. When Tom asked for time to contradict Mr. Van Goor's statements, Hollis French, still current Alaska State Senate Judiciary Chair, cut him off. The minutes of the meeting were never transcribed. Would anyone be more articulate than Tom Obermeyer who had in 2007 weathered 23 years and 30 Alaska Bar Exam "failures?" This was the same Hollis French who as a State of Alaska Prosecutor charged and prosecuted me in State of Alaska/Hilton Anchorage vs. Theresa Nangle Obermeyer 3AN-S98-2211 CR for over nine months until I was acquitted in a seven day jury trial on November 10, 1998. How much did that cost?

In my case, I have been defamed endlessly by Alaska corrupt media which is about 95% owned in many Lower 48 states because I continue to believe that I have a right to attend a public meeting. I was jailed over night in a set-up orchestrated by Ms. O'Regan and Mr. Van Goor when Board of Governors was at court on January 15, 1999. If a person dares to go to an advertised "public meeting," he/she is made to look foolish and is targeted. I have lived this fact for many years. Governor Sarah Palin nominated me December 2, 2008 http://www.tobermeyer.info/pdfs/fbresponse.pdf for a position as a "Public Member" Board of Governors Alaska Bar Association. I hope that I will be appointed.

Alaska Bar Association has the best of both worlds – private and quasi-governmental. Currently, Alaska Supreme Court "rubber stamps" admissions and discipline actions and no Alaska State Agency oversees the Board's operations. This has to change. Alaska Bar dues are among the highest in the nation because Alaska attorneys do not want any competition. The Board allows the employees to lavish themselves with high salaries, travel, and plush offices as long as competition is limited. Alaska Active Out of State attorneys are very weak and totally depend on the handful of local Alaska attorneys who control everything that goes on in Alaska. Substantive truth and real numbers never surface.

This document is meant to create much more discussion about Alaska Bench and Bar. Alaska Legislature must send a strong message to Alaska Bar Association that "the light of day" will shine on its totally unaccountable practices that hurt all Alaskans.

Cindy Smith

From: Theresa Nangle Obermeyer [tobermeyer@gci.net]

Sent: Saturday, April 18, 2009 7:30 PM

To: Sen. Hollis French

Subject: HB 88 Senate Judiciary Committee April 19, 2009

Dear Senator French:

Alaska State Senate Judiciary Committee will take up HB 88 tomorrow at 10:00 A.M. I cannot recommend continuation of Alaska Bar Association after what I have watched for 25 years. I have reread the State House Committee Minutes of February 4, 2009 per http://www.legis.state.ak.us/basis/get_single_minute.asp?ch=H&beg_line=00207&end_line=00418&session=26&comm=JUD&date=20090204&time=1318 and regret that I was not privy to this meeting being held so I was not able to comment. I was pleased that Mr. Mitchell Seaver, current President, Board of Governors Alaska Bar Association, was present and hope he will be available tomorrow morning as well.

Ms. Jane Pierson, staff for Representative Ramras, told the House Judiciary Committee on February 4, 2009 according the minutes that "Alaska Bar Association has a one-year wind down period and so could continue to operate until 2010 should HB 88 not be enacted. "

Mr. Stephen Van Goor, Bar Counsel, according to the minutes of the February 4, 2009 House Judiciary Committee Meeting stated that Alaska Bar Exam is: "designed to illustrate minimal competence to practice law, knowledge of Alaska law, an ability to spot issues, and an ability to thgoroughly explain a legal problem in a manner expected of a lawyer." I hope that Mr. Van Goor will take this to heart when the next Alaska Bar Exam results come out on May 4, 2009 in Juneau before Alaska Bar Association Convention. On what basis can he possibly believe that he and his colleagues have had a right to deny Thomas S. Obermeyer, Attorney, licensed since 1990 by similar Missouri Bar Exam, a state that has reciprocity with Alaska, the right to practice law in Alaska for 25 years? Tom has paid for, studied for, and taken Alaska Bar Exam 35 times for 105 days of his life since February, 1984.

Also, Tom has the type of active Missouri law license that requires that he take 15 hours of Continuing Legal Education (CLE) yearly. Please compare Tom to Mr. Michael J. Burns, Executive Director, Alaska Permanent Fund, who is also licensed to practice law in Missouri but has a type of Missouri law license that does not require that he take CLE. Mr. Burns has never attempted to be licensed to practice law in Alaska; something that Tom Obermeyer has dedicated himself to for 25 years.

A few ideas State Senate Judiciary Committee to consider follow:

1. A one year probationary period;
2. An audit received at the beginning of 26th Alaska Legislature 2nd Session documenting:
   A. How many Alaska Bar Association applicants have been admitted by reciprocity and how many by Alaska Bar Exam in the last two years;
   B. The basis upon which Alaska Bar Association Board of Governors does not accept the admission of local attorneys who are licensed in
      reciprocal states by written bar exam:
   C. Information about how many local attorneys licensed in reciprocal states have attempted to be admitted to Alaska Bar Association in the last
      two years including completing the documentation required except for payment of $1,500 if Alaska Bar Association is not going to admit the
      local applicants licensed in reciprocal states:
   D. The results of the 3 clock hours of "Ethics" requirement of Mandatory Continuing Legal Education (MCLE):
   E. The response to the suggestion that a minimum of 12 hours of MCLE be enacted by Board of Governors Alaska Bar Association immediately.

I will call right before 10:00 A.M. tomorrow in the hope that I can address the Committee.

Sincerely yours,

Theresa Nangle Obermeyer, Ph.D.
3000 Dartmouth Drive
Anchorage, Alaska 99508-4413
(907)278-9455 Phone/Fax/Msg.
http://www.tobermeyer.info
http://www.apfboardconfirmation.org

HB

98

SENATE COMMITTEE REPORT

DATE: 4/17/09

FURTHER: Finance

DATE TURNED IN TO OFFICE: 2/1/10

Judiciary Committee considered CS FOR HOUSE BILL NO. 98(FIN) am

HB 98 ALCOHOL: MINOR CONSUMING/LOCAL OPTION

"An Act relating to minor consuming and repeat minor consuming; relating to penalties for violations of limitations on possessing, sending, shipping, transporting, or bringing alcoholic beverages to, soliciting or receiving orders for delivery of alcoholic beverages to, and the manufacture, sale, offer for sale, barter, traffic, or possession of alcoholic beverages in, a local option area; and providing for an effective date."

and recommends:

[ ] be **replaced** with [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt _____ Letter of Intent

[ ] further referral to _____ Committee

SENATE BILL:
[ ] Same Title
[ ] New Title

HOUSE BILL:
[✓] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Law	1/29/10			✓	
DPS	12/29/09			✓	
fiscal info forthcoming					

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet:	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Coghill	✓			
	Elton	✓			
CHAIR:	French	✓			

2800

Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Services
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
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Alaska State Legislature
House of Representatives

While in Session
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Juneau, Alaska 99801-1182
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Representative Jay Ramras
District 10

Sponsor Statement
HB 98

"An Act relating to minor consuming and repeat minor consuming; and providing for an effective date."

HB 98 fixes a problem that occurred with the enactment of HB 359, a bill that passed the House unanimously in the 25th Legislative Session. HB 359 originated due to the desire of Alaskan youths to join the military and not being able to so due to probation restrictions from a minor consuming charge that may have occurred up to 5 years previously. Unfortunately, when the bill was drafted, it left a loop-hole in the repeat minor consuming law.

HB 98 fixes this loop-hole by referencing both suspended impositions of sentence under AS 04.16.050(b)(1) and a judgment of conviction under AS 04.16.050(b)(2).

This new language will now cover all repeat offenders, no matter how their previous minor consuming charges were adjudicated.

An amendment was added in the House Finance HB98 to also fix an issue as it relates to bootlegging. The new language will bring bootlegging penalties in line with felony DUI penalties.

Representative_Jay_Ramras@legis.state.ak.us

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Representative Jay Ramras
District 10

HB98 Sectional

Sec. 1. States that minor consuming is not a misdemeanor

Sec. 2. Incorporates AS 04.16.050(b) penalties under the repeat minor consuming statute.

Sec. 3. Conforming language for habitual minor consuming.

Sec. 4. Corrects the intent of the bootlegging statute, to bring penalties in line with felony DUIs.

Sec 5. Applicability language for section 4.

Sec. 6. Immediate effective date language.

Representative_Jay_Ramras@legis.state.ak.us

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Representative Jay Ramras
District 10

HB98 – Explanation of Changes

A change from version A to version R, was made at the request of the Department of Law Section 3 of the bill was added. Section 3 corrects AS 04.16.200(h), which deals with penalties for possession for sales or importation of liquor into areas that have chosen to establish local option laws. This amendment brings bootlegging penalties into compliance with felony DUI penalties.

A change was made on the House Floor to version R that resulted in version R.A. This amendment made it clear that Minor Consuming and Repeat Minor Consuming are not misdemeanor crimes.

Representative_Jay_Ramras@legis.state.ak.us

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ALASKA PEACE OFFICERS ASSOCIATION

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Wrangell
Pres. Wrangell Chapter

February 17, 2009

Representative Jay Ramras
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Ramras:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 98, an act relating to minor consuming and repeat minor consuming; and providing for an effective date.

The APOA State Board's Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

Sec. 04.16.050. Possession, control, or consumption by persons under the age of 21.

(a) A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages except those furnished persons under AS 04.16.051 (b).

(b) A person who violates (a) of this section and who has not been previously convicted or received a suspended imposition of sentence under (1) of this subsection is guilty of minor consuming or in possession or control. Upon conviction in the district court, the court

(1) may grant a suspended imposition of sentence under AS 12.55.085 and place the person on probation for up to one year if the person has not been convicted of a violation of this section previously; among the conditions of probation, the court shall, with the consent of a community diversion panel, refer the person to the panel, and require the person to comply with conditions set by the panel, including counseling, education, treatment, community work, and payment of fees; in this paragraph, "community diversion panel" means a youth court or other group selected by the court to serve as a sentencing option for a person convicted under this section; or

(2) shall impose a fine of at least $200 but not more than $600, shall require the person to attend alcohol information school if the school is available, and shall place the person on probation for up to one year under (e) of this section; the court may suspend a portion of the fine imposed under this paragraph that exceeds $200 if the person is required to pay for education or treatment required under (e) of this section.

(c) A person is guilty of repeat minor consuming or in possession or control if the person was placed on probation under (b)(1) of this section or has been previously convicted once, and the person violates (a) of this section. Upon conviction in the district court, the court shall

(1) impose a fine of $1,000 and require at least 48 hours of community work;

(2) revoke the person's driver's license for three months;

(3) take possession of the person's driver's license; and

(4) suspend up to $500 of the fine and place the person on probation for up to one year under (e) of this section.

(d) A person is guilty of habitual minor consuming or in possession or control if the person was placed on probation under (c) of this section, or has been previously convicted twice, and the person violates (a) of this section. Habitual minor consuming or in possession or control is a class B misdemeanor. Upon conviction, the court may impose an appropriate period of imprisonment and fine and place the person on probation under (e) of this section for one year, or until the person is 21 years of age, whichever is later, and shall

(1) impose at least 96 hours of community work;

(2) revoke the person's driver's license for six months;

(3) within five working days, notify the agency responsible for the administration of motor vehicle laws of the revocation; and

(4) take possession of the person's driver's license.

(e) The court shall place a person sentenced under (b)(2), (c), or (d) of this section on probation for the appropriate period. The person may not refuse probation. The court may require the person to pay for and enroll in a juvenile alcohol safety action program, if one is available. The court shall impose the following conditions of probation:

(1) the person shall pay for and successfully complete any education or treatment recommended;

(2) the person may not consume inhalants or possess or consume controlled substances or alcoholic beverages, except as provided in AS 04.16.051(b);

(3) the person shall timely complete any community work ordered, as provided in (f) of this section; and

(4) other conditions the court considers appropriate.

(f) A person ordered to perform community work under this section shall perform the work within 120 days of the entry of judgment for a conviction. The court may expand the time period for up to 30 days upon a showing of good cause. The person shall submit verification of completion of community work to the clerk of court on a form provided by the court. If the verification is not provided within the time period required by this subsection, the court shall, within 30 days, schedule further proceedings in the case to determine whether a violation of probation has occurred.

(g) The treatment recommended by a juvenile alcohol safety action program for a person placed on probation under (e) of this section may include a period of inpatient treatment if the judgment specifies the maximum period of inpatient treatment authorized. A person who has been recommended for inpatient treatment may make a written request to the sentencing court for review of the referral. A person shall make a request for review within seven days after the recommendation and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

(h) The juvenile alcohol safety action program to which a person is referred under this section shall inform the court or a minor's juvenile probation officer if the person fails to submit to evaluation or fails to complete successfully any education or treatment recommended. If the court finds that the person has failed to perform community work as ordered, to submit to evaluation, or to complete successfully the education or treatment recommended, the court may impose the suspended fine, and may impose any period of suspended incarceration. If the person was convicted under (c) or (d) of this section, the court shall revoke the person's driver's license for an additional six months beyond the revocation imposed under (c) or (d) of this section. A court revoking a person's driver's license under this subsection shall notify the agency responsible for the administration of motor vehicle laws of the revocation within five working days.

(i) When considering the financial resources of a minor for purposes of determining eligibility for court-appointed counsel under this section, the court shall consider the resources of both the defendant and the defendant's parent or guardian, unless the court finds good cause to treat the defendant's or the defendant's parent's or guardian's resources as being unavailable to the defendant.

(j) A driver's license revocation under this section is consecutive to a revocation imposed under another provision of law, but is concurrent with a revocation under another provision of law based on a prior conviction, adjudication of delinquency, or informal adjustment under AS 47.12.060 .

(k) Notwithstanding (b), (c), and (e) of this section, a person sentenced under (b) or (c) of this section may make a motion to the court to terminate probation of that person before the end of the probationary period required under those subsections. The court may grant the motion if the court finds, by clear and convincing evidence, that

(1) the person completed any community work ordered under (f) of this section;

(2) the person has successfully completed any education or treatment program ordered by the court and, if required by the court, has either

(A) paid for the programs; or

(B) made a good faith effort to pay for the programs, agreed to have the debt reduced to a civil judgment, entered into a repayment plan with the provider or the state, and agreed that the civil judgment may be enforced in the manner provided for restitution and fines in AS 12.55.051;

(3) the person has either

(A) paid the fine; or

(B) made a good faith effort to pay the fine, agreed to have the remaining fine amount reduced to a civil judgment, entered into a plan with the state, and agreed that the civil judgment may be enforced in the manner provided for restitution and fines in AS 12.55.051 ; and

(4) the person has substantially complied with the other conditions of probation.

(l) In this section,

(1) "driver's license" has the meaning given in AS 28.90.990 ;

(2) "juvenile alcohol safety action program" means

(A) a juvenile alcohol safety action program developed and implemented or approved by the Department of Health and Social Services under AS 47.37;

(B) any other alcohol education or treatment program approved by the Department of Health and Social Services under AS 47.37 if a program described in (A) of this paragraph is not available in the community in which the person resides; or

(C) a program or counseling approved by the court if a program or treatment described in (A) of this paragraph is not available in the community where the person resides;

(3) "previously convicted" means a conviction or an adjudication as a delinquent for a violation of AS 11.71, AS 28.35.030 , 28.35.032, 28.35.280 - 28.35.290, or a law or ordinance in another jurisdiction with substantially similar elements.

Sec. 04.16.180. Penalties for violation.

(a) Except as provided in AS 04.11.015 , 04.11.150(g), AS 04.16.025, 04.16.050, 04.16.051, 04.16.200 - 04.16.210, and AS 04.21.065, a person who violates a provision of this title or a regulation adopted by the board is guilty, upon conviction, of a class A misdemeanor. Each violation is a separate offense.

(b) A suspension or revocation of a license ordered by the board under AS 04.11.370 (a)(4) and (5) shall be as follows:

(1) on first conviction the license of the premises involved may not be revoked, but may be suspended for not more than 45 days;

(2) on second conviction the license of the premises involved may not be revoked, but may be suspended for not more than 90 days;

(3) on third conviction the license of the premises involved may be suspended or revoked.

(c) In this section, the terms "second conviction" and "third conviction" include only convictions for violations that occur within five years of the first conviction. The terms refer to the cumulative number of convictions of a licensee of any combination of violations of the provisions of this title, regulations adopted under this title, or ordinances adopted under AS 04.21.010 . The terms "second conviction" and "third conviction" include a conviction of the agent or employee of a licensee of a violation of a law, regulation, or ordinance if the conviction constitutes a ground for suspension or revocation under AS 04.11.370(a)(5).

(d) This section does not affect the authority of the board to suspend or revoke a license when the board determines that continuance of activities under a license would not be in the best interests of the public.

HB

101

SENATE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced:
Referred:

A RESOLUTION

Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning House Bill No. 101, exempting the full value of life insurance and annuity contracts from levy to satisfy a debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding changes to the title of a bill, are suspended in consideration of House Bill No. 101, exempting the full value of life insurance and annuity contracts from levy to satisfy a debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured.

26-LS0176\T
Bailey
3/26/10

SENATE CS FOR CS FOR HOUSE BILL NO. 101( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES COGHILL, Lynn

A BILL

FOR AN ACT ENTITLED

"An Act increasing the value of life insurance and annuity contracts that is exempt from levy to satisfy a debt."

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

*** Section 1.** AS 09.38.025(a) is amended to read:

(a) Except as provided in this section or AS 09.38.017, an individual is entitled to exemption of unmatured life insurance and annuity contracts owned by the individual. If the contracts have accrued dividends and loan values available to the individual aggregating more than **$500,000** [$10,000], a creditor may obtain a court order requiring the individual debtor to pay the creditor, and authorizing the creditor on the debtor's behalf to obtain payment of, the amount of the accrued dividends and loan values in excess of **$500,000** [$10,000] or the amount of the creditor's claim, whichever is less.

*** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 09.38.025(a), as amended by sec. 1 of this Act, applies to an exemption that is sought on or after the effective date of this Act.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 26, 2010

SUBJECT: Resolution suspending rules for title change (SCS CSHB 101( ))
(Work Order No. 26-LS0176\C)

TO: Senator John Coghill
Attn: Rynnieva Moss

FROM: Dennis C. Bailey
Legislative Counsel

This memorandum accompanies the draft Senate CS requested. The new CS requires a title change. Because the bill is in the second house, a concurrent resolution to waive the uniform rule provisions against adding material to a bill in the second house necessitating a bill title change will be required if the CS is adopted.

Please let me know if you would like me to draft a resolution.

DCB:ljw
10-224.ljw

Enclosure

ALASKA STATE LEGISLATURE

SENATOR JOHN COGHILL

State Capitol, Room 504, Juneau, AK 99801-1182 (907) 465-3719
3340 Badger Road Suite #290, North Pole, AK 99705 (907) 488-5725

SCS HB 101(JUD) Exempting a Portion of Value of Life Insurance and Annuity Contracts from Levy to Satisfy Unsecured Debt
SPONSOR STATEMENT

HB 101 as originally written placed unmatured life insurance and annuity contracts under AS 09.38.015, **"Property Exempt without limitation"**, repealing the $10,000 exemption for unmatured life insurance and annuity contracts from AS 09.38.025.

The Senate Committee Substitute for HB 101 being offered removes unmatured life insurance and annuity contracts from exempts without limitation and places a $500,000 exemption on unmatured life insurance and annuity contracts for levies for unsecured debts. Deceitful or fraudulent actions would be prosecuted.

There are several claims that are still enforceable against exempt property, the most significant being collection of child support, unpaid earnings of an employee for up to one month's compensation, and federal, state and local taxes.

There are a multitude of exemptions without limitation for retirement plans for public employees at the federal, state, and local levels. The blue collar workers, people who rely on social security for retirement and small business owners have few options to supplement their retirement plans. Unmatured life insurance policies and annuity contracts offer a sound investment for retirement.

HB 101 offers more security to people investing in unmatured life insurance policies and annuity contracts to provide for themselves and their families in their retirement years.

ALASKA STATE HOUSE OF REPRESENTATIVES

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Session

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State Capitol
Room 214

REPRESENTATIVE JOHN COGHILL

SECTIONAL
CS to HB 101 (JUD)

"An Act exempting the full value of life insurance and annuity contract from levy to satisfy a debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured."

Section 1: AS 09.38.015 Property exempt without limitation is amended to read:

(a) (11) adds unmatured life insurance and annuity contracts owned by the individual to the list of property exempt without limitation.

Section 2: AS 09.38.030 Exemption of earnings and liquid assets is amended to read:

(e) (4) proceeds or benefits paid [OR PAYABLE] on the death of an insured, if the individual was the spouse or a dependant of the insured; and

This section clarifies a potential ambiguity regarding trying to garnish someone's death benefit before that person has passed away.

Section 3: AS 09.38.025(a) is repealed because there is no longer any reason to have a section dedicated to the exemption of unmatured life insurance and annuity contracts since they now fall under the category of property exempt without limitation in AS 09.38.015.

Section 4: is an applicability section that states that this will only apply to a debt that is created on or after the effective date of this Act.

PIQ-09-01

DATE: April 25, 2009

ATTACHMENTS: Chart on Garnishment of Federal Payments for Child Support Obligations

TO: State and Tribal IV-D Directors

FROM: Vicki Turetsky, Commissioner, Office of Child Support Enforcement

SUBJECT: Garnishment of Federal Payments for Child Support Obligations

Section 459 of the Social Security Act (the Act) provides for the garnishment of certain Federal payments to satisfy obligations for child support. A chart titled **Garnishment of Federal Payments for Child Support Obligations** is attached as a reference. It contains information regarding different payment types and authority citations.

QUESTION 1: What moneys are subject to garnishment from Federal employee pay?

RESPONSE 1: A Federal employee's compensation is subject to garnishment for child support payments with the exception of amounts listed under section 459(h)(2) of the Act. Compensation that is subject to garnishment includes wages, salary, commission, bonus, pay, allowances (including severance pay, sick pay, and incentive pay).

QUESTION 2: Are worker's compensation and other benefits subject to garnishment?

RESPONSE 2: Yes, benefits subject to garnishment include worker's compensation benefits paid or payable under Federal or State law, benefits paid or payable under the Railroad Retirement System, and special benefits for certain World War II veterans payable under title VIII of the Act.

QUESTION 3: Are Federal pensions, retirement or retired pay, and annuities subject to garnishment?

RESPONSE 3: Yes, benefits subject to garnishment include periodic benefits (including a periodic benefit as defined in section 228(h)(3) of the Act) or other payments under any system or fund established by the United States which provides for the payment of pensions, retirement or retired pay, annuities, dependents' or survivors' benefits, or similar amounts payable on account of personal services performed by any individual. Section 228(h)(3) of the Act defines the term "periodic benefit" as a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

QUESTION 4: Can child support be withheld from the pay of members of the uniformed services?

RESPONSE 4: Yes, moneys for the personal service of an obligor in the uniformed services are subject to garnishment; however, this does not include allowances for members of the uniformed services payable pursuant to chapter 7 of title 37, United States Code, as prescribed by the Secretaries concerned (defined by section 101(5) of such title) as necessary for the efficient performance of duty. Restrictions also apply for certain allowances and stipends. The attached chart outlines the payments to a member of the uniformed services that are subject to garnishment in 5 CFR §581.103(b) as well as the payments that are not subject to garnishment per §581.104(h)(2).

QUESTION 5: Are title II benefits subject to garnishment? (Title II refers to Federal old-age, survivors, and disability insurance benefits established under title II of the Act.)

RESPONSE 5: Yes, benefits subject to garnishment include periodic benefits (including a periodic benefit as defined in section 228(h)(3) of the Act) or other payments under the insurance system established by title II of the Act. In addition, benefits subject to garnishment include periodic benefits (including a periodic benefit as defined in section 228(h)(3) of the Act) payable under any other system or fund established by the United States which provides for the payment of pensions, retirement or retired pay, annuities, dependents' or survivors' benefits, or similar amounts payable on account of personal services performed by the individual or any other individual.

QUESTION 6: Are Federal "Black Lung" benefits subject to garnishment?

RESPONSE 6: Yes, benefits subject to garnishment include periodic benefits (including a periodic benefit as defined in section 228(h)(3) of the Act) or other payments under any Federal program established to provide

"black lung" benefits. A benefit as defined by 20 CFR §410.110(b) means the black lung benefit provided under part B of title IV of the Act to coal miners, to surviving widows of miners, to the surviving child or children of a miner, or of a widow of a miner, to the surviving dependent parent or parents of a miner, and to the surviving dependent brother(s) or sister(s) of a miner.

QUESTION 7: Are Veteran benefits subject to garnishment?

RESPONSE 7: Certain benefits are subject to garnishment including periodic benefits (including a periodic benefit as defined in section 228(h)(3) of the Act) or other payments by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation. Regulations under 5 CFR §581.103(c)(7) indicate that in such cases, only that part of the Department of Veterans Affairs payment that is in lieu of the waived retired pay or waived retainer pay is subject to garnishment.

In addition, as stated in 5 CFR §581.104(b) payments or portions of payments made by the Department of Veterans Affairs pursuant to sections 501–562 of title 38 of the United States Code, in which the entitlement of the payee is based on non-service-connected disability or death, age, and need are not subject to garnishment. Furthermore, 5 CFR §581.104 (f) indicates that education and vocational rehabilitation benefits for veterans and eligible persons under chapters 30, 31, 32, 35, and 36 of title 38, United States Code, and chapters 106 and 107 of title 10, United States Code are not subject to garnishment.

Benefits payable under title VIII of the Act, "Special Benefits for Certain World War II Veterans" are subject to garnishment. Every individual who is a qualified individual under title VIII section 802 of the Act shall, in accordance with and subject to the provisions of title VIII, be entitled to a monthly benefit paid by the Commissioner of Social Security for each month after September 2000 (or such earlier month, if the Commissioner determines is administratively feasible) the individual resides outside the United States. Except as otherwise provided in title VIII, a qualified individual has: (1) attained the age of 65 on or before the date of the enactment of this title; (2) is a World War II veteran; (3) is eligible for a supplemental security income benefit under title XVI for—(A) the month in which this title is enacted; and (B) the month in which the individual files an application for benefits under this title; (4) whose total benefit income is less than 75 percent of the Federal benefit rate under title XVI; (5) who has filed an application for benefits under this title; and (6) who is in compliance with all requirements imposed by the Commissioner of Social Security under this title, shall be a qualified individual for purposes of this title.

QUESTION 8: Are moneys paid as compensation for death under any Federal program subject to garnishment when the beneficiary is the noncustodial parent?

RESPONSE 8: Yes, section 459(h)(1)(A)(ii)(III) of the Act permits moneys paid as compensation for death under any Federal program to be collected to pay child support. Please refer to Q&A 5 for the exception to this.

QUESTION 9: Are Social Security Income (SSI) benefits subject to garnishment?

RESPONSE 9: No. Supplemental Security Income (SSI) for the aged, blind, and disabled pursuant to title XVI of the Social Security Act are not subject to garnishment; see 5 CFR §581.104(j).

RELATED REFERENCES: Section 459 of the Act, 5 CFR §581.103 and §581.104, PIQ-90-11, AT-93-07, PIQ-06-01

cc: ACF/OCSE Regional Program Managers

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This is a Historical Document.

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ALASKA

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907-563-1492

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Professional Development Chair
A Michael Daniels

Board of Directors:
Noni Baldwin
Nathan McKay
Tim Haworth
Rhiannon Benedetti

Attn: The Alaska Legislature;

03/12/2009

RE; House Bill 101

Dear Madams and Sirs,

NAIFA-Alaska supports House Bill 101.

In order for Alaskan's to protect their families, and to plan for retirements, we feel House Bill 101 is extremely important. We feel the safe passage of this Bill is a positive step in this security.

This protection IS already available in numerous other states. We would like to have this protection for Alaska's families as well.

We appreciate your support of this Bill. Thank you!!

Regards,

Kent S Kallander, LUTCF
NAIFA-Alaska President

Amanda Mortensen

From: Kenneth G. Robertson [ken@robertsonlaw.net]
Sent: Wednesday, March 11, 2009 5:16 PM
To: Amanda Mortensen
Subject: Support for HB101 - Full Value Exemption for Life Insurance and Annuity Contracts

Dear Amanda,

I am writing in support of HB101 which will exempt the full value of unmatured life insurance policies and annuity contracts.

As an estate planning attorney, and President of the Socity of Financial Service Professionals, life insurance, annuities and asset protecion are issues which I deal with on a regular basis. At present, Alaska law only exempts up to $10,000 in cash value for the foregoing products, yet exempts an unlimited amount for most types of qualified plans (IRAs, 401(K)s etc). By passing HB101, those Alaskans who do not have qualified plans, but are investing in life insurance plans, will be able to save and protect their assets in the same way those with qualified plans may do so now.

In the long run, encouraging Alaskas to save and invest during their working years will be of great benefit to the state in that financially self-sufficient Alaskans will not need to rely on state or federal assistance in their post-work years.

Although Alaska has some excellent legislation in the areas of self-settled trusts, and LLCs, it is lagging far behind most states when it comes to exempt property. Passage of HB101 would therefore not only align the protections between Alaskans who have, and do not have, qualified plans, it will bring Alaska more in line with the exemption statutes of other states.

Finally, it will provide the average Alaska with a viable method to a reaonable amount of asset protection without the expense or complexity of creating and managaing self-settled trusts AND it will be a boost to the entire financial services industry insofaras many potential life insurance purchasers will now have the added feature of asset protection at no extra cost.

For these reasons I strongly support passage of HB101. Kenneth G. Robertson.

Kenneth G. Robertson
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Lifetime Income Annuity - Single Life

Income Summary

Annuitant & Policy Information

Name:
Date of Birth: **02/11/1944**
Sex: **Male**
State: **Alaska**
Premium Tax: **0.00%**
Income Tax Rate: **28%**

Type of Funds: **Non-Qualified**
Payment Frequency: **Monthly**
Purchase Date: **02/11/2010**
Income Payment Start Date: **03/11/2010**
Cost Basis: **$250,000.00**

Immediate Annuity Income Amounts

	Single Premium Amount	Monthly Income Amount Starting On 03/11/2010	Tax Free Portion of Income	Total Amount of Guaranteed Payments	Lump Sum Death Benefit	Total Payments to Age 100 1
Life Only	$250,000.00	$1,558.06	$1,085.10	$0.00	$0.00	$668,585.00
Life with 5 Years Certain	$250,000.00	$1,549.02	$1,073.47	$92,941.00	$0.00	$660,588.00
Life with 10 Years Certain	$250,000.00	$1,517.91	$1,029.14	$182,149.00	$0.00	$637,522.00
Life with 15 Years Certain ^	$250,000.00	$1,442.26	$944.69	$258,510.00	$0.00	$606,756.00
Life with 20 Years Certain	$250,000.00	$1,348.64	$868.52	$323,673.00	$0.00	$586,429.00
Life with 25 Years Certain	$250,000.00	$1,267.19	$781.86	$380,157.00	$0.00	$532,220.00
Life with 30 Years Certain	$250,000.00	$1,191.80	$684.09	$429,048.00	$0.00	$500,556.00
Life with Cash Refund	$250,000.00	$1,428.89	$944.49	§	§	$600,134.00
Life w/25% of Prem. DB	$250,000.00	$1,392.32	$813.11	$0.00	$62,500.00	$584,774.00
Life w/50% of Prem. DB	$250,000.00	$1,213.73	$542.64	$0.00	$125,000.00	$508,767.00

§ Under the Life with Cash Refund income alternative, income payments to the annuitant plus the lump sum death benefit to the beneficiaries will total at least $ 250,000.00.
^This Life with Period Certain payment option is the shortest certain period that guarantees a return of premium paid. Payment options offering longer certain periods are guaranteed to provide more than the premium paid.

This illustration is not a guarantee of future benefits and is for informational purposes only. Not complete unless accompanied by Form 20282.
Field Technology Illustration System v2010.1.1D, Prepared on Thursday, February 4, 2010.

Title 09. CODE OF CIVIL PROCEDURE
Chapter 09.38. ALASKA EXEMPTIONS ACT

Sec. 09.38.015. Property »exempt« without limitation.

(a) An individual is entitled to exemption of the following property:

(1) a burial plot for the individual and the individual's family;

(2) health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;

(3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;

(4) an award under AS 18.67 (Violent Crimes Compensation Board) or a crime victim's reparations act of another jurisdiction;

(5) benefits paid or payable as a longevity bonus under AS 47.45;

(6) compensation or benefits paid or payable and »exempt« under federal law;

[Social security benefits whether paid or payable are not subject to execution, levy, attachment, legal process or to the operation of the bankruptcy laws. 42 U.S.C.A. 407

Veteran's Benefits generally exempted from seizure, both before and after receipt by the beneficiary. 38 U.S.C.A. 3101(a) (exceptions: child support liability – *Rose v Rose, 418 U.S. 619 (1987)*; benefits spent on a permanent investment - *Carrier v Bryant, 306 U.S. 545 (1939)*; *Porter v. Aetna Casualty Co.*, 370 U.S. 159 held in that veterans' benefits deposited in a savings and loan association on behalf of a veteran retained the "quality of moneys" and had not become a permanent investment.

Compensation (and claims due compensation) paid on the death or injury of a federal employee are exempt; these claims cannot be assigned. 5 U.S.C.A. 8130;

Unemployment compensation or a local public assistance benefit are exempt. 11 U.S.C. 522(b)(1)"]

(7) liquor licenses granted under AS 04;

(8) tuition credit or savings accounts under a higher education savings account established under AS 14.40.802 or an advance college tuition savings contract authorized under AS 14.40.809 (a);

(9) a permanent fund dividend to the extent allowed under AS 43.23.065;

(10) *[Repealed, Sec. 4 ch 89 SLA 2005].*

(11) benefits paid or payable under AS 47.45.301 - 47.45.309. *(Senior Benefits Payments)*

(b) The right to benefits held by the state on behalf of an individual that may become payable by reason of disability, unemployment, or illness, amounts held in the teachers', judicial, or public employees' »retirement« system, or in the elected public officers' »retirement« system under former AS 39.37, and child support collections made by the child support services agency are »exempt«.

(c) Property of the state, a municipality, and of the Alaska Municipal Bond Bank Authority or another state public corporation is »exempt«.

(d) Real property held by a cemetery association established under AS 10.30 for the purpose of a cemetery and not exceeding 80 acres is »exempt«.

(e) Money held in an escrow account under AS 06.60.360 is »exempt«.

Sec. 09.38.017. Exemption of »retirement« plan interests and payments.

(a) In addition to the exemption under AS 09.38.015 (b), the following are »exempt« from a claim of an individual's creditor:

(1) the interest of the individual in a »retirement« plan; and

(2) the money or other assets payable to the individual from a »retirement« plan.

(b) The exemptions provided by (a) of this section do not apply to a contribution made by an individual to a »retirement« plan within 120 days before the individual files for bankruptcy.

(c) The exemptions provided by (a) of this section do not prevent the payment of benefits under a »retirement« plan to an alternate payee under a qualified domestic relations order. In this subsection, "qualified domestic relations order" has the meaning given in 26 U.S.C. 414(p).

(d) A »retirement« plan »exempt« from claims under (a) of this section is conclusively presumed to be a spendthrift trust under this section.

(e) In this section,

(1) "alternate payee" has the meaning given in 26 U.S.C. 414(p)(8);

(2) "individual" means an individual who is a participant in, a beneficiary of, or an alternate payee of a »retirement« plan;

(3) "»retirement« plan" means a »retirement« plan that is qualified under 26 U.S.C. 401(a), [employer-sponsored retirement plan for employees of state and local governments and

certain tax-exempt entities] 26 U.S.C. 403(a), [retirement plans that are similar to. 401(a) plans but are funded through annuity insurance] 26 U.S.C. 403(b), [retirement plan funded by an annuity purchased by section 501 (c)(3) organization or public school] 26 U.S.C. 408, [individual retirement accounts] 26 U.S.C. 408A, [ROTH IRA] or 26 U.S.C. 409 [retirement plans funded by employee stock ownership plans] (Internal Revenue Code).

Lifetime Income Annuity - Joint Life

Income Summary

Annuitant & Policy Information

Primary Name:
Date of Birth: 02/11/1944
Sex: Male
Joint Name:
Date of Birth: 01/13/1946
Sex: Female
State: Alaska
Premium Tax: 0.00%
Income Tax Rate: 28%

Type of Funds: Non-Qualified
Payment Frequency: Monthly
Purchase Date: 02/11/2010
Income Payment Start Date: 03/11/2010
Cost Basis: $500,000.00

Survivor Receives 100% of Joint Income on Death of Either Annuitant

Immediate Annuity Income Amounts

	Single Premium Amount	Monthly Income Amount Starting On 03/11/2010	Tax Free Portion of Income	Total Amount of Guaranteed Payments	Lump Sum Death Benefit	Total Payments to Younger Annuitant Age 100 1
Life Only	$500,000.00	$2,568.20	$1,859.04	$0.00	$0.00	$1,149,161.00
Life with 5 Years Certain	$500,000.00	$2,539.51	$1,880.84	$152,370.00	$0.00	$1,127,642.00
Life with 10 Years Certain	$500,000.00	$2,533.97	$1,849.61	$304,076.00	$0.00	$1,125,083.00
Life with 15 Years Certain	$500,000.00	$2,516.62	$1,829.55	$453,351.00	$0.00	$1,118,267.00
Life with 17 Years Certain ^	$500,000.00	$2,507.20	$1,699.62	$511,468.00	$0.00	$1,113,197.00
Life with 20 Years Certain	$500,000.00	$2,481.90	$1,561.12	$595,658.00	$0.00	$1,101,984.00
Life with 25 Years Certain	$500,000.00	$2,426.98	$1,460.44	$727,794.00	$0.00	$1,077,135.00
Life with 30 Years Certain	$500,000.00	$2,344.20	$1,329.16	$843,912.00	$0.00	$1,040,825.00
Life with Cash Refund	$500,000.00	$2,506.28	$1,810.32	$	$	$1,113,676.00
Life w/25% of Prem. DB	$500,000.00	$2,395.95	$1,245.69	$0.00	$125,000.00	$1,063,802.00
Life w/50% of Prem. DB	$500,000.00	$2,196.13	$630.14	$0.00	$250,000.00	$975,092.00

$ Under the Life with Cash Refund income alternative, income payments to the annuitants plus the lump sum death benefit to the beneficiaries will total at least $ 500,000.00.
^This Life with Period Certain payment option is the shortest certain period that guarantees a return of premium paid. Payment options offering longer certain periods are guaranteed to provide more than the premium paid.

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Field Technology Illustration System v2010.1.1D, Prepared on Thursday, February 4, 2010.

Lifetime Income Annuity - Single Life

Income Summary

Annuitant & Policy Information

Name:
Date of Birth: 02/11/1944
Sex: Female
State: Alaska
Premium Tax: 0.00%
Income Tax Rate: 28%

Type of Funds: Non-Qualified
Payment Frequency: Monthly
Purchase Date: 02/11/2010
Income Payment Start Date: 03/11/2010
Cost Basis: $500,000.00

Immediate Annuity Income Amounts

	Single Premium Amount	Monthly Income Amount Starting On 03/11/2010	Tax Free Portion of Income	Total Amount of Guaranteed Payments	Lump Sum Death Benefit	Total Payments to Age 100 1
Life Only	$500,000.00	$2,885.48	$2,169.88	$0.00	$0.00	$1,211,902.00
Life with 5 Years Certain	$500,000.00	$2,873.93	$2,146.83	$172,435.00	$0.00	$1,207,051.00
Life with 10 Years Certain	$500,000.00	$2,847.89	$2,087.57	$341,746.00	$0.00	$1,196,114.00
Life with 15 Years Certain	$500,000.00	$2,753.00	$1,891.31	$495,540.00	$0.00	$1,156,260.00
Life with 18 Years Certain ^	$500,000.00	$2,729.88	$1,867.09	$524,094.00	$0.00	$1,146,457.00
Life with 20 Years Certain	$500,000.00	$2,624.08	$1,737.14	$629,779.00	$0.00	$1,102,114.00
Life with 25 Years Certain	$500,000.00	$2,490.84	$1,582.40	$748,952.00	$0.00	$1,049,833.00
Life with 30 Years Certain	$500,000.00	$2,371.97	$1,386.25	$853,909.00	$0.00	$998,227.00
Life with Cash Refund	$500,000.00	$2,714.89	$1,898.86	$	$	$1,140,264.00
Life w/25% of Prem. DB	$500,000.00	$2,606.84	$1,627.92	$0.00	$125,000.00	$1,095,713.00
Life w/50% of Prem. DB	$500,000.00	$2,322.77	$1,094.73	$0.00	$250,000.00	$975,563.00

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Field Technology Illustration System v2010.1.1D, Prepared on Thursday, February 4, 2010.

Amanda Mortensen

From: Kenneth G. Robertson [ken@robertsonlaw.net]
Sent: Wednesday, March 11, 2009 5:16 PM
To: Amanda Mortensen
Subject: Support for HB101 - Full Value Exemption for Life Insurance and Annuity Contracts

Dear Amanda,

I am writing in support of HB101 which will exempt the full value of unmatured life insurance policies and annuity contracts.

As an estate planning attorney, and President of the Socity of Financial Service Professionals, life insurance, annuities and asset protecion are issues which I deal with on a regular basis. At present, Alaska law only exempts up to $10,000 in cash value for the foregoing products, yet exempts an unlimited amount for most types of qualified plans (IRAs, 401(K)s etc). By passing HB101, those Alaskans who do not have qualified plans, but are investing in life insurance plans, will be able to save and protect their assets in the same way those with qualified plans may do so now.

In the long run, encouraging Alaskas to save and invest during their working years will be of great benefit to the state in that financially self-sufficient Alaskans will not need to rely on state or federal assistance in their post-work years.

Although Alaska has some excellent legislation in the areas of self-settled trusts, and LLCs, it is lagging far behind most states when it comes to exempt property. Passage of HB101 would therefore not only align the protections between Alaskans who have, and do not have, qualified plans, it will bring Alaska more in line with the exemption statutes of other states.

Finally, it will provide the average Alaska with a viable method to a reaonable amount of asset protection without the expense or complexity of creating and managaing self-settled trusts AND it will be a boost to the entire financial services industry insofaras many potential life insurance purchasers will now have the added feature of asset protection at no extra cost.

For these reasons I strongly support passage of HB101. Kenneth G. Robertson.

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Tim Haworth
Rhiannon Benedetti

Attn: The Alaska Legislature;

03/12/2009

RE; House Bill 101

Dear Madams and Sirs,

NAIFA-Alaska supports House Bill 101.

In order for Alaskan's to protect their families, and to plan for retirements, we feel House Bill 101 is extremely important. We feel the safe passage of this Bill is a positive step in this security.

This protection IS already available in numerous other states. We would like to have this protection for Alaska's families as well.

We appreciate your support of this Bill. Thank you!!

Regards,

Kent S Kallander, LUTCF
NAIFA-Alaska President

ALASKA STATE LEGISLATURE

SENATOR JOHN COGHILL

State Capitol, Room 504, Juneau, AK 99801-1182 (907) 465-3719
3340 Badger Road Suite #290, North Pole, AK 99705 (907) 488-5725

MEMORANDUM

Date: March 21, 2010

To: Senator Hollis French, Chairman, Senate Judiciary Committee

From: Rynnieva Moss, Legislative Aide RW Moss

Re: 26-LS0176\C - House Bill 101

I am requesting you consider a new CS for HB 101 that would delete the provision that makes exemption of unmatured life insurance and annuity contracts *"property exempt without limitations"* and sets a $500,000 exemption on unmatured life insurance and annuity contracts. I propose the following language.

Sec. 09.38.025. Exemption of unmatured life insurance and annuity contracts.

(a) Except as provided in this section or AS 09.38.017 , an individual is entitled to exemption of unmatured life insurance and annuity contracts owned by the individual. If the contracts have accrued dividends and loan values available to the individual aggregating more than **$500,000** [$10,000], a creditor may obtain a court order requiring the individual debtor to pay the creditor, and authorizing the creditor on the debtor's be **$500,000** [$10,000] or the amount of the creditor's claim, whichever is less.

While public employee retirement systems are already protected by federal law, many trade union workers rely on unmatured life insurance policies and annuity contracts to provide supplemental retirement benefits. People who are self-employed also depend on these sources of retirement income. This legislation strives to preserve any portion of those retirement benefits.

I read the minutes to the April 17, 2009 Senate Judiciary Meeting and there were two unanswered questions:

(1) Can the deceased's annuity contract be garnished to pay unpaid child support?

Rob Stone 276-4190
Mike Schneider 277-9306

HB101 Trial lawyers

Rynera HB101 Academy of Trial Lawyers
he has comments c. 727-7441 anchorage
regarding h. 334-7441

ALASKA STATE HOUSE OF REPRESENTATIVES

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Fax# (907)-488-4271

Session

(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: April 14, 2009

To: Senator French, Chair
Senate Judiciary Committee

From: Amanda Mortensen, Intern
Representative John Coghill, Chair
House Rules

Re: Senate Judiciary Committee –CS to HB 101(JUD)

Please schedule CS to HB 101(JUD) *"An Act exempting the full value of life insurance and annuity contracts from levy to satisfy a debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured."*

I have attached a Sponsor Statement, Sectional and backup documentation for your information and distribution.

Thank you.

Senator French

ALASKA STATE HOUSE OF REPRESENTATIVES

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3340 Badger Road
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Fax# (907)-488-4271

Session

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FAX# (907)-465-3258
State Capitol
Room 214

REPRESENTATIVE JOHN COGHILL

Sponsor Statement
HB 101

"An Act exempting the full value of life insurance and annuity contracts from levy to satisfy unsecured debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured."

This bill will provide people with better security and planning for their families after they have passed on. This bill exempts the full value of life insurance and annuity contracts from levy or garnishment to satisfy unsecured debt.

When fewer employers are offering retirement plans, the state can help offer families the opportunity to better plan for their future. People who are self-employed or working for an employer that does not offer a retirement plan can use annuities as a retirement plan and know that these funds are protected. With the uncertainty of social security, families need to be sure that they can provide for themselves and their survivors.

This bill encourages personal responsibility and protects the future of Alaskan families.

P.S. Labor supports this! Also - Hawaii has the same protection requested in HB #101

Would you allow this bill out - I so believe in this bill. In my view, as a recent widow, (not in debt or owing creditors) I am concerned life ins or annuity contracts could be levied to satisfy debts. However, I respect your expertise. Linda

HB 102

SENATE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced:
Referred:

A RESOLUTION

Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning House Bill No. 102, relating to the Uniform Commercial Code, to the general provisions of the Uniform Commercial Code, to documents of title under the Uniform Commercial Code, to the Uniform Electronic Transactions Act, to lease-purchases of personal property, to the contractual duty to act fairly and in good faith, and to carrier, warehouse, and animal care liens; and amending Rules 403 and 902, Alaska Rules of Evidence.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding changes to the title of a bill, are suspended in consideration of House Bill No. 102, relating to the Uniform Commercial Code, to the general provisions of the Uniform Commercial Code, to documents of title under the Uniform Commercial Code, to the Uniform Electronic Transactions Act, to lease-purchases of personal property, to the contractual duty to act fairly

and in good faith, and to carrier, warehouse, and animal care liens; and amending Rules 403 and 902, Alaska Rules of Evidence.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 17, 2009

SUBJECT: SCS CSHB 102(JUD) relating to the Uniform Commercial Code, etc. (Work Order No. 26-LS0059\S)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Single subject considerations. The bill combines lien language from and contract duty language amendment in AS 09.70.030 with provisions throughout the Uniform Commercial Code. The bill has to rely on a somewhat questionable single subject of "contracts" for its single subject.

Although I believe that this single subject would not ultimately be held to violate the constitutional single subject rule,[1] there is definitely an issue here. First, it is difficult to reduce the Uniform Commercial Code to "contracts," although that is the ultimate basis for its commercial transactions. The Supreme Court has held that the purpose of the constitutional provision is to guard against legislative log-rolling, "the practice of deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure."[2] However, it is likely that the general perception, at least of the legal community, of the UCC, the contract duty in AS 09.70.030, and the lien provisions would be that they are logically related. So they may not be considered dissimilar or incongruously placed together in the bill. Second, it is not clearly spelled out in the AS 34.35 lien language that the transactions it covers are based on a contract. However, the treatment in AS 34.35 suggests that there was some kind of expectation or agreement that the other party would pay for the services provided.

---

[1] Art. II, sec. 13, Constitution of the State of Alaska.

[2] Evans v. State, 56 P.3d 1046, 1069 (Alaska 2002), quoting from State v. First National Bank of Anchorage, 660 P.2d 406, 415 (Alaska 1982).

Although some justices in dissents have expressed concern that the court's broad construction may possibly make the single subject rule meaningless,[3] the Supreme Court has not overturned legislation because of a failure of the single-subject requirement. The Court has indicated that one meaning of the general subject is that all matters treated of should be so connected with or related to each other, either logically or in popular understanding as to be part of, or germane to, one general subject.[4] It appears logical to group the amendments and the original bill together as related to contractual relations. As mentioned earlier, it also appears likely that, at least in the legal community, the general perception of the items in the bill would be that they are logically related.

When construing the single-subject rule, the Court will "resolve doubts in favor of validity."[5] In order "to warrant the setting aside of enactments for failure to comply, the violation must be substantial and plain."[6] In this case, the possible lack of a single subject among the provisions is not plain and it does not appear to be substantial.

In light of all these factors, I would say that relying on the single subject of "contracts" probably is not fatal for the legislation. However, it is an issue and I wanted you to be aware of it.

2. Title change. The change was made in the title from "animal care" to "livestock care." So, as you requested (unless not needed) we are preparing a concurrent resolution to waive the uniform rules for the title change. It is arguable that the change the committee made to the bill would not require the change to "livestock" because "animal" covers livestock and is not, therefore, misleading. However, because "animal" is broader than what is actually in the bill, it is safer to make the change and pass the resolution.

If I may be of further assistance, please advise.

TLB:plm
09-289.plm

Enclosure

---

[3] See Yute Air Alaska, Inc., et. al. v. Stephen A. McAlpine, et al., 698 P.2d 1173, 1180 - 1183 (Alaska 1985); and Gellert v. State, 522 P.2d 1120, 1124 (Alaska 1974).

[4] See State v. First National Bank of Anchorage, supra at 415.

[5] See Suber v. Alaska State Bond Committee, 414 P.d 546, 557 (Alaska 1966).

[6] See State v. First National Bank of Anchorage, supra at 415 (Alaska 1982), citing, among other cases, North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 545 (Alaska 1978).

ALASKA STATE LEGISLATURE
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EXPLANATION OF CHANGES – AMENDED 3/16/09

Changes between HB102 and CSHB102(JUD):

- Adds **Section 1**, which codifies in Title 9 of the Alaska Statutes a requirement already found in the common law of the state that all parties to a contract have a duty to act fairly and in good faith in the performance and enforcement of the contract. The Alaska Supreme Court has previously found that the duty of good faith and fair dealing is implied in every contract in Alaska, and has gone so far as to call the duty "a long-standing tenet of Alaska law." McConnell v. State, Dept of Health and Social Services, 991 P.2d 178, 184 (Alaska 1999). The covenant of good faith and fair dealing assures parties to a contract that no party "will do anything which will interfere with the right of [another] party to receive the benefits of the agreement." Guin v. Ha, 591 P.2d 1281, 1291 (Alaska 1979). The covenant is implied "in order to effectuate the reasonable expectations of the parties to the agreement." Ramsey v. City of Sand Point, 936 P.2d 126, 133 (Alaska 1997); see generally Casey v. Semco Energy, Inc, 92 P.3d 379, 384 (Alaska 2004); Keffer v. Keffer, 852 P.2d 394 (Alaska 1993); Municipality of Anchorage v. Gentile, 922 P.2d 248 (Alaska 1996). Since common law is more malleable than statutory law, codification through this legislation offers additional guarantees of the duty of good faith and fair dealing to all parties of a contract.
- Adds **Sections 4-7**, which modernizes the language of AS 34.35.200 and AS 34.25.225, relating to carrier, warehouse, and animal care liens, and clarifies that the remedies available under AS 34.35.225 and AS 45.07.210(g) are not mutually exclusive; an owner of property wrongfully disposed of has rights and remedies

Note that this is a summary only. This sectional analysis should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

under each statute in the event both statutes apply. Adds **Section 47** amending AS 45.07.210(g) clarifying that rights and remedies available under that section are in addition to rights and remedies under AS 34.35.225.

- Updates the language of **Section 50**, relating to AS 45.07.302. Professor William H. Henning, Distinguished Professor of Law at the University of Alabama School of Law, provide the following rationale for the change:

"The language in the uniform version of Section 7-302 was included because of the interface between state and federal law. At the time revised Article 7 was adopted by the Uniform Law Commission, federal law provided that performing or connecting carriers could not alter obligations if they were within the ambit of federal law regarding carrier obligations. The language in 7-302 designated what was outside that ambit and was included merely to point out what would have been true without the language - if the parties were outside federal law, the performing carrier COULD alter liability by agreement. Since the ULC adopted the act, much of federal law regarding carriers has been restated and reorganized and that exact formulation does not seem to be used. The new language that we suggested should be appropriate regardless of the scope of current federal law."

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SECTIONAL ANAYLSIS
CSHB 102(JUD) – UNIFORM COMMERCIAL CODE

"An Act relating to the Uniform Commercial Code, to the general provisions of the Uniform Commercial Code, to documents of title under the Uniform Commercial Code, to the Uniform Electronic Transactions Act, and to lease-purchases of personal property; amending Rules 403 and 902, Alaska Rules of Evidence; and providing for an effective date."

(Sections Making Substantive, Non-technical Changes)

Section 1 codifies in Title 9 of the Alaska Statutes a requirement already found in the common law of the state that all parties to a contract have a duty to act fairly and in good faith in the performance and enforcement of the contract.

Section 2 provides for the Uniform Electronic Transactions Act (UETA) to apply to sections of the Uniform Commercial Code (UCC) concerning warehouse receipts, bills of lading and documents of title previously excluded from application of UETA.

Sections 4 – 7 modernizes the language of AS 34.35.200 and AS 34.25.225, relating to carrier, warehouse, and animal care liens, and clarifies that the remedies available under AS 34.35.225 and AS 45.07.210(g) are not mutually exclusive; an owner of property wrongfully disposed of has rights and remedies under each statute in the event both statutes apply.

Section 8 adds a short title, describes the scope, and adds rules of construction and severability provision for the UCC, and addresses modification of federal electronic signatures laws.

Section 9 adds several new sections to AS 45.01 to promote uniformity in UCC-covered transactions by revising or modifying general rules. These include: general definitions; standards for determining when someone has notice or knowledge; provisions on distinguishing between leases and security interests, what constitutes value given for rights, and determining whether actions are timely performed and what facts must be

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presumed; choice of laws; good faith; course of performance and dealings, and usage of trade; and various rights and remedies.

Sections 15 & 17 amend payment requirement as it relates to delivery of goods and passage of title to goods to facilitate use of electronic documents of title.

Section 30 adds several new sections to AS 45.07 to modernize the UCC Documents of Title statutes, especially to reflect the use of electronic documents of title by the shipping and warehousing industries. These include: general definitions; negotiation of documents of title; use of alternative media (electronic versus tangible documents); and control of electronic documents of title.

Section 39 updates the language of warehouse lien provisions to include liens arising from storage agreements and clarifies (in this provision rather than by cross reference to another statute) the protection afford the rights of a person with a perfected security interest in the goods who did not entrust the goods/document of title.

Section 54 amends the lien provisions applicable to the carrier of goods to ensure that a carrier's lien extends to the proceeds of the goods, not just the goods themselves.

Section 61 modernizes the language of and clarifies the ability to limit a carrier's liability by specifically referring to bills of lading and transportation agreements at the source documents for limitation of liability provisions.

Section 68 modernizes the standards for negotiation of documents of title to address use of negotiable electronic documents.

Section 71 amends provisions on the rights arising from transfer of documents of title to address the rights of lessors and lessees.

Section 77 revises remedial provisions for dealing with lost or missing documents of title by changing the standards for require the posting of security before the courts order delivery of goods or of a substitute document, and eliminates archaic classification and tariff-related conditions from the standard for whether delivery of goods in good faith constitutes conversion.

Section 100 amends duties of secured parties who must respond to debtors' demands to include duties for a party with control over an electronic document of title to respond to such demands.

Sections 114 & 118 describe two indirect amendments of the rules of evidence and provide for those changes to take effect only if the necessary two-thirds majority vote is achieved.

Note that this is a summary only. This sectional analysis should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

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SPONSOR STATEMENT

CSHB 102(JUD) – UNIFORM COMMERCIAL CODE

"An Act relating to the Uniform Commercial Code, to the general provisions of the Uniform Commercial Code, to documents of title under the Uniform Commercial Code, to the Uniform Electronic Transactions Act, and to lease-purchases of personal property; amending Rules 403 and 902, Alaska Rules of Evidence; and providing for an effective date."

The Uniform Commercial Code is a uniform act created with the objective of synchronizing the law of sales and other commercial transactions in all fifty states. The UCC is a joint project of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI). The UCC is not itself law, but provides recommendation of the laws that should be adopted by individual states. All fifty states have adopted the UCC in one version or another, and it is a major part of Title 45 of the Alaska Statutes.

The UCC was originally released in 1952; periodically, the NCCUSL and ALI revisit the UCC and make appropriate recommendations for revisions to states statutes. This bill reflects the recent revisions of Articles 1 and 7 of the UCC. The Alaska Uniform Law commissioners have recommended passage of these revisions this legislative session.

Article 1 provides definitions and general provisions for the UCC; the updates to Article 1 modernize and reflect changing business practices and developments in the law and are necessary to bring Article 1 up to date. Thirty-four other states have already adopted the revised Article 1 language.

Article 7 of the UCC pertains to warehouse receipts, bills of lading, and other documents of title. The revisions to Article 7 introduce new rules concerning electronic documents of title. The substantive revisions to Article 7 fall into four main categories: recognition of electronic documents of title; extension of the statute of fraud requirements to include electronic records and signatures as equivalent to paper documents and written manual signatures; establishment of the unique original in electronic form; and interchangeability between electronic and tangible documents of title. Thirty-one other states have already adopted the revised Article 7 language.

An expert from the NCCUSL will be available to testify and answer questions at the hearing, along with an Alaska Commissioner to the NCCUSL and Chief Administrative Law Judge Terry Thurbon. Should you have questions before the hearing, please do not hesitate to call legislative aide Allison Laffen at 465-2840.

Uniform Law Commissioners

The National Conference of Commissioners on Uniform State Laws

A Few Facts About The...

REVISED UNIFORM COMMERCIAL CODE ARTICLE 1, GENERAL PROVISIONS (2001)

PURPOSE:
Updates the general provisions section of the Uniform Commercial Code, to harmonize with ongoing UCC projects and recent revisions.

ORIGIN:
Completed by the Uniform Law Commissioners and the American Law Institute in 2001.

APPROVED BY:
American Bar Association

STATE ADOPTIONS:

Alabama
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Minnesota
Montana
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Washington

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Why States Should Adopt the...

Revised Uniform Commercial Code
Article 1 - General Provisions (2001)

Article 1 serves all other articles of the Uniform Commercial Code with definitions and general provisions. Revised Article 1 improves old Article 1 in the following ways:

- Modernization. The UCC has entirely been amended or revised between 1985 and 2003. Most states have enacted these revisions and amendments. It is time to bring Article 1 as up-to-date as the rest of the UCC.
- Narrower Scope. The intentionally narrowed scope of the substantive rules in Article 1 prevent them from being applied outside the UCC with potentially serious unintended consequences.
- Clarifies When Non-UCC Rules Apply. Other law will clearly supplement, but does not supplant UCC rules. This reduces interpretation problems and the opportunities for litigation.
- Good Faith. Reasonable commercial standards will affect the determination of what is good faith in any given case for the entire UCC, not just individual articles. This is a fairer standard for courts to enforce and is the existing standard in most of the substantive articles of the UCC.
- Broader Choice of Law. Parties to transactions under the UCC may choose any law that best governs their transaction, except in a consumer transaction in which the choice of law would deprive a consumer of the protections of his or her own state's law. This amendment provides for greater flexibility in doing business interstate and is good for business.
- Course of Performance Added. Absent express terms, evidence of "course of performance" (a concept currently utilized only in Articles 2 and 2A of the UCC) may be used in court to interpret a contract along with course of dealing and usage of trade. Courts will have more complete evidence on the meaning of contracts and the intent of the parties to them.
- Statute of Frauds Deleted. General writing and signature requirements are deleted to make way for the specific provisions for electronic records and signatures that are contained in the substantive UCC articles.

UNIFORMITY

Modifications and revisions of other articles in the Uniform Commercial Code require the revision of Article 1 of the UCC. This required harmonization of Article 1 with the other revised articles as well as the need to reflect in Article 1 recent changes and developments in law are both expressed in Revised Article 1. It is important for every state to adopt Revised Article 1 of the Uniform Commercial Code.

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SUMMARY

Revised Article 1 of the Uniform Commercial Code

Article 1 of the Uniform Commercial Code (UCC) provides definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC. As other parts of the UCC have been revised and amended to accommodate changing business practices and development in the law, these modifications need to be reflected in an updated Article 1. Thus, Article 1 contains many changes of a technical, non-substantive nature, such as reordering and renumbering sections, and adding gender neutral terminology. In addition, over the years it has been in place, certain provisions of Article 1 have been identified as confusing or imprecise. Several changes reflect an effort to add greater clarity in light of this experience. Finally, developments in the law have led to the conclusion that certain changes of a substantive nature needed to be made.

The first substantive change is intended to clarify the scope of Article 1. Section 1-102 now expressly states that the substantive rules of Article 1 apply only to transactions within the scope of other articles of the UCC. The statute of frauds requirement aimed at transactions beyond the coverage of the UCC has been deleted. Second, amended Section 1-103 clarifies the application of supplemental principles of law, with clearer distinctions about where the UCC is preemptive. Third, the definition of "good faith" found in 1-201 is revised to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing". This change conforms to the definition of good faith that applies in all of the recently revised UCC articles except Revised Article 5. Finally, evidence of "course of performance" may be used to interpret a contract along with course of dealing and usage of trade.

Perhaps the most important change to Article 1, however, has to do with default choice-of-law provisions found in 1-301, which replaces previous 1-105. Under the Article 1 before the 2001 amendments, parties to a transaction may agree to be governed by the law of any jurisdiction that bears a reasonable relation to that transaction. Revised Article 1 provides a different basic rule that applies except for consumer transactions in certain circumstances.

With respect to all transactions, an agreement by the parties to use the law of any state (or in the case of an international transaction, country) is effective, regardless of whether the transaction bears a reasonable relation to that state. However, if one of the parties to a transaction is a consumer, such a choice-of-law provision in a contract may not deprive the consumer of legal protections afforded by the law of the state or country in which the consumer resides, or of the state or country where the consumer contracts and takes delivery of goods. Also, with respect to all transactions, an agreement to use the law of a designated state or country is ineffective to the extent that application would violate a fundamental public policy of the state or country which has jurisdiction to adjudicate a dispute arising out of the transaction. The forum state's law will govern the transaction if the contract is silent on the issue of choice of law.

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A Few Facts About The...

REVISED UNIFORM COMMERCIAL CODE ARTICLE 7 (2003)

PURPOSE:
The 2003 Revision of UCC Article 7 updates the original UCC7 to provide a framework for the further development of electronic documents of title, and to update the article for modern times in light of state, federal and international developments.

ORIGIN:
Completed by the National Conference of Commissioners on Uniform State Laws and the American Law Institute in 2003.

ENDORSED BY:
International Association of Refrigerated Warehouses
International Warehouse Logistics Association

STATE ADOPTIONS:

Alabama
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Maryland
Minnesota
Mississippi
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Nebraska
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North Dakota
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Pennsylvania
Rhode Island
Tennessee
Texas
Utah
Virginia
West Virginia

2009 INTRODUCTIONS:

Alaska
Georgia
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Washington

For any further information regarding the Revised UCC Article 1, please contact Mike Kerr or Katie Robinson at 312-450-6600.

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Uniform Law Commissioners
The National Conference of Commissioners on Uniform State Laws

SUMMARY

Uniform Commercial Code - Revised Article 7 (2003)

Revision in 2003

The original Article 7 of the Uniform Commercial Code, "Warehouse Receipts, Bills of Lading and Other Documents of Title," combined two earlier uniform acts, the Uniform Warehouse Receipts Act (1906) and the Uniform Bills of Lading Act (1909), with some principles from the Uniform Sales Act (which became Article 2-Sales of the UCC). Article 7 had not been revisited after the 1951 promulgation of the original Uniform Commercial Code until 2003, a period of 52 years. The longevity of the principles of warehouse receipts and bills of lading suggests very successful law and law-making as it pertains to the commercial storage and shipment of goods. The basic principles do not change basically in the 2003 revision. But there are reasons to readdress this area of the commercial law in 2003, which shall be discussed a little later. First, it is necessary to establish some of the basics.

Introduction to Documents of Title

The storage and shipment of tangible goods for commercial purposes has been going on for centuries. The physical side of the business is carried on by entities that provide warehouses (warehousemen) and entities that carry the goods from place of origin to destination (common carriers). These are tangible, visible businesses. What is not tangible and visible is the transfer of rights in the goods while they are stored and/or shipped. The common law provided the rules of bailment. The terminology of bailor and bailee is still incorporated in the Uniform Act. As the law developed, the transfer of rights came to depend upon the transfer of specific documents of title. The transfer of the documents from one person to another became the transfer of the rights. The title documents were warehouseman's receipts on the storage/warehouse side, and the bill of lading on the carrier side. The original uniform acts and the 2003 revision all incorporate these basics.

One of the important principles carried forward into the 2003 revision is that of negotiability. Free transfer of interests is an important policy norm throughout the UCC. In Article 7, documents of title may be negotiable. Whether a document is negotiable or non-negotiable depends upon how it identifies the transferee and how it is transferred. A negotiable document may be one of two kinds of paper documents, bearer paper or order paper. A document made out to bearer may be transferred from one person to another by simple delivery of possession. The delivery transfers the rights to the goods (therefore the title) to the transferee. Order paper is made out to a specific person. After initial delivery to the person named on the document, it may be negotiated to another person by the indorsement of the named person and delivery of possession to that other person. The rights to the goods (and therefore the title) pass with the negotiation to the transferee.

Documents of title may also be made non-negotiable. This is primarily done by a statement on the face of the instrument. Non-negotiable documents of title may also be assigned or transferred. The difference between negotiable and non-negotiable documents is the rights that they may transfer. A non-negotiable document of title transfers only the actual interests of the transferor. A negotiable document of title may transfer more than the actual interests of the transferor. If negotiated, for example, it transfers free of any claims against the issuer of the document. A non-negotiable document is not free of such claims.

Negotiation as a concept exists to make commerce in goods possible. Goods would not be transferred if the purchaser always has to look behind the transaction to see who may come after the goods after the transfer is complete. Negotiation erases the peril. The principle enunciated in Article 7 is consistent with other parts of the UCC governing notes, drafts, checks and investment securities.

Electronic Documents of Title

Article 7 governs other important aspects of the transfer of rights in goods when stored or shipped, such as the liens of warehousemen and carriers and their enforcement and allocation of risk of loss of the goods either in storage or transit, but the issue of negotiation has been its single most important aspect, up to the revisions in 2003. Something very important has happened to change the way we look at the principle of negotiation. That something is computers, electronic communications and the ability to create electronic documents of title. Computers have been accused and applauded for their impact on commerce and business. Their impact on storage and shipment of goods is profound. Federal law has actually recognized electronic documents for some time, but electronic documents of title cannot be substituted one to one with tangible documents of title. Their characteristics in electronic form are not the same as their characteristics in tangible form.

The tangible form is a written document on paper with signatures of issuers and subsequent transferors. The individual document is a unique token of the rights and interests it represents. Even if there is a copy, there is always the original. This is not so with electronic documents. Originals and copies are indistinguishable from each other in electronic form. Signatures in the sense of an individual's scribing them uniquely on a piece of paper cannot be equally duplicated in an electronic document. Transferors and transferees, who are remote from each other when tangible documents are transferred, are not remote from each other in electronic media. Electronic communications can occur between any two persons anywhere in the world. Yet, it is difficult for each participant in an electronic communication to verify or authenticate the identity of the other party. To have the effective electronic documents that commerce demands, new concepts have to be introduced into the law. The concept of negotiation as we have known it in American law cannot apply in electronic media. The great addition to Article 7, therefore, is the new rules for electronic documents of title.

These rules must deal with distinct issues: recognition of electronic documents of title; statute of fraud extensions; establishment of the unique original in electronic form (sometimes thought of as authentication); and interchangeability between electronic and tangible documents of title. In addition, the rules for electronic documents of title must fit as seamlessly as possible into the existing system governing tangible documents of title. The law should avoid skewing the choice between tangible and electronic documents of title in the favor of either form. Only the actual marketplace should determine users' choices. Revised Article 7 deals with these issues and meets the test of seamless insertion into the existing law.

Recognition of Electronic Documents of Title

Recognition of electronic documents of title begins in the definition of "Document of Title:" "An electronic document of title is evidence by a record consisting of information stored in an electronic medium." Other definitions have been modified to accord with this root definition. For example, "Holder" is defined to include: "a person in control of a negotiable electronic document of title." Electronic documents of title become the equal to tangible documents of title.

Statute of Frauds Requirements

Revised Article 7 extends statute of fraud requirements to include electronic records and signatures. Any writing requirement that relates to enforceability of a document is a statute of frauds requirement. Article 7 treats electronic records and signatures as the equivalent of paper documents and written, manual signatures. This initially occurs in new definitions of "record" and "sign." A record is "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." The term "sign" is defined to

when the person in control surrenders control to the issuer, which then issues a tangible document of title containing a statement that it substitutes for the electronic document. The same kind of process will convert a tangible document to an electronic one. The person entitled to enforce a tangible document surrenders possession to the issuer. The electronic document must also state that it is a substitute for the tangible document. Without the ability to convert from tangible to electronic documents, this system would not work.

Other Benefits to Revision

The revisions to UCC Article 7, beyond making way for electronic documents of title, primarily update or clarify existing rules of law. There are references to tariffs and regulations in original UCC Article 7 that no longer exist with deregulation. These have been eliminated in the revision. There is nothing as significant as the rules for electronic documents of title. But these rules alone make it imperative for the states to enact the revision to UCC Article 7 as soon as practicable. Documents of title are fundamental to the transfer of goods in interstate commerce. The new rules are wholly commerce friendly and every state needs them as soon as possible.

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REPRESENTATIVE CRAIG JOHNSON
HOUSE DISTRICT 28

MEMORANDUM

To: Senator Hollis French,
Chair, Senate Judiciary

From: Representative Craig Johnson

Date: April 14, 2009

Subject: Request for scheduling for CS HB 201 (JUD)

I respectfully request that Committee Substitute for House Bill 201 (JUD), relating to concealed carry permits, be considered for scheduling. This legislation would allow Alaskans who require a conceal carry permit for reciprocity to have their permit expire on their birthday.

Please feel free to contact me, or my aide, Jeanne Ostnes, with questions or thoughts at our main office number of 465- 6871.

Co-Chair House Resources Committee
Member of Fisheries, State Affairs, Transportation Committees

HB

108

Alaska State Legislature

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Representative Jay Ramras
House District 10

Chair, House Judiciary • Chair, House Economic Development, Trade & Tourism • Member, Energy • Member, House Military & Veteran Affairs, Member, Joint Armed Services

Sectional HB 108 Property Foreclosures and Executions

3.18.10

Section 1. AS 09.35.140 is amended –Removes the U.S. Post Office as a posting requirement.

Section 2. Amends AS 09.35.140 to add a new subsection. Adds a new section to AS 09.35 (execution on property) to require the notice of the execution sale of real property also be noticed on an Internet website, inclusive of newspaper websites. Also, describes the requirements that Newspaper websites and Internet websites must meet to qualify, and the Internet notice requirement for a non-judicial foreclosure.

Section 3. Amends AS 09.35.142 to allow an Internet website owner to bring a court action to establish that the website qualifies under AS 09.35.140(b)

Section 4. Amends AS 34.20.070(b) adjusts to 90 days the minimum length of time that must elapse between recording a notice of default on a deed of trust and holding the foreclosure sale.

Section 5. Amends AS 34.20.070(c) requires that possession be actual physical possession where possession is required for certain persons to be entitled to receive a notice of default for foreclosure sale.

Section 6. Adds new subsection to AS 34.20.070 (foreclosure by trustee).

Proposed 34.20.070(e) establishes when a person who holds a lien or non-possessory property interest that can be inferred from an inspection of the property is entitled to receive a notice of default for a foreclosure sale.

Proposed 34.20.070(f) explains that a lien or nonpossessory interest must be recorded or notice given to the beneficiary or trustee before the recording of the notice of default.

Proposed 34.20.070(g) allows a trustee additional time (after recording) to deliver the notice of default when the trustee delivers the notice personally to the property or to

an occupant of the property. Allows the trustee to place the notice on the property or as close as practicable to the property under certain conditions.

Proposed sec 34.20.070(h) states that an affidavit signed by a trustee or another person who delivered notice personally under sec. 34.20.070(f) is prima facie evidence that the trustee complied with sec. 34.20.070(f). Establishes a conclusive presumption (as evidenced by the affidavit) after one year unless a court action is filed within the year to challenge the foreclosure for failure to comply with sec. 34.20.070(f)

Proposed sec. 34.20.070(i) establishes how a trustee may satisfy the notice requirements for a person known by the trustee to be deceased and for whom the trustee or the deed of trust beneficiary knows a personal representative has been appointed.

Proposed sec. 34.20.070(j) establishes how a trustee may satisfy the notice requirements for a person known by the trustee to be deceased and for whom the trustee or the deed of trust beneficiary know that a personal representative has been appointed for the deceased person.

Proposed sec. 34.20.070(k) states that an heir or devisee of a deceased person must challenge a foreclosure sale within 90 days if alleging non-receipt of notice and if the trustee gave notice as required by (h) – (i).

Proposed sec. 34.20.070(l) describes the persons who may bring a court action to enjoin a foreclosure sale.

Proposed sec. 34.20.070(m) states that when a court injunction action meets certain conditions, a court may impose conditions that it considers appropriate to protect the deed of trust beneficiary.

Proposed sec. 34.20.070(n) defines certain terms for AS 34.20.070

Section 7. AS 34.20.080(a) is amended to require that the proceeds from a foreclosure sale are placed in trust until disbursed. This section allows a trustee to accept foreclosure bids by telephone, the Internet, and electronic mail if certain conditions are met.

Section 8. Amends AS 34.20.080(b) Allowing the attorney or other agent of the trustee to conduct the sale. Additionally, allows the trustee to set reasonable rules for the conduct of the sale. Adds language that conforms the deed delivery requirements to the new provision in sec. 34.20.070(g) allowing the trustee to rescind the sale under certain circumstances.

Section 9. Amends AS 34.20.080(e) Limiting the postponement of a foreclosure sale to not more than 12 months unless a new notice of sale is given. Establishes that postponement for up to 12 months does not provide a basis for challenging the validity of the foreclosure because of how long the foreclosure has been pending.

Section 10. Adds a new subsections to AS 34.20.080(foreclosure sale).

Proposed sec. 34.20.080(f) indicates how any cash proceeds of the sale are to be distributed after delivery of a deed.

Proposed sec. 34.20.080(g) allows a trustee to withhold delivery of the deed for up to ten days, prohibits the trustee from issuing the deed under certain conditions, and describes what the trustee must do when rescinding the sale.

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Proposed sec. 34.20.080(h) allows the trustee to reschedule a rescinded sale, establishes a minimum time that must elapse after the rescinded sale before the new sale may be held, and establishes the notice procedure that the trustee must follow for the rescheduled sale.

Proposed sec. 34.20.080(i) establishes that if a sale is not rescinded it completely terminates the rights of the trustor of the deed in the property.

Section 11. AS 34.20.120(a) is amended. Allowing the attorneys for the beneficiaries or their successors in interest to execute and acknowledge the substitution of a trustee for certain trust needs.

Section 12. AS 34.20.120(b) is amended. Adds a requirement to the contents of a trustee substitution for a situation when the substitution is executed by the attorneys for the beneficiaries or their successors in interest.

Section 13. Adds a new section AS 34.20.125(a) requiring a trustee to provide a surety bond before performing trustee duties under a deed of trust foreclosure.

AS 34.20.125(b) requires the bond to be terminable at any time by the surety by complying with certain requirements, indicates when the bond terminates, and indicates that the surety is not liable after termination for more than the face amount of the bond. States that a revision of the amount of the bond is not cumulative.

AS 34.20.125(c) gives notice requirements for a termination of the bond.

AS 34.20.125(d) requires a trustee to file evidence of a bond each year with the Department of Commerce, Community, and Economic Development. Requires the department to verify that the evidence is satisfactory, keep an updated list of bonded trustees, and make the evidence and the list available to the public. Allows the department to charge the trustee a reasonable fee for the verification and maintenance of records.

AS 34.20.125(e) exempts state agencies from the bonding requirements.

AS 34.20.125(f) defines "department" in this section to mean the Department of Commerce, Community, and Economic Development

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ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

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Representative Bob Lynn
Representative Carl Gatto
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Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801

Explanation of Changes Between SCCSHB108(L&C) 26-LS0318\T and Proposed CS version 26-LS0318\M

Sec. 2 AS 09.35.140(d)(2), Page 3. Lines 16-26, Deleted the following language "and has a total paid circulation or paid distribution of at least 500 copies or 10 percent of the total population of the judicial district, whichever is less" The circulation requirements were deleted since these are pervasively covered by the Second Class Mailing Permit. Hopefully, this will allow smaller papers to flourish and compete, and thus driving down the incredibly high price of legal notice publication.

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Explanation of Previous Changes to HB108

Sec. 2. AS 09.35.140(b). New language expands the list of qualified Internet sites, to newspapers of general circulation provided they meet the requirements of proposed AS 09.35.140(d) and are free to the public. Thus, if a newspaper qualifies to run legal ads it will be qualified to run the internet publication.

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26-LS0318\M
Bannister
3/19/10

SENATE CS FOR CS FOR HOUSE BILL NO. 108( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES RAMRAS, Gatto

A BILL

FOR AN ACT ENTITLED

"An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust."

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

*** Section 1.** AS 09.35.140 is amended to read:

Sec. 09.35.140. Notice of sale on execution. Before the sale of property on execution, notice of the sale shall be given as follows:

(1) notice of the sale of personal property is given by posting a written or printed notice of the time and place of sale in three public places within five miles of the place where the sale is to be held, not less than 10 days before the day of sale; [ONE OF THE NOTICES SHALL BE POSTED AT THE POST OFFICE NEAREST TO THE PLACE WHERE THE SALE IS TO TAKE PLACE;]

(2) notice of the sale of real property is given by posting a similar notice particularly describing the property, including the property's street address if there is a street address for the property, not less than 30 days before the day of sale in

three public places, as provided in (1) of this section, and publishing a copy of the notice four times, once a week for four successive weeks in a newspaper of general circulation published nearest to the place of sale; an inaccuracy in the street address may not be used to set aside a sale if the legal description is correct [; IN THIS PARAGRAPH, "NEWSPAPER OF GENERAL CIRCULATION" MEANS A PUBLICATION THAT

(A) IS PUBLISHED IN NEWSPAPER FORMAT;

(B) IS DISTRIBUTED AT LEAST ONCE A WEEK FOR AT LEAST 50 WEEKS EACH YEAR WITHIN THE JUDICIAL DISTRICT, EXCLUDING A PERIOD WHEN PUBLICATION IS INTERRUPTED BY A LABOR DISPUTE OR BY A NATURAL DISASTER OR OTHER CASUALTY THAT THE PUBLISHER CANNOT CONTROL; AND HAS A TOTAL PAID CIRCULATION OR PAID DISTRIBUTION OF AT LEAST 500 COPIES, OR 10 PERCENT OF THE TOTAL POPULATION OF THE JUDICIAL DISTRICT, WHICHEVER IS LESS; IN THIS SUBPARAGRAPH, "JUDICIAL DISTRICT" MEANS THE JUDICIAL DISTRICT WHERE THE PLACE OF SALE IS LOCATED;

(C) HOLDS A SECOND CLASS MAILING PERMIT FROM THE UNITED STATES POSTAL SERVICE;

(D) IS NOT PUBLISHED PRIMARILY TO DISTRIBUTE ADVERTISING; AND

(E) IS NOT INTENDED PRIMARILY FOR A PARTICULAR PROFESSIONAL OR OCCUPATIONAL GROUP].

*** Sec. 2.** AS 09.35.140 is amended by adding new subsections to read:

(b) In addition to the notice required by (a) of this section, notice of the sale of real property on execution shall be given by publishing a notice of the sale on an Internet website beginning at least 45 days before the date of the sale. Publication of the notice must begin not later than the first day that the notice is published under (a)(2) of this section and must continue at least through the day in the fourth week that the notice is published under (a)(2) of this section.

(c) To qualify as an Internet website on which notices of sale may be

published under (b) of this section, an Internet website must,

(1) if operated by a newspaper of general circulation, be completely free to the public for viewing and not require a subscription; or

(2) if operated by a person who is not covered by (1) of this subsection,

(A) be available to any person;

(B) be completely free to the public for viewing and not require a subscription;

(C) be used primarily to advertise real property under foreclosure;

(D) have been in continuous operation for more than one year;

(E) have a viewership of at least 5,000 different visitors each month that is verified by an independent audit; and

(F) have an office in the state and the office has staff that includes a senior management person.

(d) In this section, "newspaper of general circulation" means a publication that

(1) is published in newspaper format;

(2) is distributed at least once a week for at least 50 weeks each year within the judicial district where the place of sale is located, excluding a period when publication is interrupted by a labor dispute or by a natural disaster or other casualty that the publisher cannot control;

(3) holds a second class mailing permit from the United States Postal Service;

(4) is not published primarily to distribute advertising; and

(5) is not intended primarily for a particular professional or occupational group.

*** Sec. 3.** AS 09.35.142 is amended to read:

Sec. 09.35.142. Action to establish newspaper <u>or Internet website</u> status. A person who owns a publication may bring an action under AS 22.10.020(g) to establish that the publication is a newspaper of general circulation under **<u>AS 09.35.140. A person who owns an Internet website may bring an action under</u>**

AS 22.10.020(g) to establish that the Internet website qualifies as an Internet website on which notices of sale may be published under AS 09.35.140(b) [AS 09.35.140(2)].

*** Sec. 4.** AS 34.20.070(b) is amended to read:

(b) Not less than 30 days after the default and not less than **90 days** [THREE MONTHS] before the sale, the trustee shall record in the office of the recorder of the recording district in which the trust property is located a notice of default setting out (1) the name of the trustor, (2) the book and page where the trust deed is recorded or the serial number assigned to the trust deed by the recorder, (3) a description of the trust property, including the property's street address if there is a street address for the property, (4) a statement that a breach of the obligation for which the deed of trust is security has occurred, (5) the nature of the breach, (6) the sum owing on the obligation, (7) the election by the trustee to sell the property to satisfy the obligation, [AND] (8) the date, time, and place of the sale**, and (9) the statement described in (e) of this section describing conditions for curing the default**. An inaccuracy in the street address may not be used to set aside a sale if the legal description is correct. At any time before the sale **date stated in the notice of default or to which the sale is postponed under AS 34.20.080(e)**, if the default has arisen by failure to make payments required by the trust deed, the default may be cured **and sale under this section terminated** by payment of the sum **then** in default, other than the principal that would not then be due if no default had occurred, **and foreclosure** [PLUS ATTORNEY] fees **and** [OR COURT] costs actually incurred by the **beneficiary and** trustee due to the default. If, under the same trust deed, notice of default under this subsection has been recorded two or more times previously and the default has been cured under this subsection, the trustee may elect to refuse payment and continue the sale.

*** Sec. 5.** AS 34.20.070(c) is amended to read:

(c) Within 10 days after recording the notice of default, the trustee shall mail a copy of the notice by certified mail to the last known address of each of the following persons or their legal representatives: (1) the **trustor** [GRANTOR] in the trust deed; (2) the successor in interest to the **trustor** [GRANTOR] whose interest appears of

record or of whose interest the trustee or the beneficiary has actual notice, or who is in **actual physical** possession of the property; (3) any other person **actually** in **physical** possession of [OR OCCUPYING] the property; (4) any person having a lien or interest subsequent to the interest of the trustee in the trust deed, where the lien or interest appears of record or where the trustee or the beneficiary has actual notice of the lien or interest**, except as provided in (f) of this section**. The notice may be delivered personally instead of by mail.

*** Sec. 6.** AS 34.20.070 is amended by adding new subsections to read:

(e) The statement required by (b)(9) of this section must state that, if the default has arisen by failure to make payments required by the trust deed, the default may be cured and the sale under this section terminated if

(1) payment of the sum then in default, other than the principal that would not then be due if default had not occurred, and foreclosure fees and costs actually incurred by the beneficiary and trustee due to the default is made at any time before the sale date stated in the notice of default or to which the sale is postponed; and

(2) when notice of default under (b) of this section has been recorded two or more times previously under the same trust deed and the default has been cured under (b) of this section, the trustee does not elect to refuse payment and continue the sale.

(f) In (c)(4) of this section, if the existence of a lien or nonpossessory interest can only be inferred from an inspection of the real property, the person holding the lien or nonpossessory interest is not entitled to notice under (c) of this section unless the lien or nonpossessory interest appears of record or a written notice of the lien or nonpossessory interest has been given to the beneficiary or trustee before the recording of the notice of default.

(g) If the trustee delivers notice personally under (c) of this section to the property or to an occupant of the property, the trustee may, notwithstanding (c) of this section, deliver the notice up to 20 days after the notice of default is recorded. If there is not a structure on the property and a person is not present on the property at the time of delivery, the trustee may place the notice on the property, or as close as practicable

to the property if

(1) there is not a practical road access to the property; or

(2) access to the property is restricted by gates or other barriers.

(h) If the trustee or other person who delivered notice under (g) of this section signs an affidavit for the delivery, the affidavit is prima facie evidence that the trustee complied with (g) of this section. After one year from the delivery, as evidenced by the affidavit, the trustee is conclusively presumed to have complied with (g) of this section unless, within one year from the delivery, an action has been filed in court to contest the foreclosure based on failing to comply with (g) of this section.

(i) If a person who is entitled to receive notice by mail under (c) of this section is known by the beneficiary or trustee to be deceased, the trustee may satisfy the notice requirements of (c) of this section by mailing the notice to the last known address of the deceased person and to the personal representative of the deceased person if the beneficiary or trustee knows that a personal representative has been appointed for the deceased person.

(j) If a person who is entitled to receive notice by mail under (c) of this section is known by the beneficiary or trustee to be deceased but the trustee and the beneficiary do not know that a personal representative has been appointed for the deceased person, the trustee may satisfy the notice requirements of (c) of this section by

(1) mailing the notice to the heirs and devisees of the deceased person

(A) whose names and addresses are known to the beneficiary or trustee; or

(B) who have recorded a notice of their interest in the property; and

(2) publishing and posting the notice of the foreclosure as provided by law for the sale of real property on execution, except that the notice must be titled "To the Heirs or Devisees of (insert the name of the deceased person)" and include in the body of the notice a list of the names of the persons who are known by the beneficiary or trustee to be the heirs and devisees of the deceased person.

(k) If notice is given as required by (i) and (j) of this section, an heir or

devisee of the deceased person may not challenge the foreclosure on the ground that the heir or devisee did not receive notice of the sale, unless the heir or devisee challenges the foreclosure on this ground within 90 days after the sale.

(*l*) A person may bring an action in court to enjoin a foreclosure on real property only if the person is

(1) the trustor of the deed of trust under which the real property was foreclosed;

(2) a guarantor of the obligation that the real property is securing;

(3) a person who has an interest in the real property that has been recorded;

(4) a person who has a recorded lien against the real property;

(5) an heir to the real property;

(6) a devisee of the real property; or

(7) the attorney general acting under other legal authority.

(m) If a person brings an action under (*l*) of this section to stop a sale of real property, and if the sale is being brought because of a default in the performance of a nonmonetary obligation required by the deed of trust that the real property is securing, the court may impose on the person the conditions that the court determines are appropriate to protect the beneficiary.

(n) In this section, "devisee," "heir," and "personal representative" have the meanings given in AS 13.06.050.

*** Sec. 7.** AS 34.20.080(a) is amended to read:

(a) The sale authorized in AS 34.20.070 shall be made under the terms and conditions and in the manner set out in the deed of trust. **The proceeds from a sale shall be placed in a trust account until they are disbursed.** However, the sale shall be made

(1) at public auction held at the front door of a courthouse of the superior court in the judicial district where the property is located, unless the deed of trust specifically provides that the sale shall be held in a different place**, except that a trustee may also accept bids by telephone, the Internet, and electronic mail if the trustee has taken reasonable steps to ensure that the bidding methods using the**

telephone, the Internet, or electronic mail are fair, accessible, and designed to result in money that is immediately available for disbursement; and

(2) after public notice of the time and place of the sale has been given in the manner provided by law for the sale of real property on execution.

*** Sec. 8.** AS 34.20.080(b) is amended to read:

(b) The attorney for the trustee **or another agent of the trustee** may conduct the sale and act in the sale as the auctioneer for the trustee. **The trustee may set reasonable rules and conditions for the conduct of the sale.** Sale shall be made to the highest and best bidder. The beneficiary under the trust deed may bid at the trustee's sale. **Except as provided by (g) of this section, the** [THE] trustee shall execute and deliver to the purchaser a deed to the property sold.

*** Sec. 9.** AS 34.20.080(e) is amended to read:

(e) The trustee may postpone sale of all or any portion of the property by delivering to the person conducting the sale a written and signed request for the postponement to a stated date and hour. The person conducting the sale shall publicly announce the postponement to the stated date and hour at the time and place originally fixed for the sale. This procedure shall be followed in any succeeding postponement, **but the foreclosure may not be postponed for more than 12 months unless a new notice of the sale is given under (a)(2) of this section. A sale may be postponed for up to 12 months from the sale date stated in the notice of default under AS 34.20.070(b) without providing a basis for challenging the validity of the foreclosure process because of the length of time the foreclosure has been pending**.

*** Sec. 10.** AS 34.20.080 is amended by adding new subsections to read:

(f) After delivery of a deed under (b) of this section, the trustee shall distribute any cash proceeds of the sale in the following order to

(1) the beneficiary of the deed of trust being foreclosed until the beneficiary is paid the full amount that is owed under the deed of trust to the beneficiary;

(2) the persons who held, at the time of the sale, recorded interests, except easements, in the property, that were subordinate to the foreclosed deed of

trust; the distribution under this paragraph shall be made according to the priority of the recorded interest, and a recorded interest with a higher priority shall be satisfied before distribution is made to the recorded interest that is next lower in priority; however, if a person holds a recorded interest that is an assessment, the person is entitled only to the amount of the assessment that was due at the time of the sale; in this paragraph, "recorded interest" means an interest, including a lease, recorded under AS 40.17;

(3) the trustor in the trust deed if the trustor is still the owner of the property at the time of the foreclosure sale, but, if the trustor is not still the owner of the property at the time of the foreclosure sale, then to the trustor's successor in interest whose interest appears of record at the time of the foreclosure sale.

(g) The trustee may withhold delivery of the deed under (b) of this section for up to 10 days after the sale. If, during the 10 days, the trustee determines that the sale should not have proceeded, the trustee may not issue the deed but shall

(1) inform the beneficiary, the otherwise successful bidder, and the trustor of the trust deed or the trustor's successor in interest that the sale is rescinded; and

(2) return to the otherwise successful bidder money received from the otherwise successful bidder as a bid on the property; return of this money is the otherwise successful bidder's only remedy if the trustee withholds delivery of the deed under (b) of this section.

(h) If a trustee rescinds a sale under (g) of this section and the obligation secured by the deed of trust remains in default, the trustee may, at the request of the beneficiary, reschedule the sale for a date that is not less than 45 days after the date of the rescinded sale. Not less than 30 days before the rescheduled sale date, the trustee shall

(1) mail notice of the rescheduled sale date by certified mail to the last known address of each of the persons identified by AS 34.20.070(c); and

(2) publish and post the notice of the rescheduled sale date as provided by law for the sale of real property on execution.

(i) Unless a sale is rescinded under (g) of this section, the sale completely

terminates the rights of the trustor of the trust deed in the property.

(j) If a sale is rescinded under (g) of this section, the deed of trust foreclosed in the rescinded sale is restored to the validity and priority it would have had as though the sale had not occurred.

*** Sec. 11.** AS 34.20.120(a) is amended to read:

(a) The trustee under a trust deed upon real property given to secure an obligation to pay money and conferring no duties upon the trustee other than the duties that are incidental to the exercise of the power of sale conferred in the deed may be substituted by recording in the mortgage records of the recording district in which the property is located a substitution executed and acknowledged by

(1) all the beneficiaries under the trust deed, or their successors in interest**; or**

(2) the attorneys for all of the beneficiaries or the attorneys for all of the beneficiaries' successors in interest.

*** Sec. 12.** AS 34.20.120(b) is amended to read:

(b) The substitution must contain

(1) the date of execution of the trust deed;

(2) the names of the trustee, trustor, and beneficiary**, and, if the substitution is executed by the attorney for the beneficiary or successor in interest to the beneficiary, the name, address, and Alaska Bar Association identification number of the attorney**;

(3) the book and page where the trust deed is recorded or the serial number assigned to the trust deed by the recorder;

(4) the name of the new trustee; and

(5) an acknowledgment signed and acknowledged by the trustee named in the trust deed of a receipt of a copy of the substitution, or an affidavit of service of a copy of it.

*** Sec. 13.** AS 34.20 is amended by adding a new section to read:

Sec. 34.20.125. Trustee bond required. (a) Before performing the duties of a trustee under AS 34.20.070 and 34.20.080, a person shall obtain a surety bond in the amount of $250,000 to protect the trustors and beneficiaries of trust deeds against

fraud or defalcation by the trustee in the performance of the duties.

(b) The bond required by (a) of this section must be a bond that is terminable at any time by the surety by sending written notice by first class United States mail to the obligee and the principal at the address for each that is last known by the surety, and to the department. The bond terminates when 45 days have expired after the date the notice is mailed. The surety is not liable for an act or omission of the principal that occurs after the termination. The surety is not liable after the termination for more than the face amount of the bond, regardless of the number of claims made against the bond or the number of years the bond remains in force. A revision of the amount of the bond is not cumulative.

(c) If a bond terminates under (b) of this section, the person who obtained the bond under (a) of this section shall give notice of the bond's termination to the department and may not act as a trustee until the person obtains another bond under (a) of this section.

(d) Each year, a trustee shall file evidence of the bond with the department. The department shall verify that the evidence is satisfactory to indicate the existence of the bond, keep an updated list of trustees who are bonded, and make the evidence and the list available to the public for inspection. The department may charge the trustee a reasonable fee for verifying the existence of the bond and maintaining the records required by this subsection.

(e) The bonding requirements of this section do not apply to a state agency, including the Alaska Housing Finance Corporation and the Alaska Industrial Development and Export Authority.

(f) In this section, "department" means the Department of Commerce, Community, and Economic Development.

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Representative Jay Ramras
District 10

Sponsor Statement
HB 108 - Property Foreclosures and Executions
(3/18/10)

Alaska's statutes on non judicial foreclosure of real property are antiquated, ambiguous and unclear, and therefore, prone to unnecessary litigation. House Bill 163 clarifies the present statutory language, by simplifying and modernizing the foreclosure process. The suggested changes benefit lenders, borrowers and title insurance companies by bringing clarity and certainty to the foreclosure process.

HB 108 would improve many aspects of the foreclosure process as they appear in Title 34. Some of these changes are:

- Clarifies how proceeds from a foreclosure auction are to be disbursed
- Assures that foreclosure trustees are fiscally responsible by imposing reasonable bond requirements
- Allows trustees to nullify sales when mistakes are made that negatively affect the integrity of the sale
- Sets up procedures to follow involving a deceased borrower
- Creates common-sense rules to govern times and methods for posting foreclosure properties
- Defines when one's rights are terminated in the foreclosure process
- Creates an Internet publishing requirement for non-judicial foreclosures
- Allows acceptance of foreclosure auction bids via email, internet, and telephone for greater accessibility

Passage of HB 108 will streamline and simplify the foreclosure language in Alaska statutes and provide for a more open, accessible and fair auction process, benefiting borrowers, lenders, and title insurers, as well as reducing unnecessary litigation.

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Alaska State Legislature

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Representative Jay Ramras
House District 10

Chair, House Judiciary • Chair, House Economic Development, Trade & Tourism • Member, Energy • Member, House Military & Veteran Affairs, Member, Joint Armed Services

Sectional HB 108 Property Foreclosures and Executions

(3:23:10)

Section 1. AS 09.35.140 is amended –Removes the U.S. Post Office as a posting requirement.

Section 2. Amends AS 09.35.140 to add a new subsection. Adds a new section to AS 09.35 (execution on property) to require the notice of the execution sale of real property also be noticed on an Internet website, including newspaper websites. Describes the requirements that the Internet websites must meet to qualify, and the Internet notice requirement for a non judicial foreclosure.

Section 3. Amends AS 09.35.142 to allow a newspaper and Internet website owner to bring a court action to establish that the website qualifies under AS 09.35.140(b)

Section 4. Amends AS 34.20.070(b) adjusts to 90 days the minimum length of time that must elapse between recording a notice of default on a deed of trust and holding the foreclosure sale.

Section 5. Amends AS 34.20.070(c) requires that possession be actual physical possession where possession is required for certain persons to be entitled to receive a notice of default for foreclosure sale.

Section 6. Adds new subsection to AS 34.20.070 (foreclosure by trustee).

Proposed 34.20.070(e) establishes when a person who holds a lien or non-possessory property interest that can be inferred from an inspection of the property is entitled to receive a notice of default for a foreclosure sale.

Proposed 34.20.070(f) allows a trustee additional time (after recording) to deliver the notice of default when the trustee delivers the notice personally to the property or to an occupant of the property. Allows the trustee to place the notice on the property or as close as practicable to the property under certain conditions.

Proposed sec 34.20.070(g) states that an affidavit signed by a trustee or another person who delivered notice personally under sec. 34.20.070(f) is prima facie evidence that the trustee complied with sec. 34.20.070(f). Establishes a conclusive presumption

(as evidenced by the affidavit) after one year unless a court action is filed within the year to challenge the foreclosure for failure to comply with sec. 34.20.070(f)

Proposed sec. 34.20.070(h) establishes how a trustee may satisfy the notice requirements for a person known by the trustee to be deceased and for whom the trustee or the deed of trust beneficiary knows a personal representative has been appointed.

Proposed sec. 34.20.070(i) establishes how a trustee may satisfy the notice requirements for a person known by the trustee to be deceased and for whom the trustee or the deed of trust beneficiary know that a personal representative has been appointed for the deceased person.

Proposed sec. 34.20.070(j) states that an heir or devisee of a deceased person must challenge a foreclosure sale within 90 days if alleging non-receipt of notice and if the trustee gave notice as required by (h) – (i).

Proposed sec. 34.20.070(k) describes the persons who may bring a court action to enjoin a foreclosure sale.

Proposed sec. 34.20.070(l) states that when a court injunction action meets certain conditions, a court may impose conditions that it considers appropriate to protect the deed of trust beneficiary.

Proposed sec. 34.20.070(m) defines certain terms for AS 34.20.070

Section 7. AS 34.20.080(a) is amended to require that the proceeds from a foreclosure sale are placed in trust until disbursed. This section allows a trustee to accept foreclosure bids by telephone, the Internet, and electronic mail if certain conditions are met.

Section 8. Amends AS 34.20.080(b) Allowing the attorney or other agent of the trustee to conduct the sale. Additionally, allows the trustee to set reasonable rules for the conduct of the sale. Adds language that conforms the deed delivery requirements to the new provision in sec. 34.20.070(g) allowing the trustee to rescind the sale under certain circumstances.

Section 9. Amends AS 34.20.080(e) Limiting the postponement of a foreclosure sale to not more than 12 months unless a new notice of sale is given. Establishes that postponement for up to 12 months does not provide a basis for challenging the validity of the foreclosure because of how long the foreclosure has been pending.

Section 10. Adds a new subsections to AS 34.20.080(foreclosure sale).

Proposed sec. 34.20.080(f) indicates how any cash proceeds of the sale are to be distributed after delivery of a deed.

Proposed sec. 34.20.080(g) allows a trustee to withhold delivery of the deed for up to ten days, prohibits the trustee from issuing the deed under certain conditions, and describes what the trustee must do when rescinding the sale.

Proposed sec. 34.20.080(h) allows the trustee to reschedule a rescinded sale, establishes a minimum time that must elapse after the rescinded sale before the new sale may be held, and establishes the notice procedure that the trustee must follow for the rescheduled sale.

E-Mail Representative_Jay_Ramras@legis.state.ak.us

Proposed sec. 34.20.080(i) establishes that if a sale is not rescinded it completely terminates the rights of the trustor of the deed in the property.

Section 11. AS 34.20.120(a) is amended. Allowing the attorneys for the beneficiaries or their successors in interest to execute and acknowledge the substitution of a trustee for certain trust needs.

Section 12. AS 34.20.120(b) is amended. Adds a requirement to the contents of a trustee substitution for a situation when the substitution is executed by the attorneys for the beneficiaries or their successors in interest.

Section 13. Adds a new section AS 34.20.125(a) requiring a trustee to provide a surety bond before performing trustee duties under a deed of trust foreclosure.

AS 34.20.125(b) requires the bond to be terminable at any time by the surety by complying with certain requirements, indicates when the bond terminates, and indicates that the surety is not liable after termination for more than the face amount of the bond. States that a revision of the amount of the bond is not cumulative.

AS 34.20.125(c) gives notice requirements for a termination of the bond.

AS 34.20.125(d) requires a trustee to file evidence of a bond each year with the Department of Commerce, Community, and Economic Development. Requires the department to verify that the evidence is satisfactory, keep an updated list of bonded trustees, and make the evidence and the list available to the public. Allows the department to charge the trustee a reasonable fee for the verification and maintenance of records.

AS 34.20.125(e) exempts state agencies from the bonding requirements.

AS 34.20.125(f) defines "department" in this section to mean the Department of Commerce, Community, and Economic Development

E-Mail Representative_Jay_Ramras@legis.state.ak.us

MATANUSKA VALLEY
FEDERAL CREDIT UNION

1020 S. Bailey St.
Palmer, Alaska 99645
(907) 745-4891
(907) 694-4891
Fax: (907) 745-9131
www.mvfcu.coop

February 24, 2009

Mr. Stephen Routh
Routh & Crabtree, APC
3000 A Street, Suite 200
Anchorage, AK 99503

Re: HB 108 – Property Foreclosures and Executions

Dear Mr. Routh,

This letter is being written in support of House Bill 108 "An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust."

The proposed changes to the above referenced bill will clarify and update the current foreclosure process and language.

If there are any questions please don't hesitate to contact me at 745-9140.

Sincerely,

Al Strawn
CEO

/geg

EQUAL HOUSING LENDER

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NCUA

AlaskaUSA
Federal Credit Union®

February 6, 2009

Mr. Stephen Routh
Routh & Crabtree, APC
3000 A Street, Suite 200
Anchorage, AK 99503

Re: HB 108-An Act relating to property foreclosures and executions

Dear Mr. Routh:

Thank you for alerting us to this legislation. We think the changes proposed in the bill are well thought out, necessary, and will benefit borrowers, financial institutions, and title agents.

We are pleased to support this legislation.

Sincerely,

William B. Eckhardt
President

P.O. Box 196613 • Anchorage, Alaska 99519-6613
Phone (907) 563-4567 • (800) 525-9094 outside Anchorage • (800) 742-7084 TTY/Hearing Impaired • www.alaskausa.org

First American
Title Insurance Company

BRYAN S. MERRELL
REGIONAL COUNSEL

February 5, 2009

RE: House Bill 108 *"An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust."*

To Whom It May Concern:

This letter is written in support of House Bill 108, relating to Deeds of Trust and Foreclosures.

I am Regional Counsel for First American Title Insurance Company. First American is the leading title insurer in the United States, and in Alaska. I am a 20 year member of the Alaska Bar, and a former long time resident of Alaska. In my capacity as an in-house attorney for First American, I have had many occasions to be involved in non-judicial foreclosure related issues and controversies, as First American has produced title insurance produces related to such foreclosures, and acted as trustee in many cases as well.

HB 108 would clarify a large number of issues relative to non-judicial foreclosure actions. It would fill in gaps in the current statutes relative to procedure. It would clarify issues which Alaska Supreme Court opinions over the years have made unclear. The result of passage of the bill would be a clearer pattern of conduct for the parties to the foreclosure, which should result in less litigation and higher bidding for the properties involved in the process. I urge your yes vote for the bill, and would be happy to answer any questions you may have regarding it.

Very truly yours,

FIRST AMERICAN TITLE INSURANCE CO.

Bryan S. Merrell
Regional Counsel

818 Stewart Street, Suite 800, Seattle, WA 98101
TEL 206.728.0400 ext. 6281 ▾ TOLL FREE 800.526.7544 ext. 6281 ▾ DIRECT 206.448.6281
bmerrell@firstam.com ▾ firstam.com

UTA
United Trustees Association

February 25, 2010

Honorable Hollis French
Chair, Senate Judiciary Committee
State Capitol, Room 417
Juneau, AK 99801

Re: HB 108

Dear Chairman French:

I write to you on behalf of the United Trustees Association and its members in regard to HB 108. The United Trustees Association ("UTA") is a nonprofit association whose membership consists of trustees, substitute trustees, foreclosure agents, posting and publishing companies and others in the deed of trust default services industry.

The latest version of HB 108 provides much-needed clarity and additional structure to the existing statutory scheme governing Alaska's nonjudicial foreclosures, and UTA generally supports the Bill. However, the UTA would like to bring the following concerns to your attention, ***as important matters that should be considered for revision in the final version of the Bill.***

Period for Issuance of the Trustee's Deed Upon Sale

As specified in Section 10 of the Bill, the proposed new subsection of AS 34.20.080(g), provides that the time period within which a foreclosure trustee must issue a Trustee's Deed Upon Sale to a third party purchaser is five days. Presently, there is no maximum time period for issuance of the Trustee's Deed in Alaska. UTA believes that a five-day period is too short to allow bid funds to be remitted and/or cleared for deposit, for a final quality control review to be conducted, and for the Trustee's Deed Upon Sale to be generated and delivered to a third party purchaser. This is especially true when a foreclosure sale is cried in a remote borough and the auctioneer cannot make the afternoon overnight express mail cutoff so that the funds are not remitted to the trustee for processing until the second business day after the sale. In the case of any sale conducted after Wednesday, the intervening weekend would leave only three business days for the necessary action and delivery of the deed by the foreclosure trustee.

2030 Main Street, Suite 1300 • Irvine, CA 92614
Tel. 949.260.9020 • Fax 949.260.9021
www.unitedtrustees.com

Other Western states have much more lenient statutory periods within which a Trustee's Deed Upon Sale can be issued. California Civil Code section 2924h provides that the foreclosure sale is deemed perfected as of 8:00 a.m. on the day of the sale if the Trustee's Deed is recorded within 15 days of the sale. While this is not an absolute statutory deadline, it is a reasonable and desirable standard to enjoy the benefit of the sale date perfection. Nevada Revised Statutes provide that the Trustee's Deed Upon Sale must be recorded within 20 days of the sale. Arizona Revised Statutes section 33-811 requires that the trustee deliver or record the Trustee's Deed Upon Sale within seven days. Oregon Revised Statutes require that the Trustee's Deed be issued within ten days of the sale. Thus, the UTA would recommend that the time period in AS 34.20.080(g) as presently proposed be increased to ten days. It would not appear that there would be any substantial detriment to interested parties to increase the period to ten days, especially when there is presently no deadline. If the legislature is not inclined to amend the Bill to provide ten days, at a minimum, UTA would recommend that the five day period be defined in terms of business days, not calendar days.

Deposit of Sale Proceeds

The proposed language in Section 7 of the Bill regarding the process of conducting a sale, found in the second sentence of AS 34.20.080(a) provides: "The proceeds from a sale shall be placed in escrow until they are disbursed." This provision seems misplaced. UTA recommends that this provision be placed in AS 34.20.080(b), in Section 8 of the Bill, just before the sentence that reads, "trustee shall execute and deliver to the purchaser a deed to the property sold." The basis for this recommendation is that a trustee would not want to deposit the third party purchaser's funds into an escrow until it is determined that a Trustee's Deed Upon Sale will be issued, after quality control review and verification of the availability of the bid funds by the issuing bank.

UTA is also concerned with the use of the term, "in escrow." It is unclear whether this terminology would require trustees to open a separate escrow account with a licensed escrow company for each sale for the disbursement of funds, or if it would be sufficient to deposit the funds into the trustee's separate surplus funds or trust account pending disbursement. Requiring a separate escrow to be opened for the deposit of funds from every foreclosure sale would entail additional time, cost and expense in the post-sale processing of the sale proceeds. Presently, the sale proceeds are deposited by the trustee into an operating account so that the checks to the foreclosing lender for the total debt can be processed timely and the refund checks to the third party purchaser can be generated in time to deliver with the Trustee's Deed Upon Sale. UTA believes that requiring an "escrow" to be opened with a separate company would be unnecessary and detrimental to the current efficiencies required in processing the sale proceeds. Thus,

UTA suggests that the entire sentence "The proceeds from a sale shall be placed in escrow until they are disbursed," should be omitted from the Bill. However, to the extent that the legislature is concerned with the security of the funds in the event of the insolvency of the trustee, perhaps the language of the Bill could require deposit in a "trust account" as opposed to "in escrow." Without any revision to this provision as drafted, UTA feels that the required process is not clearly defined, and if the intent of the current terminology is that a separate escrow is required for each sale, this is unnecessary.

Respectfully submitted for your consideration.

Very truly yours,

Rande Johnsen
President

Alaska Mortgage Bankers Association
P.O. Box 9-2691
Anchorage, Alaska 99509-2691

April 2, 2009

Re: House Bill 108

Stephen Routh
Routh Crabtree, APC
3000 "A" Street Suite 200
Anchorage, AK 99503

Dear Stephen;

The Alaska Mortgage Bankers Association is a trade organization composed of loan origination companies, servicing companies, and affiliated industry service providers. We have been serving Alaska's mortgage and housing industry since 1980. Our members adhere to a canon of ethics that calls for the use of sound and ethical business practices.

The Alaska Mortgage Bankers Association is dedicated to the preservation and improvement of the Mortgage Banking Industry through a proactive relationship with Federal and State legislators, industry agencies, and other housing trade organizations. Our members are kept informed about changes in mortgage laws and pending legislation.

Our standing committees provide seminars, meetings, and general information for the purpose of education for our members and the public.

The Association promotes public education, high ethical standards, sound business practices, and cooperation among legislators, regulators and other members of the industry.

Consistent with our mission, we are pleased to offer our support for HB 108. It will modernize Alaska Statutes, and make the foreclosure process more fair, transparent, and efficient. It will tend to reduce litigation, and encourage bidders to attend foreclosure auctions to the benefit of borrowers, lenders, and neighborhoods alike.

Sincerely,

Gail K. Stafford
President

ALASKA CREDIT UNION LEAGUE

March 8, 2009

Stephen Routh
Routh Crabtree, apc
3000 A Street Suite 200
Anchorage, AK 99503

Re: HB 108-An Act relating to real property foreclosures, to the sale of property on execution, and to deed of trust.

Dear Mr. Routh;

We are an association representing all thirteen credit unions doing business in Alaska, with a combined membership base of over 500,000.

Thank you for alerting us to this legislation. We think the changes proposed in the bill are well thought-out, necessary, and will benefit borrowers, financial institutions, and title agents. Much of the bill is housekeeping, which will reduce future litigation. Other parts are forward-thinking, like developing methods for internet advertising and bidding, that will tend to increase bidding at foreclosure auctions.

We are pleased to support this legislation.

Sincerely,

James M Wileman
Chair

Kirk Wickersham
280 W. 34th Ave.
Anchorage, Alaska 99503

907-561-3726

March 18, 2009

Re: House Bill 108 "***An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust.***"

Dear Members of the Legislature,

I am a real estate lawyer, real estate broker and title insurance licensee.

I have had the opportunity to review HB 108, which updates the provisions of Alaska's foreclosure law. It contains many housekeeping items that clarify existing law, as well as some sections that will take Alaska solidly into the 21st century.

An outstanding provision is the requirement for publication on the Internet. Most folks look to the internet today for foreclosure information. Having this information on the web will improve dissemination of the sale information to the general public, and thus it should increase the number of bids above the offset bid.

Bids above the offset bid are in everyone's interest. The debtor receives the net proceeds of the sale. The lender does not have to take title, renovate and market the property. And the successful bidder is obviously happy.

I encourage you to adopt this bill. It is my understanding that, if adopted, this bill will become a model for legislation in other states. Please contact me if you have any questions.

Sincerely,

Kirk Wickersham

KENNETH P. EGGERS, P.C.
SALLY J. KUCKO
DENNIS G. FENERTY
DAVID A. DEVINE, P.C.
ROBERT H. SCHMIDT
SARAH A. BADTEN

CLIFFORD J. GROH, SR.
1926-1998

LAW OFFICES OF
GROH EGGERS, LLC
2600 CORDOVA STREET, SUITE 110
ANCHORAGE, ALASKA 99503

Telephone
(907) 562-6474

Facsimile
(907) 562-6044

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RECEIVED
MAR

March 11, 2009

The Honorable Kurt Olson
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Via E-mail: Representative_Kurt_Olson@legis.state.ak.gov

re: HB 108 – "A Bill Relating to Foreclosures, etc."
Our File No. 85-19-15

Dear Representative Olson:

I am writing on my own behalf, and on behalf of my law firm, to voice my opposition to the as-written version of HB 108 changing Alaska's laws relating to deed of trust foreclosures. While the majority of the bill contains beneficial changes, HB 108, as written, will create a requirement for Internet publication that will result in giving monopoly power to the law firm that wrote HB 108.

HB 108 requires publication on the Internet prior to a foreclosure. I have no objection to Internet publication as a general matter. In fact, current law requires that all default notices must be published in a newspaper, and most newspapers that publish default notices simultaneously publish the default notice on the newspaper's accompanying website. Every judicial district already has a newspaper of general circulation that publishes legal notices online. **Therefore, almost all default notices in Alaska are already published on the Internet.**

However, HB 108 goes further to provide that, to qualify as a website for publishing default notices, the website must have 5,000 unique visitors a month, be used primarily for advertising foreclosure properties, and have senior management within the state. Under this definition, almost no websites will qualify. **The websites operated by the Anchorage Daily News, Alaska Journal of Commerce, Juneau Empire, and Fairbanks Daily News-Miner, among others, will not qualify because they are not "used primarily to advertise real property under foreclosure[.]"** Websites such as Craigslist, which was mentioned favorably in the February 23, 2009 committee hearing, would not qualify because it is not used primarily for foreclosures, and because it does not have senior management in Alaska. Websites operated by banks will not qualify because they are not used primarily for foreclosures. Websites operated by local law firms will not qualify because they do not get 5,000 unique visitors a month. Finally, the State of Alaska's own website will not qualify because it is not used primarily to advertise foreclosures.

It is my belief that the only website that will qualify under the current HB 108 is USA-Foreclosure.com, which is half owned by Mr. Stephen Routh, whose law firm wrote HB108. Mr. Routh's law firm, with over 400 employees and offices in seven states, should not be granted monopoly power to conduct all foreclosures in Alaska.

I recommend the committee do one of two things with HB 108. I would recommend that all provisions relating to Internet advertising be eliminated. This is what happened last year with HB 163 and I recommend the same change be made now. Alternately, I recommend that proposed subsections AS 09.35.140(c)(3), (5) and (6) be eliminated. This would take away the requirement that a website "be used primarily to advertise real property under foreclosure", that the website have 5,000 unique visitors a month, and the website have senior management in Alaska. This would allow newspaper websites, bank websites, law firm websites, and Craigslist to qualify.

Thank you for the opportunity to provide information to the Committee on HB 108. If I can be of any further assistance, please don't hesitate to contact me.

Very truly yours,

GROH EGGERS, LLC

Robert H. Schmidt

cc: House Labor & Commerce Committee Members (via E-mail)

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Services
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
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Alaska State Legislature

House of Representatives

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1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146
Toll Free: (877) 465-3004

House District 10

Memo

To: Senator Hollis French
Chairman Senate Judiciary Committee

From: Representative Jay Ramras

Date: March 23, 2010

Re: Hearing Request for HB108 – "Property Foreclosures and Executions"

Please accept this memo as a request for the Senate Judiciary Committee to have a hearing on HB108 – Property Foreclosures and Executions. Accompanying this memo please find the following documents:

- Sponsor Statement
- Proposed SCS for HB108( ) 26-LS0318\M
- Explanation of Changes
- Sectional for version \M
- SCSHB108(L&C) 26-LS0318\T
- REV Zero Fiscal Note
- Letters of Support

Representative_Jay_Ramras@legis.state.ak.us

HB

129

Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Services
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Alaska State Legislature
House of Representatives

While in Session
State Capitol, Room 118
Juneau, Alaska 99801-1182
(907) 465- 3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Representative Jay Ramras
District 10

Sponsor Statement
CS for HB 129 (RLS) Revoking Real Estate Salesperson Licenses

CS for House Bill 129 (RLS) makes a simple, but needed, correction to existing law. Under current law, the Alaska Real Estate Commission must revoke the license of a real estate broker or associate broker if that person is convicted of a felony or other crime committed while licensed that, in the judgment of the commission, affects the ability of that person to practice as a broker or associate broker competently and safely or who is convicted of forgery, theft, extortion, conspiracy to defraud creditors, or fraud. Unfortunately this current law does not apply to real estate *salespersons*.

HB 129 simply adds "salesperson" to the statute and thereby enables the Real Estate Commission to likewise revoke the license of a salesperson who commits the same listed crimes. HB 129 also clarifies that the Alaska Real Estate Commission has the authority not only to revoke, but also to refuse to grant or renew the license of a salesperson who was convicted of the listed offenses at a time before the effective date of HB 129.

The need for this legislation came to the attention of the Real Estate Commission after a licensed real estate salesperson was indicted on five counts of bribery, money laundering, and importing a controlled substance. After reaching a plea agreement, all but the drug trafficking charges were dropped. After the guilty plea was entered on the drug trafficking charge, the Real Estate Commission discovered that they had no power to revoke this real estate salesperson's license and after serving the sentence imposed, the real estate salesperson continued to work in a field where customers place faith in their agent's trustworthiness and ability to follow the laws of the State of Alaska to the letter.

As of November 2008 there were 1460 real estate salespersons licensed in Alaska; compared to only 411 associate brokers and 483 brokers. With so many real estate salespersons licensed in Alaska, the urgency and need for this bill is clear. HB 129 empowers the Real Estate Commission to appropriately regulate its profession – including revoking a salesperson's license – and it protects the public interest.

Representative_Jay_Ramras@legis.state.ak.us

February 19, 2009

Dear Legislators:

The Alaska Real Estate Commission would like to express support for HB129. The current statute AS 08.88.071(10) only provides for a Broker or an Associate Broker to have their license revoked if convicted of a felony or other crime while licensed.

The Commission, through the Division of Corporations, Business and Professional Licensing issues three types of licenses: Broker, Associate Broker and Salesperson.

This proposed legislation would complete the process that would allow the Commission to also pursue the revocation of the salesperson license. The majority of the licensees are salespersons and therefore, an increased probability would exist that a felony would be committed by a licensed salesperson.

The Commission is tasked with the duty to provide for real estate practice that is conducted competently and safely. All licensees (Broker, Associate Broker and Salespersons) convicted of a felony should be licensed at the discretion of the Real Estate Commission in order to practice in Alaska.

We ask that you consider making the change by adding the license type, Salesperson, to the existing list of licenses in AS 08.88.071(10).

Sincerely,

Brad Cole
Chairman
Alaska Real Estate Commission

Representative Jay Ramras
Chair, House Judiciary
House Labor & Commerce
House Oil & Gas
House Military & Veteran Affairs
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Alaska State Legislature

While in Session
State Capitol, Room 118
Juneau, Alaska 99801-1182
(907) 465- 3004
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Toll Free: (877) 465-3004

House District 10

House of Representatives

Memo

To: Senator Hollis French
Chair Senate Labor & Commerce Committee

CC: Cindy Smith, Senate Judiciary Committee Aide

From: Representative Jay Ramras

Date: April 14, 2009

Re: CS for HB 129 (RLS): REVOKING REAL ESTATE SALESPERSON LICENSES

Please schedule CS for House Bill 129 (RLS), REVOKING REAL ESTATE SALESPERSON LICENSES to be heard in the Senate Judiciary Committee.

Attached to this memo please find the following documents:

- CS for HB 129 (RLS) REVOKING REAL ESTATE SALESPERSON LICENSES 26-LS0558\R
- Sponsor Statement
- Fiscal Note
- Support letter from Brad Cole, Chairman, Alaska Real Estate Commission
- Bill history
- Office Contact: Margaret Dowling, 465-6841

Thank you.

Representative_Jay_Ramras@legis.state.ak.us

HB

141

Alaska State Legislature

Senate

Office of the Secretary

Official Business

State Capitol, Room 213
Juneau, Alaska 99801-1182
Phone: (907) 465-3701
Fax: (907) 465-2832
Email:senate_secretary@legis.state.ak.us

FOR YOUR IMMEDIATE ATTENTION

DATE: April 16, 2009

TO: Judiciary Committee
(Cindy, Room 417)

FROM: Office of the Senate Secretary

SUBJ: Referral Change

The Chair of the Committee noted above has waived the referral(s) on the following bills(s):

RETRIEVE

HOUSE BILL NO. 141
"An Act relating to the Interstate Compact for Juveniles; relating to the State Council for Interstate Adult and Juvenile Offender Supervision; amending Rules 4 and 24(b), Alaska Rules of Civil Procedure; and providing for an effective date."

Please give the bill file(s) to the page delivering this message for forwarding to the next Committee of referral.

Thank you.

ALASKA STATE HOUSE OF REPRESENTATIVES

Contact:
Interim Address:
3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271

Session

(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 214

REPRESENTATIVE JOHN COGHILL

Sponsor Statement
HB 141

"An Act relating to the Interstate Compact for Juveniles; relating to the State Council for Interstate Adult Offender Supervision; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date."

This bill would enact the new Interstate Compact for Juveniles into law. This would replace the old compact which was created in 1955. The purpose of the Compact is to ensure the supervision of juvenile offenders and the return of runaways, escapees and absconders. The Compact provides the procedural means to regulate the movement of juveniles who are under court supervision across state lines. The Association of Compact Administrators estimates that the Interstate Compact on Juveniles is used in 20,000 to 30,000 transfer and supervision cases annually.

The new Compact ensures that all states will have identical language in their statutes which would help with compliance issues. The new Compact provides procedures for enforcement which the old Compact lacked. The Interstate Compact for Juveniles also provides for the collection of standardized information and information sharing systems.

This is a chance for the states to have the means to deal with state problems and enforce state solutions without having any federal intervention. 35 states have already passed this compact. If Alaska chooses not to enact this Compact the state would have to deal with every other state on a case-by-case basis which would cost the state more money than it would cost to implement the Compact.

The compact provides for the safety of the juvenile offender and the state as a whole. The importance of this compact cannot be overstated. This legislation is necessary to ensure the public safety and security of Alaskans. It will help ensure that Alaska receives notification about juveniles who are relocated or traveling to Alaska before they arrive here, and will expedite Alaska's ability to send juveniles from here to other jurisdictions.

ALASKA STATE HOUSE OF REPRESENTATIVES

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Session

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Room 214

REPRESENTATIVE JOHN COGHILL

SECTIONAL

HB 141

"An Act relating to the Interstate Compact for Juveniles; relating to the State Council for Interstate Adult and Juvenile Offender Supervision; amending Rules 4 and 24(b), Alaska Rules of Civil Procedure; and providing for an effective date."

Section 1: AS 33.36.140 State Council:

(a) Adds the words **and Juvenile** to the State Council for Interstate Offender Supervision. Adds a reference to the repealed and reenacted statute AS 47.15.010.

Section 2: AS 33.36.140

(b) changes the number of council members from seven to **nine**.

(6) adds the position of **the commissioner of health and social services** and provides that the commissioner may appoint a designee to serve in his/her capacity.

(7) adds the position of the **compact administrator appointed under AS 47.15.020**.

Section 3: AS 44.21.410(a)

(a) (5) deletes the word [UNIFORM], adds the word **for** and deletes the word [ON] in order to change the name of the Compact to the Interstate Compact for Juveniles.

Section 4: AS 47.15.010

The Execution of interstate compact is repealed and reenacted.

Section 5: AS 47.15.020

Changes the designator of the compact administrator from the Governor to the commissioner of health and social services and adds a comma to ensure proper grammar.

Section 6: AS 47.15

Adds a new section: AS 47.15.025 which designates the State Council for Interstate Adult and Juvenile Offender Supervision to serve as the state council under AS 47.15.010.

Section 7: AS 47.15

Adds a new section: AS 47.15.035 which allows the Department of Health and Social Services to adopt regulations to implement the provisions of this chapter.

Section 8: AS 47.15.070

Cleanup of section for clarity.

Section 9: AS 47.15.080

States that the short title of this chapter may be cited as the Interstate Compact for Juveniles.

Section 10: AS 47.15.050

Appointment of attorney or guardian provision is covered in AS 47.12.090.

Section 11: The uncodified law of the State of Alaska is amended by adding a new section:

(1) Changes the name of the Compact to the Interstate Compact for Juveniles in Rule 4 in Alaska Rules of Civil Procedure.

(2) Changes the name of the Compact to the Interstate Compact for Juveniles in Rule 24(b) in the Alaska Rules of Civil Procedure.

Section 12: The uncodified law of the State of Alaska is amended by adding a new section: This section applies the old Compact to the states who do not opt to join the new Compact.

Section 13: The uncodified law of the State of Alaska is amended by adding a new section: Court rule changes only take effect if it is approved by 2/3 of the majority of each house.

Section 14: The uncodified law of the State of Alaska is amended by adding a new section: The Compact takes effect only if at least 34 other states ratify the Interstate Compact for Juveniles.

Section 15: Setting the effective date as either the day after the date on which the commissioner of health and social services or the commissioner's designee notifies the revisor of statutes that at least 34 other states have ratified the new Compact or July 1, 2009 whichever is later.

RESOLUTION OF THE
AMERICAN PROBATION AND PAROLE ASSOCIATION

"Interstate Compact for Juveniles"

Whereas, The Interstate Compact on Juveniles was established in 1955 and is the primary compact addressing the needs of juveniles within the justice system who move between states and has not been sufficiently amended in its 47-year existence; and

Whereas, This compact is the only vehicle for the controlled movement of juveniles released from custody or on probation across state lines; and

Whereas, The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements and sex offender registration; and

Whereas, After national surveys and a detailed study by a task force appointed by the Office of Juvenile Justice and Delinquency Prevention, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns, offender accountability and effective treatment needs.

BE IT THEREFORE RESOLVED, That the Board of Directors of the American Probation and Parole Association hereby endorses and recommends adoption of the amended and newly titled Interstate Compact for Juveniles by the 50 states and affected territories of the United States of America.

January 5, 2003

CSG GOVERNING BOARD/EXECUTIVE COMMITTEE

RESOLUTION ON

THE INTERSTATE COMPACT FOR JUVENILES

WHEREAS, The Interstate Compact on Juveniles was established in 1955 and is the compact addressing the needs of juveniles within the juvenile justice system who move between states and has not been sufficiently amended in its forty-seven (47) year existence; and

WHEREAS, This compact is the only vehicle for the interstate supervision of juvenile offenders, the return of absconders and escapees, and runaways; and

WHEREAS, The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision and program expectations to include currently unregulated practices such as victim input and notification requirements, sex offender registration, and age related issues; and

WHEREAS, After exhaustive research and detailed study, the Office of Juvenile Justice and Delinquency Prevention and The Council of State Governments convened an Advisory Group and Drafting Team to formulate recommendations and implement changes to the compact language to better address public safety, enforcement, accountability and communication concerns.

NOW THEREFORE BE IT RESOLVED, That The Council of State Governments hereby endorses and recommends adoption of the new compact entitled, "Interstate Compact for Juveniles" by the fifty (50) states, the District of Columbia, Puerto Rico and effected territories of the United States of America.

Adopted this 8th Day of December, 2002 at the
CSG Annual State Trends and Leadership Forum
In Richmond, Virginia

Resolution of the
Association of Juvenile Compact Administrators

"Interstate Compact for Juveniles"

Whereas, The Interstate Compact on Juveniles was established in 1955 and is the compact addressing the needs of juveniles within the juvenile justice system who move between states and has not been sufficiently amended in its forty-seven (47) year existence; and

Whereas, This compact is the only vehicle for the interstate supervision of juvenile offenders, the return of absconders and escapees, and runaways; and

Whereas, The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision and program expectations to include currently unregulated practices such as victim input and notification requirements, sex offender registration, and age related issues; and

Whereas, After national surveys and a detailed study by a task force appointed by the Office of Juvenile Justice and Delinquency Prevention, the recommendation has been to rewrite the document to bring about an effective management capacity that addresses public safety concerns and juvenile accountability.

Be it therefore resolved, That the Association of Juvenile Compact Administrators hereby endorses and recommends adoption of the new compact entitled "Interstate Compact for Juveniles" by the fifty (50) states, the District of Columbia, and affected territories of the United States of America.

Adopted this 10th day of August, 2002.

NDAA

Office of the President

National District Attorneys Association
99 Canal Center Plaza, Suite 510, Alexandria, Virginia 22314
703.549.9222 / 703.836.3195 Fax
www.ndaa-apri.org

February 19 , 2003

Mr. Daniel M. Sprague
Executive Director
The Council of State Governments
P.O. Box 11910
Lexington, KY 40578-8001

Dear Mr. Sprague:

On behalf of the Board of Directors of the National District Attorneys Association I want to offer our support for the Interstate Compact for Juveniles. Our Board unanimously voted to support your effort during our recent meeting in Texas.

As local prosecutors we have to work daily with juveniles that require the attention of our court system and we recognize the need for interstate supervision of juvenile offenders and for the return of those who have escaped, run away or fail to live up to release expectations.

We also recognize that the changes in the complexities of our society have made many of the provisions of the compact badly out dated. Ideas such as community corrections, sexual predator registrations and victims rights provisions all impact on the how states must relate to each other in dealing with criminal offenders and in this instance, juveniles.

The Board of Directors considered the importance of addressing consistent treatment of juveniles in need of both consequences and treatment. The proposed Compact language provides states with the means of accomplishing these goals.

Sincerely,

Daniel M. Alsobrooks
District Attorney General, 23rd Judicial District, Tennessee
President, National District Attorneys Association

RECEIVED NOV 0 7 2002

NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN

Charles B. Wang International
Children's Building
699 Prince Street
Alexandria, VA 22314-3175
U.S.A.

Telephone 703.274.3900

Facsimile 703.274.2200

www.missingkids.com

November 1, 2002

Mr. Daniel M. Sprague
Executive Director
The Council of State Governments
Headquarters Office
P.O. Box 11910
Lexington, Kentucky 40578-8001

Dear Mr. Sprague:

The National Center for Missing & Exploited Children (NCMEC) is pleased to support the proposed Interstate Compact Initiative for Juveniles. As an organization that provides services to runaway youth and their families, we are pleased that this enhanced initiative will ensure consistent use of those policies governing the Compact.

Although, primarily designed to assist those organizations working within the juvenile justice, and social service systems, the Compact will assist NCMEC in it's work to bring children back home by providing law enforcement professionals with clear guidelines and procedures once a missing youth is recovered.

As you work to implement this initiative throughout the 50 states, please do not hesitate to let us know if we can be of further assistance in this most important venture.

Sincerely,

Ernie Allen
President & CEO
NCMEC

Branches
California
Florida
Kansas City
New York
South Carolina

National Juvenile Detention Association | NJDA

Eastern Kentucky University • 301 Perkins Building • 521 Lancaster Avenue
Richmond, Kentucky 40475-3102 • Telephone: (859) 622-6259
Fax: (859) 622-2333 • E-Mail: NJDAEKU@aol.com • Website: www.njda.com

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January 28, 2003

Chad S. Foster
Policy Analyst
The Council of State Governments
2760 Research Park Drive
PO Box 11910
Lexington, KY 40578-1910

Dear Mr. Foster:

As one of participating entities, the National Juvenile Detention Association (NJDA) has been actively involved in the review and update of the Interstate Compact or Juveniles, originally established in 1955. The two-year effort to modernize the Compact has been thorough and comprehensive and has engaged the efforts of many practitioners from the juvenile justice field. The process addressed a multiplicity of issues regarding the Compact that have been identified as problematic or outdated in an effort to develop a document that meets the current needs of stakeholders in the signatory states.

The nation's detention centers deal with the Contract frequently as the entities responsible for housing juveniles found to be in violation of placement agreements or of state laws in the receiving states. The proposed modifications to the Compact should address many of the issues that have created problems for detention centers and will offer assistance to them in dealing with both sending and receiving states.

As the association serving juvenile detention nationally, NJDA supports the proposed changes to the Compact. The changes are designed to address the needs of the states, of the agencies within the states, and of the public in ensuring that placement agreements are complied with and community safety is ensured.

We are happy to offer assistance to you in your efforts to achieve adoption of the revised Interstate Compact for Juveniles.

Sincerely,

Earl L. Dunlap

Earl L. Dunlap, Executive Director
National Juvenile Detention Association

cc: file
Executive Committee

STATE OFFICE

ALASKA PEACE OFFICERS ASSOCIATION

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

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Pres. First City Chapter
Matt Betzen, Member
Unalaska
Pres. Aleutian Islands Chapter
Thecla LaLonde, Member
Wrangell
Pres. Wrangell Chapter

March 27, 2009

Representative John Coghill
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Coghill:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 141, an act relating to the Interstate Compact for Juveniles; relating to the State Council for Interstate Adult and Juvenile Offender Supervision; amending Rules 4 and 24(b), Alaska Rules of Civil Procedure; and providing for an effective date.

The APOA State Board's Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

STATE OF ALASKA

DEPARTMENT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF JUVENILE JUSTICE

Sarah Palin, GOVERNOR

P.O. BOX 110635
JUNEAU, ALASKA 99811-0635
PHONE: (907) 465-1382
FAX (907) 465-2333

April 1, 2009

The Honorable Jay Ramras
Chair, House Judiciary Committee
Alaska State Legislature
Alaska State Capitol
Juneau, AK 99811

Dear Representative Ramras:

In the House Judiciary Committee hearing held on March 27, 2009, Representative Max Gruenberg asked the following questions about House Bill 141 (Interstate Compact for Juveniles):

- When did the first state adopt the new Interstate Compact for Juveniles?

We contacted Keith Scott, Director of the National Center for Interstate Compacts at the Council of State Governments, to answer this question; he reported that the first state to adopt the new Compact did so in March 2003 (North Dakota). The 35th state to adopt the Compact, Illinois, did so in August 2008. Adoption of the Compact by 35 states placed the Compact into "active" status, meaning that participating states are now developing the new rules that will govern interstate travel by juveniles. With the 35th state enacting the Compact, the first Interstate Commission meeting was held in December 2008. States that have not enacted the new Compact by December 2009 will not be able to transfer juveniles to and from states operating under the new Compact at that time, and will be required to develop individualized Memoranda of Agreement to transfer juveniles to and from those states.

- What are Hawaii's amendments to its bill on the Interstate Compact for Juveniles, noted in the materials provided by Rep. Coghill's office?

To answer this question we contacted Hawai's juvenile compact administrator. She stated that Hawaii is currently considering two changes to the Compact:

1.) In Article III, subsection (h)(7), deleting the phrase "regulated person or entity" and replacing it with the word "juvenile." The Hawaiian compact administrator said they believed the phrase "regulated person or entity" to be confusing.

2.) In Article VI of the Compact (found in Section 4 of Alaska's HB 141), deleting section (f), which reads: "The existing rules governing the operation of the Interstate Compact on Juveniles shall be null and void 12 months after the first meeting of the Interstate Commission created under this compact." The Hawaiian compact administrator said they made this change to ensure that Hawaii could continue to work with states that have adopted the new compact as well as states that continue to operate under the old compact.

We consulted with Jan Rutherdale and Deborah Behr at the Department of Law on these issues. Our two agencies agree that Hawaii's amendments are not needed in Alaska's bill and would only complicate what is intended to be a nationally uniform document. In the first case, we do not believe the term used in the Compact, "regulated person or entity," is confusing. It clearly refers to the individuals subject to the compact. In the second case, we believe Alaska's ability to work with other states, including those that do not adopt the new compact, is ensured in Section 12 of Alaska's HB 141, which reads:

> The Department of Health and Social Services may continue to implement the provisions of former AS 47.15.010 (the old Interstate Compact on Juveniles), as it read on the day before the effective date of this Act, to certain states that are compacting states to the Uniform Interstate Compact on Juveniles, but have not yet enacted the Interstate Compact for Juveniles, set out in AS 47.15.010, as repealed and reenacted by sec. 4 of this Act, or a substantially similar form of that compact.

- Have other states made amendents to the Compact?

To answer this question we contacted the Keith Scott, Director of the National Center for Interstate Compacts at the Council of State Governments. We asked Mr. Scott if he could provide a list of other states' amendments to the Interstate Compact for Juveniles. Mr. Scott said no such list has been assembled by the Council. While he has received occasional inquiries and provided feedback on potential amendments on the Compact from various states, he has not maintained a list of these inquiries and does not know which, if any, of these potential amendments have been adopted. To fully answer this question therefore would require us to contact individual states and review their legislation that enacted the Interstate Compact for Juveniles.

At the request of Acting Chair Nancy Dahlstrom we are sending a copy of this response to the members of the House Finance Committee, the next committee of referral for HB 141.

Sincerely,

Tony Newman
Social Services Program Officer

Barb Murray
Deputy Administrator
Interstate Compact on Juveniles

Cc: The Honorable Carl Gatto, Alaska House of Representatives
The Honorable Lindsay Holmes, Alaska House of Representatives
The Honorable Nancy Dahlstrom, Alaska House of Representatives
The Honorable Bob Lynn, Alaska House of Representatives
The Honorable Max Gruenberg, Alaska House of Representatives
The Honorable Mike Hawker, Alaska House of Representatives
The Honorable Bill Thomas, Alaska House of Representatives
The Honorable Bill Stoltze, Alaska House of Representatives
The Honorable Alan Austerman, Alaska House of Representatives
The Honorable Anna Fairclough, Alaska House of Representatives
The Honorable Richard Foster, Alaska House of Representatives
The Honorable Reggie Joule, Alaska House of Representatives
The Honorable Mike Kelly, Alaska House of Representatives
The Honorable Harry Crawford, Alaska House of Representatives
The Honorable Les Gara, Alaska House of Representatives
The Honorable Woodie Salmon, Alaska House of Representatives
Jan Rutherdale, Civil Division, Alaska Department of Law
Deborah Behr, Civil Division, Alaska Department of Law
Wilda Laughlin, Commissioner's Office, Alaska Department of Health and Social Services

ALASKA STATE HOUSE OF REPRESENTATIVES

Contact:
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Fax# (907)-488-4271

Session

(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: April 14, 2009

To: Senator French, Chair
Senate Judiciary Committee

From: Representative John Coghill, Chair
House Rules

Re: Senate Judiciary Committee –HB 141

Please schedule HB 141 "*An Act relating to the Interstate Compact for Juveniles; relating to the State Council for Interstate Adult and Juvenile Offender Supervision; amending Rules 4 and 24(b), Alaska Rules of Civil Procedure; and providing for an effective date.*"

I have attached the Sponsor Statement, Sectional and backup documentation for your information and distribution.

Thank you.

HB

152

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

SARAH PALIN, GOVERNOR

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

April 15, 2009

The Honorable Hollis French, Chair
Senate Judiciary Committee
Alaska State Legislature
State Capital, Room 417
Juneau, Alaska 99801-1182

Re: 2009 Revisor's Bill - CSHB 152(JUD)

Dear Senator French:

The Department of Law has reviewed CSHB 152(JUD), 2009 Revisor's Bill. The bill makes important technical improvements to the laws of this state. We recommend its passage.

If you need additional information, please let me know.

Sincerely,

WAYNE ANTHONY ROSS
ATTORNEY GENERAL

By: Deborah E. Behr
Deborah E. Behr
Chief Assistant Attorney General

WAR:DEB:ajh

cc: Jerry Gallagher, Legislative Director, Office of the Governor
Kathryn Kurtz, Assistant Revisor of Statutes, Legislative Affairs Agency

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 30, 2009

SUBJECT: 2009 Revisor's Bill, CSHB 152(JUD)
(Work Order No. 26-LS0158\S)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee

FROM: Kathryn L. Kurtz KLK
Assistant Revisor

Enclosed is a sectional summary for CSHB 152(JUD), the 2009 revisor's bill, which has bee referred to the Senate Judiciary Committee. Would you please schedule this bill for a hearing? Thank you for your consideration. Please give me a call at 465-6663 if you have any questions.

KLK:ljw
09-194.ljw

Enclosure

LEGAL SERVICES

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MEMORANDUM March 30, 2009

SUBJECT: 2009 Revisor's Bill Sectional Summary - CSHB 152(JUD)
(Work Order No. 26-LS0158\S)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee

FROM: Kathryn L. Kurtz KLC
Assistant Revisor

The following is a sectional summary of the 2009 revisor's bill. The bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

> . . . shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state.

To assist the reader in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

Sections that delete, repeal, or update obsolete provisions: Sections 2 - 5, 14, 16 - 18, 20, 25, 26, 32, 35, 36, 40, 41, 48, 61 - 65, 69, 77, 82, 83, and 85 amend or repeal provisions that have become obsolete through other legislative action.

Sections that correct errors or oversights: Sections 7, 9, 12, 13, 15, 22, 23; 27 - 29, 37, 43, 50, 59, 66 - 68, 70 - 73, 76, and 78 - 81 correct errors or oversights.

Sections that improve the form or substance of the law: Sections 1, 6, 8, 10, 11, 19, 21, 24, 30, 31, 33, 34, 38, 39, 42, 44 - 47, 49, 51- 58, 60, 74, and 75 propose amendments to improve the form or substance of the statutory law of Alaska.

SECTIONAL SUMMARY

Bill section 1 substitutes a generic description for a specific reference to the division of agriculture in AS 03.09.020(a). There is no statutorily created division of agriculture. Currently there is an administratively created division of agriculture within the Department of Natural Resources; however, that name could be changed

administratively. The generic reference will apply no matter what name is given to the division administratively.

Bill section 2 substitutes a generic reference to "college or department of the University of Alaska responsible for the agricultural and forestry experiment station" for a specific reference to the "Institute of Agricultural Sciences" in AS 03.22.010. The University no longer has an institute called the "Institute of Agricultural Sciences." According to the office of the Dean of the School of Natural Resources and Agricultural Sciences, what was the Institute of Agricultural Sciences is now known as the Agricultural and Forestry Experiment Station.

Bill section 3 amends AS 03.22.020 by substituting a generic reference to "college or department of the University of Alaska responsible for the agricultural and forestry experiment station" for a specific reference to the "Institute of Agricultural Sciences". See bill section 2.

Bill section 4 amends AS 03.22.040 by adding "and Forestry" to reflect the current name of the University of Alaska Agriculture and Forestry Experiment Station and makes the reference to the University generic for consistency with other references. See bill section 2.

Bill section 5 amends AS 03.22.050 by substituting a generic reference to "college or department of the University of Alaska responsible for the agricultural and forestry experiment station" for a specific reference to the "Institute of Agricultural Sciences". See bill section 2.

Bill section 6 substitutes a generic description for a specific reference to the division of agriculture in AS 03.47.040(2). See bill section 1.

Bill section 7 amends AS 08.36.246(a) to repeal subparagraph (B), which refers to "a specialty examination given by the Central Regional Examining Board" because there is no such exam given by that entity. The Chief Assistant Attorney General of the Legislation and Regulations section at the Attorney General's office is in accord with this change.

Bill section 8 inserts the word "acid" in AS 11.56.762 to reflect the full name of the system established in AS 44.41.035.

Bill section 9 corrects an apparent error by changing "adopted parent" to "adoptive parent" in AS 12.55.125(b). Although Alaska law provides a process for parents to adopt children, it does not provide for the adoption of parents by children.

Bill section 10 adds an "or" and changes "from" to "to" to improve the form and readability of AS 12.61.020(a).

Bill section 11 deletes two commas to improve the form and readability of AS 12.61.020(c).

Bill section 12 deletes "is" and inserts "are" to create agreement between the two subjects and the verb in the first sentence of AS 12.62.160(a).

Bill section 13 changes "heirs" plural to the singular "heir" in AS 13.06.050(21) to match the singular tense used elsewhere in the paragraph. Under AS 01.10.050, words in the singular include the plural. In this instance, use of the singular throughout improves readability.

Bill section 14 amends AS 14.03.075(g)(2) to delete a reference to the definition of "individualized education program team" in AS 14.30.350, since that definition was repealed in 2001. This section replaces the reference with a description.

Bill section 15 changes the phrase "counting period" in AS 14.17.600 to "count period" to match the usage in AS 14.17.420(a)(2) and 14.17.990.

Bill section 16 amends AS 14.17.990(5) to reflect the repeal of 20 U.S.C. 7703(f)(2)(B), by inserting the word "former".

Bill section 17 deletes "by July 1, 1997," from AS 14.20.149(a), as the deadline has become obsolete.

Bill section 18 amends AS 14.35.025 by deleting a reference to the "United States Department of Health, Education, and Welfare," which no longer exists (it has been superseded by the Department of Health and Human Services and the Department of Education), and inserting a generic reference to "the appropriate federal agency."

Bill section 19 deletes the word "or" in one place in AS 14.40.826(a)(5), and adds commas and the word "have" in two places to improve the form and readability of the paragraph.

Bill section 20 amends AS 14.50.010 to indicate the repeal of 20 U.S.C. 401 - 602.

Bill section 21 amends AS 14.57.199 to substitute a generic description for a specific reference to the division of state libraries, archives, and museums. The division is not created in statute and could be renamed or reorganized administratively.

Bill section 22 deletes "two-thirds" and replaces it with "three-fourths" in AS 15.45.160 and adds a provision relating to the minimum number of signatures per district to conform this section to AS 15.45.140 and article XI, sec. 3, Constitution of the State of Alaska.

Bill section 23 deletes "two-thirds" and replaces it with "three-fourths" in AS 15.45.390 and adds a provision relating to the minimum number of signatures per district to conform this section to AS 15.45.370 and article XI, sec. 3, Constitution of the State of Alaska.

Bill section 24 makes a conforming change in AS 17.37.070(6) to reflect the removal of the definition of "treatment facility" in AS 47.14.990(12). The term "treatment facility" is not used anywhere in AS 47.14, so a definition of the term does not belong in AS 47.14.990. The term "treatment facility" is used in AS 47.12, and a definition of the term identical to that in AS 47.14.990 appears in AS 47.12.990. AS 17.37.070(6) refers to the definition of "treatment facility" in AS 47.14.990. Since that term and the other terms defined by reference are also defined in AS 47.12.990, and those definitions are identical to the ones found in AS 47.14.990, a reference to AS 47.12.990 is substituted for the original reference here to preserve the content of the definitions for purposes of this section despite the removal of the definition of "treatment facility" in bill section 73.

Bill section 25 deletes material applicable only before October 1, 2006 from AS 19.15.025(a).

Bill section 26 deletes material applicable only before October 1, 2006 from AS 19.15.025(b).

Bill section 27 deletes the word "care" and inserts "insurance" in AS 21.54.120(a) to accurately reflect the title of the federal Health Insurance Portability and Accountability Act of 1996.

Bill section 28 deletes the word "care" and inserts "insurance" in AS 21.54.500(11) to accurately reflect the title of the federal Health Insurance Portability and Accountability Act of 1996.

Bill section 29 deletes the word "care" and inserts "insurance" in AS 21.54.500(17) to accurately reflect the title of the federal Health Insurance Portability and Accountability Act of 1996.

Bill section 30 replaces a comma with the word "and" to improve the readability of AS 23.05.060(3).

Bill section 31 deletes "Alaska Workers' Compensation Board" in AS 23.05.067(a)(1)(B) and replaces it with "division of workers' compensation in the department." The reports referred to in AS 23.30.155(m) and (n) are made to the division.

Bill section 32 amends AS 23.20.175(c) to remove an obsolete date reference.

Bill section 33 is a conforming amendment to AS 23.20.276(b) that reflects the repeal of AS 23.20.525(a)(4) and (5) and the renumbering of paragraphs in AS 23.20.525(a) in bill section 38.

Bill section 34 amends AS 23.20.277(c) to remove a paragraph that has become obsolete, as well as an obsolete date reference.

Bill section 35 is a conforming amendment to AS 23.20.278 that reflects the renumbering of paragraphs in AS 23.20.525(a) in bill section 38.

Bill section 36 corrects a citation in AS 23.20.401(b)(2) to reflect a 1982 renumbering of the referenced paragraph in the U.S.C.

Bill section 37 amends AS 23.20.408(h) to remove a reference to AS 23.20.408(g), since that subsection has not included the defined phrase since 1982.

Bill section 38 amends AS 23.20.525(a) to remove several obsolete date references, to repeal paragraphs (4) and (5) which have become obsolete, and to renumber the remaining paragraphs. Also makes a conforming change in AS 23.20.525(b).

Bill section 39 replaces the words "newsboys" and "salesman" in AS 23.20.526(a) to avoid use of gender specific terms; the phrase "service performed by an individual under the age of 18", used to replace "newsboys", is found in 26 U.S.C. 3306(c)(15)(A). Deletes a grammatically incorrect occurrence of the word "some". Inserts "United States" before "Secretary of Labor" and substitutes "that" for "which" to conform with current drafting style. Makes conforming changes required by the renumbering of paragraphs in AS 23.20.525(a) in bill section 38.

Bill section 40 makes conforming amendments in AS 23.20.526(d) required by the renumbering of paragraphs in AS 23.20.525(a) in bill section 38.

Bill section 41 removes obsolete date references in AS 23.20.530(b), and changes the word "tax" to "taxation". Also substitutes "that" for "which" and semi-colons for commas to conform to current drafting style.

Bill section 42 amends AS 24.05.135(c) to substitute a generic description for a specific reference to the division of state libraries, archives, and museums. The division is not created in statute and could be renamed or reorganized administratively.

Bill section 43 shortens the descriptive phrase "voter approval of alteration or abolishment of service areas" in AS 29.10.200(46) to "service areas" to reflect the scope of AS 29.35.450. Under AS 29.35.450(d), all of AS 29.35.450 applies to home rule municipalities, not just subsection (c), which deals with voter approval of alteration or abolishment of a service area. This corrects a drafting error.

The section amends a reference in AS 29.10.200(50) to reflect the 1992 renumbering of AS 29.45.570 as AS 29.45.800.

This section also amends AS 29.10.200(57) to remove "construction" and insert "revenue bonds" to reflect the actual content of AS 29.47.260 as noted in the current catchline. The original catchline for AS 29.47.260 was "construction" and that has been changed editorially to "Applicability of AS 37.10.085", but the text of the section, which relates to revenue bonds, has not been changed. AS 37.10.085 relates to financial aid to corporations by the state or a political subdivision of the state.

Bill section 44 adds language to AS 29.46.010(b) indicating that the subsection applies to home rule municipalities. The subsection already appears on the list in AS 29.10.200 of limitations on home rule powers. The change brings this section into conformity with other sections on the list, which include applicability in the text of the section listed.

Bill section 45 changes the word "section" in AS 29.46.030(a) to "subsection", since only subsection (a) of that section refers to findings.

Bill section 46 amends AS 29.60.860(b) to resolve a contradiction between the first and second sentences of the subsection. The agency has indicated that the revised wording is consistent with the agency's interpretation of the statute.

Bill section 47 deletes a reference to AS 12.55.185 in AS 33.16.090(c)(1) and replaces it with a reference to AS 12.55.127. The definition referred to in AS 12.55.185 simply directs the reader to the definition in AS 12.55.127, so the change enables the reader to refer to the relevant section directly.

Bill section 48 amends AS 33.30.015 by deleting "on and after August 17, 1999", a phrase setting a date after which the commissioner of corrections may not perform certain actions. Since the date is long past, the phrase is no longer needed.

Bill section 49 amends AS 38.07.030 to substitute a generic description for a specific reference to the division of agriculture, since that division is not created in statute and could be changed administratively. See bill section 1.

Bill section 50 amends AS 39.25.110(14) by adding the word "Alaska" before "Oil and Gas Conservation Commission", to conform to the statutory name of that commission created in AS 31.05.005.

Bill section 51 amends AS 41.10.100(b)(6) by substituting a generic description for a specific reference to the division of agriculture. See the full explanation at bill section 1.

Bill section 52 amends AS 44.41.035(b) by inserting "identification" in two places in order to make all references to the DNA identification registration system consistent.

Bill section 53 amends AS 44.41.035(*l*) by inserting the word "identification" in order to make all references to the DNA identification registration system consistent.

Bill section 54 amends AS 44.41.035(n) by inserting "identification" in order to make all references to the DNA identification registration system consistent.

Bill section 55 amends AS 44.41.035(p) by inserting "DNA" in order to make all references to the DNA identification registration system consistent.

Bill section 56 amends AS 45.07.309(a) to change "man" to "person" in order to avoid a gender specific reference, and "must" to "shall" since the subsection imposes a duty on a person.

Bill section 57 amends AS 45.10.220(6) to change the phrase "multiplied times" to "multiplied by" to conform to usage elsewhere in the Alaska Statutes.

Bill section 58, without changing the wording of the section, removes the subparagraph designators (A) and (B), making AS 45.14.403(a)(2) a unitary paragraph, rather than a paragraph with subparagraphs. This change is consistent with the Article 4A of the Uniform Commercial Code. It removes an inappropriate break following subparagraph (A) to clarify that the phrase "payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact" applies to the material in (A) as well as (B).

Bill section 59 corrects a reference in AS 45.29.313(b) to reflect the content of the corresponding sections of Article 9 of the Uniform Commercial Code (secured transactions).

Bill section 60 removes an extraneous "or" from AS 45.29.314(a).

Bill section 61 amends AS 45.50.471(b)(34) to remove AS 08.66.200 - 08.66.250 from a spanned reference, since those sections were repealed in 2002.

Bill section 62 updates a reference to federal law in AS 46.03.450(8). The section cites 49 U.S.C. 1671 et seq. and 49 U.S.C. 2001 et seq. Those sections have been combined, and recodified (without substantive change) at 49 U.S.C. 60101 et seq., so 49 U.S.C. 60101 et seq. is cited instead.

Bill section 63 removes an outdated date reference from AS 46.06.090(a).

Bill section 64 removes an outdated date reference from AS 46.06.090(b).

Bill section 65 removes a reference to AS 46.14.170(b) from AS 46.14.170(c); this is a conforming amendment required by the repeal of AS 46.14.170(b). See bill section 82.

Bill section 66 changes a reference in AS 46.14.300(c) from "15 U.S.C. 631" to "15 U.S.C. 632." AS 46.14.300(c) refers to the definition of a "small business concern." 15 U.S.C. 631 is the first section of the federal Small Business Act, but it is a purpose section and does not contain a definition of "small business concern." Criteria for identifying a "small business concern" are listed in 15 U.S.C. 632, and that section is referred to as the source of the definition elsewhere in federal law. *See* sec. 2, 105 P.L. 135 (Small Business Reauthorization Act of 1997) ("the term 'small business concern' has the meaning given the term in section 3 of the Small Business Act (15 U.S.C. 632)").

Bill section 67 changes a reference in AS 46.14.990(24) from "15 U.S.C. 631" to "15 U.S.C. 632." See bill section 66 for further explanation.

Bill section 68 updates a reference in AS 46.15.035(c)(2) from AS 16.05.870 to AS 16.05.871. AS 16.05.870 was repealed and renumbered as AS 41.14.870 by Executive Order No. 107, and that section was in turn repealed and renumbered as AS 16.05.871 in Executive Order No. 114. This section inserts the current cite.

Bill section 69 amends AS 46.15.165(c) by inserting the word "former" before a reference to 43 U.S.C. 270-1 and 270-2, to reflect the 1971 repeal of those sections. The reference is to land for which the patent, deed, or certificate was issued under those sections, so the reference should be retained.

Bill section 70 adds two words to AS 46.30.080 to correct a reference to the name of the advisory board created in AS 46.30.020, consistent with other references to the board in AS 46.30.

Bill section 71 amends AS 47.10.396 to remove the word "nonprofit" in two places to conform to amendments made by ch. 107, SLA 1998 to AS 47.10.392, 47.10.398, and 47.10.399, which now refer to corporations rather than nonprofit corporations.

Bill section 72 adds a subsection to AS 47.14.100 defining the term "adult family member" for purposes of that section. This change is related to the repeal of AS 47.14.295(1). The phrase "adult family member" is not used in AS 47.14.205 - 47.14.295, and has not been since those sections were enacted in 2005. However, the term is also used, without benefit of definition, in AS 47.14.100(e), (f), and (m). It appears that the placement of the definition in AS 47.14.295(1) instead of where it would apply to AS 47.14.100 was a drafting error in ch. 64, SLA 2005. This section relocates the definition to where it is needed. For the repeal of AS 47.14.295(1), see bill section 82.

Bill section 73 removes the term "treatment facility" from AS 47.14.990(12), because that term is not used in AS 47.14. See bill section 24.

Bill sections 74 and 75 amend AS 47.30.660(b) and AS 47.30.662(c) to substitute a generic description for specific references to the division of mental health and

developmental disabilities. The department no longer has a division with that name, and the former division's duties have been divided among other divisions.

Bill section 76 expands a citation in AS 47.30.772, enacted in 1984 and amended in 1992, to reflect the 2004 addition of AS 47.30.817 to the AS 47.30 article relating to patient rights.

Bill section 77 updates a spanned reference in AS 47.30.835(b), which now refers to "a determination of legal incapacity under AS 13.26.005 - 13.26.330." Since this section was enacted in 1981, AS 13.25.325 and .330, relating to powers of attorney and disability and incompetence, have been repealed. This bill section removes AS 13.25.325 and .330 from the scope of the spanned reference.

Bill section 78 changes the word "lead" in AS 47.30.838(b) to "led". Although the mistake appeared in the enacting law, the past tense is clearly more appropriate in this context.

Bill section 79 expands a citation in AS 47.30.855 to reflect the 2004 addition of AS 47.30.817 to the AS 47.30 list of patient rights.

Bill section 80 amends sec. 14, ch. 137, SLA 2002, which contains a delayed amendment to AS 16.43.970(b). The existing delayed amendment would sunset changes made to that section in 2002 effective December 30, 2013. An intervening amendment was made to AS 16.43.970(b) in sec. 16, ch. 42, 2006, adding the words "in the second degree" after "unsworn falsification" to conform to a change in AS 11.56.210 of the designation of that crime. The 2006 Act did not make a conforming change to the delayed amendment. This bill remedies that omission by adding the words "**in the second degree**" to the text of the delayed amendment scheduled to take effect in 2013. This will have the effect of retaining the intervening amendment. Note that the other changes indicated in the section, including deletion of "vessel interim-use permit, or vessel entry permit" are the changes made by the 2002 sunset provision. The only change being made in this bill is the addition of the words "**in the second degree**", which is a conforming amendment.

Bill section 81 amends sec. 12, ch. 50, SLA 2005 to remove the repeal of AS 14.25.070(b). AS 14.25.070(b) was enacted in 2005, and relettered as (c) that same year. AS 14.25.070 was repealed and reenacted July 1, 2008 by sec. 3, ch. 13, SLA 2008. This change corrects an oversight in sec. 3, ch. 13, SLA 2008. See bill section 83.

Bill section 82 repeals several sections.

- AS 08.36.246(a)(4)(B) appears to be obsolete since the Central Regional Examining Board does not offer a specialty examination.
- AS 31.05.080(b) was impliedly repealed by the enactment of AS 22.10.020(d), *Allen v. Alaska Oil and Gas Conservation Commission,* 147 P.3d 664, 667 - 668 (Alaska 2006); here, the repeal is made express.
- AS 44.88.180(b) was made obsolete by the 1982 amendment of AS 44.88.180(a),

and was removed from the statutes when the changes to AS 44.88.180(a) were made, but was not expressly repealed by ch. 113, SLA 1982.

- AS 46.14.170(b) provides for "a phased schedule for acting on operating permit applications submitted within 12 months following the date on which the federal administrator approves the state program under 42 U.S.C. 7661a(d)". The federal administrator gave the final interim approval of the state program in 1996. *See* 61 Federal Register 64463-64475 (December 5, 1996). Full approval of the operating permit program was effective November 30, 2001. *See* 66 Federal Register 63,184 (December 5, 2001). Since well more than 12 months have passed since the federal approval, this subsection has become obsolete.
- AS 46.14.990(13) defines the term "fugitive emissions", which is not found anywhere else in the Alaska statutes. The term was used in the definition of "potential to emit" in AS 46.14.990(21), until that definition was repealed and reenacted in sec. 57, ch. 46, SLA 2003.
- AS 47.14.295(1) defines the phrase "adult family member" for purposes of AS 47.14.205 - 47.14.295, where it is not used. See bill section 73.
- AS 47.14.990(11) defines the phrase "serious offense", which does not appear in the chapter to which AS 47.14.990 applies.
- AS 47.20.390(4) defines the term "health care insurer". That term does not appear elsewhere in AS 47.20.300 - 47.20.390, so the definition is superfluous.
- Secs. 33 and 34, ch. 122, SLA 1977, provide for the sunset of several changes to the state's unemployment compensation laws in case the federal law underlying those changes is held to be unconstitutional or is repealed. When these sections were enacted, in the spring of 1977, there was a live controversy about the constitutionality of 26 U.S.C. 3304(a)(6), as amended in 1976, which, among other things, required states to cover employees of the state and its political subdivisions in order to obtain federal certification of the state program and its concomitant tax and grant benefits. Other states challenged the constitutionality of the federal law, arguing that it constituted an impermissible infringement on state sovereignty under the Tenth Amendment to the federal constitution. In *New Hampshire Department of Employment Security v. Marshall*, 616 F.2d 240 (1st Cir. 1980), *cert. denied* 449 U.S. 806 (1980), the court held that the 1976 amendments to the federal unemployment tax act did not impair the sovereignty of New Hampshire. In *County of Los Angeles v. Marshall*, 631 F.2d 767, 769 (D.C. Cir. 1980), *cert. denied* 449 U.S. 837 (1980), the D.C. circuit adopted the first circuit's reasoning, holding that the "voluntary and wholly optional aspect" of the federal program defeated the argument that there was an "coercion and improper transgression upon the sovereignty of the state shielded by the *Tenth Amendment*." (emphasis in original) So, when the legislature enacted the changes necessitated by 26 U.S.C. 3304(a)(6) in 1977, there was an active controversy about whether the 1976 amendment to the federal act was constitutional. By the end of 1980, that controversy had been resolved in favor of the constitutionality of the federal statute, and the Supreme Court had declined to review the issue. However, the provisions of secs. 33 and 34, ch. 122, SLA 1977, providing for the return of several sections of the Alaska Statutes to their pre-1977 state, remains.

The first paragraph of sec. 34's contingency language appears to be obsolete, given the resolution of the constitutional controversy. The second paragraph, calling for the sunset of the changes to the Alaska statutes in case 26 U.S.C. 3304(a)(6) is repealed, could conceivably take effect. However, it seems likely that this second paragraph was inserted in the contingency in case the federal government decided to repeal the offending section rather than litigating the issue to its conclusion--which is not what happened. It is not clear that the 1977 legislature meant for the changes to the Alaska statutes to be reversed if the federal statute were repealed for some other reason more than 30 years later. Arguably, then, the entire contingency provision has become obsolete. Sec. 33, ch. 122, SLA 1977, is repealed by this bill section. Because it relates to an effective date, sec. 34, ch. 122, SLA 1977, is repealed in a different bill section, bill section 85.

Bill section 83 is a delayed repeal of AS 14.25.070(e), which relies on AS 14.20.135, to reflect the delayed repeal of AS 14.20.135 under secs. 12 and 15, ch. 57, SLA 2001, as amended by sec. 6, ch. 15, SLA 2003, and by secs. 10 and 17, ch. 50, SLA 2005.

Bill section 84 conditions the effectiveness of bill section 83, repealing AS 14.25.070(e), on the repeal of AS 14.20.135.

Bill section 85 repeals sec. 34, ch. 122, SLA 1977, which is the effective date for sec. 33, ch. 122, SLA 1977. See bill section 82.

Bill section 86 provides an effective date for sec. 83.

Bill section 87 provides a special effective date for bill section 55, which amends AS 44.41.035(p), since that subsection will not take effect until July 1, 2009. The effective dates of the section and of the change made to the section in this bill should be the same.

Bill section 88 provides an immediate effective date for the bill, except sections 55 and 83.

Please give me a call if you have any questions about the above.

TEXT OF REPEALED PROVISIONS

AS 08.36.246(a)(4)(B):

> (B) pass a specialty examination given by the Central Regional Examining Board;

AS 31.05.080(b):

> (b) A person who has applied for reconsideration and is dissatisfied with the disposition of the application for reconsideration may appeal to the superior court. The questions reviewed on appeal are limited to the questions presented to the commission by the application for reconsideration.

AS 44.88.180(b):[1]

> (b) The state officer serves as a member from time to time and for all purposes of this chapter is a member for the purpose of voting on the resolution but after each vote the authority shall again consist of members referred to in AS 44.88.030 only, until one or more members may not again vote on a resolution because of the prohibition.

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[1] AS 44.08.180(a) was amended by sec. 56, ch. 113, SLA 1982 as follows:

> (a) A [NO] member of the authority may **not** vote on a resolution of the authority relating to a lease or contract to be entered into by the authority under this chapter if **the member** [HE] is a party to the lease or contract or has a direct ownership or equity interest in a firm, partnership, corporation, or association **that** [WHICH] may be a party to the contract or lease. **A resolution of the authority that is approved by a majority of the members who are not barred from voting under this subsection is a valid action of the authority for all purposes.** [IF A PERSON MAY NOT VOTE BECAUSE OF THIS PROHIBITION, FOR ALL PURPOSES REGARDING ACTION OF THE AUTHORITY RELATING TO ADOPTION OF THE RESOLUTION, THE POSITION OF THE PERSON AS A MEMBER SHALL BE TRANSFERRED TO THE FIRST ONE OF THE FOLLOWING STATE OFFICERS WHO IS NOT THEN ACTING AS A MEMBER AND WOULD NOT BE PROHIBITED FROM VOTING ON THE RESOLUTION BECAUSE OF THE SAME PROHIBITION: COMMISSIONER OF ADMINISTRATION, ATTORNEY GENERAL, COMMISSION OF REVENUE, COMMISSIONER OF HEALTH AND WELFARE, COMMISSIONER OF LABOR, COMMISSIONER OF PUBLIC WORKS, COMMISSIONER OF PUBLIC SAFETY.]

AS 46.14.170(b):

(b) Notwithstanding (a) of this section, the department may establish a phased schedule for acting on operating permit applications submitted within 12 months following the date on which the federal administrator approves the state program under 42 U.S.C. 7661a(d). A phased schedule must ensure that at least one-third of the applications submitted during the first 12 months of the state's operation of its permit program after federal approval will be acted on by the department during each of the first three 12-month periods following federal approval of the program. The department shall give priority to the issuance of permits for new stationary sources and modifications of existing stationary sources.

AS 46.14.990(13):

(13) "fugitive emissions" has the meaning given in 40 C.F.R. 51.166(b);

AS 47.14.295(1):

(1) "adult family member" has the meaning given in AS 47.10.990;

AS 47.14.990(11):

(11) "serious offense" has the meaning given in AS 12.62.900;

AS 47.20.390(4):

(4) "health care insurer" means an entity regulated by the director of insurance, Department of Commerce, Community, and Economic Development, and includes a health, hospital, or medical service plan corporation, and a health maintenance organization;

Section 33, ch. 122, SLA 1977:

*** Sec. 33.** Sections 4, 5, 13, 15, 16, 21 and 22 of this Act, AS 23.20.525(a)(14) as enacted in sec. 18 of this Act, and the repeal of AS 23.20.526(a)(16) and (18) enacted in sec. 25 of this Act, are repealed and the language of AS 23.20.278, 23.20.325(a), 23. 20.520(12), 23.20.525(a)(4), (5), and (14), 23.2l0.526(a)(16) and (18) and 23.20.526(d), as it existed before January 1, 1978, is revived.

Section 34, ch. 122, SLA 1977:

*** Sec. 34.** Section 33 of this Act takes effect upon the condition and at the time that:

(1) a decision of a federal court of competent jurisdiction, which decision is not subject to appeal or for which the time in which to appeal has run without and appeal having been taken, that the requirement of 26 U.S.C. 3304(a)(6) is unconstitutional becomes final; or

(2) Congressional repeal of 26 U.S.C. 3304(a)(6) takes effect in accordance with law.

KLK:ljw
09-195.ljw

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 152(JUD)
(H) Publish Date: 3/23/09

Identifier (file name): HB152-LAW-CIV-3-11-09
Title: 2009 REVISOR'S BILL
Sponsor: RULES BY REQUEST OF LEGISLATIVE COUNCIL
Requester: JUDICIARY

Dept. Affected: LAW
RDU: CIVIL
Component: LEGISLATION & REGULATIONS
Component Number: 2209

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

HB 152 makes important technical changes to the Alaska statutes to correct deficiencies, conflicts, or obsolete provisions. It is believed there will be no fiscal impacts on the Department of Law if HB 152 is enacted into law.

Prepared by: Robert Meiners, Deputy Director
Division: Administrative Services Division
Phone 907.465.5427
Date/Time 3/11/09 4:00 PM

Approved by: Richard Svobodny, Acting Attorney General
Department of Law
Date 3/11/2009

(Revised 9/10/2008 OMB)

HB 170

Alaska State Legislature

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REPRESENTATIVE MIKE CHENAULT
SPEAKER OF THE HOUSE

SPONSOR STATEMENT
House Bill 170
"An Act repealing the authority for day fines."

House Bill 170 repeals the authority established for day fines. The legislation establishing day fines for certain misdemeanor offenses, House Bill 119, was passed into law in 1994 and became effective July 1, 1994.

One of the provisions in the legislation was for the Court System to adopt a day fine plan. As required by the bill, the Supreme Court created a committee to establish a fine schedule based on the guidelines of House Bill 119. The committee found several problems in adopting a day fine plan and requested the legislature to introduce a bill to solve those problems. Senate Bill 167 was introduced in 1995 but did not get out of the Senate. Without the changes requested by the Supreme Court, the court did not implement the provisions of House Bill 119.

According to the Court System, "some of the technical issues identified by the committee included concerns over which misdemeanors were included and excluded, significant time delays associated with judges making written findings, problems in determining defendant income, conflicts with ordering substance abuse treatment and concerns over the levels of fines imposed and the time allowed to pay them."

The committee also expressed concerns that the bill would not accomplish what the sponsor had intended. The sponsor statement stated the intent of the legislation was to improve fine collection and reduce the number of misdemeanor offenders who were sentenced to jail. The committee believed that because the misdemeanors that were excluded from the day fine provisions and because of the technical problems identified by the committee, the sponsor's goals would not be met.

Since these statutes are not in use and will not be used by the courts, I propose that we repeal the statutes that impose a day fine plan rather than keeping these statutes in the books.

Representative_Mike_Chenault@legis.state.ak.us

Sec. 12.55.015. Authorized sentences; forfeiture.

(a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a

(A) fine when authorized by law and as provided in AS 12.55.035; or

(B) day fine when authorized by law and as provided in AS 12.55.036 if the court does not impose a term of periodic or continuous imprisonment or place the defendant on probation;

(2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;

(3) impose a definite term of periodic imprisonment, but only if an employment obligation of the defendant preexisted sentencing and the defendant receives a composite sentence of not more than two years to serve;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution under AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;

(8) suspend imposition of sentence under AS 12.55.085;

(9) order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

(10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation if the program is made available to the defendant by the Department of Corrections;

(11) order the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang;

(12) order the defendant to have no contact, either directly or indirectly, with a victim or witness of the offense until the defendant is unconditionally discharged.

(b) The court, in exercising sentencing discretion as provided in this chapter, shall impose a sentence involving imprisonment when

(1) the defendant deserves to be imprisoned, considering the seriousness of the present offense and the defendant's prior criminal history, and imprisonment is equitable considering sentences imposed for other offenses and other defendants under similar circumstances;

(2) imprisonment is necessary to protect the public from further harm by the defendant; or

(3) sentences of lesser severity have been repeatedly imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

(c) In addition to the penalties authorized by this section, the court may invoke any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or impose any other civil penalty. When forfeiting property under this subsection, a court may award to a municipal law enforcement agency that participated in the arrest or conviction of the defendant, the seizure of property, or the identification of property for seizure, (1) the property if the property is worth $5,000 or less and is not money or some other thing that is divisible, or (2) up to 75 percent of the property or the value of the property if the property is worth more than $5,000 or is money or some other thing that is divisible. In determining the percentage a municipal law enforcement agency may receive under this subsection, the court shall consider the municipal law enforcement agency's total involvement in the case relative to the involvement of the state.

(d) [Repealed, Sec. 1 ch 188 SLA 1990].

(e) If the defendant is ordered to serve a definite term of imprisonment, the court may recommend that the defendant serve all or part of the term

(1) in a correctional restitution center;

(2) by electronic monitoring.

(f) Notwithstanding (a) of this section, the court shall order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of a crime involving domestic violence.

(g) Unless a defendant is ineligible for a deduction under AS 33.20, when a defendant is sentenced to a term of imprisonment of two years or more, the sentence consists of two parts: (1) a minimum term of imprisonment that is equal to not less than two-thirds of the total term of imprisonment; and (2) a maximum term of supervised release on mandatory parole that is equal to not more than one-third of the total term of imprisonment; the amount of time that the inmate actually serves in imprisonment and on supervised release is subject to the provisions of AS 33.20.010 - 33.20.060.

(h) In addition to penalties authorized by this section, the court shall order a person convicted of an offense requiring the state to collect a blood sample, oral sample, or both, for the deoxyribonucleic acid identification registration system under AS 44.41.035 to submit to the collection of

(1) the sample or samples when requested by a health care professional acting on behalf of the state to provide the sample or samples; or

(2) an oral sample when requested by a juvenile or adult correctional, probation, or parole officer, or a peace officer.

(i) In this section "deadly weapon" has the meaning given in AS 11.81.900.

Sec. 12.55.035. Fines.

(a) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.

(b) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) $500,000 for murder in the first or second degree, attempted murder in the first degree, murder of an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, promoting prostitution in the first degree under AS 11.66.110(a)(2), or misconduct involving a controlled substance in the first degree;

(2) $250,000 for a class A felony;

(3) $100,000 for a class B felony;

(4) $50,000 for a class C felony;

(5) $10,000 for a class A misdemeanor;

(6) $2,000 for a class B misdemeanor;

(7) $500 for a violation.

(c) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of

(1) an amount that is

(A) $1,000,000 for a felony offense or for a misdemeanor offense that results in death;

(B) $200,000 for a class A misdemeanor offense that does not result in death;

(C) $25,000 for a class B misdemeanor offense that does not result in death;

(D) $10,000 for a violation;

(2) three times the pecuniary gain realized by the defendant as a result of the offense; or

(3) three times the pecuniary damage or loss caused by the defendant to another, or to the property of another, as a result of the offense.

(d) If a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(e) In imposing a fine under (c) of this section, in addition to any other relevant factors, the court shall consider

(1) measures taken by the organization to discipline an officer, director, employee, or agent of the organization;

(2) measures taken by the organization to prevent a recurrence of the offense;

(3) the organization's obligation to make restitution to a victim of the offense, and the extent to which imposition of a fine will impair the ability of the organization to make restitution; and

(4) the extent to which the organization will pass on to consumers the expense of the fine.

(f) In imposing a fine, the court may not reduce the fine by the amount of a surcharge or otherwise consider the applicability of a surcharge to the offense.

Sec. 12.55.036. Day fines.

(a) Upon conviction of a misdemeanor, other than a violation of AS 11.41 and AS 11.56.740, a defendant may be sentenced to pay a day fine as authorized by this section. If a day fine is imposed under this section, the defendant may not be sentenced to pay a fine under AS 12.55.035, serve a term of imprisonment, or be placed on probation.

(b) The Alaska Supreme Court shall adopt a day fine plan that includes

(1) an assessment of the gravity of all misdemeanor offenses, which assessment must include the existence of prior offenses, and the assignment of presumptive penalties to them in day fine units within the following ranges:

(A) for class A and unclassified misdemeanors, not to exceed 365-day fine units;

(B) for class B misdemeanors, not to exceed 90-day fine units;

(2) a schedule of the presumptive day fine penalties;

(3) procedures for a court to increase or decrease the presumptive day fine penalties if the court finds the existence of an aggravating factor under AS 12.55.155(c) or a mitigating factor under AS 12.55.155(d);

(4) a table for the conversion of a defendant's actual, potential, or estimated gross income, less one-third for a defendant above the federal poverty guideline as determined by the United States Department of Health and Human Services, and less one-half for a defendant below the federal poverty guideline into net daily income amounts; the table must include adjustments for the number of dependents actually supported by the defendant;

(5) procedures for a court to gather information about the defendant's occupation, actual, estimated, and potential income, number of dependents, and other facts necessary or relevant to sentencing a person to a day fine; a court may order the production of the financial or other records of a person it determines to be relevant to a determination under this section; the procedures must include a requirement that the facts shall be received

(A) under oath so that the defendant is subject to prosecution under AS 11.56.200; or

(B) in a writing or recording that bears notice that false statements made in it are punishable under AS 11.56.210; and

(6) other information the court determines to be necessary for implementing the day fine plan.

(c) The amount of a day fine shall be the product of the net daily income of the defendant, adjusted for the number of dependents actually supported by the defendant, times the day fine penalty. When imposing a sentence of a day fine, the court shall

(1) state on the record the

(A) presumptive day fine penalty for the offense, and whether the court is adjusting the presumptive day fine penalty for the existence of aggravating or mitigating factors;

(B) net daily income of the income of the defendant, adjusted for the number of dependents actually supported by the defendant; and

(C) amount of the day fine;

(2) make written findings of the facts considered in

(A) finding the existence of aggravating or mitigating factors and in assigning a value to those factors; and

(B) determining the defendant's gross and daily net incomes.

(d) When imposing a sentence of a day fine, the court may permit the payment of the day fine in specified installments or within a certain period of time, provided the entire day fine is paid within 180 days of imposition.

(e) A sentence imposing a day fine shall be considered a civil judgment for the day fine. The Department of Law shall enforce the judgment and may utilize any procedure available for the enforcement of civil judgments. If the Department of Law uses the civil process of the court to enforce or collect a day fine, the department shall be awarded costs and attorney fees.

(f) [Repealed, Sec. 7 ch 79 SLA 1994].

(g) Money collected under this section shall be deposited into the general fund and separately accounted for under AS 37.05.142. The annual estimated balance in the account maintained under AS 37.05.142 for day fines collected under this section may be appropriated by the legislature as follows: (1) 25 percent of the annual estimated balance for grants and claims paid by the Council on Domestic Violence and Sexual Assault; (2) 25 percent of the annual estimated balance for grants and claims paid by the Violent Crimes Compensation Board; and (3) the balance for any lawful purpose. Nothing in this subsection creates a dedicated fund.

History -

(Sec. 5 ch 79 SLA 1994; am Sec. 6 ch 21 SLA 1995)

SENATE CS FOR CS FOR HOUSE BILL NO. 119(FIN)
"An Act authorizing a sentencing court to impose a sentence of a day fine instead of a sentence of imprisonment on a defendant convicted of a misdemeanor; directing the Alaska Supreme Court to develop and implement a day fine plan; requiring the Alaska Court System to report to the legislature on the use of day fines; amending Alaska Rule of Criminal Procedure 32; and providing for an effective date."
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
* Section 1. AS 12.55.015(a) is amended to read:
(a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination
(1) impose a
(A) fine when authorized by law and as provided in AS 12.55.035; or
(B) a day fine when authorized by law and as provided in AS 12.55.036, if the court does not impose a term of periodic or continuous imprisonment or place the defendant on probation;
(2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;
(3) impose a definite term of periodic imprisonment;
(4) impose a definite term of continuous imprisonment;
(5) order the defendant to make restitution under AS 12.55.045;
(6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;
(7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;
(8) suspend imposition of sentence under AS 12.55.085;
(9) order the forfeiture to the commissioner of public safety of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;
(10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation [,] if the program is made available to the defendant by the Department of Corrections.
* Sec. 2. AS 12.55.035(a) is amended to read:
(a) Except as provided in AS 12.55.036, upon [UPON] conviction of an

offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.

* Sec. 3. AS 12.55.035(b) is amended to read:

(b) Except as provided in AS 12.55.036, upon [UPON] conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) $75,000 for murder in the first or second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree;

(2) $50,000 for a class A, B, or C felony;

(3) $5,000 for a class A misdemeanor;

(4) $1,000 for a class B misdemeanor;

(5) $300 for a violation.

* Sec. 4. AS 12.55.035(c) is amended to read:

(c) Except as provided in AS 12.55.036, upon [UPON] conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of

(1) an amount that is

(A) $500,000 for a felony offense or for a misdemeanor offense that results in death;

(B) $200,000 for a class A misdemeanor offense that does not result in death;

(C) $25,000 for a class B misdemeanor offense that does not result in death;

(D) $10,000 for a violation;

(2) two times the pecuniary gain realized by the defendant as a result of the offense; or

(3) two times the pecuniary damage or loss caused by the defendant to another, or to the property of another, as a result of the offense.

* Sec. 5. AS 12.55 is amended by adding a new section to read:

Sec. 12.55.036. DAY FINES. (a) Upon conviction of a misdemeanor, other than a violation of AS 11.41 and 11.56.740, a defendant may be sentenced to pay a day fine as authorized by this section. If a day fine is imposed under this section, the defendant may not be sentenced to pay a fine under AS 12.55.035, serve a term of imprisonment, or be placed on probation.

(b) The Alaska Supreme Court shall adopt a day fine plan that includes

(1) an assessment of the gravity of all misdemeanor offenses, which assessment must include the existence of prior offenses, and the assignment of presumptive penalties to them in day fine units within the following ranges:

(A) for class A and unclassified misdemeanors, not to exceed 365-day fine units;

(B) for class B misdemeanors, not to exceed 90-day fine units;

(2) a schedule of the presumptive day fine penalties;

(3) procedures for a court to increase or decrease the presumptive day fine penalties if the court finds the existence of an aggravating factor under AS 12.55.155(c) or a mitigating factor under AS 12.55.155(d);

(4) a table for the conversion of a defendant's actual, potential, or estimated gross income, less one-third for a defendant above the federal poverty guideline as determined by the United States Department of Health and Human Services, and less one-half for a defendant below the federal poverty guideline into net daily income amounts; the table must include adjustments for the number of dependents actually supported by the defendant;

(5) procedures for a court to gather information about the defendant's occupation, actual, estimated, and potential income, number of dependents, and other facts necessary or relevant to sentencing a person to a day fine; a court may order the production of the financial or other records of a person it determines to be relevant to a determination under this section; the procedures must include a requirement that the facts shall be received

(A) under oath so that the defendant is subject to prosecution under AS 11.56.200; or

(B) in a writing or recording that bears notice that false statements made in it are punishable under AS 11.56.210; and

(6) other information the court determines to be necessary for implementing the day fine plan.

(c) The amount of a day fine shall be the product of the net daily income of the defendant, adjusted for the number of dependents actually supported by the defendant, times the day fine penalty. When imposing a sentence of a day fine, the court shall

(1) state on the record the

(A) presumptive day fine penalty for the offense, and whether the court is adjusting the presumptive day fine penalty for the existence of aggravating or mitigating factors;

(B) net daily income of the income of the defendant, adjusted for the number of dependents actually supported by the defendant; and

(C) amount of the day fine;

(2) make written findings of the facts considered in

(A) finding the existence of aggravating or mitigating factors and in assigning a value to those factors; and

(B) determining the defendant's gross and daily net incomes.

(d) When imposing a sentence of a day fine, the court may permit the payment of the day fine in specified installments or within a certain period of time, provided the entire day fine is paid within 180 days of imposition.

(e) A sentence imposing a day fine shall be considered a civil judgment for the day fine. The Department of Law shall enforce the judgment and may utilize any procedure available for the enforcement of civil judgments. If the Department of Law uses the civil process of the court to enforce or collect a day fine, the department shall be awarded costs and attorney fees.

(f) The Alaska Court System shall evaluate and report every two years to the legislature not later than February 1 on the use of day fines and their effectiveness. The report must include

(1) a comparison of the number of defendants receiving a day fine as a sentence with the number of other defendants, eligible to receive a day fine, who receive another sentence;

(2) a comparison of the recidivism rates between defendants receiving a day fine with other defendants,

(A) eligible for a day fine, who receive another sentence; and

(B) not eligible for a day fine, who receive another sentence;

(3) the potential savings to the state from the number of defendants, who are eligible to receive a sentence of imprisonment, and who receive a day fine, assuming those defendants would have been sentenced to a term of imprisonment;

(4) the amount of day fines collected, the success rate of collections, and the number of cases requiring civil process to collect the day fine; and

(5) recommendations concerning expansion or restriction of the use of day fines, including proposals for legislation.

(g) Money collected under this section shall be deposited into the general fund and separately accounted for under AS 37.05.142. The annual estimated balance in the account maintained under AS 37.05.142 for day fines collected under this section may be appropriated by the legislature as follows: (1) 25 percent of the annual estimated balance for grants and claims paid by the Council on Domestic Violence and Sexual Assault; (2) 25 percent of the annual estimated balance for grants and claims paid by the Violent Crimes Compensation Board; and (3) the balance for any lawful purpose. Nothing in this subsection creates a dedicated fund.

* Sec. 6. CHANGE OF CRIMINAL RULE. AS 12.55.036, added by sec. 5 of this Act, has the effect of modifying the sentencing provisions of Alaska Rules of Criminal Procedure 32, by establishing procedures for imposition of sentences of day fines.

* Sec. 7. AS 12.55.036(f), as enacted by sec. 5 of this Act, is repealed February 2, 2004.

* Sec. 8. This Act takes effect July 1, 1994.

Alaska Court System
State of Alaska

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ADMINISTRATIVE DIRECTOR

(907) 264-0547
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April 26, 1995

The Honorable Robin Taylor
Chairman, Senate Judiciary Committee
State Capitol - Room 30
Juneau, Alaska 99811

Dear Senator Taylor:

The 1994 Alaska Legislature passed a law that authorizes courts to impose day fines for certain misdemeanor offenses. The legislation went into effect July 1, 1994.

The day fine law directs the Alaska Supreme Court to adopt a "day fine plan." In June 1994, Chief Justice Daniel A. Moore appointed a committee of six judges and five representatives of other agencies to develop this plan. The committee met once a month from September through December and presented a plan to the supreme court on December 22.

In the course of developing the day fines plan, certain problems became apparent. Some of these problems could be rectified by simple amendments to the original day fines legislation. However, other problems are more fundamental. SB 167 addresses the more technical difficulties. This legislation does not address the fundamental problems, which are discussed in Part II below.

I. Technical Problems With Day Fines Law.

A. Classification of Misdemeanors.

AS 12.55.036(b)(1) requires the supreme court to adopt a day fines plan that includes "an assessment of the gravity of all misdemeanor offenses, which assessment must include the existence of prior offenses . . . ." It would take months to compile a comprehensive list of all the misdemeanor offenses in the Alaska Statutes and such a list would include many relatively obscure offenses that are never charged. The Day Fines Committee only ranked offenses that were charged ten or more times since January 1, 1990 and offenses for which a fine or imprisonment was imposed in FY 94. The committee also could not think of a simple way to make the ranking of offenses reflect the existence of prior offenses. Instead, the committee decided to treat prior offenses as an aggravating factor.

The committee has recommended that AS 12.55.036(b)(1) be amended to require that the day fines plan include an assessment of common misdemeanor offenses and to delete the requirement that the assessment reflect the existence of prior offenses. This proposal is contained in section 2 of SB 167.

B. Written Findings.

AS 12.55.036(c)(2) requires that the judge make written findings of the facts considered in determining the existence of aggravating and mitigating factors and in determining the defendant's income. Given the volume of misdemeanor sentencings in some court locations, it is not feasible for judges to make written findings in these cases. Therefore, the Day Fines Committee has recommended that the legislature eliminate AS 12.55.036(c)(2). This proposal is contained in section 3 of SB 167.

C. Felony Aggravators and Mitigators.

AS 12.55.036(b)(3) authorizes the court to increase or decrease the presumptive day fine penalty for an offense if the court finds the existence of an aggravating factor under AS 12.55.155(c) or a mitigating factor under AS 12.55.155(d). AS 12.55.155 lists the aggravating and mitigating factors that apply in felony cases. Because of the volume of misdemeanor cases, it is not feasible for judges to review the lists of felony aggravators and mitigators each time a defendant is sentenced. In addition, some of these factors are not applicable to the offenses for which a day fine may be imposed. In the proposed day fine plan, the Day Fines Committee recommended that a shorter, more general list be adopted that would be easier for judges to use. The committee

recommended that AS 12.55.036(b)(3) be amended to eliminate the references to AS 12.55.155. This proposal is contained in section 2 of SB 167.

D. Set Aside of Convictions.

Many first and second misdemeanor offenders currently receive SISs and suspended sentences which are significantly less severe than the sentences they would receive under the proposed day fines plan. In order to increase the attractiveness of day fines in such cases, the Day Fines Committee recommended that courts be allowed to set aside convictions in appropriate cases upon payment of a day fine. Another benefit of this change in the law is that the possibility of eliminating the conviction from the defendant's record might increase the likelihood of payment. This proposal is contained in section 6 of SB 167.

E. Net Income Versus Gross Income.

AS 12.55.036(b)(4) requires the court to use the defendant's gross income to calculate the defendant's net daily income for purposes of day fines. However, unless they are carrying their pay stubs, people generally know only the amount of their take home pay. The Day Fines Committee recommended that AS 12.55.036(b)(4) be revised so that the method of calculating net daily income is based on a defendant's net income after taxes instead of gross income. This proposal is contained in section 2 of SB 167.

F. Additional Time to Pay.

AS 12.55.036(d) states that the court may permit day fines to be paid in installments over time, provided the entire fine is paid within 180 days. The Day Fines Committee recommends that the legislature amend AS 12.55.036(d) to allow courts to give defendants up to one year to pay. The committee believes that additional time is needed to allow for seasonal variations in income. In addition, the projected fine amounts are high enough that some defendants will not have enough discretionary income to pay their fine in full within a six-month period. This proposal is contained in section 4 of SB 167.

G. Access to Employment Information.

The Day Fines Committee recommended that the legislature amend AS 23.20.110 to authorize the Department of Labor to give the Department of Law Collections Unit access to confidential employment information (to the extent permitted by federal

law). The purpose of this change is to improve collections by making it easier for the Department of Law to locate a defendant's places of employment. This proposal is contained in sections 7, 8, and 9 of SB 167.

H. Treatment.

The Day Fines Committee is concerned that day fines may not be used in cases involving alcohol or drugs because a day fine cannot be combined with an order for treatment. AS 12.55.015 lists the sentences judges can impose as direct court orders. This statute only authorizes the court to order treatment for defendants who are incarcerated. Therefore, the only way a judge can order treatment outside of prison is if a specific statute authorizes it (which very few do) or as a condition of probation. Since day fines cannot be combined with probation, judges will be unlikely to impose day fines when they believe treatment is necessary. The Day Fines Committee has recommended that the day fines law be amended to allow the court to enter a direct court order requiring a defendant who receives a day fine to participate in a treatment program related to the defendant's offense. This proposal is contained in section 1 of SB 167.

I. Biennial Reports.

AS 12.55.036(f) requires the court system to evaluate the use and effectiveness of day fines and report every two years to the legislature. This section specifies what the report must contain. The Day Fines Committee does not believe that certain information listed in this section can be collected given the current state of the various justice agencies' information systems. The committee has recommended that the Alaska Supreme Court invite the Alaska Judicial Council to work with the court system to develop appropriate evaluation criteria (given available information systems) and to design the information collection procedures necessary to make the reports to the legislature. To accommodate this, SB 167 amends AS 12.55.036(f) to reflect the fact that it is not yet possible to provide information on recidivism. This proposal is contained in section 5.

II. Fundamental Problems with Day Fines Law.

Now I would like to discuss the more fundamental problems that are not addressed in the attached bill.

The first problem relates to the legislature's intent in passing the law. In her March 10, 1993 memorandum transmitting the bill, Representative Fran Ulmer stated that the

intent of the legislation was to decrease the number of misdemeanor offenders who are sent to jail and to increase fine collection rates. The day fines legislation as enacted will not achieve either of these objectives.

In the course of its work, the Day Fines Committee determined that the day fines law excludes most of the misdemeanors for which people are currently sentenced to jail. Therefore, the law will not result in a meaningful decrease in the jail population as the legislature intended.

Increased fine collection is also unlikely. Under the new law, a day fine is only one of several sentencing options available to a judge. A judge will not select this option unless the judge believes the fine will be collected. In reviewing the State's collection practices, the Day Fines Committee discovered that current fine collection rates are low. The day fines program will not be widely used - or increase fine revenues - unless the Department of Law receives additional collection tools and resources. (The Department of Law's Collections Unit is funded solely through program receipts.) An example of a new tool would be to make payment of fines a condition for state licenses. The Day Fines Committee recommended that the legislature consider prohibiting the issuance or renewal of state licenses and permits to persons who have unpaid fines and other obligations to the state.

A second fundamental concern pertains to the fine amounts that result from the day fines formula. In order to avoid separation of powers questions, the legislature specified in the statute the unit scale and general formula for computing day fines. This scale would have resulted in inappropriately high fine amounts for the misdemeanors that the legislature included in the day fines program. Even though the Day Fines Committee reduced the scale as much as they thought possible - from a maximum of 365 units to a maximum of 45 units - the formula still results in very high fine amounts for all but the poorest offenders. The supreme court is reluctant to proceed without further legislative review of the fines that would result under the formula prescribed in the law.

A third fundamental concern pertains to one of the largest categories of misdemeanors - fish and game offenses. After much deliberation, the Day Fines Committee excluded these offenses from its day fines plan. Unlike criminal law, which has a relatively clear statutory framework as a result of the classification system that went into effect in 1980, fish and game has no clear sentencing structure. Title 5 includes numerous penalty provisions and it is not always obvious which ones apply to particular offenses. In addition, because offense definitions overlap, the same conduct can be charged under different statutes and regulations, with different consequences. The

committee was ultimately unwilling to impose another layer of complexity in this area until the underlying statutory and regulatory problems are resolved. Instead, the committee recommended that the legislature appoint a special legislative committee or an interagency group to assess and restructure fish and game penalty provisions and definitions of offenses.

III. Conclusion.

The attached bill addresses the problems described in Part I above. It does not address the Day Fines Committee's - and the supreme court's - more fundamental concerns discussed in Part II. Both the court and the committee question whether it is wise to proceed without addressing these concerns. It will require a significant commitment of resources in order to implement the day fines program. Without significant changes, the law is unlikely to result in the savings or the revenues that the legislature originally expected.

Sincerely,

Arthur H. Snowden, II
Administrative Director

9-LS1069\A

SENATE BILL NO. 167

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

Introduced: 4/25/95
Referred: JUD. FIN

A BILL

FOR AN ACT ENTITLED

"An Act relating to day fines in certain criminal cases and release of employment information for use in the collection of criminal judgments."

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

* **Section 1.** AS 12.55.036(a) is amended to read:

(a) Upon conviction of a misdemeanor, other than a violation of AS 11.41 and AS 11.56.740, a defendant may be sentenced to pay a day fine as authorized by this section. If a day fine is imposed under this section, the defendant may not be sentenced to pay a fine under AS 12.55.035, serve a term of imprisonment, or be placed on probation. However, the court may order a defendant to participate in or comply with a screening, evaluation, or treatment program related to the defendant's offense.

* Sec. 2. AS 12.55.036(b) is amended to read:

(b) The Alaska Supreme Court shall adopt a day fine plan that includes

(1) an assessment of the gravity of common [ALL] misdemeanor

offenses [, WHICH ASSESSMENT MUST INCLUDE THE EXISTENCE OF PRIOR OFFENSES,] and the assignment of presumptive penalties to them in day fine units within the following ranges:

(A) for class A and unclassified misdemeanors, not to exceed 365-day fine units;

(B) for class B misdemeanors, not to exceed 90-day fine units;

(2) a schedule of the presumptive day fine penalties;

(3) procedures for a court to increase or decrease the presumptive day fine penalties if the court finds the existence of an aggravating factor [UNDER AS 12.55.155(c)] or a mitigating factor [UNDER AS 12.55.155(d)];

(4) a table for the conversion of a defendant's actual, potential, or estimated net [GROSS] income after taxes, less one-third for a defendant above the federal poverty guideline as determined by the United States Department of Health and Human Services, and less one-half for a defendant below the federal poverty guideline into net daily income amounts; the table must include adjustments for the number of dependents actually supported by the defendant;

(5) procedures for a court to gather information about the defendant's occupation, actual, estimated, and potential income, number of dependents, and other facts necessary or relevant to sentencing a person to a day fine; a court may order the production of the financial or other records of a person it determines to be relevant to a determination under this section; the procedures must include a requirement that the facts shall be received

(A) under oath so that the defendant is subject to prosecution under AS 11.56.200; or

(B) in a writing or recording that bears notice that false statements made in it are punishable under AS 11.56.210; and

(6) other information the court determines to be necessary for implementing the day fine plan.

* Sec. 3. AS 12.55.036(c) is amended to read:

(c) The amount of a day fine shall be the product of the net daily income of the defendant, adjusted for the number of dependents actually supported by the

defendant, times the day fine penalty. When imposing a sentence of a day fine, the court shall

[(1)] state on the record the

(1) [(A)] presumptive day fine penalty for the offense, and whether the court is adjusting the presumptive day fine penalty for the existence of aggravating or mitigating factors;

(2) [(B)] net daily income of the income of the defendant, adjusted for the number of dependents actually supported by the defendant; and

(3) [(C)] amount of the day fine [;

(2) MAKE WRITTEN FINDINGS OF THE FACTS CONSIDERED IN

(A) FINDING THE EXISTENCE OF AGGRAVATING OR MITIGATING FACTORS AND IN ASSIGNING A VALUE TO THOSE FACTORS; AND

(B) DETERMINING THE DEFENDANT'S GROSS AND DAILY NET INCOMES].

* Sec. 4. AS 12.55.036(d) is amended to read:

(d) When imposing a sentence of a day fine, the court may permit the payment of the day fine in specified installments or within a certain period of time, provided the entire day fine is paid within one year [180 DAYS] of imposition.

* Sec. 5. AS 12.55.036(f) is amended to read:

(f) The Alaska Court System shall evaluate and report every two years to the legislature not later than February 1 on the use of day fines and their effectiveness. The report must include

(1) a comparison of the number of defendants receiving a day fine as a sentence with the number of other defendants, eligible to receive a day fine, who receive another sentence;

(2) to the extent that recidivism information is available, a comparison of the recidivism rates between defendants receiving a day fine with other defendants,

(A) eligible for a day fine, who receive another sentence; and

(B) not eligible for a day fine, who receive another sentence;

(3) the potential savings to the state from the number of defendants who are eligible to receive a sentence of imprisonment, and who receive a day fine, assuming those defendants would have been sentenced to a term of imprisonment;

(4) the amount of day fines collected, the success rate of collections, and the number of cases requiring civil process to collect the day fine; and

(5) recommendations concerning expansion or restriction of the use of day fines, including proposals for legislation.

* Sec. 6. AS 12.55.036 is amended by adding a new subsection to read:

(h) When there are mitigating circumstances, when the ends of justice will be served, and when the good conduct and reform of the defendant warrant it, the court may upon payment of the entire day fine within the time specified by the court set aside the conviction and issue to the defendant a certificate to that effect.

* Sec. 7. AS 23.20.110(a) is amended to read:

(a) Except as provided in (h), [AND] (i), and (l) of this section, the department shall hold information obtained from an employing unit or individual in the course of administering this chapter and determinations as to the benefit rights of an individual confidential and may not disclose them or open them to public inspection in a manner that [WHICH] reveals the identity of the individual or employing unit. A claimant or the legal representative of the claimant is entitled to information from the records of the department to the extent necessary for the proper presentation of the claim in a proceeding under this chapter. Subject to restrictions that [WHICH] the department prescribes by regulation, the information may be made available to an agency of this state or another state or federal agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or, for the purposes of the Federal Unemployment Tax Act, to the Internal Revenue Service of the United States, or, for tax purposes, to the Department of Revenue. Information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service.

* Sec. 8. AS 23.20.110(j) is amended to read:

(j) Notwithstanding (h), [OR] (i), or (l) of this section, the department may not release information to an administrator under (h) of this section, [OR] on an employer's hiring practices under (i) of this section, or to the Department of Law as provided under (l) of this section if the United States Secretary of Labor rules that release of the information would be grounds to find that the state is in substantial noncompliance with 42 U.S.C. 503(a).

* Sec. 9. AS 23.20.110 is amended by adding a new subsection to read:

(l) The department shall make information obtained from an employing unit or an individual available on request to the Department of Law to assist the Department of Law in the collection of criminal judgments.

Alaska State Legislature

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Fax: 907-283-7184

REPRESENTATIVE MIKE CHENAULT
SPEAKER OF THE HOUSE

MEMORANDUM

TO: Senator Hollis French, Chair
Senate Judiciary Committee

FROM: Representative Mike Chenault
Speaker of the House

DATE: April 9, 2009

RE: Request for Hearing-House Bill 170

Please consider this request to schedule House Bill 170: Repeal of Day Fines, before your committee at your earliest possible convenience.

Back up for the bill is attached.

Thank you for your consideration of my request.

Representative_Mike_Chenault@legis.state.ak.us

HB

186

2948

Firearm freedom a priority for Fairbanks Rep. Kelly

by Christopher Eshleman/ceshleman@newsminer.com

10 hrs ago | 962 views | 16 | 3 |

FAIRBANKS — An Interior lawmaker said he'll push to curb federal regulation of guns built and sold solely within Alaska, saying his research has failed to convince him Congress can justify regulating, or requiring registration of, firearms built and sold within a single state's boundaries.

Federal commerce laws regulate firearm producers and dealers, limiting them to license-holders. The proposed Alaska Firearms Freedom Act, pitched by Rep. Mike Kelly, R-Fairbanks, seeks to preclude federal regulation of guns, ammunition, magazines or other accessories made and sold only within Alaska.

Kelly said federal rules should apply to firearms sold across state borders, where the federal government has clear constitutional authority to regulate interstate commerce. He cited, as justification of his plan, the Bill of Rights' protection of state and individual firearm rights.

"It says, 'Thank you just the same, but we'll control the things — powers — left to us as a state or as individual Alaskans,'" Kelly said.

The bill's presentation during last winter's legislative retreat coincided with, in Fairbanks and Outside, a wave of anti-federal government public sentiment. Kelly said he finds himself at least partly aligned with that movement and the act, along with a planned "health care freedoms" resolution, aim to reinforce Alaskans' rights in the face of federal initiatives.

The bill easily passed the state House of Representatives in April after picking up 11 co-sponsors. It now sits before the Senate Judiciary Committee, whose chairman is Anchorage Democrat Sen. Hollis French. French said Tuesday he'll schedule a committee hearing for the bill this winter, a hearing that likely will come relatively soon if sponsors have an accompanying information packet ready.

The act would allow unlicensed gun suppliers and dealers to make and sell firearms if the products remain in the state, according to Kelly's explanation.

The guns would need to prominently display the words "made in Alaska." The state attorney general's office would defend businesses prosecuted by the federal government for failure to hold a license.

The bill could insert Alaska into a broader national discussion about gun rights. Similar bills have passed in Montana and Tennessee. Fairbanks attorney Lynn Levengood said many gun rights advocates are closely following debate about gun rights following a shift in Congress and the White House to Democratic control.

"It's a fail-safe position," Levengood said. "If federal law tries to undo our Second Amendment rights, we've got a fail-safe."

Alan Gottlieb, founder of the Bellevue, Wash.-based Second Amendment Foundation, said he expects similar proposals to emerge in many states next year. Gottlieb said past court rulings could create hurdles as states look to protect intrastate gun trade. But he said if enough states jump on board, the momentum could force Congress to rethink the federal government's role in firearm regulation.

"The more states that join in, the more ammunition and clout it gives to the argument," Gottlieb said of firearm freedom laws.

Kelly's bill is House Bill 186.

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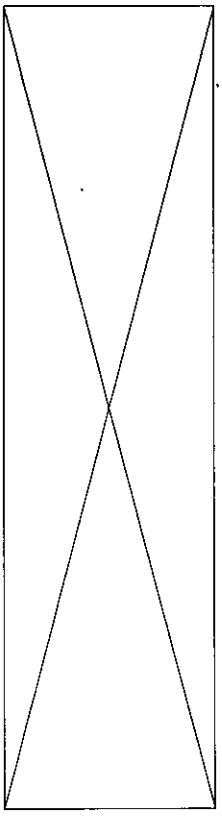

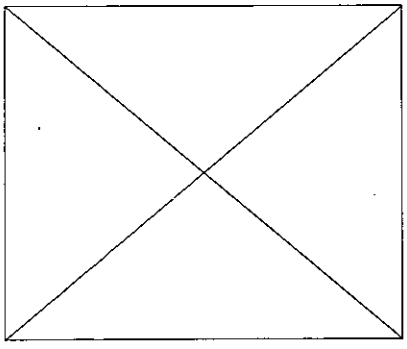

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Member
House Finance Committee

Representative Mike Kelly

House District 7

Sponsor Statement – CSHB 186(FIN)

"ALASKA FIREARMS FREEDOM ACT"

The United States Constitution gives Congress the authority to regulate Interstate Commerce between the states and 18 USC 922 makes it unlawful for any person not licensed as a manufacturer or dealer in firearms to engage in the business of manufacturing or dealing in firearms. Collectively, the Interstate Commerce Clause and 18 USC 922 are used by the federal government as a means to regulate firearms.

The Alaska Firearms Freedom Act addresses this by exempting firearms, firearm accessories, and ammunition manufactured and retained in the state from all federal firearm control laws including registration, as firearms that meet these criteria shouldn't be regulated by the federal government because they have not traveled in interstate commerce. Firearms exempt from this Act must have the words "Made in Alaska" clearly stamped on a central metallic part such as the receiver or frame. CSHB 186(FIN) also requires the Attorney General of Alaska to defend a citizen of this State who is prosecuted by the federal government under their authority to regulate interstate commerce for violating federal law regarding the manufacture, sale, transfer, or possession of a firearm, firearm accessory, or ammunition manufactured and retained in this state.

This bill frees certain firearms from federal regulation as long as certain conditions are met. It frees the state of Alaska from restrictive federal firearm regulation and allows the state to take responsible firearm regulation into her own hands. The federal government has historically used the Interstate Commerce Clause to regulate firearms and has consistently pursued legislation that imposes its will on states. Outdoorsmen, hunters, and Alaskans defending their families and property will benefit from the passage of CSHB 186(FIN).

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Member
House Finance Committee

Representative Mike Kelly

House District 7

MEMORANDUM

DATE: **January 20, 2010**

TO: **Representative Mike Kelly**

FROM: **Derek Miller**

RE: **Sectional Analysis for CSHB 186(FIN) – (26-LS0627\P.A)**

A sectional summary of a bill should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1.
Findings Section. The authority of this Act is the Second, Ninth, and Tenth Amendments to the Constitution of the United States. The Second Amendment reserves to the people the right to keep and bear arms, the Ninth Amendment guarantees to the people rights not granted in the constitution, and the Tenth Amendment guarantees to the states and their people all powers not granted to the federal government elsewhere in the constitution. The United States Congress has not expressly preempted state regulation of intrastate commerce pertaining to the manufacture on an intrastate basis of firearms, firearm accessories, and ammunition. Article I, Section 19 of the Constitution of the State of Alaska secures to the citizens and prohibits government interference with the right of individual Alaska citizens to keep and bear arms.

Section 2.
(a) A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in this state and that remains in the state is not subject to federal law or federal regulation including registration under the authority of the United States Congress to regulate intrastate commerce.

(b) This section applies to a firearm, a firearm accessory, or ammunition that is manufactured in this state from basic materials without the inclusion of significant parts imported from another state. Generic and insignificant parts that have other manufacturing or consumer applications are not firearms, firearm accessories, or ammunition and their incorporation into a firearm, firearm accessory, or ammunition manufactured in this state does not subject them to federal regulation. Basic materials, such as unmachined steel and unshaped wood are not firearms, firearm accessories, and ammunition and are not subject to federal regulation under intrastate commerce. Firearm accessories imported into this state from another state and are attached to or used in conjunction with a firearm in this state does not subject the firearm to federal regulation under intrastate commerce.

(c) A firearm manufactured or sold in this sate and not subject to federal regulation mush have the words "Made in Alaska" clearly stamped on a central metallic part, such as the receiver or frame.

(d) Permits the Attorney General of Alaska to defend a citizen of the state who is prosecuted by the government of the United States under power to regulate interstate commerce for violating federal law concerning the manufacture, sale, transfer, or possession of a firearm, a firearm accessory, or ammunition manufactured and retained within this state.

(e) Definitions section.

"Firearm accessory" – an item that is used in conjunction with or mounted on a firearm but is not essential to the basic function of a firearm. This includes: a telescope or laser sight, magazine, flash or sound suppressor, folding or aftermarket stock and grip, speedloader, ammunition carrier, and light for target illumination.

"Generic and insignificant parts" – includes springs, screws, nuts, and pins.

"Manufactured" – means a firearm a firearm accessory, or ammunition that has been created from basic materials for functional usefulness, including forging, casting, machining, or other processes for working materials.

Section 3.
Applicability section. This Act applies to firearms, firearm accessories, and ammunition that are manufactured and retained in this state after October 1, 2009.

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Member
House Finance Committee

Representative Mike Kelly

House District 7

MEMORANDUM

DATE: **April 7, 2009**

TO: **Representative Mike Kelly**

FROM: **Derek Miller**

RE: **Changes to HB 186 in CSHB 186(JUD)**
(26-LS0627\S)

Section 1. (Minor Changes)

Page 1, line 10	Page 2, line 2	Page 2, line 12
Delete "understood"	Delete "understood"	Delete "understood"
Insert "intended"	Insert "intended"	Insert "intended"

Section 2.

The CSHB 186(JUD) deleted a section requiring the Attorney General to defend a citizen of the state who is prosecuted by the government of the United States under the Congressional power to regulate interstate commerce for violation of a federal law concerning the manufacture, sale, transfer, or possession of a firearm, a firearm accessory, or ammunition manufactured and retained within this state.

Page 3, lines 18 – 26
Delete

Section 3

No changes.

Alaska State Legislature

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Member
House Finance Committee

Representative Mike Kelly

House District 7

MEMORANDUM

DATE: **April 7, 2009**

TO: **Representative Mike Kelly**

FROM: **Derek Miller**

RE: **Changes to CSHB 186(JUD) in CSHB 186(FIN)**
(26-LS0627\P)

Section 1.
No changes.

Section 2.
Added subsection (d) – page 3, lines 18 – 24.
New section (d) requires the Attorney General of Alaska to defend a citizen of the state who is prosecuted by the government of the United States under the Congressional power to regulate interstate commerce for violation of a federal law concerning the manufacture, sale, transfer, or possession of a firearm, a firearm accessory, or ammunition manufactured and retained within this state.

Re-numbered the definitions subsection accordingly.

Section 3.
No changes.

Alaska State Legislature

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Member
House Finance Committee

Representative Mike Kelly

House District 7

MEMORANDUM

DATE: **January 20, 2010**

TO: **Representative Mike Kelly**

FROM: **Derek Miller**

RE: **Changes to CSHB 186(FIN) in CSHB 186(FIN) am (26-LS0627\P.A)**

Section 1.
No changes

Section 2.
Page 3, line 18
Delete "shall"
Insert "may"

Section 3
No changes.

Firearms Freedom Act

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The Firearms Freedom Act (FFA) is sweeping the Nation.

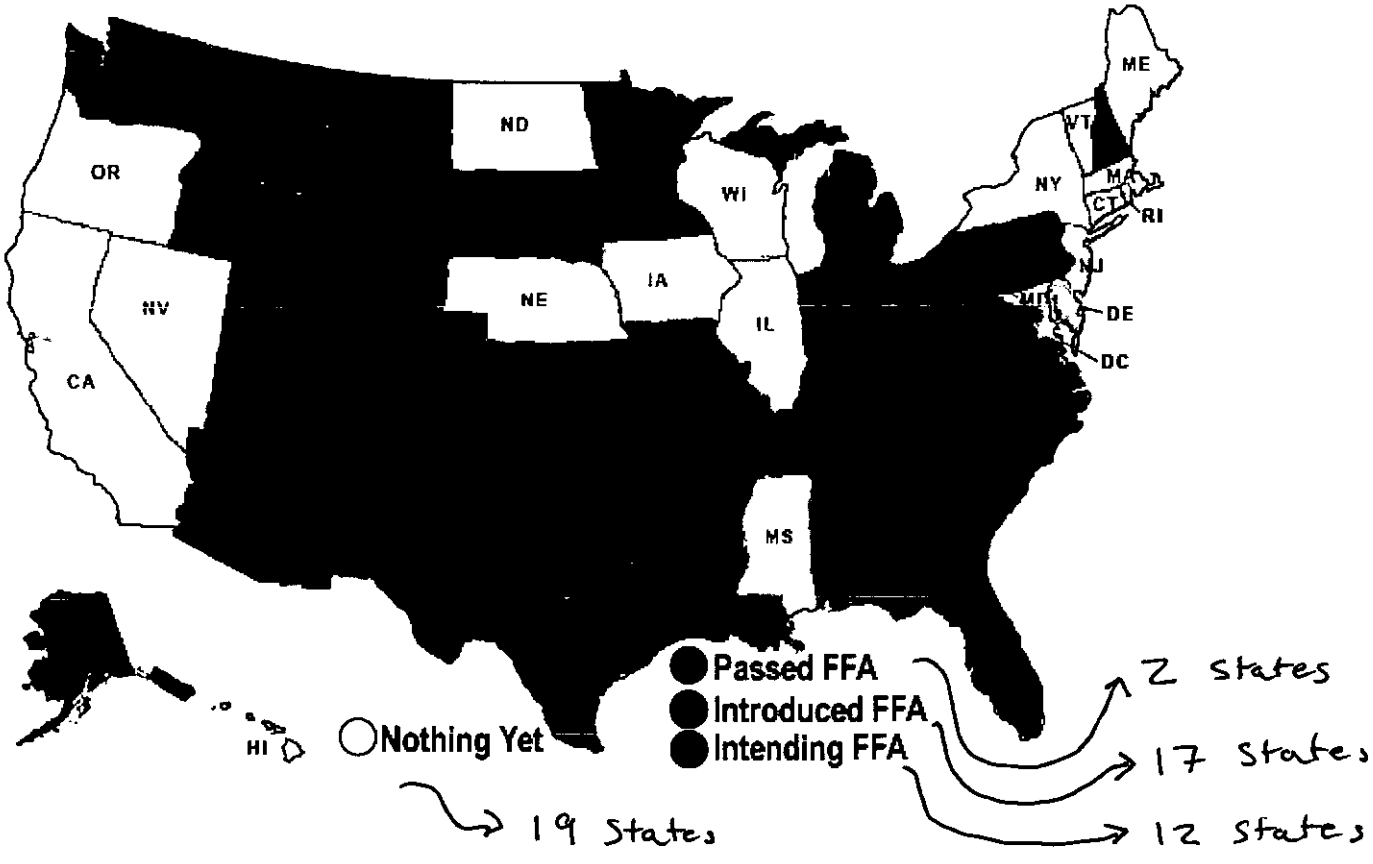
January 15th, 2010 Leave a comment Go to comments

Originally introduced and passed in Montana, the FFA declares that any firearms made and retained in-state are beyond the authority of Congress under its constitutional power to regulate commerce among the states.

Since its passage in Montana, a clone of the Firearms Freedom Act has been enacted in Tennessee, and has been introduced in the legislatures of Alaska, Texas, South Carolina, Minnesota and Florida. Legislators in many other states have announced that they will introduce FFA clones when their legislatures next convene.

The FFA is primarily a Tenth Amendment challenge to the powers of Congress under the "commerce clause," with firearms as the object – it is a state's rights exercise.

Help Fund the Lawsuit – Donate



Gun Groups File Lawsuit to Validate Montana Firearms Freedom Act

FOR IMMEDIATE RELEASE **Contact: Gary Marbut, 406-549-1252**
Alan Gottlieb, 425-454-7012

MISSOULA - The Montana Shooting Sports Association (MSSA) and the Second Amendment Foundation (SAF) filed a lawsuit in federal court in Missoula today to validate the principles and terms of the Montana Firearms Freedom Act (MFFA).

The MFFA was enacted by the 2009 Montana Legislature, signed by Governor Schweitzer, and becomes effective today, Oct. 1.

Lead attorney for the plaintiffs' litigation team is Quentin Rhoades of the Missoula firm of Sullivan, Tabaracci & Rhoades, PC. The MFFA litigation team also includes other attorneys located in Montana, New York, Florida, Arizona and Washington.

"We feel very strongly that the federal government has gone way too far in attempting to regulate a lot of activity that occurs only in-state," explained MSSA President Gary Marbut. "The Montana Legislature and governor agreed with us by enacting the MFFA. It's time for Montana and her sister states to take a stand against the bullying federal government, which the Legislature and Governor have done and we are doing with this lawsuit. We welcome the support of many other states that are stepping up to the plate with their own firearms freedom acts."

"We're happy to join this lawsuit," said SAF founder Alan Gottlieb, "because we believe this issue should be decided by the courts."

The MFFA declares that any firearms made and retained in Montana are not subject to any federal authority under the power given to Congress in the U.S. Constitution to regulate "commerce ... among the several states." The MFFA relies on the Tenth Amendment and other principles to challenge Congress' commerce clause power to regulate a wide spectrum of in-state activities. This is a states' rights effort, using firearms as the object of the exercise. The MFFA exempts Montana-made and retained firearms, firearm accessories and ammunition from federal power, saying that if these items do not cross state lines, they are strictly INTRAstate commerce, not INTERstate commerce, and not subject to federal authority.

MSSA continues to strongly urge that no Montana citizen attempt to manufacture an MFFA-covered item, even after the law takes effect today, until MSSA can prove the

principles of the MFFA in court. Until the courts rule in support of the MFFA, any such manufacturer could be subject to federal criminal prosecution.

This concept has caught national attention. Tennessee has passed a clone of the MFFA. Other clones have been introduced in Alaska, Texas, Florida, South Carolina, Pennsylvania, Michigan and Minnesota. Legislators in 20 other states have indicated that they will introduce MFFA clones in their states once their legislatures reconvene, Marbut said. Information about the Firearms Freedom Act movement is being accumulated and made publicly available at firearmsfreedomact.com.

This movement follows multi-state rejection of Washington-mandated Real ID, a law passed by Congress requiring state drivers licenses to conform to federal identification standards. The FFA movement also works in tandem with resolutions introduced or passed in many states asserting state sovereignty under the Ninth and Tenth Amendments to the U.S. Constitution. As is the rest of the Bill of Rights, the Ninth and Tenth Amendments are limitations on federal power. The Ninth Amendment says: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." The Tenth Amendment declares: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Under our federated system of government in the U.S., Marbut noted, states and the federal government are widely recognized to share power and authority, with definite limits placed on federal power by the states, the creators of the federal government. The MFFA lawsuit is designed to test and define those limits, to assert states' authority, and to limit what many see as overbearing authority assumed by Congress and the federal government.

Beginning during the New Deal, federal courts have generally upheld federal commerce clause authority, initially in the 1942 case of *Wickard v. Filburn* and continuing recently with the 2005 case of *Gonzales v. Raich*. *Raich* was the Supreme Court case allowing federal regulation of medical marijuana in California. However, other cases such as the 1995 case of *US v. Lopez* suggest that federal commerce power is not infinitely elastic, that there are limits to federal commerce power, and that it has just not yet been determined what those limits may be. The MFFA litigation is structured to clarify and affirm those limits.

The modern era of dramatically-expanded federal commerce clause power was ushered in with the *Wickard* decision. The Supreme Court allowed this considerable expansion of federal commerce power under *Wickard* only after President Roosevelt threatened to pack the Court with cronies if the Court didn't cease declaring

Roosevelt's New Deal programs to be unconstitutional and beyond federal reach. (http://en.wikipedia.org/wiki/Commerce_clause)

MSSA is the primary political advocate for Montana gun owners. SAF is a national organization headquartered in Bellevue, WA that works nationally to advance the interests of gun owners.

Copy of Complaint available at: http://www.marbut.com/complaint.html

Derek Miller

From: Maria Rensel [akconservative@ymail.com]
Sent: Thursday, February 04, 2010 5:42 PM
To: Rep. Mike Kelly
Subject: Alaska Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

I am writing in support of the Alaska Firearms Freedom Act. I am a member of the Second Amendment Task force as well as a Founder of the Interior Alaska Conservative Coalition (IACC). I am in touch on a daily basis with Alaskans in the Interior who are committed to the restoration of all of our Constitutional Rights.

This bill will be a step in the right direction for a state that has many, many citizens who want their legislature to stand up for our liberty, state sovereignty and second amendment rights as well as the entire Constitution. We are simply insisting that all levels of government uphold the Law of the Land. Why do we even have to ask?

Sincerely,

Maria Rensel

Derek Miller

From: Brandi Fleshman [bfleshman2@alaska.edu]
Sent: Thursday, February 04, 2010 12:34 PM
To: Rep. Mike Kelly
Subject: Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

Representative Kelly:

Please support the Firearms Freedom Act in the House Judiciary Committee.

Brandi Fleshman
2026 Kendall Ave.
North Pole, AK 99705

Derek Miller

From: Tomaszewski [sparkyselectricalservices@gmail.com]
Sent: Thursday, February 04, 2010 12:11 PM
To: Rep. Mike Kelly
Subject: Alaska Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

I support this Bill and would appreciate your support.

Frank Tomaszewski

2962

Derek Miller

From: Douglas Hart [dsimshart@gmail.com]
Sent: Thursday, February 04, 2010 11:23 AM
To: Rep. Mike Kelly
Subject: Alaska Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

Representative Kelly,

I wish to add my name to those who have written to you in support of this act. I know that there are many who do not believe Barack Obama can, could, or would do anything to "abridge" our 2nd Amendment Rights. The fact remains, however, that I do believe he/they (I include his 'friends') would like to curtail these rights and will do so if given the opportunity. I believe that, in these present circumstances, apathy and complacency are our Worst Enemies!

I've recently read where there are many in the current administration that wish for the United States to ratify a United Nations Treaty that would adversely affect the 2nd Amendment Rights of American Citizens. My question, sir, is how can the United States Federal Government enter into a Treaty in an Area that is NOT granted to it by the Constitution but is Reserved unto the States of the Union?

With Appreciation,

Doug Hart
Douglas S. Hart, Sr
Master Sergeant, US Army (Retired)

"ΜΟΛΩΝ ΛΑΒΕ"

Derek Miller

From: s.murray@gci.net on behalf of Susan Murray [s.murray@gci.net]
Sent: Thursday, February 04, 2010 10:37 AM
To: Rep. Mike Kelly
Subject: FFA

Follow Up Flag: Follow up
Flag Status: Completed

Please support the Alaska Firearms Freedom Act. Thank you

2964

Derek Miller

From: Al Weber [al@tlcgeneral.com]
Sent: Thursday, February 04, 2010 9:05 AM
To: Rep. Mike Kelly
Subject: Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

Mr. Kelly,

Thank you for the work you are doing to restore states' rights in Alaska and the USA. Our Federal Government has arrogantly usurped power not granted to it by the Constitution and as a result it has grown into a dangerous monster with a salacious appetite for more and more power. The Firearms Freedom Act is a big step in returning the power to the states and to the people as intended by the framers of our Constitution as they clearly stated in the 10th Amendment.

The Fire Arms Freedom Act is big step in the right direction, but it is only the first step. We have a long way to go to undo the damage that has and is being done.

God Bless you and all the men and women who are willing to take a stand for what is right rather than for what is convenient. You are in my prayers. Keep up the good work.

Al Weber
<><
cell 907 378-9427
work 907-479-8810

Derek Miller

From: Phil Evans [philevans@pbevans.com]
Sent: Thursday, February 04, 2010 8:59 AM
To: Rep. Mike Kelly
Subject: Fire Arms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

Dear Rep Kelly:

I wholeheartedly support the Fire Arms Freedom Act. For states like Alaska, firearms are an integral part of our lively hood. Hunting with all of the associated support is an important industry for our state. Shooting sports and all of us who are involved with the various ranges help cultivate the talented shooters who go on to UAF Nanooks Rifle Team and make us national champions.

Simply put, our second amendment rights shall not be infringed. Many have died to defend our Constitution. Currently, there are those who have never served in the military to defend our freedoms who are hell bent on taking them away. We must stand together to protect our rights.

Thank you for your service!

Phil Evans

Derek Miller

From: Carl St.George [cstgeorge@gci.com]
Sent: Thursday, February 04, 2010 8:40 AM
To: Rep. Mike Kelly
Subject: Firearms Freedom Act

Follow Up Flag: Follow up
Flag Status: Completed

Hey Mike,
I just wanted to take a minute to thank you for everything you are & have been doing to protect our 2nd Amendment rights, and our State sovereignty. Please do everything in your power to get this act of legistlation through. Have a good day, and may God bless you & your work there.

Thanks,
Carl St. George
330 Gold Claim Ave
Fairbanks AK 99712

Derek Miller

From: akinvest@gci.net on behalf of Rodger Hopp [akinvest@gci.net]
Sent: Thursday, February 04, 2010 8:19 AM
To: Rep. Mike Kelly
Subject: FFA

Follow Up Flag: Follow up
Flag Status: Completed

Rep Mike Kelly, I am writing to show support for the "Firearms Freedom Act" and related issues currently being considered. I view this as a very important action that is sorely needed to help establish the position of Alaska sovereignty from oppressive, restrictive and highly regulatory actions from legislators and regulators in the Federal Government. You have a massive base of support in the Interior. Thanks Mike!
Sincerely, Rodger P Hopp

Derek Miller

From: Michael Lockery [northern_templar@yahoo.com]
Sent: Thursday, February 04, 2010 8:16 AM
To: Rep. Mike Kelly
Subject: Firearms Freedom act

Follow Up Flag: Follow up
Flag Status: Completed

Mr. Kelly, Please forward this letter to whom ever you need too. I support this act 100% I am an active voter and plan on continuing to fight the politcians (no matter which party) who are trying to sell our God given rights away. Thank you for your service, Michael Lockery Two Rivers, Alaska.

Montana Firearms Freedom Act

From Wikipedia, the free encyclopedia

The **Montana Firearms Freedom Act**, also known as Montana House Bill Number 246,[1] was introduced January 13, 2009 by Joel Boniek, Gerald Bennett, Edward Butcher, Aubyn Curtiss, Lee Randall and Wendy Warburton. The bill was signed in to law by Governor Brian Schweitzer on April 15, 2009 and became effective on October 1, 2009. On that effective date, supporters of the law filed suit as a test case in federal district court.

The law exempts firearms made and kept in the state of Montana from United States federal firearms regulations. It also has no requirements for registration, background checks or dealer licensing. It applies to firearms other than machineguns, along with ammunition and accessories such as silencers,[2] provided that these items are manufactured in the state, and do not leave the state.

It makes several references to a contract made between the United States and the state and people of Montana. It goes on to say the United States agreed to the compact and it was adopted by Montana and the United States in 1889.

Contents

- 1 Legislative declarations of authority
- 2 Definitions
- 3 Prohibitions
- 4 Exceptions
- 5 Marking of firearms
- 6 Codification
- 7 Applicability
- 8 Similar laws and expected challenges
- 9 ATF response
- 10 Legal Challenge
- 11 External links
- 12 References

Legislative declarations of authority

The legislature declares that the authority for this law is derived from the Second, Ninth and Tenth amendments from the Bill of Rights to the United States Constitution. This act reaffirms the right of the people to keep and bear arms. It guarantees to the people rights not mentioned in the constitution, as well as to the states and their people all powers not

granted to the federal government elsewhere in the constitution. The law also states that Article II, section 12, of the Montana constitution prohibits government interference with the right of individual Montana citizens to keep and bear arms.

Definitions

This section defines, the borders of Montana, what firearms accessories, as well as, generic and insignificant parts are and defines what manufactured means in relation to this law.

Prohibitions

This law prohibits federal law or federal regulation on any personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Montana and that remains within the borders of Montana.

Exceptions

However, this law does not apply to a firearm that cannot be carried and used by one person, a firearm that has a bore diameter greater than 1½ inches and uses smokeless powder, ammunition that uses exploding projectiles or fully automatic firearms.

Marking of firearms

Applicable firearms must be clearly stamped "Made in Montana" on a central metallic part.

Codification

This law has been assigned Chapter 205 in Title 30, of the Montana Code Annotated.[3]

Applicability

This law became effective October 1, 2009 and applies to the items defined manufactured after that date.

Similar laws and expected challenges

The drafters of the law intend setting off a legal challenge with the Bureau of Alcohol, Tobacco, Firearms and Explosives.[4] Currently only Montana and Tennessee have passed these bills into law. However Texas, Alaska, Utah, Minnesota, Ohio, South

Carolina and most recently Florida[5] have introduced similar bills.[4]

Supporters assert that the legislation is really about curbing excessive Federal regulation in areas such as education, animal management and intrastate trade.[4]

ATF response

On July 16, 2009, the Bureau of Alcohol, Tobacco, Firearms and Explosives published an open letter to Montana Federal Firearms Licensees, clarifying the bureau's position on the Montana Firearms Freedom Act. According to this letter, "... because the Act conflicts with Federal firearms laws and regulations, Federal law supersedes the Act, and all provisions of the Gun Control Act and the National Firearms Act, and their corresponding regulations, continue to apply." The letter then summarizes ATF requirements for FFL holders.[6]

On August 24, 2009, the Montana Shooting Sports Association and the Second Amendment Foundation announced that they were planning on filing a lawsuit on October 1, 2009 — the date that the Montana Firearms Freedom Act became effective — to stop federal regulations from being enforced for the firearms covered under the new state law.[7]

Legal Challenge

Plaintiffs filed suit in support of the law, in federal district court, on October 1, 2009. These plaintiffs are the Montana Shooting Sports Association, the Second Amendment Foundation, and MSSA president Gary Marbut. The legal complaint states that Marbut "wishes to manufacture and sell small arms and small arms ammunition to customers exclusively in Montana, pursuant to the MFFA, without complying with the NFA or the GCA, or other applicable federal laws."[8][9][10][11] One firearms manufacturer in Kalispell, Montana has stated that because they cannot afford to litigate, they do not plan to sell their AR-15s or AR-10/AR-15 family receivers to private parties without a Form 4473. But they did state that they intend to do so, once a court ruling clears the way.[12]

External links

- The Firearms Freedom Act

References

1. ^ 2009 Montana Legislature, HB 246
2. ^ Ernest Hancock (4 May 2009). "Montana Governor Signs Revolutionary New Gun Law".

Republic Magazine. http://www.republicmagazine.com/montana-governor-signs-revolutionary-new-gun-law/. Retrieved 2009-05-09.
3. ^ LAWS Detailed Bill Information Page, HB 246
4. ^ [a] [b] [c] Kahrin Deines (29 April 2009). "Montana fires a warning shot over states' rights". *Associated Press*. http://www.helenair.com/articles/2009/04/16/legi/top/65st_090416_statesrights.txt. Retrieved 2009-05-08.
5. ^ House Bill 21, Florida House of Representatives
6. ^ "Open Letter to All Montana Federal Firearms Licensees", Bureau of Alcohol, Tobacco, Firearms and Explosives, July 16, 2009
7. ^ McKee, Jennifer (24 August 2009). "Missoula Gun Rights Group Will Challenge Feds over Montana Firearms Freedom Act", *The Missoulan*
8. ^ [1], Complaint (PDF)
9. ^ [2] AP: "Montana to feds: we don't want your gun control"
10. ^ [3] Montana News Station: "Gun groups file suit supporting Montana law"
11. ^ [4] CBS: "Montana Gun Suit Challenges Federal Authority"
12. ^ http://www.sonju.net/faq.html

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MEMORANDUM April 8, 2009

SUBJECT: Interstate Commerce Clause and CSHB 186(JUD)
(Work Order No. 26-LS0627\S)

TO: Representative Lindsey Holmes

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have asked if the declarations in CSHB 186(JUD) regarding interstate and intrastate commerce would successfully prevent someone from being prosecuted for a firearms violation under federal law. In my opinion, CSHB 186(JUD) would not prevent the federal government from prosecuting someone for a firearms violation under federal law.[1]

The commerce clause is found at Article I, § 8, of the Constitution of the United States:

> The Congress shall have power . . . [t]o regulate commerce with foreign nations, and among the several states and with the Indian tribes . . . .

The extent of the commerce clause was first interpreted to not apply to commerce "which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States."[2] Over the years, "certain categories of activity such as 'production,' 'manufacturing,' and 'mining' were within the province of state governments, and thus were beyond the power of Congress under the Commerce Clause."[3] As the interpretation of the commerce clause continued, the United States Supreme Court allowed incidental effects on purely interstate commerce if that

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[1] 18 U.S.C. §§ 921 - 931 regulate certain firearms and activities. For example, 18 U.S.C. § 922(g) prohibits a felon from possessing in or affecting commerce firearms or ammunition.

[2] *Gibbons v. Ogden*, 9 Wheat. 1, 189 - 190 (1824)

[3] *United States v. Lopez*, 514 U.S. 549 (1995).

regulation was necessary to regulate interstate commerce.[4] The development of the commerce clause continued as explained in this excerpt from *United States v. Lopez*:[5]

> In *A. L. A. Schecter Poultry Corp. v. United States*, 295 U.S. 495, 550 (1935), the Court struck down regulations that fixed the hours and wages of individuals employed by an intrastate business because the activity being regulated related to interstate commerce only indirectly. In doing so, the Court characterized the distinction between direct and indirect effects of intrastate transactions upon interstate commerce as "a fundamental one, essential to the maintenance of our constitutional system." *Id.*, at 548. Activities that affected interstate commerce directly were within Congress' power; activities that affected interstate commerce indirectly were beyond Congress' reach. *Id.*, at 546. The justification for this formal distinction was rooted in the fear that otherwise "there would be virtually no limit to the federal power and for all practical purposes we should have a completely centralized government." *Id.*, at 548.
>
> Two years later, in the watershed case of *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937), the Court upheld the National Labor Relations Act against a Commerce Clause challenge, and in the process, departed from the distinction between "direct" and "indirect" effects on interstate commerce. *Id.*, at 36-38 ("The question [of the scope of Congress' power] is necessarily one of degree"). The Court held that intrastate activities that "have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions" are within Congress' power to regulate. *Id.*, at 37.
>
> In *United States* v. *Darby*, 312 U.S. 100 (1941), the Court upheld the Fair Labor Standards Act, stating:
>
> "The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce." *Id.*, at 118.
>
> See also *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 119 (1942) (the commerce power "extends to those intrastate activities which

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[4] *Houston, E. & W. T. R. Co. v. United States*, 234 U.S. 342 (1914)

[5] *United States v. Lopez*, 514 U. S. 549 (1995) (syllabus and majority opinion enclosed).

in a substantial way interfere with or obstruct the exercise of the granted power").

In *Wickard* v. *Filburn*, the Court upheld the application of amendments to the Agricultural Adjustment Act of 1938 to the production and consumption of home grown wheat. 317 U. S., at 128-129. The *Wickard* Court explicitly rejected earlier distinctions between direct and indirect effects on interstate commerce, stating:

"[E]ven if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.' " *Id.*, at 125.

The *Wickard* Court emphasized that although Filburn's own contribution to the demand for wheat may have been trivial by itself, that was not "enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial." *Id.*, at 127-128.

Jones & Laughlin Steel, *Darby*, and *Wickard* ushered in an era of Commerce Clause jurisprudence that greatly expanded the previously defined authority of Congress under that Clause. In part, this was a recognition of the great changes that had occurred in the way business was carried on in this country. Enterprises that had once been local or at most regional in nature had become national in scope. But the doctrinal change also reflected a view that earlier Commerce Clause cases artificially had constrained the authority of Congress to regulate interstate commerce.

But even these modern era precedents which have expanded congressional power under the Commerce Clause confirm that this power is subject to outer limits. In *Jones & Laughlin Steel*, the Court warned that the scope of the interstate commerce power "must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." 301 U. S., at 37; see also *Darby*, *supra*, at 119-120 (Congress may regulate intrastate activity that has a "substantial effect" on interstate commerce); *Wickard*, *supra*, at 125 (Congress may regulate activity that "exerts a substantial economic effect on interstate commerce"). Since that time, the Court has heeded that warning and undertaken to decide whether a rational basis existed for concluding that a regulated activity sufficiently affected interstate

commerce. See, *e.g., Hodel* v. *Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 276-280 (1981); *Perez* v. *United States*, 402 U.S. 146, 155-156 (1971); *Katzenbach* v. *McClung*, 379 U.S. 294, 299-301 (1964); *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241, 252-253 (1964).

Similarly, in *Maryland* v. *Wirtz*, 392 U.S. 183 (1968), the Court reaffirmed that "the power to regulate commerce, though broad indeed, has limits" that "[t]he Court has ample power" to enforce. *Id.*, at 196, overruled on other grounds, *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), overruled by *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985). In response to the dissent's warnings that the Court was powerless to enforce the limitations on Congress' commerce powers because "[a]ll activities affecting commerce, even in the minutest degree, *[Wickard]*, may be regulated and controlled by Congress," 392 U.S., at 204 (Douglas, J., dissenting), the *Wirtz* Court replied that the dissent had misread precedent as "[n]either here nor in *Wickard* has the Court declared that Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities," *id.*, at 197, n. 27. Rather, "[t]he Court has said only that where *a general regulatory statute bears a substantial relation to commerce*, the *de minimis* character of individual instances arising under that statute is of no consequence." *Ibid.* (first emphasis added).

Consistent with this structure, we have identified three broad categories of activity that Congress may regulate under its commerce power. *Perez* v. *United States*, *supra*, at 150; see also *Hodel* v. *Virginia Surface Mining & Reclamation Assn.*, *supra*, at 276-277. First, Congress may regulate the use of the channels of interstate commerce. See, *e.g., Darby*, 312 U. S., at 114; *Heart of Atlanta Motel*, *supra*, at 256 (" '[T]he authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question.' " (quoting *Caminetti* v. *United States*, 242 U.S. 470, 491 (1917)). Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. See, *e.g., Shreveport Rate Cases*, 234 U.S. 342 (1914); *Southern R. Co.* v. *United States*, 222 U.S. 20 (1911) (upholding amendments to Safety Appliance Act as applied to vehicles used in intrastate commerce); *Perez*, *supra*, at 150 ("[F]or example, the destruction of an aircraft (18 U.S.C. § 32), or . . . thefts from interstate shipments (18 U.S.C. § 659)"). Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *Jones & Laughlin Steel*, 301 U. S., at 37, *i.e.*,

> those activities that substantially affect interstate commerce. *Wirtz*, *supra*, at 196, n. 27.
>
> Within this final category, admittedly, our case law has not been clear whether an activity must "affect" or "substantially affect" interstate commerce in order to be within Congress' power to regulate it under the Commerce Clause. Compare *Preseault* v. *ICC*, 494 U.S. 1, 17 (1990), with *Wirtz*, *supra*, at 196, n. 27 (the Court has never declared that "Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities"). We conclude, consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity "substantially affects" interstate commerce.

Lopez, at 554 - 559. The *Wickard* case is particularly relevant as it involved an individual farmer who grew his own wheat for his own consumption. As noted, Wickard was still subject to federal regulation even though as an individual his potential effect on interstate commerce was small but when combined with others the court noted that the potential effect on interstate commerce could be great.

In *Lopez*, the Court struck down 18 U.S.C. § 922(q), the "Gun Free School Zones Act of 1990," which made it a federal crime to possess a gun within a school zone. The Court found that

> Section 922(q) is a criminal statute that by its terms has nothing to do with "commerce" or any sort of economic enterprise, however broadly one might define those terms. Section 922(q) is not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under our cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce.
>
> Second, §922(q) contains no jurisdictional element which would ensure, through case by case inquiry, that the firearm possession in question affects interstate commerce.
>
> . . . .
>
> The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

Id., at 561. See also *United States v. Morrison*, 529 U.S. 598 (2000) (striking down the "Violence Against Women Act" that created civil liability for the commission of any gender based violent crime and noting that again there was no "express jurisdictional element which might limit its reach" to those acts connected with or affecting interstate commerce).[6]

The limits of the *Lopez* and *Morrison* decisions were found in the context of medical marijuana. In *Gonzales v. Raich*, 545 U.S. 1 (2005),[7] the Court held the commerce clause authorized Congress to enact federal laws regulating and criminalizing activities involving controlled substances even if those activities were wholly intrastate and were pursuant to a state statutory scheme that authorized the activities.

> Unlike those at issue in *Lopez* and *Morrison*, the activities regulated by the CSA [Controlled Substances Act] are quintessentially economic. "Economics" refers to "the production, distribution, and consumption of commodities." Webster's Third New International Dictionary 720 (1966). The CSA is a statute that regulates the production, distribution, and consumption of commodities for which there is an established, and lucrative, interstate market. Prohibiting the intrastate possession or manufacture of an article of commerce is a rational (and commonly utilized) means of regulating commerce in that product. Such prohibitions include specific decisions requiring that a drug be withdrawn from the market as a result of the failure to comply with regulatory requirements as well as decisions excluding Schedule I drugs entirely from the market. Because the CSA is a statute that directly regulates economic, commercial activity, our opinion in *Morrison* casts no doubt on its constitutionality.
>
> . . .
>
> Second, limiting the activity to marijuana possession and cultivation "in accordance with state law" cannot serve to place respondents' activities beyond congressional reach. The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail. It is beyond peradventure that federal power over commerce is " 'superior to that of the States to provide for the welfare or necessities of their inhabitants,' " however legitimate or dire those necessities may be. *Wirtz*, 392 U.S., at 196 (quoting *Sanitary Dist. of Chicago v. United States*, 266 U.S. 405, 426 (1925)). See also 392 U.S., at 195-196; *Wickard*, 317 U.S., at 124 (" '[N]o form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress' "). Just as state acquiescence to federal regulation

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[6] Syllabus and majority opinion enclosed.

Syllabus and majority opinion enclosed.

> cannot expand the bounds of the Commerce Clause, see, *e.g.*, *Morrison*, 529 U.S., at 661-662 (Breyer, J., dissenting) (noting that 38 States requested federal intervention), so too state action cannot circumscribe Congress' plenary commerce power. See *United States* v. *Darby*, 312 U.S. 100, 114 (1941) ("That power can neither be enlarged nor diminished by the exercise or non-exercise of state power").

Raich, *id.* at 25 - 26.

The *Wickard* and *Raich* cases seem especially relevant to CSHB 168(JUD). They clearly stand for the proposition that the Commerce Clause allows federal regulation of purely intrastate activities and products if Congress could rationally conclude that those activities could enter or affect interstate commerce. The production of wheat in *Wickard* and the production of marijuana in *Raich* could enter and could affect interstate commerce. Similarly, the production of a firearm, even if performed wholly intrastate and with materials found only in that state, could seemingly affect interstate commerce in firearms generally.

Indeed, this was the decision of the Ninth Circuit Court of Appeals in *United States v. Stewart*, 451 F.3d 1071 (9th Cir. 2006).[8] Robert Stewart manufactured homemade machine guns and machine gun kits wholly within California and was convicted of possessing a machine gun in violation of federal law. Stewart appealed and the Ninth Circuit Court of Appeals, based upon *Lopez* and *Morrison*, and before *Raich* was decided, initially reversed his conviction finding that the simple possession of homemade machines did not have a substantial effect on interstate commerce. See *United States v. Stewart*, 348 F.3d 1132(2003). After the United States Supreme Court decided *Raich*, the Supreme Court vacated the decision of the Ninth Circuit and told the court to reconsider their opinion in light of *Raich*.[9] On remand, the Ninth Circuit found that Congress had the authority to regulate machine guns, including one's wholly a product of intrastate commerce. The court found that "[h]omemade guns, even those with a unique design, can enter the interstate market and affect supply and demand."[10]

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Enclosures

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[8] Opinion enclosed.

[9] *United States v. Stewart*, 545 U.S. 1112 (2005).

[10] *Stewart*, 451 F.3d at 1077.

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC 20226

JUL 16 2009

OPEN LETTER TO ALL TENNESSEE FEDERAL FIREARMS LICENSEES

The purpose of this letter is to provide guidance on your obligations as a Federal firearms licensee ("FFL"). The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") is dedicated to your success in meeting your requirements as a Federal firearms licensee. The following guidance is intended to assist you in accomplishing this goal.

The passage of the Tennessee Firearms Freedom Act, H.B. 1796, 106th Leg. (Tenn. 2009) 1796 ("Act"), effective June 19, 2009, has generated questions from industry members as to how this State law may affect them while engaged in a firearms business activity. The Act purports to exempt personal firearms, firearms accessories, and ammunition manufactured in the State, and which remain in the State, from most Federal firearms laws and regulations. However, because the Act conflicts with Federal firearms laws and regulations, Federal law supersedes the Act, and all provisions of the Gun Control Act and the National Firearms Act, and their corresponding regulations, continue to apply.

As you may know, Federal law requires a license to engage in the business of manufacturing firearms or ammunition, or to deal in firearms, even if the firearms or ammunition remain within the same state. All firearms manufactured by a licensee must be properly marked. Additionally, each licensee must record the type, model, caliber or gauge, and serial number of each firearm manufactured or otherwise acquired, and the date such manufacture or other acquisition was made. The information required must be recorded in the licensee's records not later than the seventh day following the date such manufacture or other acquisition was made. Firearms transaction records and NICS background checks must be conducted prior to disposition of firearms to unlicensed persons. These, as well as other Federal requirements and prohibitions, apply whether or not the firearms or ammunition have crossed state lines.

If you have any questions regarding the Federal firearms laws and regulations, please contact your local ATF office. ATF works closely with the firearms industry and appreciates the important role the industry plays in combating violent crime. A listing of ATF office phone numbers can be found at http://www.atf.gov/contact/field.htm.

Carson W. Carroll
Assistant Director
(Enforcement Programs and Services)

ATF – Bureau of Alcohol, Tobacco, Firearms and Explosives

Identify Prohibited Persons

The Gun Control Act (GCA) makes it unlawful for certain categories of persons to ship, transport, receive, or possess firearms. 18 USC 922(g). Transfers of firearms to any such prohibited persons are also unlawful. 18 USC 922(d).

These categories include any person:

Under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year;

convicted of a crime punishable by imprisonment for a term exceeding one year;

who is a fugitive from justice;

who is an unlawful user of or addicted to any controlled substance;

who has been adjudicated as a mental defective or has been committed to any mental institution;

who is an illegal alien;

who has been discharged from the military under dishonorable conditions;

who has renounced his or her United States citizenship;

who is subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner; or

who has been convicted of a misdemeanor crime of domestic violence (enacted by the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, effective September 30, 1996). 18 USC 922(g) and (n).

The Arms Export Control Act (AECA) prohibits the issuance of licenses to persons who have been convicted of:

Section 38 of the AECA, 22 USC 2778;

Section 11 of the Export Administration Act of 1979, 60 USC App. 2410;

Sections 7903, 794, or 798 of Title 18, USC, relating to espionage involving defense or classified information;

Section 16 of the Trading with the Enemy Act, 50 USC App. 16;

Section 30A of the Securities Exchange Act of 1934, 15 USC 78dd-1, or section 104 of the Foreign Corrupt Practices Act, 15 USC 78dd-2;

Chapter 105 of Title 18, USC, relating to sabotage;

Section 4(b) of the Internal Security Act of 1950, 50 USC 783(b), relating to communication of classified information;

Sections 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954, 42 USC 2077 2122, 2131, 2234, 2272, 2275, and 2276;

Section 601 of the National Security Act of 1947, 50 USC 421, relating to the protection of the identity of undercover intelligence officers, agents, and other sources;

Section 371 of Title 17, USC, when it involves conspiracy to violate any of the above statutes; and

International Emergency Economic Powers Act, 50 USC 1702 and 1705.

Prohibitions on Certain Types of Firearms

Federal firearms laws prohibit transactions in and possession of certain types of firearms. These include, for example:

Transfer or possession of a machinegun, 18 USC 922(o);

Manufacture, importation, sale, or possession of any firearm not detectable by airport security devices, 18 USC 922(p);

and Possession of a firearm not registered as required by the National Firearms Act (NFA), 26 USC 5861(d).

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ATF – Bureau of Alcohol, Tobacco, Firearms and Explosives

Manufacturers

1. Must a person who engages in the business of manufacturing and importing firearms have a separate license to cover each type of business?
2. May a person licensed as a manufacturer of ammunition also manufacture firearms?
3. May a person licensed as a manufacturer of firearms also manufacture ammunition?
4. Is a person who reloads ammunition required to be licensed as a manufacturer?
5. Must a licensed manufacturer pay excise taxes?
6. May a person engage in gunsmithing under a dealer's license (type 01), or do gunsmiths need to be licensed as "manufacturers" of firearms?

Q: Must a person who engages in the business of manufacturing and importing firearms have a separate license to cover each type of business?

Yes. A separate license is required to cover each of these types of businesses.

[27 CFR 478.41]

Q: May a person licensed as a manufacturer of ammunition also manufacture firearms?

No. A person licensed as a manufacturer of ammunition may not manufacture firearms unless he or she obtains a license as a firearms manufacturer.

Q: May a person licensed as a manufacturer of firearms also manufacture ammunition?

Yes. The person may also manufacture ammunition (not including destructive device ammunition or armor piercing ammunition) without obtaining a separate license as a manufacturer of ammunition.

Q: Is a person who reloads ammunition required to be licensed as a manufacturer?

Yes, if the person engages in the business of selling or distributing reloads for the purpose of livelihood and profit. No, if the person reloads only for personal use.

[18 U.S.C. 922(a) (i) and 923(a), 27 CFR 478.41]

Q: Must a licensed manufacturer pay excise taxes?

Yes. Licensed manufacturers incur excise tax on the sale of firearms and ammunition manufactured. See Item 17, "Federal Excise Tax" in the General Information section of this publication.

Q: May a person engage in gunsmithing under a dealer's license (type 01), or do gunsmiths need to be licensed as "manufacturers" of firearms?

Generally, a person engaged in gunsmithing requires only a dealer's license (type 01). There are circumstances in which a gunsmith might require a manufacturing license. Generally, a person should obtain a license as a manufacturer of firearms if the person is: 1. performing operations which create firearms or alter firearms (in the case of alterations, the work is not being performed at the request of customers, rather the person who is altering the firearms is purchasing them, making the changes, and then reselling them), 2. is performing the operations as a regular course of business or trade, and 3. is performing the operations for the purpose of sale or distribution of the firearms.

Below are examples of operations performed on firearms and guidance as to whether or not such operations would be considered manufacturing under the Gun Control Act (GCA). These examples do not address the question of whether the operations are considered manufacturing for purposes of determining excise tax. Any questions concerning the payment of excise tax should be directed to the Alcohol and Tobacco Tax and Trade Bureau, U.S. Department of the Treasury.

1. A company produces a quantity of firearm frames or receivers for sale to customers who will assemble firearms.

   The company is engaged in the business of manufacturing firearms and should be licensed as a manufacturer of firearms.

2. A company produces frames or receivers for another company that assembles and sells the firearms.

   Both companies are engaged in the business of manufacturing firearms and each should be licensed as a manufacturer of firearms.

3. A company provides frames to a subcontractor company that performs machining operations on the frames and returns the frames to the original company which assembles and sells the completed firearms.

   Both companies are engaged in the business of manufacturing firearms and should be licensed as manufacturers of firearms.

4. A company produces barrels for firearms and sells the barrels to another company that assembles and sells complete firearms.

   Because barrels are not firearms, the company that manufactures the barrels is not a manufacturer of firearms. The company that assembles and sells the firearms should be licensed as a manufacturer of firearms.

5. A company receives firearm frames from individual customers, attaches stocks and barrels and returns the firearms to the customers for the customers' personal use.

   The operations performed on the firearms were not for the purpose of sale or distribution. The company should be licensed as a dealer or gunsmith, not as a manufacturer of firearms.

6. A company acquires one receiver, assembles one firearm, and sells the firearm.

   The company is not manufacturing firearms as a regular course of trade or business and is not engaged in the business of manufacturing firearms. This company does not need to be licensed as a manufacturer.

7. An individual acquires frames or receivers and assembles firearms for his personal use, not for sale or distribution.

   The individual is not manufacturing firearms for sale or distribution and is not required to be a licensed manufacturer.

8. A gunsmith regularly buys military type firearms, Mausers etc., and â€œsporterizesâ€ them for resale.

   The gunsmith is in the business of manufacturing firearms and should be licensed as a manufacturer.

9. A gunsmith buys semiautomatic pistols or revolvers and modifies the slides to accept new Style f sights. The sights are not usually sold with these firearms and do not attach to the existing mounting openings.

   The gunsmith offers these firearms for sale. This would be considered the manufacturing of firearms and the gunsmith should be licensed as a manufacturer.

10. A gunsmith buys government model pistols and installs â€œdrop-inâ€ precision trigger parts or other â€œdrop-in partsâ€ for the purpose of resale.

    This would be considered the manufacturing of firearms, as the gunsmith is purchasing the firearms, modifying the firearms and selling them. The gunsmith should be licensed as a manufacturer.

11. A gunsmith buys surplus military rifles, bends the bolts to accept a scope, and then drills the receivers for a scope base. The gunsmith offers these firearms for sale.

    This would be considered the manufacturing of firearms and the gunsmith should be licensed as a manufacturer.

12. A gunsmith buys surplus military rifles or pistols and removes the stocks, adds new stocks or pistol grips, cleans the firearms, then sends the firearms to a separate contractor for bluing. These firearms are then sold to the public.

    This would be considered manufacturing of firearms and the gunsmith should be licensed as a manufacturer.

13. A company purchases surplus firearms, cleans the firearms then offers them for sale to the public.

    The company does not need to be licensed as a manufacturer.

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TITLE 18 > PART I > CHAPTER 44 > § 921

§ 921. Definitions

(a) As used in this chapter—

(1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(3) The term "firearm" means

(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;

(B) the frame or receiver of any such weapon;

(C) any firearm muffler or firearm silencer; or

(D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means—

(A) any explosive, incendiary, or poison gas—

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684 (2), 4685, or 4686 of title 10; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

(5) The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than twenty-six inches.

(7) The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

(8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

(9) The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this chapter.

(10) The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter.

(11) The term "dealer" means

(A) any person engaged in the business of selling firearms at wholesale or retail,

(B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or

(C) any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter.

(12) The term "pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money.

(13) The term "collector" means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define, and the term "licensed collector" means any such person licensed under the provisions of this chapter.

(14) The term "indictment" includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

(15) The term "fugitive from justice" means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

(16) The term "antique firearm" means—

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or

(B) any replica of any firearm described in subparagraph (A) if such replica—

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or

(C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

(17)

(A) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellent powder designed for use in any firearm.

(B) The term "armor piercing ammunition" means—

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

(C) The term "armor piercing ammunition" does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

(18) The term "Attorney General" means the Attorney General of the United States [1]

(19) The term "published ordinance" means a published law of any political subdivision of a State which the Attorney General determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Attorney General, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter.

(20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(21) The term "engaged in the business" means—

(A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

(B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;

(C) as applied to a dealer in firearms, as defined in section 921 (a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

(D) as applied to a dealer in firearms, as defined in section 921 (a)(11)(B), a person who devotes time, attention, and labor to

engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

(E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and

(F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

(22) The term "with the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection: Provided, That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this paragraph, the term "terrorism" means activity, directed against United States persons, which—

(A) is committed by an individual who is not a national or permanent resident alien of the United States;

(B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

(C) is intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

(23) The term "machinegun" has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845 (b)).

(24) The terms "firearm silencer" and "firearm muffler" mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned,

and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

(25) The term "school zone" means—

(A) in, or on the grounds of, a public, parochial or private school; or

(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

(26) The term "school" means a school which provides elementary or secondary education, as determined under State law.

(27) The term "motor vehicle" has the meaning given such term in section 13102 of title 49, United States Code.

(28) The term "semiautomatic rifle" means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

(29) The term "handgun" means—

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

[(30) , (31) Repealed. Pub. L. 103–322, title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000.]

(32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

(33)

(A) Except as provided in subparagraph (C),[2] the term "misdemeanor crime of domestic violence" means an offense that—

(i) is a misdemeanor under Federal, State, or Tribal [3] law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person

similarly situated to a spouse, parent, or guardian of the victim.

(B)

(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(34) The term "secure gun storage or safety device" means—

(A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device;

(B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or

(C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

(35) The term "body armor" means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the

product is to be worn alone or is sold as a complement to another product or garment.

(b) For the purposes of this chapter, a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.

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[1] So in original. Probably should be followed by a period.

[2] So in original. No subparagraph (C) has been enacted.

[3] So in original. Probably should not be capitalized.

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TITLE 18 > PART I > CHAPTER 44 > § 922

§ 922. Unlawful acts

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails

pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to

(A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and

(B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, unless—

(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) the manufacture of such ammunition is for the purpose of exportation; or

(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) is for the purpose of exportation; or

(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General; [1]

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee

knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are XXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXX

Signature XXXXXXXXX Date XXXX."

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923 (g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(26)));

(6) who [2] has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)

(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment

in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)

(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)

(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or

having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(l) Except as provided in section 925 (d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(o)

(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to—

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(p)

(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm—

(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(2) For purposes of this subsection—

(A) the term "firearm" does not include the frame or receiver of any such weapon;

(B) the term "major component" means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

(C) the term "Security Exemplar" means an object, to be fabricated at the direction of the Attorney General, that is—

(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17–4 PH stainless steel in a shape resembling a handgun; and

(ii) suitable for testing and calibrating metal detectors:

Provided, however, That at the close of such 12-month period, and at appropriate times thereafter the Attorney General shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a "Security Exemplar" which contains 3.7 ounces of material type 17–4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology.

(3) Under such rules and regulations as the Attorney General shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm.

The Attorney General shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(4) The Attorney General shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

(5) This subsection shall not apply to any firearm which—

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Attorney General and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988.

(q)

(1) The Congress finds and declares that—

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary [3] the House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves—even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)

(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm—

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is—

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)

(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm—

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925 (d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to—

(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s)

(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any

licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923, unless—

(A) after the most recent proposal of such transfer by the transferee—

(i) the transferor has—

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

(II) verified the identity of the transferee by examining the identification document presented;

(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii)

(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C)

(i) the transferee has presented to the transferor a permit that—

(I) allows the transferee to possess or acquire a handgun; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(F) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028 (d)(1) [4]) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee—

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who—

(I) is illegally or unlawfully in the United States; or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(26)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to—

(A) the chief law enforcement officer of the place of business of the transferor; and

(B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(6)

(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law—

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term "chief law enforcement officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9) The Attorney General shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(t)

(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless—

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

(B)

(i) the system provides the licensee with a unique identification number; or

(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028 (d) of this title) of the transferee containing a photograph of the transferee.

(2) If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall—

(A) assign a unique identification number to the transfer;

(B) provide the licensee with the number; and

(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

(A)

(i) such other person has presented to the licensee a permit that—

(I) allows such other person to possess or acquire a firearm; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

(B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(C) on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law,

the Attorney General may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than $5,000.

(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

[(v) , (w) Repealed. Pub. L. 103–322, title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000.]

(x)

(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to—

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile—

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission

of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6)

(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

(y) Provisions Relating to Aliens Admitted Under Nonimmigrant Visas.—

(1) Definitions.— In this subsection—

(A) the term "alien" has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(3)); and

(B) the term "nonimmigrant visa" has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(26)).

(2) Exceptions.— Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is—

(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is—

(i) accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

(3) Waiver.—

(A) Conditions for waiver.— Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5), if—

(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (C); and

(ii) the Attorney General approves the petition.

(B) Petition.— Each petition under subparagraph (B) shall—

(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (g)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

(C) Approval of petition.— The Attorney General shall approve a petition submitted in accordance with this paragraph, if the Attorney General determines that waiving the requirements of subsection (g)(5)(B) with respect to the petitioner—

(i) would be in the interests of justice; and

(ii) would not jeopardize the public safety.

(z) Secure Gun Storage or Safety Device.—

(1) In general.— Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921 (a)(34)) for that handgun.

(2) Exceptions.— Paragraph (1) shall not apply to—

(A)

(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921 (a)(13); or

(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923 (e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

(3) Liability for use.—

(A) In general.— Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

(B) Prospective actions.— A qualified civil liability action may not be brought in any Federal or State court.

(C) Defined term.— As used in this paragraph, the term "qualified civil liability action"—

(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se. [APPENDIX A

Repealed. **Pub. L. 103–322**, title XI, § 110105(2), Sept. 13, 1994, **108 Stat. 2000**]

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[1] So in original. Probably should be followed with "and".

[2] So in original. The word "who" probably should not appear.

[3] So in original. Probably should be followed by "of".

[4] See References in Text note below.

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TITLE 18 > PART I > CHAPTER 44 > § 923

§ 923. Licensing

(a) No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Attorney General. The application shall be in such form and contain only that information necessary to determine eligibility for licensing as the Attorney General shall by regulation prescribe and shall include a photograph and fingerprints of the applicant. Each applicant shall pay a fee for obtaining such a license, a separate fee being required for each place in which the applicant is to do business, as follows:

(1) If the applicant is a manufacturer—

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of $1,000 per year;

(B) of firearms other than destructive devices, a fee of $50 per year; or

(C) of ammunition for firearms, other than ammunition for destructive devices or armor piercing ammunition, a fee of $10 per year.

(2) If the applicant is an importer—

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of $1,000 per year; or

(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, or ammunition other than armor piercing ammunition, a fee of $50 per year.

(3) If the applicant is a dealer—

(A) in destructive devices or ammunition for destructive devices, a fee of $1,000 per year; or

(B) who is not a dealer in destructive devices, a fee of $200 for 3 years, except that the fee for renewal of a valid license shall be $90 for 3 years.

(b) Any person desiring to be licensed as a collector shall file an application for such license with the Attorney General. The application shall be in such form and contain only that information necessary to determine eligibility as the Attorney General shall by regulation prescribe. The fee for such license shall be $10 per year. Any license granted under this subsection shall only apply to transactions in curios and relics.

(c) Upon the filing of a proper application and payment of the prescribed fee, the Attorney General shall issue to a qualified applicant the appropriate license which, subject to the provisions of this chapter and other applicable provisions of law, shall entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce during the period stated in the license. Nothing in this chapter shall be construed to prohibit a licensed manufacturer, importer, or dealer from maintaining and disposing of a personal collection of firearms, subject only to such restrictions as apply in this chapter to dispositions by a person other than a licensed manufacturer, importer, or dealer. If any firearm is so disposed of by a licensee within one year after its transfer from his business inventory into such licensee's personal collection or if such disposition or any other acquisition is made for the purpose of willfully evading the restrictions placed upon licensees by this chapter, then such firearm shall be deemed part of such licensee's business inventory, except that any licensed manufacturer, importer, or dealer who has maintained a firearm as part of a personal collection for one year and who sells or otherwise disposes of such firearm shall record the description of the firearm in a bound volume, containing the name and place of residence and date of birth of the transferee if the transferee is an individual, or the identity and principal and local places of business of the transferee if the transferee is a corporation or other business entity: Provided, That no other recordkeeping shall be required.

(d)

(1) Any application submitted under subsection (a) or (b) of this section shall be approved if—

(A) the applicant is twenty-one years of age or over;

(B) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922 (g) and (n) of this chapter;

(C) the applicant has not willfully violated any of the provisions of this chapter or regulations issued thereunder;

(D) the applicant has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact, in connection with his application;

(E) the applicant has in a State

(i) premises from which he conducts business subject to license under this chapter or from which he intends to conduct such business within a reasonable period of time, or

(ii) in the case of a collector, premises from which he conducts his collecting subject to license under this chapter or from which he intends to conduct such collecting within a reasonable period of time;

(F) the applicant certifies that—

(i) the business to be conducted under the license is not prohibited by State or local law in the place where the licensed premise is located;

(ii)

(I) within 30 days after the application is approved the business will comply with the requirements of State and local law applicable to the conduct of the business; and

(II) the business will not be conducted under the license until the requirements of State and local law applicable to the business have been met; and

(iii) that the applicant has sent or delivered a form to be prescribed by the Attorney General, to the chief law enforcement officer of the locality in which the premises are located, which indicates that the applicant intends to apply for a Federal firearms license; and

(G) in the case of an application to be licensed as a dealer, the applicant certifies that secure gun storage or safety devices will be available at any place in which firearms are sold under the license to persons who are not licensees (subject to the exception that in any case in which a secure gun storage or safety device is temporarily unavailable because of theft, casualty loss, consumer sales, backorders from a manufacturer, or any other similar reason beyond the control of the licensee, the dealer shall not be considered to be in violation of the requirement under this subparagraph to make available such a device).

(2) The Attorney General must approve or deny an application for a license within the 60-day period beginning on the date it is received. If the Attorney General fails to act within such period, the applicant may file an action under section 1361 of title 28 to compel the Attorney General to act. If the Attorney General approves an applicant's application, such applicant shall be issued a license upon the payment of the prescribed fee.

(e) The Attorney General may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has willfully violated any provision of this chapter or any rule or regulation prescribed by the Attorney General under this chapter or fails to have secure gun storage or safety devices available at any place in which firearms are sold under the license to persons who are not licensees (except that in any case in which a secure gun storage or safety device is temporarily unavailable because of theft, casualty loss, consumer sales, backorders from a manufacturer, or any other similar reason beyond the control of the licensee, the dealer shall not be considered to be in violation of the requirement to make available such a device). The Attorney General may, after notice and opportunity for hearing, revoke the license of a dealer who willfully transfers armor piercing ammunition. The Secretary's [1] action under this subsection may be reviewed only as provided in subsection (f) of this section.

(f)

(1) Any person whose application for a license is denied and any holder of a license which is revoked shall receive a written notice from the Attorney General stating specifically the grounds upon which the application was denied or upon which the license was revoked. Any notice of a revocation of a license shall be given to the holder of such license before the effective date of the revocation.

(2) If the Attorney General denies an application for, or revokes, a license, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation of a license, the Attorney General shall upon the request of the holder of the license stay the effective date of the revocation. A hearing held under this paragraph shall be held at a location convenient to the aggrieved party.

(3) If after a hearing held under paragraph (2) the Attorney General decides not to reverse his decision to deny an application or revoke a license, the Attorney General shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a de novo judicial review of such denial or revocation. In a proceeding conducted under

this subsection, the court may consider any evidence submitted by the parties to the proceeding whether or not such evidence was considered at the hearing held under paragraph (2). If the court decides that the Attorney General was not authorized to deny the application or to revoke the license, the court shall order the Attorney General to take such action as may be necessary to comply with the judgment of the court.

(4) If criminal proceedings are instituted against a licensee alleging any violation of this chapter or of rules or regulations prescribed under this chapter, and the licensee is acquitted of such charges, or such proceedings are terminated, other than upon motion of the Government before trial upon such charges, the Attorney General shall be absolutely barred from denying or revoking any license granted under this chapter where such denial or revocation is based in whole or in part on the facts which form the basis of such criminal charges. No proceedings for the revocation of a license shall be instituted by the Attorney General more than one year after the filing of the indictment or information.

(g)

(1)

(A) Each licensed importer, licensed manufacturer, and licensed dealer shall maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business for such period, and in such form, as the Attorney General may by regulations prescribe. Such importers, manufacturers, and dealers shall not be required to submit to the Attorney General reports and information with respect to such records and the contents thereof, except as expressly required by this section. The Attorney General, when he has reasonable cause to believe a violation of this chapter has occurred and that evidence thereof may be found on such premises, may, upon demonstrating such cause before a Federal magistrate judge and securing from such magistrate judge a warrant authorizing entry, enter during business hours the premises (including places of storage) of any licensed firearms importer, licensed manufacturer, licensed dealer, licensed collector, or any licensed importer or manufacturer of ammunition, for the purpose of inspecting or examining—

(i) any records or documents required to be kept by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector under this chapter or rules or regulations under this chapter, and

(ii) any firearms or ammunition kept or stored by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector, at such premises.

(B) The Attorney General may inspect or examine the inventory and records of a licensed importer, licensed manufacturer, or licensed dealer without such reasonable cause or warrant—

(i) in the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the licensee;

(ii) for ensuring compliance with the record keeping requirements of this chapter—

(I) not more than once during any 12-month period; or

(II) at any time with respect to records relating to a firearm involved in a criminal investigation that is traced to the licensee; or

(iii) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

(C) The Attorney General may inspect the inventory and records of a licensed collector without such reasonable cause or warrant—

(i) for ensuring compliance with the record keeping requirements of this chapter not more than once during any twelve-month period; or

(ii) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

(D) At the election of a licensed collector, the annual inspection of records and inventory permitted under this paragraph shall be performed at the office of the Attorney General designated for such inspections which is located in closest proximity to the premises where the inventory and records of such licensed collector are maintained. The inspection and examination authorized by this paragraph shall not be construed as authorizing the Attorney General to seize any records or other documents other than those records or documents constituting material evidence of a violation of law. If the Attorney General seizes such records or documents, copies shall be provided the licensee within a reasonable time. The Attorney General may make available to any Federal, State, or local law enforcement agency any information which he may obtain by reason of this chapter with respect to the identification of persons prohibited from purchasing or receiving firearms or ammunition who have purchased or received firearms or ammunition, together with a description of

such firearms or ammunition, and he may provide information to the extent such information may be contained in the records required to be maintained by this chapter, when so requested by any Federal, State, or local law enforcement agency.

(2) Each licensed collector shall maintain in a bound volume the nature of which the Attorney General may by regulations prescribe, records of the receipt, sale, or other disposition of firearms. Such records shall include the name and address of any person to whom the collector sells or otherwise disposes of a firearm. Such collector shall not be required to submit to the Attorney General reports and information with respect to such records and the contents thereof, except as expressly required by this section.

(3)

(A) Each licensee shall prepare a report of multiple sales or other dispositions whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more pistols, or revolvers, or any combination of pistols and revolvers totalling two or more, to an unlicensed person. The report shall be prepared on a form specified by the Attorney General and forwarded to the office specified thereon and to the department of State police or State law enforcement agency of the State or local law enforcement agency of the local jurisdiction in which the sale or other disposition took place, not later than the close of business on the day that the multiple sale or other disposition occurs.

(B) Except in the case of forms and contents thereof regarding a purchaser who is prohibited by subsection (g) or (n) of section 922 of this title from receipt of a firearm, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall not disclose any such form or the contents thereof to any person or entity, and shall destroy each such form and any record of the contents thereof no more than 20 days from the date such form is received. No later than the date that is 6 months after the effective date of this subparagraph, and at the end of each 6-month period thereafter, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall certify to the Attorney General of the United States that no disclosure contrary to this subparagraph has been made and that all forms and any record of the contents thereof have been destroyed as provided in this subparagraph.

(4) Where a firearms or ammunition business is discontinued and succeeded by a new licensee, the records required to be kept by this chapter shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business is absolute, such

records shall be delivered within thirty days after the business discontinuance to the Attorney General. However, where State law or local ordinance requires the delivery of records to other responsible authority, the Attorney General may arrange for the delivery of such records to such other responsible authority.

(5)

(A) Each licensee shall, when required by letter issued by the Attorney General, and until notified to the contrary in writing by the Attorney General, submit on a form specified by the Attorney General, for periods and at the times specified in such letter, all record information required to be kept by this chapter or such lesser record information as the Attorney General in such letter may specify.

(B) The Attorney General may authorize such record information to be submitted in a manner other than that prescribed in subparagraph (A) of this paragraph when it is shown by a licensee that an alternate method of reporting is reasonably necessary and will not unduly hinder the effective administration of this chapter. A licensee may use an alternate method of reporting if the licensee describes the proposed alternate method of reporting and the need therefor in a letter application submitted to the Attorney General, and the Attorney General approves such alternate method of reporting.

(6) Each licensee shall report the theft or loss of a firearm from the licensee's inventory or collection, within 48 hours after the theft or loss is discovered, to the Attorney General and to the appropriate local authorities.

(7) Each licensee shall respond immediately to, and in no event later than 24 hours after the receipt of, a request by the Attorney General for information contained in the records required to be kept by this chapter as may be required for determining the disposition of 1 or more firearms in the course of a bona fide criminal investigation. The requested information shall be provided orally or in writing, as the Attorney General may require. The Attorney General shall implement a system whereby the licensee can positively identify and establish that an individual requesting information via telephone is employed by and authorized by the agency to request such information.

(h) Licenses issued under the provisions of subsection (c) of this section shall be kept posted and kept available for inspection on the premises covered by the license.

(i) Licensed importers and licensed manufacturers shall identify by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Attorney General shall by regulations

prescribe, each firearm imported or manufactured by such importer or manufacturer.

(j) A licensed importer, licensed manufacturer, or licensed dealer may, under rules or regulations prescribed by the Attorney General, conduct business temporarily at a location other than the location specified on the license if such temporary location is the location for a gun show or event sponsored by any national, State, or local organization, or any affiliate of any such organization devoted to the collection, competitive use, or other sporting use of firearms in the community, and such location is in the State which is specified on the license. Records of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale or other disposition and shall be entered in the permanent records of the licensee and retained on the location specified on the license. Nothing in this subsection shall authorize any licensee to conduct business in or from any motorized or towed vehicle. Notwithstanding the provisions of subsection (a) of this section, a separate fee shall not be required of a licensee with respect to business conducted under this subsection. Any inspection or examination of inventory or records under this chapter by the Attorney General at such temporary location shall be limited to inventory consisting of, or records relating to, firearms held or disposed at such temporary location. Nothing in this subsection shall be construed to authorize the Attorney General to inspect or examine the inventory or records of a licensed importer, licensed manufacturer, or licensed dealer at any location other than the location specified on the license. Nothing in this subsection shall be construed to diminish in any manner any right to display, sell, or otherwise dispose of firearms or ammunition, which is in effect before the date of the enactment of the Firearms Owners' Protection Act, including the right of a licensee to conduct "curios or relics" firearms transfers and business away from their business premises with another licensee without regard as to whether the location of where the business is conducted is located in the State specified on the license of either licensee.

(k) Licensed importers and licensed manufacturers shall mark all armor piercing projectiles and packages containing such projectiles for distribution in the manner prescribed by the Attorney General by regulation. The Attorney General shall furnish information to each dealer licensed under this chapter defining which projectiles are considered armor piercing ammunition as defined in section 921 (a)(17)(B).

(l) The Attorney General shall notify the chief law enforcement officer in the appropriate State and local jurisdictions of the names and addresses of all persons in the State to whom a firearms license is issued.

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[1] So in original. Probably should be "Attorney General's".

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TITLE 18 > PART I > CHAPTER 44 > § 927

§ 927. Effect on State law

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

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TITLE 18 > PART I > CHAPTER 44 > § 929

§ 929. Use of restricted ammunition

(a)

(1) Whoever, during and in relation to the commission of a crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm and is in possession of armor piercing ammunition capable of being fired in that firearm, shall, in addition to the punishment provided for the commission of such crime of violence or drug trafficking crime be sentenced to a term of imprisonment for not less than five years.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(b) Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this section, nor place the person on probation, nor shall the terms of imprisonment run concurrently with any other terms of imprisonment, including that imposed for the crime in which the armor piercing ammunition was used or possessed.

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Pro Querente

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MONTANA SHOOTING SPORTS ASSOCIATION, SECOND AMENDMENT FOUNDATION, and GARY MARBUT, Plaintiffs, v. **ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA,** Defendant.	Cause No. _____ **COMPLAINT**

Plaintiffs, Montana Shooting Sports Association, Second Amendment Foundation, Inc., and Gary Marbut ("PLAINTIFFS"), by and through the

undersigned counsel of record, allege for their Complaint against Eric H. Holder, Attorney General of the United States of America ("DEFENDANT"), as follows:

1. Plaintiff Montana Shooting Sports Association ("MSSA") is a non-profit corporation organized under the laws of the State of Montana. The purpose of MSSA is to "support and promote firearm safety, the shooting sports, hunting, firearm collecting, and personal protection using firearms, to provide education to its members concerning shooting, firearms, safety, hunting and the right to keep and bear arms, to own and or manage one or more shooting facilities for the use of its members and or others, to conduct such other activities as serves the needs of its members." MSSA regularly lobbies the Montana Legislature, and its efforts were instrumental in the passage of the Montana statutes at issue in this civil action. MSSA has a genuine and viable interest in this case, as its goals and its existence depends upon the protection of the rights and interests of its members, and the enforcement of Montana law.

2. Plaintiff Second Amendment Foundation, Inc. ("SAF"), is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington.

SAF has over 650,000 members and supporters nationwide, including Montana. The purposes of SAF include promoting the exercise of the right to keep and bear arms, education, research, publishing and legal action focusing on the Constitutional right to privately own and possess firearms, and the consequences of gun control.

3. Plaintiff Gary Marbut is the President of MSSA, a citizen of the United States, and a resident of Missoula, Montana. Marbut is responsible for promoting and protecting the interests of MSSA and its members. Further, as an individual, Marbut desires to manufacture and sell small arms and small arms ammunition per the Montana Firearms Freedom Act.

4. Defendant, Eric H. Holder, Jr., is the appointed, qualified, confirmed, and acting Attorney General and head of the Department of Justice of the United States of America and, as such, is the official charged with administering the Unites States Bureau of Alcohol, Tobacco, Firearms and Explosives ("BATFE"), and enforcement of both the National Firearms Act ("NFA"), and the Gun Control Act of 1968 ("GCA"). DEFENDANT maintains his offices as Attorney General in the District of Columbia.

5. This is an action for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and 18 U.S.C. § 925A and is brought for the

purpose of determining a question of actual controversy between the parties as more fully appears in the complaint below.

6. Jurisdiction of this action is based generally on 5 U.S.C. § 704 and 28 U.S.C. § 1331. Jurisdiction is expressly conferred on this court by 18 U.S.C. § 925A(2).

7. Venue for this action is proper pursuant to 28 U.S.C. § 1391(e) because Plaintiff resides in this district and no real property is involved in this action.

8. The Montana Firearms Freedom Act ("MFFA"), House Bill 246 of the 2009 Montana legislative session, whose language is incorporated herein by this reference, becomes effective today. Its scope is limited to activity occurring exclusively within the state of Montana.

9. The activity authorized under the MFFA is primarily political. It has a commercial element, but the purpose is to allow Montanans who wish to avoid interference by the United States government in their legitimate activity (specifically, manufacturing and selling small arms and small arms ammunition), to do so if they strictly confine such activity to the political boundaries of their own state. Although there are commercial elements to the statutory scheme, they are incidental to the material

purpose and function of the MFFA. Passage of the MFFA was an express exercise by the State of Montana of powers reserved to the states and to the people under the 10th Amendment of the United States Constitution. The MFFA is also authorized under the conditions of the compact with the United States that Montana entered upon admission to the union. The United States Congress therefore has no authority, under the limited powers granted to it by the United States Constitution, to preempt the MFFA.

10. PLAINTIFF MARBUT wishes to manufacture and sell small arms and small arms ammunition to customers exclusively in Montana, pursuant to the MFFA, without complying with the NFA or the GCA, or other applicable federal laws. MARBUT has sought permission and assurances from BATFE that he may proceed under MFFA without fear of criminal prosecution or civil sanction, so long as he strictly confines such activity to Montana.

11. PLAINTIFF MSSA and PLAINTIFF SAF have members, along with other Montana citizens, who wish to manufacture and sell small arms and small arms ammunition to customers in Montana, pursuant to the MFFA, without complying with the NFA or the GCA, or other applicable

federal laws.

12. Like PLAINTIFF MARBUT, other members of PLAINTIFF MSSA and PLAINTIFF SAF, and other Montana citizens, have sought permission and assurances from BATFE that they may proceed under MFFA without fear of criminal prosecution or civil sanction, sanction so long as he strictly confines such activity to Montana.

13. BATFE refuses to give permission to Marbut or anyone else to proceed under MFFA, and instead, on September 29, 2009, it issued a letter to Plaintiff Gary Marbut contending that "to the extent the [MFFA] conflicts with Federal firearms laws and regulations, Federal law supersedes the MFFA, and all provisions of the GCA and NFA, and their corresponding regulations, continue to apply." (See copy attached hereto as Exhibit A.) This is consistent with an "open letter" BATFE issued to the general public on July 16, 2009, warning that MFFA conflicts with federal firearms law and regulations, and that federal law therefore supersedes the MFFA. (See copy attached hereto as Exhibit B.)

14. As a result of BATFE'S actions in issuing its July 16, 2009, "open letter," and in its September 29, 2009, letter to PLAINTIFF MARBUT, and its refusal to give other Montana citizens assurances or permission to

exercise their rights under the MFFA, no Montanan who wishes to proceed under the MFFA can do so without fear of federal criminal prosecution and/or civil sanctions, including fines and/or forfeiture.

15. There is therefore a real and actual controversy between PLAINTIFFS and DEFENDANT regarding whether the United States Constitution confers power on Congress to regulate activities contemplated by the MFFA. Under the 10th Amendment, all regulatory authority of all such activities within Montana's political borders is left in the sole discretion of Montana. Federal law therefore does not preempt the MFFA and cannot be invoked to regulate or prosecute Montana citizens acting in compliance with the MFFA, so long as they do so solely within the political borders of Montana.

16. In addition, PLAINTIFFS face irreparable harm from DEFENDANT'S threat to enforce the NFA and/or the GCA and other federal laws and regulations through the prosecution of civil actions and criminal indictments against Montana citizens who proceed in compliance with MFFA. The threat of federal civil action and/or criminal prosecution faced under the circumstances effectively blocks PLAINTIFFS and all law abiding citizens from exercising their rights under and otherwise benefitting from

the MFFA, a wrong for which they have no adequate legal remedy at law.

REQUEST FOR RELIEF

PLAINTIFFS respectfully request:

A. A declaratory judgment pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57 for the purpose of determining and adjudicating the questions of actual controversy between the parties as set forth above, that:

(i) The United States Constitution confers no power on Congress to regulate the special rights and activities contemplated by the MFFA;

(ii) Under the 10th Amendment of the United States Constitution, all regulatory authority of all such activities within Montana's political borders is left in the sole discretion of Montana; and

(iii) Federal law does not preempt the MFFA and cannot be invoked to regulate or prosecute Montana citizens acting in compliance with the MFFA.

B. A permanent injunction order enjoining DEFENDANT and any agency of the United States of America from prosecuting any civil action or criminal indictment or information under the NFA or the GCA, or any other federal laws and regulations, against PLAINTIFFS or other Montana citizens

acting, solely within the political borders of Montana, in compliance with the MFFA.

C. An order awarding to PLAINTIFFS costs and a reasonable attorney fee under the private attorney general doctrine.

D. PLAINTIFFS request such other and further relief as may be

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proper in the circumstances.

DATED this ____ day of September, 2009.

Respectfully submitted,
SULLIVAN, TABARACCI & RHOADES, P.C.

By: /s/ Quentin M. Rhoades
Quentin M. Rhoades
Pro Querente

Alaska State Legislature

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Member
House Finance Committee

Representative Mike Kelly

House District 7

MEMORANDUM

To: Senator Hollis French – Chair, Senate Judiciary Committee

From: Representative Mike Kelly MPK

Date: January 20, 2010

Re: Committee Hearing Request – CSHB 186(FIN) "An Act declaring that certain firearms and accessories are exempt from federal regulation"

I respectfully request that CSHB 186(FIN), "An Act declaring that certain firearms and accessories are exempt from federal regulation" be scheduled for a hearing. I have included a sponsor statement, the bill and other items of evidentiary support.

If you have any questions or comments, or require additional material please feel free to contact me at extension 4976 or my staff, Derek Miller at extension 6879.

HB

201

ALASKA STATE LEGISLATURE

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Rep.Craig.Johnson@legis.state.ak.us

Session:
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Juneau, Alaska
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REPRESENTATIVE CRAIG JOHNSON
HOUSE DISTRICT 28

Sponsor Statement
Concealed Handgun Birthday Permit
HB 201

June 2003 Alaska Governor Frank Murkowski signed into law the bill allowing citizens to carry firearms concealed without getting a permit. The bill had 33 co-sponsors, from both chambers, and passed on a veto-proof vote of 28 to 12 in the House and 12 to 8 in the Senate.

The permit is still available for those who would want to travel to other states that have reciprocity with Alaska. Since the permit is not necessary in Alaska some permit holders forget the renewal date.

This bill changes the expiration date of a concealed handgun permit from five years from the date of issue to the person's birthday. The first year is a transitional year where the permit will be issued for a minimum of 4 year and how ever many months it is until the person's birthday. All permits after that will be for 5 years.

HB

251

Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Services
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Representative Jay Ramras
District 10

Sponsor Statement

CSHB 251 – VEHICLE LINES/TOWING/STORAGE/TRANSPORT

Towing companies provide necessary service to Alaskans through the removal of abandoned, junked, and wrecked vehicles from public thoroughfares and private property. Alaskan towing companies follow prescribed laws in providing these towing services and in most cases are acting under the authorization or direction of public safety officers. Alaskan towing companies should be paid for providing these services to the public. Providing a statutory mechanism so that these small towing businesses are first in line for payment for delivered services will reduce business risk to these companies. House Bill 251 changes the priority in which payments may be made to provide for a fairer business environment to towing companies.

House Bill 251 prioritizes a possessory lien for services lawfully provided in conformity with AS 28.10.502, and requires towing companies to provide timely notification. The prioritization of the possessory lien gives first position to towing companies for the purpose of recouping costs for contractual vehicular towing and storage. HB 251 also adds a layer of consumer protection by requiring a towing company to notify the registered owner and primary lienholder of towing and storage of a vehicle within 7 business days from the date of service.

House Bill 251 corrects a current situation whereby some owners and lienholders may receive services from towing companies without paying for all or part of the charges. Current law does not specifically state a possessory lien has precedence over other perfected liens on a vehicle. Nonpayment for service situations could shift these costs to other Alaskans, raising prices for all. In extreme cases nonpayment may induce business hardships and cause business failure. This is unfair to Alaska's towing companies. Reducing unfair business risk to small companies is in the best interest of the state.

Representative_Jay_Ramras@legis.state.ak.us

Alaska Towing Association

The Voice of Alaskan Towing Professionals

RE: Alaska Towing Association supports HB 251

Members of the towing industry in Alaska have begun to catch up with our counterparts in other states over the last decade, and many Alaskan towers are now on the leading edges of towing technology and practice. Towing in Alaska presents unique challenges, but our members meet those challenges, and towing entities both large and small provide daily professional support to our emergency services and law enforcement systems.

Unfortunately, the modernization of the towing industry across the state has increased costs for towing businesses almost exponentially in recent years as Alaskan towers have upgraded equipment to meet the demands of newer vehicles, improved response times, procedures and training to enhance public safety, and satisfied an ever-growing list of license and permit requirements from Federal, State and local municipalities.

These costs are of course passed on to consumers. Vehicle mishaps and subsequent towing frequently involves great financial liability for vehicle owners, their lenders, and/or their insurance companies. Alaska Statute AS 28.10.502 offers some measure of protection to towers, providing for a Towing and Storage Lien to be automatically placed on any vehicle lawfully towed and stored to ensure payment for the towers' services. This lien is most commonly applied to abandoned or wrecked vehicles removed from public or private property, or towed from public roadways at the request of law enforcement officials, and stored in secured lots at the expense of the towing company.

However, a court decision in the 3rd Judicial Court has determined that perfected liens supercede a tower's possessory lien based on AS 28.10.391, and this decision has effectively nullified the Towing & Storage Lien. Practically speaking, this means a tower may recover, tow, and store a vehicle at real cost to himself and his company, and then be denied payment, lose possession of the collateral, and have no real recourse for financial satisfaction for his loss. HB 251 will alleviate this discrepancy by prioritizing the Towing and Storage lien.

Most other states, if not all, have long resolved the issue between possessory liens and perfected liens on towed or stored vehicles in favor of prioritizing the tower's lien. The obvious fact of services rendered, and payment due for those services creates a reasonable and lawful expectation of payment. In no way does this financial obligation for services supercede the interest in collateral of a perfected lien, rather it merely prioritizes payment for services rendered.

Alaska's statutory disparity is unfortunate, and presumably unintended, but is a very real and expensive issue for Alaska Towing Association members. Towers respond to thousands of vehicle emergencies every year, and remove wrecked vehicles from Alaska's roadways every day. This kind of towing is an integral part of most small towing business models within Alaska. Each emergency tow can easily cost a tower several hundred dollars in labor, fuel, equipment, insurance and operating costs, depending on services rendered and length of time it must be secured and stored.

If the costs of these services cannot be reasonably recouped on even one vehicle simply because a perfected lien exists prior to the tow company's possessory lien, a financial hardship condition develops.

If towing companies continue to be effectively forced to provide their services for free, the current status quo for providing these services to law enforcement agencies at no cost to the agency may change, and State and local law enforcement jurisdictions may be placed into the position of hiring their own towing contractors or otherwise purchasing towing services.

Alaska has much work to do to improve and enhance the towing industry in our state. It has been largely unregulated and unmonitored for many years. Careful evaluation of the issues within the industry is necessary, and thoughtful legislation is required for the protection of both the public and the small businessmen and women within the industry.

The members of the Alaska Towing Association consider HB 251 one step in this direction. The small change to AS 28.10.502 presented in the bill will help protect industry providers from an effective theft of services. In turn, this will help ensure that the many small towing operators across the state remain in business, and ensure a competitive industry that continues to improve itself to meet the demands of the motoring public and Alaska's law enforcement agencies.

The Alaska Towing Association supports HB 251. If it is passed into law, towers can remain willing and available to respond to that next call from their local law enforcement dispatcher in the dead of night knowing they have the protection of the law to ensure they will be compensated for the service they provide.

Shawn Ross
President, Alaska Towing Association

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Services
State Capitol, Room 118
Juneau, Alaska 99801-1182
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Alaska State Legislature

House of Representatives

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House District 10

Memo

To: Senator Hollis French, Chair Senate Judiciary Committee

From: Rep. Jay Ramras

Date: April 8, 2010

Re: CSHB 251-VEHICLE LIENS/TOWING/STORAGE/TRANSPORT

Please accept this memo as a request for CSHB 251 to be heard before the Senate Judiciary Committee. Please find the attached documents for this purpose:

- Sponsor Statement
- CSHB 251 – 26-LS0786\S
- Fiscal Notes
- Bill History
- Letter of Support

Thank you for your time and consideration, should you have any questions, please do not hesitate to contact me or Don Habeger at 465-3004.

Representative_Jay_Ramras@legis.state.ak.us

HB

253

Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Services

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Representative Jay Ramras
District 10

Sponsor Statement
HB 253 – Mechanic/Materialmen Liens

Under current law, contractors, material suppliers, and service people who have not been paid by property owner for labor or goods have 90 days from the date of completion of the work, or from the date the service ceases, to file a lien on the property to secure payment of that debt. See AS 34.35.068 (a).

House Bill 253 merely extends the time within which to file a lien to 120 days. This extra time will give contractors, material suppliers, and service people an additional 30 days to work with property owners to secure payment or to negotiate a reasonable payment plan between a creditor and debtor. The need for this bill was brought to Representative Ramras' attention by small business owners who suggested that it usually takes two billing cycles to discover that a property owner may not pay his or her debt, and another billing cycle to see if a payment plan or other compromise is working as planned.

All contractors and suppliers are entitled to payment for services and goods delivered, yet recording a lien on property is a severe remedy that encumbers a property owner's interest and that can be costly for the contractor or supplier to execute. HB 253 affords more time for the parties to negotiate before this remedy is employed.

Representative_Jay_Ramras@legis.state.ak.us

HEAT-ME, INC.
dba Rocky's Heating Service
2441 Hill Road Unit C
Fairbanks, Alaska 99709

February 17th, 2010

House Representative Jay Ramras
House District 10
Fairbanks, Alaska

Re: House Bill #253-Extension of Mechanic's Lien

Dear Mr. Ramras,

I wish to convey my enthusiastic support for House Bill #253, the bill extending by 30 days the amount of time allowed to file a Mechanic's Lien on a customer that has not paid their mechanical repair bill.

As a small business owner employing 16 Fairbanks families, prompt payment is imperative in order to keep the doors of Rocky's Heating Service open. However, the situation can arise where; because of the timing of our service at the beginning of the month, versus our end-of-the-month billing, almost thirty days can expire before our customers see their statement. While our customers are normally required to pay at the time of servicing, often times multi-day jobs or absent owners prevent us from collecting at the time of service. Because we realize many people feel they have thirty days from receipt of their *statement* to actually pay, now we easily have a scenario in which the work was performed at the beginning of one month, the statement sent at the end of that month, and the homeowner not even considering paying us until the end of the next month: we are now 60 days out from completion of the service.

If for some reason, either due to forgetfulness, unexpected bills that month, or a myriad of other reasons the customers do not send us the payment, now it gets put back in their queue, to be paid with the rest of their bills at the end of the next month. We are now 90 days out from the original service and unable to protect ourselves from possible non-payment. It happens that fast. We hear on a daily basis from someone who either forgot to send in their payment with the rest of last month's bills, or had unexpected expenditures leaving no additional monies to pay our bill; asking if we could wait till the next month when they get paid again.

Because we are understanding and want to work with our customers, we will often acquiesce, because lets face it, who hasn't forgotten a bill at some time in the past? However, to do so puts us at great risk if in fact someone is using this as a ruse to avoid having their home or business liened. Sadly there are many people who have taken advantage of our generosity, knowing full well the laws governing this action. These people have literally accounted for tens of thousands of dollars in lost revenue by our

Tel: 907-456-4120
Fax: 907-455-7341

company alone. All it takes is just one time of "forgiving" our customer, and we have put ourselves in peril of not being able to attach their property. We, as entrepreneurs and job providers, should not be penalized for our generosity and willingness to work with our customers. I feel an additional 30 days in which to assess whether someone is sincere in their desire to pay or whether they are trying to avoid having their property attached would be a huge benefit to all mechanical repair shops. I feel the extra thirty days would allow us the small amount of extra time needed to fully assess the honest property owners, who may just be struggling that month, from out and out shysters who are using the current law to their advantage.

Realizing that a lien has a significant impact on one's credit rating, we do not take this action lightly. That is why we are often hesitant to file one on a customer who is literally begging us to not lien them, assuring us they will pay next month. Again, it is the repair shops who are now assuming the risk by allowing their customers to "slide" for just one month.

Because of the impact a lien can have on a customer's credit rating, I actually see House Bill 253 as a win-win scenario for both the mechanical service providers and their customers. The extra thirty day window will allow those honest customers the additional time needed to make good on their debt and not have their credit rating tarnished by a lien. We, the mechanical repair shops, can now allow them the extra time to make good on their debt and not be put at risk by doing so.

I strongly encourage the passage of House Bill #253.

Sincerely,

Rocky Pavey, President
Rocky's Heating Service

ALASKA BEST PLUMBING & HEATING, INC.
PO Box 58015
Fairbanks, Alaska 99711
Ph: (907) 455-6506 Fax: (907) 455-4871
E-Mail: akbest@alaska.com
Web Site: www.akbestph.com
Mechanical Administrators License M1041

Jay Ramas

Re: Mechanics Lien legislation

Mr. Ramas,

It has come to my attention that there will be a debate regarding legislation to extend the deadline to file a mechanics lien from 90 days to 120 days. As a mechanical contractor we have a vested interest in this legislation. I would ask you to review our point of view and take into consideration our comments during this debate.

This legislation would be beneficial to both our business and our customers in several respects.

1. Often times we are unable to meet the deadline due to billing delays and in these cases our accounts can and do become uncollectable.
2. In some cases we are forced to file a lien to protect our interest when a customer is unable to pay within 90 days. This increases the cost of doing business and reduces our job profitability as well as damages our customer's credit.
3. Filing a lien creates ill will between us and our customers, which in many instances is completely unnecessary.
4. Extending the deadline will allow us to extend credit to our customers, who in many cases need the extra time to pay their bills.

As a plumbing and heating company we often provide vital services to customers who are sometimes in financial situations that make it difficult for them to afford repairs on necessary items such as heat and running water. As a customer service oriented and community minded company we strive to do our best to assist those that need our services most. Being able to extend terms beyond 90 days would be greatly beneficial to both us and our customers. I sincerely hope that you will consider these issues when debating this legislation and seriously consider making the change for the benefit of all of those affected.

Regards,

Sandra Hembree
Vice President

North Pole Heating & Cooling, Inc.
P.O. BOX 58159
Fairbanks, AK 99711
PH: 488-2500 FAX: 488-0722

✓Heating
✓Plumbing
✓Drain Cleaning
✓Air-Conditioning
✓Refrigeration
✓Controls
✓Duct Cleaning
✓Steam Thawing

February 19, 2010

Jay Ramras
1292 Sadler Way, Suite 324
Fairbanks, AK 99701

Representative Ramras:

This letter is to show support for extending the time to file a mechanics' lien from ninety days to one hundred twenty days. We use mechanics' liens quite often to force payment from customers that would probably not pay otherwise. We have found mechanic's lien very helpful in collecting when small claims and garnishments have been to no avail. We have been able to collect for work done when the property is sold.

We have found ninety days to file a bit restrictive. We often miss the deadline because most commercial customers take up to ninety days, sometime as long as one hundred twenty days to pay. By the time the terms are past, it is already too late to file a lien. We have also found out that with many contractors we subcontract for, we can not get paid until the contractor has finished the job. Most of the time, we have already finished the subcontract portion more than ninety days before the contractor has finished the job.

We support a filing deadline of one hundred twenty days for filing a mechanics' lien and we encourage your support on it as well.

Sincerely,

Cindy Castoe

Cindy Castoe
Northern Lights Services

Feb 19 2010 3:19PM HEAT ME, INC 455-7341 p.1

February 19th, 2010

House Representative Jay Ramras
House District 10
Fairbanks, Alaska

Re: House Bill #253-Extension of Mechanic's Lien

Dear Mr. Ramras,

I wish to convey my enthusiastic support for House Bill #253, the bill extending by 30 days the amount of time allowed to file a Mechanic's Lien on a customer that has not paid their mechanical repair bill.

If for some reason, either due to forgetfulness, unexpected bills that month, or a myriad of other reasons the customers do not send us a timely payment, now it gets put back in their queue, to be paid with the rest of their bills at the end of the next month. We are now 90 days out from the original service and unable to protect ourselves from possible non-payment. It happens that fast. We hear on a daily basis from someone who either forgot to send in their payment with the rest of last month's bills, or had unexpected expenditures leaving no additional monies to pay our bill; asking if we could wait till the next month when they get paid again. Because we are understanding and want to work with our customers, we will often acquiesce, because lets face it, who hasn't forgotten a bill at some time in the past? I feel an additional 30 days in which to assess whether someone is sincere in their desire to pay or whether they are trying to avoid having their property attached would be a huge benefit to all mechanical repair shops. I feel the extra thirty days would allow us the small amount of extra time needed to fully assess the honest customers, who may just be struggling that month, from out and out shysters who are using the current law to their advantage.

Realizing that a lien has a significant impact on one's credit rating, we do not take this action lightly. That is why we are often hesitant to file one on a customer who is literally begging us to not lien them, assuring us they will pay next month. Again, it is the repair shops who are now assuming the risk by allowing their customers to "slide" for just one month.

I actually see House Bill 253 as a win-win scenario for both the mechanical service providers and their customers. The extra thirty day window will allow those honest customers the additional time needed to make good on their debt and not have their credit rating tarnished by a lien. We, the mechanical repair shops, can now allow them the extra time to make good on their debt and not be put at risk by doing so.

I strongly encourage the passage of House Bill #253.

Sincerely,

Dan Boschert,
Ken's Fairbanks Alignment

February 17th, 2010

House Representative Jay Ramras
House District 10
Fairbanks, Alaska

Re: House Bill #253-Extension of Mechanic's Lien

Dear Mr. Ramras,

I wish to convey my enthusiastic support for House Bill #253, the bill extending by 30 days the amount of time allowed to file a Mechanic's Lien on a customer that has not paid their mechanical repair bill.

As a small plumbing and heating service owner, we at Mountain High Plumbing and Heating, are often left unpaid due to the short window of time allowed to file a lien against the property owner. The situation can arise where; because of the timing of our service at the beginning of the month, versus our end-of-the-month billing, almost thirty days can expire before our customers see their statement. While our customers are normally required to pay at the time of servicing, often times multi-day jobs or absent owners prevent us from collecting at the time of service. Because we realize many people feel they have thirty days from receipt of their *statement* to actually pay, now we easily have a scenario in which the work was performed at the beginning of one month, the statement sent at the end of that month, and the homeowner not even considering paying us until the end of the next month: we are now 60 days out from completion of the service.

If for some reason, either due to forgetfulness, unexpected bills that month, or a myriad of other reasons the customers do not send us the payment, now it gets put back in their queue, to be paid with the rest of their bills at the end of the next month. We are now 90 days out from the original service and unable to protect ourselves from possible non-payment. It happens that fast. We hear on a daily basis from someone who either forgot to send in their payment with the rest of last month's bills, or had unexpected expenditures leaving no additional monies to pay our bill; asking if we could wait till the next month when they get paid again.

Because we are understanding and want to work with our customers, we will often acquiesce, because lets face it, who hasn't forgotten a bill at some time in the past? However, to do so puts us at great risk if in fact someone is using this as a ruse to avoid having their home or business liened. Sadly there are many people who have taken advantage of our generosity, knowing full well the laws governing this action. These people have literally accounted for tens of thousands of dollars in lost revenue by our company alone. All it takes is just one time of "forgiving" our customer, and we have

put ourselves in peril of not being able to attach their property. We, as entrepreneurs and job providers, should not be penalized for our generosity and willingness to work with our customers. I feel an additional 30 days in which to assess whether someone is sincere in their desire to pay or whether they are trying to avoid having their property attached would be a huge benefit to all mechanical repair shops. I feel the extra thirty days would allow us the small amount of extra time needed to fully assess the honest property owners, who may just be struggling that month, from out and out shysters who are using the current law to their advantage.

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I strongly encourage the passage of House Bill #253.

Sincerely,

Joe Copeland

Joe Copeland
Mountain High Plumbing and Heating

Representative Jay Ramras
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Chair, Economic Development, Trade & Tourism
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House District 10

Memo

To: Senator Hollis French, Chair Senate Judiciary Committee

From: Representative Jay Ramras

Date: April 7, 2010

Re: Hearing request for HB 253 - Mechanic/Materialmen Liens bill.

Please accept this memo as a request for HB 253 to be heard before the Senate Judiciary Committee. Please find the attached documents for this purpose:

- Sponsor Statement
- HB 253 – 26-LS0940\A
- Fiscal Note
- Bill History
- Support

Thank you for your time and consideration, should you have any questions please do not hesitate to contact Don Habeger at 465-3004.

Representative_Jay_Ramras@legis.state.ak.us

HB

287

3063

Alaska State Legislature

House of Representatives

Representative Max F. Gruenberg, Jr.
Representative Jay Ramras

SPONSOR STATEMENT
HB 287 – UNIFORM ACT: PROPERTY INTEREST DISCLAIMER

"An Act relating to the adoption of the Uniform Disclaimer of Property Interests Act, and to the disclaimer of property rights under the Uniform Probate Code."

HB 287 is a comprehensive collection of rules outlining the types of property interests eligible for disclaimer, the process by which property interests may be disclaimed, and the effect of a disclaimer on the interest itself.

The Uniform Disclaimer of Property Interests Act was promulgated in 1999 and has already been adopted in 16 other states. There do not appear to be any reported court cases construing this Act. There have been several law review articles discussing the pros and cons of the Uniform Act; Representative Gruenberg would be happy to provide copies of these articles to any interested parties.

Member

Standing Committees:
Judiciary
State Affairs
Transportation

Finance Subcommittees:
Transportation
Courts
Law

Alaska State Legislature
House of Representatives

Representative Max F. Gruenberg, Jr.
House District 20
Anchorage (Mountain View, Russian Jack, East Anchorage)
House Minority Assistant Floor Leader

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Rep.Max.Gruenberg@legis.state.ak.us

EXPLANATION OF CHANGES

Changes between HB 287 and CSHB 287(JUD) (26-LS1300\S):

- On page 2, lines 6 and 13 of HB 287, the word "explicitly" was removed.

- Under proposed AS 13.70.030(b)(2) - page 2, lines 14-20 of the CS - the original bill allowed for a disclaimer by a "natural guardian" on behalf of a minor child. The proposed CS replaces the phrase "natural guardian" with "an individual having legal custody of a minor child" to conform to language typically used in Alaskan family law. An "individual having legal custody of a minor child" is defined on page 10, lines 25-27.

- Proposed AS 13.70.040(a)(3)(D) on page 3, line 29 through page 4, line 8, provides a default rule for the disposition of a disclaimed property interest. Under the original bill, the default rule was that the disclaimed interest would revert to the benefactor; under the CS, however, the disclaimed interest would instead pass by representation to the descendants of the disclaimant. This change is made to conform to the national Uniform Act.

- Stylistic changes were made on page 7, lines 3, 7, and 28, and page 8, line 4.

- On page 9, line 1, the word "or" was added after "disclaimed;" to clarify that the provisions under subsection (c) are disjunctive.

- On page 9, line 2, "non-judicial foreclosure" was added.

- On page 10, lines 11-13, a section regarding uniformity of application and construction (proposed AS 13.70.150) was added to conform to the national Uniform Act.

- Under proposed AS 13.70.190(4) on page 10, lines 22-23, "an individual having legal custody of a minor child" was added to the definition of "fiduciary."

- Under proposed AS 13.70.190(6) on page 11, line 6, "a limited liability partnership" was added to the definition of "person."

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Juneau, Alaska 99801-1182
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MEMORANDUM January 28, 2010

SUBJECT: Sectional summary of HB 287 relating to the adoption of the Uniform Disclaimer of Property Interests Act
(Work Order No. 26-LS1300\R)

TO: Representative Max Gruenberg
Attn: Gretchen Staft

FROM: Theresa Bannister
Legislative Counsel

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

Section 1. This bill section creates a new chapter dealing with the disclaimer of property interests. This new chapter is based on the Uniform Disclaimer of Property Interests Act.

Sec. 13.70.010. States that AS 13.70 applies to the disclaimer of any interest in property. It does not matter when the disclaimer was created.

Sec. 13.70.020. States that, unless displaced by this chapter, the principles of law and equity apply. States that this chapter doesn't limit a person's right to waive, release, disclaim, or renounce an interest in or power over property under another law.

Sec. 13.70.030. States that a person may disclaim, in whole or part, conditionally or unconditionally, any interest in, or power over, property, including a power of appointment. Allows the disclaimer even if there is a spendthrift provision, a provision similar to a spendthrift provision, or a restriction, prohibition, or limitation on the right to disclaim. Provides that a disclaimer is unconditional and not subject to modification or revocation, unless the disclaimant expressly provides otherwise in the disclaimer.

Allows, if the fiduciary has court approval, a fiduciary to disclaim, in whole or part, any interest in or power over property. Indicates that, without court approval, a fiduciary may not disclaim, except under certain described circumstances, one of which involves natural guardians. Indicates how to determine who is the natural guardian.

Describes the formal requirements for a disclaimer. The disclaimer must be contained in a writing, declare that it is a disclaimer, describe the interest or power disclaimed, be

signed by the person making the disclaimer, and delivered or filed as required by AS 13.70.100. Indicates how the portion of property disclaimed by a partial disclaimer may be described (e.g., fraction, percentage, amount, term of years, etc.).

Indicates when a disclaimer becomes irrevocable. States that a disclaimer is not a transfer, assignment, or release.

Sec. 13.70.040. Establishes, except for disclaimers governed by sec. 13.70.050 - 13.70.065 (relating to jointly held property, tenancies by the entirety, and trustee disclaimers), four rules that relate to when a disclaimer becomes effective and how a disclaimer passes.

A disclaimer takes effect when the instrument creating the interest becomes irrevocable, or at the intestate's death, if related to intestate succession. The disclaimed interest passes according to a provision in the instrument that created the interest. If there is no provision, the disclaimed interest passes under one of four listed alternatives. Establishes how certain future interests take effect when there is a disclaimer of a preceding interest; clarifies that the disclaimer does not accelerate the possession and enjoyment of a future interest held by the disclaimant.

Sec. 13.70.050. Establishes rules for disclaiming interests in jointly held property. Establishes what interest one surviving holder may disclaim on the death of another holder of jointly held property. Indicates when the disclaimer takes effect. States that the disclaimed interest passes as if the disclaimant predeceased the deceased interest holder.

Sec. 13.70.060. Allows for a disclaimer of a survivorship interest in property held as a tenancy by the entirety. The deceased tenant's interest is considered to be an undivided one-half interest. Indicates when the disclaimer takes effect. States that the disclaimed interest passes as if the disclaimant predeceased the deceased cotenant.

Sec. 13.70.065. Addresses the situation of a trustee who is allowed, by court order or the fiduciary instrument, to receive property into a trust. States that if the trustee disclaims an interest that would otherwise have become trust property, the interest does not become trust property.

Sec. 13.70.070. Establishes some general rules for disclaimers of a power of appointment or other power not held in a fiduciary capacity. These rules relate to when the disclaimer takes effect, and directs that the instrument creating the power be construed as if the power expired when the disclaimer became effective.

Sec. 13.70.080. Indicates when disclaimers by persons who may or do receive an interest in property through the exercise of a power of appointment take effect.

Sec. 13.70.090. Indicates when a disclaimer takes effect if a fiduciary disclaims a power held in a fiduciary capacity. Indicates the conditions when the disclaimer may be effective as to another fiduciary.

Sec. 13.70.100. Indicates how delivery of a disclaimer may be effected in general and in listed specific situations.

Sec. 13.70.110. Indicates that a disclaimer is permitted unless barred under this section. Permits a disclaimer even if the disclaimant is not solvent. States that a disclaimer is barred by a written waiver of the right to disclaim. States that a disclaimer is barred if certain listed events occur before the disclaimer occurs.

States that a disclaimer of the future exercise of a power held in a fiduciary capacity is not barred by a previous exercise of the power. A disclaimer of the future exercise of a power not held in a fiduciary capacity is not barred by the previous exercise of the power, unless the power is exercisable in favor of the disclaimant.

A disclaimer is barred and not effective to the extent that the disclaimant is in arrears in child support payments, or if the disclaimant is involved in a child support proceeding or in a proceeding to establish paternity of maternity. Indicates that a disclaimer that is barred by this section is ineffective. States that a barred disclaimer takes effect as a transfer of the interest to the persons who would have taken the interest under this chapter if the disclaimer had not been barred.

Sec. 13.70.120. Provides that a disclaimer or transfer is effective as a disclaimer under this chapter if, as a result of the disclaimer or transfer, the disclaimed or transferred interest is treated under federal tax law as never having been transferred to the disclaimant. Provides that a tax-qualified disclaimer under 26 U.S.C. (Internal Revenue Code) is subject to the time limits under 26 U.S.C., as amended, even though time limits are not specified under this chapter.

Sec. 13.70.130. Provides for a disclaimer to be filed, recorded, or registered as required or permitted by law if a transferring instrument (for the interest in or power over property) is required or permitted by law to be filed, recorded, or registered. But a failure to do this does not affect the disclaimer's validity as between the disclaimant and the persons to whom the interest or power passes under the disclaimer.

Sec. 13.70.140. Generally provides that an existing interest or power may be disclaimed after the effective date of this chapter if the time for delivering or filing the disclaimer under law superseded by this chapter has not expired.

Sec. 13.70.190. Defines terms for the new chapter.

Sec. 13.70.195. Gives the chapter the short title of "Uniform Disclaimer of Property Interests Act."

Section 2. Repeals AS 13.12.801, which is the current statute that deals with the disclaimer of property interests.

If I may be of further assistance, please advise.

TLB:ljw
10-045.ljw

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Lawrence J. Biskowski, J.D. ♦
Suzanne M. McVicker, J.D. ♦

Legal Assistants:
Jack W. Jacobs
Linda J. Durr, PLS
Terise n'ha Caitriona
Jennifer M. Wright*

♦ Admitted in AK
● Admitted in CA
* Admitted in TX
+ Admitted in WA

CONFIDENTIAL
ATTORNEY-CLIENT INFORMATION

November 30, 2009

Via email to: <Rep.Max.Gruenberg@legis.state.ak.us>
Representative Max Gruenberg
House District 20—Anchorage
716 West Fourth Avenue, Suite 350
Anchorage, AK 99501-2133

Re: House Bill 201—Uniform Disclaimer of Property Interests Act

Dear Representative Gruenberg:

Thank you for your interest in sponsoring the Uniform Disclaimer of Property Interests Act. As you know, this act was initially introduced as House Bill 201 in the Twenty-Fifth Legislature by Representative LeDoux. Both Representative LeDoux and you asked our group to review the bill and provide our comments. Our group consists of an informal group of estate and trust attorneys who practice primarily in this area in Alaska. We have been working with the Legislature over the past 12 years to make recommendations that will improve Alaska's estate and trust statutes.

We have reviewed House Bill 201 and various articles which have been written suggesting certain changes to this uniform act. In addition, we have reviewed the recent changes to this uniform act enacted by the State of Florida. It should be noted that of the 12 states which have enacted this uniform act, ten states have enacted changes.

We have recommended the changes summarized below. These changes are contained in "CS For House Bill 201", designated "25-LS0615\N (Bannister) 3/17/08". These changes from the uniform act are as follows:

1. **AS 13.70.030(a)**: Allows for conditional disclaimers;

2. **AS 13.70.030(b)**: Requires court approval for a disclaimer by a fiduciary;

3. **AS 13.70.030(b)**: Allows a parent to disclaim for a minor child if the child receives an interest because the parent has disclaimed;

4. **AS 13.70.040(a)(3)(D)**: States that if the statute does not provide for an alternative disposition for an interest or power of appointment disclaimed during the benefactor's lifetime, the interest or power of appointment will revert to the benefactor;

5. **AS 13.70.040(b)(1)**: Clarifies that a disclaimed interest is created at the death of the benefactor or such earlier time, if any, that the benefactor's transfer of the interest is a completed gift for federal gift tax purposes;

6. **AS 13.70.040(b)(2)**: Treats disclaimers of interests in revocable trusts the same as disclaimers of interests in wills;

7. **AS 13.70.060**: Adds a provision covering disclaimers of property held as tenancy by the entirety;

8. **AS 13.70.110(a)**: States the majority rule that a disclaimer is permitted even though the disclaimant is insolvent;

9. **AS 13.70.110(f)**: States that a disclaimer of an interest or power over property is barred and not effective to the extent that the disclaimant is in arrears in child support payments.

10. **AS 13.70.120(b)**: Adds a notice that the Internal Revenue Code provides time limits for qualified disclaimers;

11. **AS 13.70.190**: Adds definitions; and

12. **AS 13.[ENTIRE STATUTE]**: A number of drafting clarifications are added.

Enclosed with this letter is a copy of "CS For House Bill No. 201, 25-LS0615\N" and Legal Services' sectional summary, dated March 16, 2007. In our group's opinion, this bill is now ready for reintroduction and passage. It will make a solid improvement to Alaska's estate and trust statutes.

Thank you very much for your consideration of this legislation.

Sincerely,

David G. Shaftel

Enclosure: As stated

Uniform Laws Annotated Currentness
Uniform Disclaimer of Property Interests Act (1999) (Last Amended or Revised in 2006)

GENERAL NOTES

<The Uniform Disclaimer of Property Interests Act (1999), in its Prefatory Note, states that it replaces the 1978 Uniform Disclaimer of Property Interests Act, the 1978 Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act, and the 1978 Uniform Disclaimer of Transfers under Nontestamentary Instruments Act, and will be incorporated into the Uniform Probate Code to replace UPC § 2-801. Uniform Probate Code § 2-801 was replaced in 2002 by the Uniform Disclaimer of Property Interests Act (1999), which is incorporated into the UPC as Part 11 of Article 2 (§§ 2-1101 to 2-1117).>

<See, also, the Uniform Disclaimer of Property Interests Act (1978).>

TABLE OF JURISDICTIONS WHEREIN ACT HAS BEEN ADOPTED

Jurisdiction	Laws	Effective Date	Statutory Citation
Arizona	2005, c. 195	8-12-2005	A.R.S. §§ 14-10001 to 14-10018.
Arkansas	2003, c. 610	9-1-2003	A.C.A. §§ 28-2-201 to 28-2-220.
Delaware	2006, c. 302	6-27-2006	12 Del.C. §§ 601 to 617.
District of Columbia	2006, D.C. Law 16-205	3-2-2007	D.C. Official Code, 2001 Ed. §§ 19-1501 to 19-1518.
Florida	2005, c. 108	7-1-2005	F.S.A. §§ 739.101 to 739.701.
Hawaii	2000, c. 43	7-1-2000	HRS §§ 526-1 to 526-16.
Indiana	2003, c. 5	7-1-2003	West's A.I.C. 32-17.5-1-1 to 32-17.5-10-1.
Iowa	2004, c. 1015	3-29-2004 [FN*]	I.C.A. §§ 633E.1 to 633E.17.
Maryland	2004, c. 465	10-1-2004	Code, Estates and Trusts, §§ 9-201 to 9-216.
Massachusetts	2008, c. 521	7-1-2011	M.G.L.A. c. 190B, § 2-801.
Nevada	2007, c. 102	5-22-2007	N.R.S. 120.100 to 120.350.
New Mexico	2001, c. 290	7-1-2001	NMSA 1978 §§ 46-10-1 to 46-10-17.
North Dakota	2001, c. 301	8-1-2001	NDCC 30.1-10.1-01 to 30.1-10.1-12.
Oregon	2001, c. 245	1-1-2002	ORS 105.623 to 105.649.
Virginia	2003, c. 253	3-16-2003 [FN*]	Code 1950, §§ 64.1-196.1 to 64.1-196.15.
West Virginia	2002, c. 317	7-1-2002	Code, 42-6-1 to 42-6-19.

[FN*] Date of approval.

DRAFTING COMMITTEE TO REVISE UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACTS

HIROSHI SAKAI, 902 City Financial Tower, 201 Merchant Street, Honolulu, HI 96813, *Chair*

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Uniform Disclaimer of Property Interests

By William P. LaPiana

The National Conference of Commissioners on Uniform State Laws (NCCUSL) approved the Uniform Disclaimer of Property Interests Act (UDPIA) on July 29, 1999. The new disclaimer act replaces three uniform acts promulgated in 1978 (the Uniform Disclaimer of Property Interests Act, the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act and the Uniform Disclaimer of Transfers under Nontestamentary Instruments Act) and will be incorporated into the Uniform Probate Code (UPC) to replace current UPC § 2-801. UDPIA is the most comprehensive disclaimer statute ever written and is designed to allow every sort of disclaimer that is useful for tax planning purposes.

Nine Month Time Limit

UDPIA does not include a specific time limit for making any disclaimer and makes no reference to the nine month limit of Code § 2518. At the beginning of the drafting process, the NCCUSL drafting committee decided that the new act would reflect the basic concept underlying all disclaimers: no one can be forced to accept a gift. The only bar to a disclaimer, therefore, should be acceptance of the offer. This decision recognizes that, in almost all jurisdictions, disclaimers can be used for more than tax planning. A proper disclaimer will often keep the disclaimed property from the disclaimant's creditors. In short, the new act is a type of enabling act that prescribes all of the rules for refusing a proffered interest in or power over property and the effect of that refusal on the power or interest. UDPIA leaves the tax consequences of the refusal to tax law.

The drafting committee also believed that the decision not to include a specific time limit—to "decouple" the disclaimer statute from the time requirement for a "qualified disclaimer" under Code § 2518—would reduce confusion. The older uniform acts and almost all the current state statutes (many of which are based on those acts) were drafted in the wake of the passage of Code § 2518 in 1976. That gift tax provision replaced the "reasonable time" requirement of prior law with a requirement that a disclaimer must be made within nine months of the creation of the interest disclaimed if the disclaimer is to be a "qualified disclaimer"—one that is not regarded as a transfer by the disclaimant.

The statutes that were written in response to Code § 2518 reflected the nine month time limit that Code section established. Under most of these statutes (including the 1978 uniform acts and UPC § 2-801), a disclaimer must be made within nine months of the creation of a present interest. For example, a disclaimer of an outright gift under a will must be made within nine months of the decedent's death, corresponding to the requirement of Code § 2518. A future interest, however, may be disclaimed within nine months of the time that the interest vests in possession or enjoyment. For example, a remainder contingent on surviving the holder of the life income interest must be disclaimed within nine months of the death of the life income beneficiary. The time limit for disclaimers of future interests does not correspond to Code § 2518, which generally requires that a qualified disclaimer of a future interest be made within nine months of the interest's creation, no matter how contingent it may be.

The nine month time limit of the existing statutes really is a trap. Although it superficially conforms to Code § 2518, its application to the disclaimer of future interests does not. The UDPIA drafting committee hoped that, by removing all mention of time limits, the statute itself would signal that different law sets the requirements for a tax-qualified disclaimer.

Relates Back

UDPIA reads differently from current disclaimer statutes because it abandons the term "relates back." Courts have interpreted that term to mean that the disclaimer takes effect as a refusal at that time, thus preventing the disclaimant from transferring the interest. UDPIA adopts this interpretation. Rather than using the term "relates back," however, UDPIA makes disclaimers effective at the time when the offer of the gift is irrevocable. For example, a disclaimer of a gift under a will is "effective" when the will becomes irrevocable at the death of the testator. In addition,

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§ 4(f) states that a disclaimer "is not a transfer, assignment, or release." Taken together, the time of effectiveness provisions and § 4(f) clearly state the meaning of a disclaimer as a refusal.

Disclaimer of Trustee Powers

UDPIA creates rules not only for the disclaimer of interests in property, but also for the disclaimer of powers over property. The act includes sections devoted to the disclaimer of powers not held in a fiduciary capacity (powers of appointment) (§ 9) and of powers held in a fiduciary capacity (§ 11). Trustees may have tax motives for surrendering powers. For example, a trust for the primary benefit of a surviving spouse will not qualify for the marital deduction if the trustee has the power to invade principal for others. If the trustee effectively disclaims the power, the trust might then qualify for the marital deduction under Code § 2056. Trustees have, in general, had difficulty disclaiming powers. The courts usually decide that the trustee must accept the trust as created or decline to be trustee. In contrast, UDPIA gives trustees the ability to make such disclaimers. Any disclaimer by a trustee must, of course, comport with the trustee's fiduciary duty.

Disclaimer of Property Added to Trust

Disclaimers of additions of property to a trust are also the subject of innovative provisions. UDPIA § 5 allows trustees to disclaim property that would otherwise be added to a trust. Such disclaimers have been hampered by the same reasoning that has held back potentially useful disclaimers of fiduciary powers. For example, a trustee might wish to disclaim an addition to a trust that would otherwise lead to the imposition of the generation-skipping transfer tax. Again, any disclaimer of a property interest by a trustee must comport with the trustee's fiduciary duty.

Disclaimer of Interest in Jointly Held Property

The most important new provision dealing with the disclaimer of interests in property is § 7, "Disclaimer of Interest in Jointly Held Property." Although existing statutes usually mention the possibility of disclaiming jointly held property, they do not provide details. Any disclaimer of joint tenancy or tenancy by the entirety property is an anomalous concept in property law terms. At the death of one joint holder, nothing really "passes" to the survivor. The traditional common law view is that the survivor has been "freed of the participation" of the other joint tenant. Nevertheless, courts have interpreted the existing disclaimer statutes as contemplating the disclaimer of at least the "accretive portion" of the joint tenancy—that part of the property that the decedent would have received had the tenancy been severed unilaterally. See *Dancy v. Comm'r*, 872 F.2d 84 (4th Cir. 1989); *McDonald v. Comm'r*, 853 F.2d 1494 (8th Cir. 1988); *Kennedy v. Comm'r*, 804 F.2d 1332 (7th Cir. 1986); *In re Estate of Lamoureux*, 412 N.W.2d 628 (Iowa 1987). Holdings such as these, of course, give little help to tenants by the entirety who cannot make a unilateral severance. IRS rulings have generally, albeit reluctantly, followed these cases, allowing the disclaimer of the severable portion. A surviving tenant by the entirety, of course, could not make a qualified disclaimer under these rulings.

The IRS ended the controversy in late 1997 when it promulgated new final regulations under Code § 2518. Treas. Reg. § 25.2518-2(c)(4)(i) allows a surviving joint tenant or tenant by the entirety to disclaim that portion of the tenancy to which he or she succeeds on the death of the first joint tenant (when there are two joint tenants), whether or not the tenancy could have been unilaterally severed under local law and regardless of the proportion of consideration that the disclaimant furnished. The regulations also create a special rule for joint tenancies between spouses created after July 14, 1988, when the spouse of the donor is not a U.S. citizen. In that case, the donee spouse may disclaim any portion of the joint tenancy includable in the donor spouse's gross estate under Code § 2040, which creates a contribution rule. Thus, the surviving non-citizen spouse may disclaim all of the joint tenancy property if the deceased spouse provided all of the consideration for the tenancy's creation.

Treas. Reg. § 25.2518-2(c)(4)(iii) also recognizes the unique features of joint bank accounts. The regulations permit the disclaimer by a survivor of that part of the account that the decedent contributed, so long as the decedent could have regained that portion during life by unilateral action. The regulations bar the disclaimer of that part of the account attributable to the survivor's contribution and explicitly extend the rule governing joint bank accounts to brokerage and other investment accounts, such as mutual fund accounts, held in joint name.

Section 7 was drafted to allow every sort of qualified disclaimer of jointly held property possible under the Treasury Regulations. Section 2(5) defines jointly held property to include joint tenancies and tenancies by the entirety as well as all other sorts of joint arrangements by stating: "'Jointly held property' means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property." A surviving holder of joint property may disclaim the greater of a fractional portion of the property, determined by dividing the number one by the number of joint holders immediately before the death of the holder giving rise to the opportunity to disclaim, and that portion of the jointly held property not attributable to the contribution of the disclaimant. A surviving spouse who

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"The nine month time limit of the existing statutes really is a trap. Although it superficially conforms to Code § 2518, its application to the disclaimer of future interests does not."

contributed all the consideration for the purchase of the family home held in joint tenancy could disclaim one-half of the property. Had the surviving spouse contributed nothing, he or she could disclaim as much as all of the property, although a qualified disclaimer would be limited to one-half.

The surviving holder of a joint account who contributed nothing to the account could disclaim the entire account. The disclaimer would be a qualified disclaimer under the regulations so long as the other requirements of Code § 2518 are met. The disclaimant is deemed to have predeceased the last of the other joint holders to die. In the case of spousal joint tenants, the decedent then would be the deemed survivor. The disclaimed portion would pass through his or her estate and could help the estate take advantage of the unified credit.

The provisions of UDPIA dealing with the disclaimer of interests in property, other than disclaimers by trustees, also differ from previous statutes. Section 6 governs all such disclaimers, whether the disclaimed interest was created by will, under intestacy law or by a nontestamentary instrument. The old uniform acts, UPC § 2-801, and almost all state statutes deal separately with disclaimers of testamentary and nontestamentary interests. The separation reflects the need to select a time at which the disclaimant is deemed to have died to determine how the disclaimed interest passes, absent a direction in the instrument. For testamentary interests, the time has always been the death of the decedent. For other interests, the time is usually when the instrument creating the interest becomes irrevocable.

Effective Time of Disclaimer

Under UDPIA, unless the instrument provides for the disposition of the disclaimed interest should it be disclaimed or for the disposition of disclaimed interests in general (§ 6(b)(2)), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution of the interest under § 6(b)(3)(A). Section 6(a)(1) defines time of distribution as "the time when a disclaimed interest would have taken effect in possession or enjoyment." "Possession" and "enjoyment" are, of course, terms of art from the law of future interests and describe the time at which it is certain to whom property belongs. The terms do not mean that the person actually has the property in hand. For example, the time of distribution of present interests created by will and of all interests arising under the law of intestate succession is the date of the decedent's death. At that moment, the heir or devisee is entitled to his or her devise or share. It is irrelevant that time will pass before the will is admitted to probate and that actual receipt of the gift may not occur until the administration of the estate is complete. The time of distribution of present interests created by nontestamentary instruments generally depends on when the instrument becomes irrevocable. Because the recipient of a present interest is entitled to the property as soon as the gift is made, the time of distribution occurs when the creator of the interest can no longer take it back.

The time of distribution of a future interest is the time when it comes into possession. Previous uniform acts and UPC § 2-801 provided that a disclaimant would be treated as predeceasing the creation of the future interest (for example, the death of the decedent if the interest was in a testamentary trust). That approach leads to an ambiguity. Assume that T's will creates a testamentary trust for A, who is to receive all of the income for life. At A's death, the trust is to be distributed to T's descendants by representation. A is survived by T's son S and daughter D. S has two living children and D has one child. S decides that he would prefer his share of the trust to pass to his children and disclaims. The disclaimer must be made within nine months of T's death if it is to be a qualified disclaimer for tax purposes. Under prior acts and UPC § 2-801, the interest passes as if S had predeceased T.

A problem can arise if S is survived by children born after T's death. It is possible to argue that, had S predeceased T, the afterborn child would not exist and that D and S's two children living at the time of T's death are entitled to all of the trust property. Under § 6(b)(3)(A), however, S is deemed to have died immediately before A's death, even though under § 6(b)(1) the disclaimer is effective as of T's death. There is no doubt, therefore, that S's children living at the time of distribution, whenever born, are entitled to the share of the trust property he would have received.

In the above example, it is clear that S's children should receive exactly what S would have received had he not disclaimed. Section 6(b)(3)(A) ensures that result by requiring that the disclaimed interest pass as if the disclaimant had died. This provision in turn ensures that a disclaimer cannot alter the representational scheme of a multigenerational gift or the intestacy statute. The classic example is the disclaimer by an older generation representative whose children outnumber those of her deceased

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"The regulations permit the disclaimer by a survivor of that part of the account that the decedent contributed, so long as the decedent could have regained that portion during life by unilateral action."

sibling. For example, X dies intestate, survived by daughter D, her three children and the only child of predeceased son S. D disclaims. Were D deemed simply to have predeceased X, her children could argue that they were entitled to three-fourths of the estate because all the heirs are now in the same generation. Courts have rejected this interpretation of deemed death, taking the position that the disclaimer should only allow the passing of what the disclaimant would otherwise have taken. See, e.g., *Welder v. Hitchcock*, 617 S.W.2d 294 (Tex. Civ. App. 1981); *Estate of Fuenga*, 347 N.Y.S.2d 150 (Surr. Ct. 1973). UDPIA agrees with that position.

Preventing the use of a disclaimer to alter the shares of an intestate estate or of a multigenerational gift by limiting the effect of the disclaimer to the disclaimed interest solves one problem but creates another. In the example in the previous paragraph, if the disclaimed interest passes as if D predeceased X, S's child could claim one-fourth of the interest because, once again, all of the heirs would be in the same generation. UDPIA prevents that result by adapting language from UPC § 2-801, providing that if the disclaimant's descendants would have shared in the disclaimed interest had the disclaimant predeceased (in this example with their cousin, S's child), then the interest passes only to the disclaimant's descendants.

The concept of the disclaimer as a deemed death follows the approach that existing statutes take. Just as under those statutes, the result of a disclaimer of an interest created under a will is seldom in doubt under § 6. Even if the will does not provide for the death of the disclaimant before the testator, the doctrine of lapse and anti-lapse statutes will give a clear answer. The law of lapse as it applies to non-testamentary instruments and the interests they create is far less certain. In the absence of comprehensive lapse provisions like UPC §§ 2-603, 2-706 and 2-707, general principles may dictate the exact result of the disclaimer of an interest created in an instrument other than a will. Unfortunately, the exact application of those general principles to any particular situation may not be obvious.

Disclaimers by Corporations and Partnerships

Section 6(b)(3)(B) provides a rule for the passing of property interests disclaimed by persons other than individuals. Because § 8 applies to disclaimers by trustees of property that would otherwise pass to the trust, this paragraph principally applies to disclaimers by corporations, partnerships and the other entities listed in the definition of "person" in § 2(b). A charity, for example, might wish to disclaim property if acceptance of the property would be incompatible with its purposes.

Acceleration of Future Interests

Section 6(b)(4) continues the approach taken in prior uniform acts and UPC § 2-801 that provides for the acceleration of future interests on the making of a disclaimer. For example, Father's will creates a testamentary trust to pay income to his son S for his life, and on his death to pay the remainder to S's descendants then living, by representation. If S disclaims his life income interest in the trust, the remainder will immediately become possessory in S's descendants determined as of Father's death, just as if S really had not survived. It is immaterial that the actual situation at S's death might be different, with different descendants entitled to the remainder.

Disclaimers of Powers of Appointments

Section 9 deals with disclaimers by holders of powers of appointment and § 10 with disclaimers by appointees, permissible appointees and takers in default. A properly disclaimed power ceases to exist as of the time the disclaimer becomes effective, which in turn depends on what sort of power is involved and whether or not it has been exercised. If a holder disclaims a power before exercising it, the disclaimer takes effect at the time that the instrument creating the power became irrevocable and the disclaimer destroys the power. If the holder has exercised the power, the disclaimer takes effect immediately after the last exercise of the power. The power ceases to exist from that time forward, unless the power is a presently exercisable general power of appointment. Once exercised, such a power cannot be disclaimed. This is the only provision in UDPIA that makes a specific act sufficient to bar a subsequent disclaimer.

Section 10 makes a disclaimer by an appointee take effect as of the time that the instrument by which the holder exercises the power becomes irrevocable. Disclaimers by objects and takers in default take effect as of the time the instrument creating the power becomes irrevocable. The effect of the disclaimer is the same as that of any disclaimer of an interest of property under § 6. The disclaimed interest will pass according to the explicit provisions of the instrument exercising or creating the power or under the default rule of

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§ 6(b)(3)(A), which deems the disclaimant to have predeceased the time of distribution.

Delivery

The delivery provisions of § 12 are designed to ensure that the disclaimer reaches the person or entity having the responsibility to distribute the disclaimed interest. UDPIA does not require filing the disclaimer with a court unless there is no person or entity to whom delivery can be made. For example, a disclaimer of an interest in a decedent's estate must be filed with the court having the authority to appoint the personal representative, only if no personal representative is serving at the time.

Bars To Disclaimers

Section 13 of UDPIA is captioned "When Disclaimer Barred or Limited." Like existing statutes, this section recognizes that a waiver of the right to disclaim, as well as an assignment, conveyance, encumbrance, pledge, transfer or judicial sale of the interest sought to be disclaimed, will bar a disclaimer. In addition, the past exercise of a general power of appointment bars a disclaimer of the power. The section also includes three novel provisions. First, subsection (e) states that other law can bar or limit a disclaimer. This provision recognizes situations such as the cases holding that disclaimers are transfers in the context of Medicaid qualification or issues in dealing with federal tax liens. (The Supreme Court has granted certiorari in *Drye v. U.S.*, 119 S. Ct. 1453 (1999), to resolve the tax lien question.) Second, subsection (f) provides that a disclaimer barred by § 13 takes effect as a transfer of the interest disclaimed to those who would have taken the interest had the disclaimer not been barred. This provision eliminates the ambiguity that would otherwise be caused by an ineffective refusal to accept property. Third, subsection (g) provides that any disclaimer that meets the requirements for a qualified disclaimer under Code § 2518 is a valid disclaimer under UDPIA.

Conclusion

UDPIA recognizes that disclaimers have a wide variety of uses. The act provides rules for all of those potential uses, while leaving policy questions on the effect of a proper refusal of property or rejection of a power to other law.

William P. LaPiana is a professor at The New York Law School in New York City, and is Vice Chair of the Probate & Trust Division's Lifetime and Testamentary Charitable Gift Planning (D-1) Committee.

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FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 287
(H) Publish Date: 3/4/10

Identifier (file name): HB287-LAW-CIV-02-26-10
Dept. Affected: Law
Title: An Act relating to the adoption of the Uniform Disclaimer of Property Interests Act, and to the disclaimer of property rights under the Uniform Probate Code.
RDU: Civil
Component: Commercial and Fair Business
Sponsor: Representative(s) Ramras, Gruenberg
Requester: Labor & Commerce
Component Number: 2717

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

The bill allows beneficiaries of intestate, testamentary and nontestamentary (nonprobate) interests to execute a disclaimer of those interests. A disclaimer extinguishes the interest as if that interest had never been granted. The Uniform Disclaimer of Property Interests Act also makes it clearer that trustees and fiduciaries may use disclaimers and that powers of appointment may be disclaimed.

No fiscal impact on Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager
Phone 465-5427
Division: Administrative Services
Date/Time 2/26/10 10:00 AM
Approved by: Daniel S. Sullivan, Attorney General
Department of Law
Date 2/26/2010

(Revised 11/6/2009 OMB)

HB

307

Representative Lindsey Holmes

House Bill 307 Sponsor Statement
"An Act relating to sexual assault protective orders."

AS 18.65.850 authorizes the courts to grant protective orders in cases of stalking and sexual assault. This statute has been amended twice in recent sessions. In 2001, HB 1 extended protections to victims of stalking by persons other than their domestic partner. In 2006, SB 54 added sexual assault to the statute. While the clear intent of SB 54 was to exactly duplicate the effects of HB 1, namely, to grant jurisdiction to magistrate and district court judges to issue these orders, SB 54 did not explicitly amend AS 22.15.100 to achieve this.

Consequently, certain magistrate and district court judges have read the statute to mean that they do not have jurisdiction to issue protective orders in cases of sexual assault. This mirrors the situation prior to HB 1, in which claimants brought petitions that clearly required a protective order, but judges were unable to offer assistance.

This bill would amend AS 22.15.100 to explicitly grant magistrate and district court judges jurisdiction to grant protective orders in cases of sexual assault, in addition to stalking. This change is especially important given that many rural communities in Alaska only have access to magistrate or district courts.

Please join me in repairing this small gap in the statute and ensuring that all victims of sexual assault in our state are able to gain protection from their attackers.

State Capitol, Juneau, Alaska 99801 · (907) 465-4919 · Fax: (907) 465-2137
Rep.Lindsey.Holmes@legis.state.ak.us

Representative
Lindsey Holmes

Capitol Room 405
465-4919
465-2137 fax

MEMORANDUM

Date: 3 February 2010

To: Senate Judiciary Committee members

From: Rep. Lindsey Holmes

RE: Sectional analysis of HB 307

The following is a sectional analysis of HB 307. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1: Amends AS 20.15.100 to give magistrate and district court judges jurisdiction to issue protective orders in cases of sexual assault under AS 18.65.850.

Bill Edwards

From: Bill Edwards
Sent: Tuesday, January 19, 2010 10:34 AM
To: 'Gayle_Keller@legis.state.ak.us'
Subject: SB 54 from 2006

Hi Gayle,

I am writing to both introduce myself and ask you guys a question. I am a new staffer for Rep. Holmes this session.

Sen. Dyson sponsored legislation in 2006 relating to protective orders, namely amending AS18.65.850 to include sexual assault as well as stalking as cause for granting a protective order.

It has come to our attention that there are some magistrate / district court judges who are reading AS 20.15.100 to mean that they have jurisdiction to grant protective orders for stalking but NOT for sexual assault. Our understanding is that this has resulted in women in rural communities having to go to a superior court judge, which is obviously quite difficult in a lot of places. We have filed a bill to amend AS 20.15.100 to explicitly roll sexual assault protective orders into magistrate / district court jurisdiction. It looks like this was just a minor oversight in the 2006 bill, but I wanted to give you guys a heads up and see if you could confirm that the intent of SB 54 was in fact to grant district courts the ability to grant these orders.

Thanks,

Bill Edwards

Bill Edwards

From: Chuck Kopp
Sent: Tuesday, January 19, 2010 9:53 PM
To: Bill Edwards
Subject: SB 54 from 2006

Hello Bill,

Welcome to the Legislature. You and I are both in the "freshman" legislative aide category. It is going to be a great experience. To the point of your inquiry – Yes, the intent of the 2006 bill was to grant district courts the jurisdiction to issue stalking and sexual assault protective orders. Thanks for taking the initiative on amending AS 20.15.100 to make this clear.

Best regards,

Chuck

Chuck Kopp
Chief of Staff
Senator Fred Dyson
(907) 694-6683 (Eagle River)
(907) 465-2199 (Juneau)

Excerpts from minutes on SB 54, 2005/2006.

Sen. Dyson Feb 17, 2005:

SENATOR FRED DYSON, prime sponsor, explained that under current law a victim may get a restraining order for domestic violence and stalking, but it doesn't mention restraining orders if you've been a victim of sexual assault. SB 54 adds sexual assault to the list that a judge or magistrate may draw from to grant a restraining order. Although some judges do grant restraining orders to victims of sexual assault it's not clear in statute and some have refused to do so. SB 54 would make it clear to judges that they have that authority.

He noted that in drafting the bill, Legislative Legal elected to replicate the language from the domestic violence restraining orders. According to the Department of Law, it would have been better to have replicated the language in existing statutes related to stalking. Because of that opinion, he asked the committee to hold the bill to provide time to draft a committee substitute (CS).

SERGEANT DAVE PARKER, special victims unit supervisor, Anchorage Police Department, said SB 54 would help the police protect victims of sexual assault. The problem has been that judges don't have clear direction. He described a case in which a neighbor raped a woman. When a detective took the victim to get a protective order the judge wouldn't issue the order because he said rape isn't a consensual sexual act.

SERGEANT PARKER emphasized no victim should be re-victimized with unwanted contact with the perpetrator and SB 54 will give sexual assault victims the same legal protection that domestic violence and stalking victims have now.

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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

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Anchorage

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Thecla LaLonde, President
Wrangell Chapter
Wrangell

February 2, 2010

Representative Lindsey Holmes
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Holmes:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 307, an act relating to sexual assault protective orders.

The APOA State Board of Directors recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

John Lucking, Jr.
State President

Rep. Lindsey Holmes

From: Doug Wooliver [dwooliver@courts.state.ak.us]
Sent: Thursday, February 04, 2010 3:20 PM
To: Rep. Lindsey Holmes
Subject: Court Amendments to HB 307
Attachments: 10 Memo for HB 307 amendments.doc; 10 Amendments for HB 307.doc; 10 Amendments to HB 307 MCA.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Lindsey. Attached are several suggested amendments to HB 307. They each come with an explanation and recommended language. They are all aimed at technical jurisdictional clarifications and none are intended to be anything more than clean-up. If you are concerned that your bill will grow too cumbersome with all of them included, let me know and we can focus on the most important. Your bill seems to be on a blisteringly fast track. I had expected a little more time to go over these with you. Who knows, your bill may set a record for the least amount of time from introduction to final passage. I don't want to screw up your bill, but these changes would be helpful. Thanks, Doug

Not Adopted

SPECIFIC SUGGESTIONS FOR POSSIBLE AMENDMENT

A. AS 22.15.110(1) pertaining to recording vital statistics.

The 1959 legislature charged magistrates and district court judges with the duty "[t]o record births, deaths and marriage certificates presented to them for record in the manner prescribed by law."[1] The following year, the legislature created the Bureau of Vital Statistics which was given responsibility for directing, supervising and controlling the statewide system of vital statistics.[2] Throughout the ensuing years, at the direction of and under the supervision of the Bureau of Vital Statistics, a number of courts have been recording vital statistics.

In 2005, the Alaska Court System Area Court Administrators and the State Registrar of Vital Statistics reached an agreement whereby all courts would cease recording vital statistics effective December 31, 2005. Courts still perform some vital statistics functions such as issuing marriage licenses. However, courts are no longer "recording" vital statistics as of January 1, 2006. Legislation deleting this as a duty required to be performed by district judges and magistrates would bring the statutes into conformity with current practice.

See Attachment 1 for suggested language.

---

[1] Ch. 184 § 8, SLA 1959, later codified as AS 22.15.110(1).

[2] *See* Ch. 188 SLA 1960, later codified as AS 18.50.010 et seq.

B. AS 22.15.030 and 22.15.100(9) pertaining to the issuance of protective orders

As the statutes pertaining to the issuance of orders for the protection of victims of domestic violence and, more recently, of victims of stalking and sexual assault, have developed over the years, the jurisdictional statutes have not kept pace. Currently, there are two amendments needed to bring the jurisdictional statutes into step with the substantive provisions providing for these forms of relief. Specifically, an amendment to AS 22.15.030(a)(10) adding issuance of stalking and sexual assault protective orders to the general jurisdiction of the district court would make it consistent with the protective order statutes which provide that such petitions may be filed in the district court. Further, an amendment to AS 22.15.100(9) giving magistrates jurisdiction to issue protective orders in cases involving "sexual assault" would specifically allow magistrates to issue this type of order which many have already been doing for the last three years.

The failure of the legislature to amend the district court statutes to specifically give magistrates jurisdiction to issue "sexual assault" protective orders appears to be an oversight. However, in the meantime, this omission has given some magistrates great anxiety that it is beyond the scope of their jurisdiction to issue such an order.

The cure to bring the jurisdictional statutes into step with the protective order statutes is:

1) to amend AS 22.15.030(a) to grant the district court general civil jurisdiction "over cases involving protective orders for stalking and sexual assault under AS 18.65.850 – 18.65.870" in addition to cases involving domestic violence under; and

2) to amend AS 22.15.100(9) by adding a section granting district judges and magistrates the power to issue a protective order in cases involving "sexual assault."

See Attachment 2 for suggested language.

C. Possible amendments to the statutes granting district judges and magistrates criminal jurisdictional.

1. Clarification of the types of proceedings that fall within the general criminal jurisdiction of the district court.

Alaska Statute 22.15.060(a)(1) is the provision which gives the district court general criminal jurisdiction. It provides:

> **Sec. 22.15.060. Criminal jurisdiction.** (a) The district court has jurisdiction
>
> (1) of the following *crimes*:
>
> (A) a misdemeanor, unless otherwise provided in this chapter;
>
> (B) a violation of an ordinance of a political subdivision;
>
> (C) a violation of AS 04.16.050 or AS 11.76.105;[3]

There are several possible amendments the legislature may wish to consider with regard to this statute.

a. AS 22.15.060(a)(1) should be amended by substituting the word *offenses* for the word *crimes* in AS 22.15.060(a)(1)

Although section (1) refers to crimes, the contents of subsections (B) and (C) refer to violations. According to the definitions contained in Title 11, violations are not crimes. Substituting the word *offenses* for the word *crimes* in AS 22.15.060(a)(1) would rectify this inaccuracy.

Violations are defined in AS 11.81.900(b)(63) as follows:

> (63) "violation" is a noncriminal offense punishable only by a fine, but not by imprisonment or other penalty; conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime; a person charged with a violation is not entitled
>
> (A) to a trial by jury; or
>
> (B) to have a public defender or other counsel appointed at public expense to represent the person.

The term "crime," on the other hand, is defined in AS 11.81.900(b)(11) as follows:

> (11) "crime" means an offense for which a sentence of imprisonment is authorized; a crime is either a felony or a misdemeanor;

---

[3] AS 22.15.060(a)(1) (Italics added). Alaska Statute 04.16.050 prohibits the "possession, control, or consumption of alcohol by persons under the age of 21." Alaska Statute 11.76.105 prohibits possession of tobacco by a minor.

Because violations are not crimes, listing violations as types of crimes under AS 22.15.060(a)(1) is inaccurate, at best. The term "offenses," however, encompasses both crimes and violations. As AS 11.81.900(b)(11) provides:

> (39) "offense" means conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation;

Substituting the term "offenses" for "crimes" would provide greater accuracy in the statutory wording of AS 22.15.060(a). It also would harmonize the criminal jurisdiction statute with the criminal statutes themselves.

See Attachment 3 for suggested language.

b. AS 22.15.060(a)(1) should be amended to give the district court criminal jurisdiction over "minor offenses"

The construct of the district court jurisdiction statutes is to begin by giving the district court general powers. These are powers that are conferred on district court judges. Specific powers of magistrates and additional powers of district court judges are delineated in the latter part of the statutory scheme.

Alaska Statute 22.15.060 describes the general criminal jurisdiction of the district court. Under present language, the district court has general jurisdiction over all types of misdemeanors and certain specified violations, those being "violations of an ordinance of a political subdivision" and "violations of AS 04.16.050 or AS 11.76.105." What is absent from the general jurisdiction statutes is a grant of authority to the district court to hear other minor offenses. This absence stands in contrast to language in AS 22.15.120(a)(7) which gives magistrates jurisdiction to hear minor offenses." [4]

The term "minor offenses" is defined at AS 22.15.120(c) as follows:

> (c) In this section, "minor offense" means
>
> > (1) an offense classified by statute as an infraction or a violation;
> > (2) an offense for which a bail forfeiture amount has been authorized by statute and established by supreme court order; or

[4] Alaska Statute 22.15.120, which describes the proceedings magistrates may conduct, gives magistrates jurisdiction in subsection (a)(7) "*to hear, try, and enter judgments in* all cases involving *minor offenses* and violations of ordinances of political subdivisions." This provision was inserted in 1993 when the House Judiciary Committee introduced a bill at the request of Alaska Supreme Court to give magistrates jurisdiction over "minor offenses." According to the testimony offered by Deputy Administrative Director, Chris Christensen, the purpose of the request was to improve the operating efficiency of the court by redistributing some of the workload from district court judges to magistrates. It was obviously assumed that district judges already had jurisdiction over all "minor offenses." The bill passed and magistrates were granted jurisdiction to hear minor offenses in AS 22.15.120(a)(7).

(3) a statutory offense for which a conviction cannot result in incarceration, a fine greater than $300, or the loss of a valuable license.

Inclusion of similar language in the general district court jurisdiction statutes would clarify that district court judges also have jurisdiction over "minor offenses" which is not presently clear.[5]
If the legislature were to agree with this suggestion, the reference to AS 11.76.105 in AS 22.15.060(a)(1)(C) could then be deleted. Alaska Statute 11.76.105 makes possession of tobacco by a minor a "violation."[6] As a violation, this offense would fall within the definition of minor offenses.

See Attachment 3 for suggested language.

---

[5] AS 12.80.040 could be argued to confer jurisdiction on district court judges. However, this is a strained reading of that statute which provides:

> **Sec. 12.80.040. Violations and infractions.** Except as provided in AS 11.91.900(b) and AS 28.90.010(d), all laws of the state relating to misdemeanors apply to violations and infractions, including the powers of peace officers, the jurisdiction of courts, and the periods for commencing actions and for bringing a case to trial.

[6] AS 11.76.105 provides:

> **Sec. 11.76.105. Possession of tobacco by a minor.** (a) A person under 19 years of age may not knowingly possess a cigarette, a cigar, tobacco, or a product containing tobacco in this state. This subsection does not apply to a person who is a prisoner at an adult correctional facility.
> (b) Possession of tobacco by a minor is a violation.

2. The maximum fine amount contained in AS 22.15.120(c) is inconsistent with the maximum fine amount contained at AS 12.55.035(b)(7).

As explained in the preceding section, AS 22.15.110(a)(7) gives magistrates jurisdiction to hear minor offenses. Minor offenses are defined in AS 22.15.110(c)(3) as follows:

> (c) In this section, "minor offense" means
>
> (1) an offense classified by statute as an infraction or a violation;
> (2) an offense for which a bail forfeiture amount has been authorized by statute and established by supreme court order; or
> (3) a statutory offense for which a conviction cannot result in incarceration, a fine greater than $300, or the loss of a valuable license.

This fine amount contained in subsection (C)(3) is inconsistent with the fine amount contained in AS 12.55.035 which prescribes the maximum fine amounts for all types of offenses, including violations. This inconsistency came about as a result of a 2002 amendment by the legislature of AS 12.55.035. Until 2002, the maximum fine that could be imposed for a violation was $300. With the 2002 amendment, the legislature increased the limit on fines for violations to $500. When it did, it failed to update the language in AS 22.15.110(c)(3).

Amending the language in AS 22.15.110(c)(3) from $300 to $500 would render it consistent with the 2002 amendment of the maximum fine amount for violations.

See Attachment 4 for suggested language.

3. Amending AS 22.15.120(a)(7) would clarify magistrate jurisdiction to accept changes of plea and to sentence in cases which are not "crimes".

An additional minor change the legislature may wish to consider pertains to subsection (5) of AS 22.15.120. That language presently reads:

> **Sec. 22.12.120 Limitations on proceedings which magistrate may hear.** (a) A magistrate shall preside only in cases and proceedings under AS 22.15.040, 22.15.100, and 22.15.110, and as follows:
>
> > (5) To give judgment of conviction upon a plea of guilty by the defendant in all *criminal proceedings* within the jurisdiction of the district magistrate court;[7]

This provision is the statute magistrates rely upon to conduct changes of plea and sentencings in all cases otherwise within their jurisdiction. However, some magistrates have expressed concern in the past that the language "criminal proceedings" does not provide authority to conduct changes of plea in cases involving minor offenses or minor consuming alcohol which are not crimes. A simple shifting of the word "criminal" in the statute to precede the word "jurisdiction" would remedy this concern.

See Attachment 5 for suggested language.

[7] (Italics added).

D. Magistrate jurisdiction in cases involving the "possession, control, or consumption of alcohol by persons under the age of 21".

Alaska Statute 04.16.050 penalizes the "possession, control, or consumption of alcohol by persons under the age of 21" (MCA cases). As mentioned in section C above, AS 22.15.060(a)(1)(C) gives the district court jurisdiction of violations of AS 04.16.050. However, nothing in the jurisdictional statutes specifically gives magistrates jurisdiction to hear MCA cases. The legislature may wish to consider seeking an amendment to AS 22.15.120(a) that would specifically empower magistrates to hear MCA cases.

Alaska Statute 04.16.050, creates three tiers of offenders: first offenders, repeat offenders, and habitual offenders. The attendant penalties escalate the more aggravated the offense.[8] While the legislature specified in AS 04.16.050(d) that "[h]abitual minor consuming or in possession or control is a class B misdemeanor," it did not define or address the "class of offense" of first and repeat minor consuming convictions. In *State v. Auliye*, 57 P.3d 711 (Alaska App. 2002), however, the Court of Appeals analyzed the minor consuming statutory scheme,[9] and concluded that because of the severity of the possible penalties and collateral consequences of a conviction, even first offenders have a right to a jury trial and court-appointed counsel if indigent.[10] The result is that while first and repeat offenses are something less serious than a class B misdemeanor, they carry rights which make them more serious than violations or other minor offenses. They are an offense unto themselves.

From a jurisdictional standpoint, this produces an odd result. The district court has jurisdiction under AS 22.15.060(a)(1)(C) for violations of AS 04.16.050. A district court judge as well as a superior court judge[11] can hear cases involving a first, repeat or habitual offender. Magistrates, on the other hand, cannot try and enter judgment in cases involving first and repeat offenses because these offenses are neither minor offenses nor misdemeanors. However, with the consent of the defendant, magistrates can hear cases charged as "habitual offenses" because of their jurisdiction to hear misdemeanors under AS 22.15.120(a)(6).

As a practical matter, magistrates do conduct changes of plea and sentencings in all types of MCA cases. In doing so, they rely on AS 22.15.120(a)(5), discussed in the preceding section, which authorizes magistrates to "give judgment of conviction upon a plea of guilty or no contest by the defendant in a criminal proceeding within the jurisdiction of the district court." However, none conduct trials in cases involving first and

---

[8] A person is a first offender if the person "has not been previously convicted or received a suspended imposition of sentence under (1) of this subsection is guilty of minor consuming or in possession or control." AS 04.16.050(b). A person is a repeat offender if the person previously "was placed on probation under (b)(1) of this section or has been previously convicted once." AS 04.16.050(c). A person is a habitual offender if the person previously "was placed on probation under (c) of this section, or has been previously convicted twice, and the person violates (a) of this section." AS 04.16.050(d).

[9] The statutory scheme has been amended since *Auliye*. However, for purposes here, magistrates and training judges alike continue to view the analysis in *Auliye* as being applicable in handling MCA cases..

[10] 57 P.3d 711 (Alaska App. 2002).

[11] The superior court has concurrent criminal jurisdiction.

repeat offenses and, in cases charged as a habitual offense, they do so only with the consent of the defendant as required by AS 22.15.120(a)(6).

An amendment to the jurisdictional statutes specifically giving magistrates jurisdiction to hear violations of AS 04.16.050 would give presiding judges greater flexibility in assigning these cases. Particularly in the Second Judicial District where there are no district court judges, it is a drain on judicial resources to have the least serious MCA cases tried by superior court judges.

See Attachment 6 (4 pages) for suggested language.

ATTACHMENT 1

SUGGESTED LANGUAGE

Sec. 22.15.110. Additional duties of district judge and magistrate. (a) Each district judge and magistrate shall

~~(1) record birth, death, and marriage certificates presented to them for record in the manner prescribed by law;~~

(2) authorize the burial or disposition of bodies under AS 12.65.100; and

(3) upon application by an appropriate person, appoint the person to assume temporary custody of and preserve the property and estate of deceased persons until disposition of the property is made under AS 13.16 or further order is made by the court.

(4) *[Repealed, §25 ch. 21 SLA 1985]*

(b) A district judge may establish a controlled livestock district in accordance with AS 03.35.010.

ATTACHMENT 2

SUGGESTED LANGUAGE

Sec. 22.15.060. Civil jurisdiction. (a) The district court has jurisdiction of civil cases, including foreign judgments filed under AS 09.30.200 and and arbitration proceedings under AS 09.43.170 or 09.43.530 to the extent permitted by AS 09.43.010 and 09.43.300, as follows:

****

(10) over cases involving protective orders for ~~domestic violence under AS 18.66.100 – 18.66.180~~
(A) domestic violence under AS 18.66.100 – 18.66.180;
(B) stalking as provided in AS 18.65.850 – 18.65.870; and
(C) sexual assault as provided in AS 18.65.850 – 18.65.870;

Sec. 22.15.100. Functions and powers of district judge and magistrate. Each district judge and magistrate has the power

****

(9) to issue a protective order in cases involving
(A) domestic violence as provided in AS 18.66.100 – 18.66.180; ~~or~~
(B) stalking as provided in AS 18.65.850 – 18.65.870; and
(C) sexual assault as provided in AS 18.65.850 – 18.65.870;

****

ATTACHMENT 3

SUGGESTED LANGUAGE:

Sec. 22.15.060. Criminal jurisdiction. (a) The district court has jurisdiction

(1) of the following offenses ~~crimes~~:

(A) a misdemeanor, unless otherwise provided in this chapter;
(B) a minor offense or a violation of an ordinance of a political subdivision;
(C) a violation of AS 04.16.050 ~~or AS 11.76.105~~;

(2) to provide post-conviction relief under the Alaska Rules of Criminal Procedure, if the conviction occurred in the district court.

(b) In this section, "minor offense" means

(1) an offense classified by statute as an infraction or a violation;
(2) an offense for which a bail forfeiture amount has been authorized by statute and established by supreme court order; or
(3) a statutory offense for which a conviction cannot result in incarceration, a fine greater than $300, or the loss of a valuable license.

~~(b)~~ (c) Insofar as the criminal jurisdiction of the district courts and the superior court is the same, such jurisdiction is concurrent.

ATTACHMENT 4

SUGGESTED LANGUAGE

Sec. 22.12.120 Limitations on proceedings which magistrate may hear. (a) A magistrate shall preside only in cases and proceedings under AS 22.15.040, 22.15.100, and 22.15.110, and as follows:

****

(c) In this section, "minor offense" means

(1) an offense classified by statute as an infraction or a violation;

(2) an offense for which a bail forfeiture amount has been authorized by statute and established by supreme court order; or

(3) a statutory offense for which a conviction cannot result in incarceration, a fine greater than ~~$300~~ $500, or the loss of a valuable license.

ATTACHMENT 5

SUGGESTED LANGUAGE

Sec. 22.12.120 Limitations on proceedings which magistrate may hear. (a) A magistrate shall preside only in cases and proceedings under AS 22.15.040, 22.15.100, and 22.15.110, and as follows:

(5) To give judgment of conviction upon a plea of guilty by the defendant in all ~~criminal~~ proceedings within the criminal jurisdiction of the district magistrate court;

ATTACHMENT 6

Sec. 22.12.120 Limitations on proceedings which magistrate may hear. (a) A magistrate shall preside only in cases and proceedings under AS 22.15.040, 22.15.100, and 22.15.110, and as follows:

****

(6) To hear, try, and enter judgments in all cases involving misdemeanors that are not minor offenses if the defendant consents in writing that the magistrate may try the case;

(7) To hear, try, and enter judgments in all cases involving violations of AS 04.16.050 if the defendant consents in writing that the magistrate may try the case;

~~(7)~~ (8) To hear, try, and enter judgments in all cases involving minor offenses and violations of an ordinance of a political subdivision;

**** [Subsequent sections to be renumbered]

Representative
Lindsey Holmes

Capitol Room 405
465-4919
465-2137 fax

MEMORANDUM

Date: 3 February 2010

To: Sen. Hollis French, Senate Judiciary Committee Chair

From: Rep. Lindsey Holmes

RE: Hearing request for HB 307

I am writing to request a hearing before the Senate Judiciary Committee for House Bill 307, "An Act Relating to Sexual Assault Protective Orders." This bill was reported out of the House Judiciary Committee with unanimous Do Pass recommendations, and passed the House floor with a unanimous vote.

I have no materials to add to the bill packet at this point. Supporting documentation, including sponsor statement, sectional analysis, fiscal note, and materials relating to the legislature's intent in creating sexual assault protective orders can be accessed via BASIS.

HB 319

[redacted] **SENATE COMMITTEE REPORT** [redacted]

TE: 2/26/10

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

diciary Committee considered CS FOR HOUSE BILL NO. 319(FIN)

HB 319 FIREARMS

Act relating to firearms; and providing for an effective date."

recommends:

be **replaced** with [ ] **SCS** or [ ] **CS** _____ (_____)

adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

attached amendment(s)

adopt _____Letter of Intent

further referral to _____Committee

SENATE BILL:
[ ] Same Title
[ ] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

EW FISCAL NOTE(S):

epartment	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Law	2/4/10			✓	1
DPS	2/17/10			✓	3

] **APPROPRIATION - no fiscal note**

GNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Coghill	✓			
	Wielechowski	✓			
	Ellis	✓			
	McGuire	✓			
HAIR:	French	✓			

Representative Mike Hawker
Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
907 465-4949 direct
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907 465-4979 fax

Interim:
716 W 4th Avenue
Anchorage, AK 99501
907 269-0244 office
907 269-0248 fax

House District 32:
Eagle River
Anchorage
Rainbow
Indian
Bird
Girdwood
Portage
Whittier
Sunrise
Hope

House Bill 319
Sponsor Statement
Version: CS HB 319 (FIN)

"An Act relating to firearms."

In Alaska, anyone who is 21 years of age or older and legally allowed to own a firearm is allowed to carry it concealed without a permit. However, there are still people who obtain Alaska Concealed Handgun Permits (ACHP) for other reasons, including reciprocity with other states. In the past few years, a few glitches in the permit system have come to light.

House Bill 319 makes the following changes to the statutes regarding an ACHP permit:

- Clarifies that a permit does not have to be surrendered when it expires or when a permit holder moves out of the state;
- clarifies that an expired permit can be displayed, as long as the permit holder is not claiming that it is a valid permit;
- requires the Department of Public Safety to mail a notice to the permit holder at least 90 days prior to the expiration of a permit; and
- allows the Department of Public Safety to use electronic applications and post the regulations and statutes on its website, instead of providing paper copies.

HB 319 also requires the chief law enforcement officer (CLEO) in Alaska jurisdictions to complete, in a timely manner, the required certification on an application to the Bureau of Alcohol Tobacco, Firearms and Explosives (BATFE) for approval to transfer a firearm registered under the National Firearms Act (NFA) of 1934 to a person who is qualified under state law to possess the firearm.

The CLEO certification is a mandatory step in the BATFE transfer process and unjustified delays in processing or refusal to cooperate compromise Second Amendment rights.

House Bill 319 makes commonsense changes to our ACHP statutes and ensures that NFA firearms transfers are not inappropriately obstructed.

HB 319
Sectional Analysis
Version CS HB 319 (FIN)

Prepared by Representative Mike Hawker's Office

Section 1: Allows the Department of Public Safety to use an electronic application for an Alaska Concealed Handgun Permit and to post the laws and regulations on its website, instead of providing a paper copy.

Section 2: Allows the Department of Public Safety to use an electronic application to renew an Alaska Concealed Handgun Permit.

Section 3: Adds two new sections to AS 18.65.725 (Alaska Concealed Handgun Permit renewal):

(e) Clarifies that a person does not become ineligible to hold a permit and does not need to surrender the permit if he or she ceases to be a resident of the state. Alaska residency is still a requirement to obtain or renew a permit.

(f) Requires the department to send, via first class mail to the permittee, a notice that their permit is expiring. The notice must be sent at least 90 days prior to the permit expiration, which is the beginning of the renewal period.

Section 4: Clarifies that a person can display an expired permit, but cannot represent it as valid, and that an expired permit does not need to be surrendered to the department.

Section 5: Requires the local law enforcement certification section of a Bureau of Alcohol, Tobacco, Firearms and Explosives firearm transfer application to be executed by the appropriate law enforcement officer within 30 days of submission by a person who is legally qualified to own the firearm.

Section 6: Delayed effective date for section 3 (f).

3107

HB 319
Background Information
Prepared by Representative Mike Hawker's Office

Section 3 of House Bill 319 requires the local law enforcement certification section of a Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) firearm transfer application to be completed by the appropriate law enforcement officer within 30 days of submission by a person who is legally qualified to own the firearm. Attached is a copy of the BATFE firearm transfer application, also known as a "Form 4." Section 17 (highlighted on page 2 of the attached form) is the local law enforcement certification section that would have to be completed.

OMB No. 1140-0014 (10/31/2007)

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Application for Tax Paid Transfer and Registration of Firearm

ATF Control Number

2a. Transferee's Name and Address *(Including tradename, if any) (See instruction 2)*

2b. County

3a. Transferor's Name and Address *(Including trade name, if any) (Executors: see instruction 2k)*

3b. Transferor's Telephone Number and Area Code

3c. If Applicable: Decedent's Name, Address, and Date of Death

Submit in Duplicate to:
National Firearms Act Branch
Bureau of Alcohol, Tobacco, Firearms and Explosives, P.O. Box 73201
Chicago, Il 60673-7201

1. Type of Transfer *(Check one)*
☐ $5 ☐ $200
Submit with your application a check or money order for the appropriate amount made payable to the Bureau of Alcohol, Tobacco, Firearms and Explosives. Upon approval of this application, this office will acquire, affix and cancel the required "National Firearms Act" stamp for you. *(See instructions 2h, 2i and 3.)*

3d. Number, Street, City, State and Zip Code of Residence *(or Firearms Business Premises)* if Different from Item 3a.

The above-named and undersigned transferor hereby makes application as required by Section 5812 of the National Firearms Act to transfer and register the firearm described below to the transferee.

4. Description of Firearm *(Complete items a through h)*

a. Name and Address of Manufacturer and/or Importer of Firearm	b. Type of Firearm *(See instruction 1c)*	c. Caliber, Gauge or Size *(Specify)*	d. Model		
			Length *(Inches)*	e. Of Barrel:	f. Overall:
			g. Serial Number		

h. Additional Description or Data Appearing on Firearm *(Attach additional sheet if necessary)*

5. Transferee's Federal Firearms License *(If any)*
(Give complete 15-digit number) (See instruction 2b)

First 6 digits	2 digits	2 digits	5 digits

6. Transferee's Special (Occupational) Tax Status *(If any)*

a. Employer Identification Number	b. Class

7. Transferor's Federal Firearms License *(If any)*
(Give complete 15-digit number) (See instruction 2b)

First 6 digits	2 digits	2 digits	5 digits

8. Transferor's Special (Occupational) Tax Status *(If any)*

a. Employer Identification Number	b. Class

Under Penalties of Perjury, I Declare that I have examined this application, and to the best of my knowledge and belief it is true, correct and complete, and that the transfer of the described firearm to the transferee and receipt and possession of it by the transferee are not prohibited by the provisions of Chapter 44, Title 18, United States Code; Chapter 53, Title 26, United States Code; or Title VII of the Omnibus Crime Control and Safe Streets Act, as amended; or any provisions of State or local law.

9. Consent to Disclosure of Information to Transferee *(See instruction 8)*. I **Do** or **Do Not** *(Circle one)* Authorize ATF to Provide Information Relating to this Application to the Above-Named Transferee.

10. Signature of Transferor *(or authorized official)*	11. Name and Title of Authorized Official *(Print or type)*	12. Date

The Space Below is for the use of the Bureau of Alcohol, Tobacco, Firearms and Explosives

By authority of the Director, This Application has been Examined, and the Transfer and Registration of the Firearm Described herein and the Interstate Movement of that Firearm, when Applicable, to the Transferee are:

Stamp Denomination

☐ Approved *(with the following conditions, if any)*

☐ Disapproved *(For the following reasons)*

Signature of Authorized ATF Official

Date

ATF Form 4 (5320.4)
Revised November 2004

3109

Transferee Information

The following questions must be answered by any transferee who is **not** a Federal firearms licensee or government agency. The transferee shall give full details on a separate sheet for all "YES" answers. *(See instruction 2d)*

13. Are You:	Yes	No	14. Have You:	Yes	No
a. Charged by information or under indictment in any court for a crime punishable by imprisonment for a term exceeding one year?			a. Been convicted in any court of a crime for which the judge could have imprisoned you for more than one year, even if the judge actually gave you a shorter sentence?		
b. A **fugitive** from justice?					
c. An alien who is **illegally** or unlawfully in the United States?			b. Been discharged from the armed forces under **dishonorable** conditions?		
d. Under 21 years of age?					
e. An unlawful user of or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?			c. Been adjudicated mentally defective or been committed to a mental institution?		
			d. Renounced your United States citizenship?		
f. Subject to a court order restraining you from harassing, stalking or threatening an intimate partner or child of such partner?			e. Been convicted in any court of a misdemeanor crime of domestic violence? This includes any misdemeanor conviction involving the use or attempted use of physical force committed by a current or former spouse, parent, or guardian of the victim, or by a person with a similar relationship with the victim.		

15. Transferee's Certification *(See instruction 2e)*

I, _____, have a reasonable necessity to
(Name of Transferee)
possess the machinegun, short-barreled rifle, short-barreled shotgun, or destructive device described on this application for the following reason(s) _____

_____

and my possession of the device or weapon would be consistent with public safety (18 U.S.C. 922(b) (4) and 27 CFR 478.98).

UNDER PENALTIES OF PERJURY, I declare that I have examined this application and the documents submitted in support thereof, and to the best of my knowledge and belief it is true, correct and complete.

_____ _____
(Signature of Transferee) *(Date)*

16. Photograph

Affix
Recent Photograph Here
(A

Law Enforcement Certification Section

17. Law Enforcement Certification *(See instruction 2e)*

I certify that I am the chief law enforcement officer of the organization named below having jurisdiction in the area of residence of

_____. I have no information indicating that the transferee will use the firearm or device
(Name of Transferee)
described on this application for other than lawful purposes. I have no information that the receipt or possession of the firearm or device described in item 4 would be place the transferee in violation of State or local law.

_____ _____
(Signature and Title of Chief Law Enforcement Officer) *(Date)*

_____
(Organization and Street Address)

_____
(County) *(Telephone Number)*

Important Information for Currently Registered Firearms

If this registration document evidences the current registration of the firearm described on it, please note the following information.

Estate Procedures: For procedures regarding the transfer of firearms in an estate resulting from the death of the registrant identified in item 2a, the executor should contact the NFA Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

Change of Address: Unless currently licensed under the Gun Control Act, the registrant shall notify the NFA Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226, in writing, of any change to the address in Item 2a.

Change of Description: The registrant shall notify the NFA Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226, in writing, of any change to the description of the firearm in Item 4.

Interstate Movement: If the firearm identified in item 4 is a machinegun, short-barreled rifle, short-barreled shotgun, or destructive device, the registrant may be required by 18 U.S.C. § 922(a)(4) to obtain permission from ATF prior to any transportation in interstate or foreign commerce.

Restrictions on Possession: Any restriction *(see approval block on face of form)* on the possession of the firearm identified in item 4 continues with the further transfer of the firearm.

Persons Prohibited from Possessing Firearms: If the registrant becomes prohibited by 18 U.S.C. § 922 from possessing a firearm, the registrant shall notify the NFA Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226, in writing, immediately upon becoming prohibited for guidance on the disposal of the firearm.

Proof of Registration: This approved application is the registrant's proof of registration and it shall be made available to any ATF officer upon request.

Instructions

1. **Definitions**

   a. **National Firearms Act (NFA).** Title 26, United States Code, Chapter 53. The implementing regulations are found in Title 27, Code of Federal Regulations, Part 479.

   b. **Gun Control Act (GCA).** Title 18, United States Code, Chapter 44. The implementing regulations are found in Title 27, Code of Federal Regulations, Part 478.

   c. **Firearm.** The term "firearm" means: (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon as defined in 18 U.S.C. § 5845(e); (6) a machinegun; (7) a muffler or silencer for any firearm whether or not such firearm is included within this definition; and (8) a destructive device.

   d. **Person.** The term "person" means a partnership, company, association, trust, estate, or corporation, as well as a natural person.

   e. **Employer Identification Number (EIN).** Required of taxpayer filing special (occupational) tax returns under 27 CFR § 479.35.

   f. **SPECIAL (OCCUPATIONAL) TAX.** Required by the NFA to be paid by a Federal firearms licensee engaged in the business of manufacturing (Class 2), importing (Class 1), or dealing (Class 3) in NFA firearms.

   g. **Federal Firearms License.** A license issued under the provisions of the GCA to manufacture, import or deal in firearms.

   h. **ATF Officer.** An officer or employee of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) authorized to perform any function relating to the administration of the NFA.

   i. **Transfer.** Selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of a firearm.

   j. **Transferor.** The registered owner of a firearm who is applying to transfer it.

   k. **Transferee.** The person acquiring the firearm.

   l. **Misdemeanor Crime of Domestic Violence.** A crime that is a misdemeanor under Federal or State law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is co-habiting with or has cohabited with the victim as a spouse, parent, or guardian. The term includes all misdemeanors that involve the use or attempted use of physical force *(e.g., simple assault, assault and battery)*, if the offense is committed by one of the defined parties. The person is NOT considered to have been convicted of such crime unless the person was represented by a lawyer or gave up the right to a lawyer, and, if the person was entitled to a jury trial, was tried by a jury or gave up the right to a jury trial.

2. **Preparation of Application**

   a. **Authority.** As provided by 26 U.S.C. §§ 5811 and 5812, any person seeking to transfer a firearm tax paid must complete, in duplicate, an application on this form for each firearm. The transferor must furnish all the information called for on this application form.

   b. **Federal Firearms Licensees.** If the transferor or transferee is licensed under the GCA, the name, trade name *(if any)*, and address shall be identified on the ATF Form 4 as they appear on the license. If item 6 is completed, the entity identified must be the same as the entity identified in item 5. For example, **if item 5 identified a sole proprietor, item 6 cannot identify a corporation.** This also applies for the completion of items 7 and 8.

   c. **Transferee Qualifications.** If the transferee is an individual and not licensed under the GCA, the questions in items 13 and 14 must be answered.

   d. **Transferee Certification.** Item 15 must be completed by the transferee if:

      (1) the firearm to be transferred is a machinegun, short-barreled rifle, short-barreled shotgun, or destructive device;
      (2) the transferor is licensed under the GCA to deal in such device or firearm; and
      (3) the transferee is not licensed under the GCA to deal in such device or firearm.

   e. **Law Enforcement Certification.** Item 17 must be completed for an individual transferee, unless the transferee is licensed as a manufacturer, importer, or dealer under the GCA and is a special *(occupational)* taxpayer under the NFA at the time of the submission of the application for transfer. The chief law enforcement officer is considered to be the Chief of Police for the transferee's city or town of residence; the Sheriff for the transferee's county of residence; the Head of the State Police for the transferee's State of residence; a State or local district attorney or prosecutor having jurisdiction in the transferee's area of residence; or another person whose certification is acceptable to the Director, Bureau of Alcohol, Tobacco, Firearms and Explosives. If someone has specific delegated authority to sign on behalf of the Chief of Police, Sheriff, etc., this fact must be noted by printing the Chief's, Sheriff's, or other authorized official's name and title, followed by the word "by" and the full signature and title of the delegated person. The certificate must be dated no more than one year prior to the date of receipt of the application.

   f. **Photographs and Fingerprints.** An individual transferee, except if licensed as a manufacturer, importer, or dealer under the GCA, must (1) attach to Item 16, a 2 inch x 2 inch photograph of the frontal view of the transferee taken within 6 months prior to the date of the application and (2) attach two properly completed FBI Forms FD-258 *(Fingerprint Card with blue lines)* to the application. The fingerprints must be clear for accurate classification and taken by someone properly equipped to take them.

   g. **Signatures.** All signatures required on ATF Form 4 must be original in ink on both copies.

   h. **Remittance.** A check or money order, made payable to the Bureau of Alcohol, Tobacco, Firearms and Explosives, in the amount for the appropriate rate of tax *(see instruction 2i)* must be submitted with the ATF Form 4. Do not send cash.

   i. **Rate of Tax.** The tax on the transfer of any NFA firearm is $200.00, except that the tax is $5.00 on the transfer of a firearm classified as "any other weapon."

   j. **Photocopies, Computer Generated Versions, or Downloaded Version from ATF Website.** The ATF Form 4 may be photocopied, computer-generated *(as long as it is in the same format and contains all required information)*, or downloaded from the ATF website *(www.atf.gov)*. Please note the instructions on the website.

   k. **Estates.** If the firearm is being transferred from an estate, item 3a shall reflect: the executor's name, title *(executor (or executrix, administrator, administratrix)* of the estate of *(name))*, and the executor's address. Item 3c shall reflect the address of the decedent and the date of death. *(see the ATF Internet website at **www.atf.gov** for additional information about transfers from estates.)*

   l. **Submission.** All requested informtion must be entered in blue or black ink and must be legible. Send both copies of the ATF Form 4 and attachments to the address located in the upper right hand corner on the face side of the ATF Form 4. The return of the application or sending it to any other address will only delay the processing.

   m. **State or Local Permit.** If a State or local permit or license is required for the transferee prior to acquisition of the firearm, a copy of the permit must be included with the application.

3. **Approval of Application.** Upon approval of an application, the NFA Branch will affix the appropriate NFA transfer tax stamp, cancel it, and return the approved copy with the stamp affixed to the transferor for delivery with the firearm to the transferee. Since the approval of the application effectuates registration of the firearm to the transferee, the physical transfer of the firearm must be completed immediately; however, the transferor must not transfer the firearm until the application has been approved and received. If the physical transfer of the firearm cannot be completed immediately, the transferor must contact the NFA Branch with the specifics.

4. **Withdrawal of Application.** The transferor may withdraw an application prior to approval subsequent to a written request. The NFA Branch will arrange for a refund of the taxpaid.

5. **Cancellation of Approved Application.** The transferor may cancel an approved application only if the physical transfer of the firearm has not been completed. The transferor must return the approved application with the tax stamp affixed with a written request for cancellation, citing the need and that the physicaltransfer of the firearm did not take place. The NFA Branch will arrange for a refund of the tax paid.

6. **Disapproval of Application.** If the application is disapproved, the NFA Branch will note the reason for disapproval on the application and return one copy of the ATF Form 4 to the transferor. The NFA Branch will arrange for a refund of the tax paid.

7. **Reasons for Disapproval.** 26 U.S.C. § 5812 provides that applications shall be denied if the transfer, receipt, or possession of the firearm would place the transferee in violation of law.

   a. **State or Local Law.** If State or local law prohibits the receipt or possession of the firearm being transferred, the application will be disapproved.

   b. **Persons Prohibited from Receiving a Firearm.** The application will be disapproved if the transferee is a person prohibited from receiving a firearm by 18 U.S.C. § 922(g), which provides that it shall be unlawful for any person—

      (1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
      (2) who is a fugitive from justice;
      (3) who is an unlawful user of or addicted to any controlled substance;
      (4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
      (5) who, being an alien, is illegally or unlawfully in the United States or except as provided in 18 U.S.C. 922(y)(2), has been admitted to the United States under a non-immigrant visa *(as that term is defined in 8 U.S.C. 1101(a)(26))*;
      (6) who has been discharged from the Armed Forces under dishonorable conditions;
      (7) who, having been a citizen of the United States, has renounced his citizenship;
      (8) who is subject to a court order that—

         (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
         (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
         (C) (I) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (II) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury, or

      (9) who has been convicted in any court of a crime of domestic violence; to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

8. **Status Inquiries and Questions.** Information relating to the NFA and other firearms laws is available at the ATF Internet website at **www.atf.gov**. Any inquiry relating to the status of an application to transfer an NFA firearm or about procedures in general should be directed to the NFA Branch at (202) 927-8330. Please be aware that any dissemination by ATF of information relating to the application to register an NFA firearm must conform with the restrictions in 26 U.S.C. § 6103. The opportunity provided in item 8 to authorize ATF to disclose information is intended to enable ATF to respond to inquiries by the transferee regarding the application. The failure to complete item 8 will be considered a declination of authorization to release the information.

9. **Penalties.** Any person who violates or fails to comply with any of the requirements of the NFA shall, upon conviction, be fined not more than $10,000 or be imprisoned for not more than 10 years, or both. Any firearm involved in a violation of the NFA shall be subject to seizure and forfeiture. It is unlawful for any person to make or cause the making of a false entry on any application or record required by the NFA knowing such entry to be false.

10. **Compliance with the Gun Control Act.** All provisions of the GCA must also be complied with, including the recordkeeping requirements for licensees and the retention of ATF Form 4473 (5300.9) by licensees for dispositions to non-licensees.

Privacy Act Information

The following information is provided pursuant to Section 3 of the Privacy Act of 1974 (5 U.S.C. § 552(e)(3)):

1. **Authority.** Solicitation of this information is made pursuant to the National Firearms Act (26 U.S.C. § 5812). Disclosure of this information by the applicant is mandatory for transfer of an NFA firearm, unless the transfer is otherwise exempt from tax.

2. **Purpose.** To insure payment of the tax imposed by 26 U.S.C. § 5811; to insure that the transfer would not be in violation of law; and to effect registration of the firearm.

3. **Routine Uses.** The information will be used by ATF to make the determinations set forth in paragraph 2. In addition, to effect registration of the firearm, information as to the identification of the firearm, date of registration, and the identification and address of person entitled to possess the firearm will be entered into the National Firearms Registration and Transfer Record. No information obtained from an application, registration, or records required to be submitted by a natural person in order to comply with any provision of the National Firearms Act or regulations issued thereunder, shall, except in connection with prosecution or other action for furnishing false information, be used, directly or indirectly, as evidence against that person in any criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing of the application. The information from this application may only be disclosed to Federal authorities for purposes of prosecution for violation of the National Firearms Act.

4. **Effects of not Supplying Information Requested.** Failure to supply complete information will delay processing and may cause denial of the application.

Paperwork Reduction Act Notice

This information request is in accordance with the Paperwork Reduction Act of 1995. The information your provide is used in applying to transfer serviceable firearms taxpaid to persons other than special taxpayers qualified to deal in NFA firearms or government entities. Data is used to identify transferor, transferee, and firearm, and to ensure legality for transfer under Federal, State and local laws. The furnishing of this information is mandatory. *(26 U.S.C. § 5812)*

The estimated average burden associated with this collection of information is 4 hour(s) per respondent or recordkeeper, depending on individual circum-stances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to Reports Management Officer, Document Services Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Representative Mike Hawker
Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
907 465-4949 office
907 465-4979 fax

Interim:
716 W 4th Avenue
Anchorage, AK 99501
907 269-0244 office
907 269-0248 fax

House District 32:
Eagle River
Anchorage
Glen Alps
Rainbow
Indian
Bird
Girdwood
Portage
Whittier
Sunrise
Hope

TO: Senator Hollis French
Chairman, Senate Judiciary Committee

FROM: Representative Mike Hawker

DATE: February 27, 2010

RE: House Bill 319

I request that House Bill 319, which would make changes to the Alaska Concealed Handgun Permit statutes and require timely law enforcement certification of federal firearm transfer forms, be scheduled for a hearing in the Senate Judiciary Committee at your earliest convenience.

I have attached a sponsor statement, current version of the bill, applicable fiscal notes, sectional analysis, and some background materials. House Bill 319 passed the house unanimously and there has been no testimony in opposition of the bill.

Please feel free to contact me if you need any additional information. You can also contact my legislative aide, Juli Lucky, at 465-6587. Thank you.

Rep.Mike.Hawker@legis.state.ak.us • www.housemajority.org/hawker

HB 324

SENATE COMMITTEE REPORT

DATE: 4/15/10

FURTHER: Rules

DATE TURNED IN TO OFFICE: 4/16/10

Judiciary Committee considered CS FOR HOUSE BILL NO. 324(FIN)

HB 324 FAILURE TO APPEAR; RELEASE PROCEDURES

"An Act relating to the crime of failure to appear; relating to arrest for violating certain conditions of release; relating to release before trial, before sentence, and pending appeal; relating to material witnesses; relating to temporary release; relating to release on a petition to revoke probation; relating to the first appearance before a judicial officer after arrest; relating to service of process for domestic violence protective orders; making conforming amendments; amending Rules 5 and 41, Alaska Rules of Criminal Procedure, and Rules 206 and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

and recommends:

[✓] be **replaced** with [✓] **SCS** or [ ] **CS** HB 324 (JUD)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt _____ Letter of Intent

[ ] further referral to _____ Committee

SENATE BILL:
[ ] Same Title
[ ] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[✓] New Title w/ SCR # 22

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#
DOA/OPA				✓	1
HFIN				✓	2
DOC				✓	3
LAW				✓	4
DPS/ASF				✓	5

[ ] **APPROPRIATION - no fiscal note**

Admin ✓ 7

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Coghill			✓	
	Wielechowski			✓	
	EGAN	✓			
	MCGUIRE	✓			
CHAIR:	French	✓			

3115

SENATE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced:
Referred:

A RESOLUTION

Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning House Bill No. 324, relating to the crime of failure to appear; relating to arrest for violating certain conditions of release; relating to release before trial, before sentence, and pending appeal; relating to material witnesses; relating to temporary release; relating to release on a petition to revoke probation; relating to the first appearance before a judicial officer after arrest; relating to service of process for domestic violence protective orders; making conforming amendments; and amending Rules 5 and 41, Alaska Rules of Criminal Procedure, and Rules 206 and 603, Alaska Rules of Appellate Procedure.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding changes to the title of a bill, are suspended in consideration of House Bill No. 324, relating to

the crime of failure to appear; relating to arrest for violating certain conditions of release; relating to release before trial, before sentence, and pending appeal; relating to material witnesses; relating to temporary release; relating to release on a petition to revoke probation; relating to the first appearance before a judicial officer after arrest; relating to service of process for domestic violence protective orders; making conforming amendments; and amending Rules 5 and 41, Alaska Rules of Criminal Procedure, and Rules 206 and 603, Alaska Rules of Appellate Procedure.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 15, 2010

SUBJECT: Conceptual Amendment to SCS CSHB 324(JUD)
(Work Order No. 26-GH2910\P)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Gerald P. Luckhaupt
Legislative Counsel

The SCS CSHB 324(JUD) that you requested is enclosed. As you requested, bill secs. 3 and 5 of CSHB 283(FIN) were added without change. Bill sec. 4 of CSHB 283(FIN) was added with your requested changes.[1] In addition to the changes noted in footnote 1, there was a conceptual amendment adopted to provide that a court could order a defendant to refrain from consuming "**or purchasing**" alcohol. Apparently, it was felt that this addition was needed to bring this new provision in line with AS 04.16.160(a), which deals with restrictions on purchasing alcohol. In my opinion, this change is not needed and the conceptual purpose of the amendment is already accomplished in the bill.

AS 04.16.160(a)[2] provides that persons who have "been ordered to refrain from consuming alcoholic beverages" may not purchase alcoholic beverages. The existing

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[1] In bill sec. 4 of CSHB 283(FIN), new paragraph AS 12.55.015(a)(13) was shortened considerably. Specifically, on p.3, line 16, following "**time**" the "," was replaced by "." and then remaining material on that line was deleted. Then the material on p.3, lines 17 - 29, was also deleted.

[2] AS 04.16.160(a) provides:

> (a) Except as otherwise provided by law, a person who is 21 years of age or older may not purchase alcoholic beverages if the person has been ordered to refrain from consuming alcoholic beverages as part of a sentence for conviction of a crime under AS 28.35.030, 28.35.032, or a similar municipal ordinance or as a condition of probation or parole from a conviction under AS 28.35.030, 28.35.032, or a similar municipal ordinance. The restriction on purchasing alcoholic beverages applies during the period that the person is required to refrain from consuming alcoholic beverages under the sentence or condition of probation or parole.

statute already ties a court order that restricts consumption[3] to a blanket prohibition on purchase. In bill sec. 4 of CSHB 283(FIN), when a court imposes an order restricting a person from consuming alcoholic beverages that person is automatically restricted from purchasing alcoholic beverages under AS 04.16.160.[4] The restriction on purchasing alcoholic beverages remains in effect for the period of time the person is restricted from consuming alcoholic beverages under the sentence. There is no need to add a separate provision providing that a court may order that a person not purchase alcohol when that is accomplished automatically by operation of law in AS 04.16.160(a) when the person is restricted from consuming alcohol.[5] Therefore, in accordance with your instructions, I have not added "or consuming" to bill sec. 4.

GPL:ljw
10-280.ljw

Enclosure

Bill sec. 3 of CSHB 283(FIN) amends this subsection by adding the new material of bill sec. 4 as follows:

> (a) Except as otherwise provided by law, a person who is 21 years of age or older may not purchase alcoholic beverages if the person has been ordered to refrain from consuming alcoholic beverages **under AS 12.55.015(a)(13) or** as part of a sentence for conviction of a crime under AS 28.35.030, 28.35.032, or a similar municipal ordinance or as a condition of probation or parole from a conviction under AS 28.35.030, 28.35.032, or a similar municipal ordinance. The restriction on purchasing alcoholic beverages applies during the period that the person is required to refrain from consuming alcoholic beverages under the sentence or condition of probation or parole.

[3] In connection with the person's conviction of a crime.

[4] As that section is amended by bill sec. 3 of CSHB 283(FIN).

[5] The only time a separate restriction on purchasing would be needed is if it was the committee's intent by the amendment to allow a court to allow a person to continue to consume alcohol but not to purchase alcohol. In that case, other amendments to AS 04.16 would be necessary. I have been informed that this was not the committee's intent.

CS FOR HOUSE BILL NO. 283(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/12/10
Referred: Rules

Sponsor(s): REPRESENTATIVES CRAWFORD, Lynn

A BILL

FOR AN ACT ENTITLED

"An Act relating to the purchasing of and restrictions concerning alcoholic beverages."

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

*** Section 1.** AS 04.16.047(a) is amended to read:

(a) A person who is restricted from purchasing alcohol under AS 04.16.160 may not

(1) knowingly enter or remain in premises licensed under this title to obtain or consume alcohol;

(2) solicit another to purchase alcoholic beverages for the person;

(3) offer or present to a licensee or an agent or employee of the licensee identification that misrepresents that the person is restricted from purchasing alcoholic beverages, for the purpose of inducing the licensee or an agent or employee of the licensee to sell, give, serve, or furnish alcoholic beverages contrary to law.

*** Sec. 2.** AS 04.16.047 is amended by adding a new subsection to read:

(d) A person may not purchase alcoholic beverages for a person who is

restricted from purchasing alcoholic beverages under AS 04.16.160.

*** Sec. 3.** AS 04.16.160(a) is amended to read:

(a) Except as otherwise provided by law, a person who is 21 years of age or older may not purchase alcoholic beverages if the person has been ordered to refrain from consuming alcoholic beverages **under AS 12.55.015(a)(13) or** as part of a sentence for conviction of a crime under AS 28.35.030, 28.35.032, or a similar municipal ordinance or as a condition of probation or parole from a conviction under AS 28.35.030, 28.35.032, or a similar municipal ordinance. The restriction on purchasing alcoholic beverages applies during the period that the person is required to refrain from consuming alcoholic beverages under the sentence or condition of probation or parole.

*** Sec. 4.** AS 12.55.015(a) is amended to read:

(a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a

(A) fine when authorized by law and as provided in AS 12.55.035; or

(B) [REPEALED]

(2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;

(3) impose a definite term of periodic imprisonment, but only if an employment obligation of the defendant preexisted sentencing and the defendant receives a composite sentence of not more than two years to serve;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution under AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;

(8) suspend imposition of sentence under AS 12.55.085;

(9) order the forfeiture to the commissioner of public safety or a

municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

(10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation if the program is made available to the defendant by the Department of Corrections;

(11) order the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang;

(12) order the defendant to have no contact, either directly or indirectly, with a victim or witness of the offense until the defendant is unconditionally discharged;

(13) order the defendant to refrain from consuming alcoholic beverages for a period of time, including during the term of any sentence and as a condition of probation, suspended sentence, and suspended imposition of sentence, if

(A) the defendant was convicted of a felony and the court finds by clear and convincing evidence that the defendant's conduct constituting the offense was substantially influenced by the consumption of alcoholic beverages; or

(B) the defendant was convicted of a misdemeanor and the defendant has been previously convicted of crimes two or more times and the court finds by clear and convincing evidence that, based on the defendant's history, there is reason to believe that imposing a requirement that the defendant refrain from consuming alcoholic beverages is necessary to protect the public; in this subparagraph, "previously convicted" has the meaning given in AS 28.35.030.

*** Sec. 5.** AS 12.55.015 is amended by adding a new subsection to read:

(k) Nothing in (a)(13) of this section limits or restricts the authority of a court

to order a person to refrain from the consumption of alcohol as a condition of sentence or probation.

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION

SEAN PARNELL, GOVERNOR

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April 5, 2010

The Honorable Hollis French
Chair, Senate Judiciary Committee
Alaska State Capitol, Room 417
Juneau, Alaska 99801

Re: Senate Bill 252 – Bail Reform

Dear Chairman French:

Thank you for the thoughtful and thorough hearing that you held for SB 252 (sexual assault and abuse) today and for our meeting on other criminal law legislation. I am writing to ask that you consider scheduling Senate Bill 252, the bail reform bill, for a hearing in the Senate Judiciary Committee as soon as practical. I hope you will not think this is presumptuous, but there are good reasons to hear the bail bill: in addition to protection of the public and other victims, victims of sexual abuse and domestic violence will greatly benefit from the passage of the bill. Although bail reform is not directly targeted at sexual abuse or domestic violence in the state, the bill would provide additional protection to victims of these crimes.

The Problems with current law:

Our bail laws date back to 1966. It is clear that when the legislature adopted these statutes, times were not as difficult as present. For example, unless a person has been convicted of an unclassified felony or a class A felony, our bail laws allow a person found guilty of any other crime, either by plea or by verdict, to be released pending the imposition of sentence or during an appeal. The following scenarios are only a few of many examples of the danger that can result from the application of the current law.

> Larry Berryhill, IJU-07-992 CR, was convicted of two counts of Sexual Abuse of a Minor in the Second Degree for having sexual contact with a young boy who worked for him at his lodge in Gustavus. After being found guilty, and over the state's objection, the court released him on an

unsecured signature bond, in lieu of posting bail, in the amount of $25,000. Mr. Berryhill did not appear for his sentencing. Alaska State Troopers and law enforcement agents from other states (Mr. Berryhill had committed similar crimes in other states) found that Mr. Berryhill had fled to Argentina, and was vacationing in New Zealand and Europe when he should have appeared in court for his sentencing. Mr. Berryhill died before the Troopers were able to arrest him. He did not spend a single day in jail for his sexual abuse of that young boy.

Michael Williams, 3AN-10-166 CR, has been convicted of a felony five times, two of the felonies were federal armed bank robbery convictions from the late 1980s. In January, 2008, he was charged with Robbery in the First Degree for a home invasion robbery with multiple victims. The state proceeded with the prosecution under the three strikes law – with a 99 year sentence possible if convicted. This potential sentence is higher than most people convicted of homicide would receive. Over the state's objection, bail was set at $5,000 cash appearance bond and a third party custodian was appointed. The state requested several times that his bail be increased, but was unsuccessful. Mr. Williams skipped out soon after release, and a bench warrant was issued for his arrest. He has not been found.

James Spencer, 3AN-09-2113 CR, was charged with Robbery in the First Degree after confronting a Carr's employee with a handgun. Over the state's objection, his bail was set at $1,000 cash performance bond, and $5,000 cash or corporate appearance bond. Last month, Mr. Spencer was arrested and charged with a new Robbery in the First Degree for an armed robbery at the Burger King (3AN010-2471 CR).

Jack Lee Espinoza, Jr., 3AN-10-2113 CR, was charged with two counts of Robbery in the First Degree. He had been convicted of more than 10 crimes in the past, several of them were felonies. Over the state's objection, Mr. Espinoza had been released on bail of $2,500 cash or corporate appearance bond and ankle monitoring. Within 48 hours of his release, Mr. Espinoza had cut off his ankle monitor, and with another person, committed another armed robbery at a trailer in Anchorage. The victim was shot, allegedly by the other person, during the robbery.

How SB 252 will help avoid these problems

Section 10 of SB 252 (page 13, beginning at line 26) provides that a person found guilty of a sexual felony may not be released pending imposition of sentence or appeal. The legislature has raised the maximum term of imprisonment for a person convicted of a sexual felony to 99 years; with that maximum term the danger of flight is high. Additionally, the danger of sex offenders victimizing others is significant. Mr. Berryhill would not have been released after being found guilty of sexual abuse under SB 252.

SB 252 is similar to federal law in part because it would adopt a presumption, that is rebuttable, that no combination of conditions or monetary bail would ensure the safety of the public and the appearance of the defendant in cases where the person is either charged with an unclassified or a class A felony (similar to current law), or the defendant is a higher risk of flight or danger to the public (new in SB 252). The bill provides that other persons with higher risk include the following:

- persons charged with a felony who have a prior felony conviction and less that five years have elapsed since unconditional release for the prior felony;

- persons charged with a crime committed while the person was on release for another charge or conviction;

- persons charged with a domestic violence crime if the person has a conviction for a domestic violence crime within the previous five years;

- persons arrested in connection with a felony charge or conviction out of state and the person is a fugitive from the other jurisdiction.

The individuals described in the scenarios above (except for Mr. Berryhill) would have the burden of going forward, under SB 252, with suggestions for release conditions. For example, Mr. Williams would have to present information and suggestions for conditions of release that would satisfy a judicial officer that he would not be a danger to the public and he would not be a flight risk. Mr. Williams still has the constitutional right to have bail set for him.

Additionally, SB 252 would adopt standards for third party custodians so that, for example, a person charged with crimes, a person who is on probation, or a person with recent convictions could not act as a third party custodian. SB 252 would require a

judicial officer to do basic screening of a person before appointing the person as a custodian. Defendants have taken advantage of third party custodians in the past. There have been advertisements on Craig's list for third party custodians (see attached).

Misconceptions about SB 252

We have heard several comments about SB 252 that are simply not accurate. For example, the bill changes the deadline for the first appearance before a court of a person arrested from 24 to 48 hours. This change has been described as contrary to the practice of a majority of other states. As can be seen by the attached memorandum and chart, Alaska is one of only three states that require a first appearance within 24 hours. The remaining states have later deadlines. There are many good reasons to change this deadline. It would give all parties a chance to gather information for better informed bail hearings. Even more important is that victims in Alaska have a constitutional right to appear at arraignments and bail hearings. Often we are unable to notify them of a hearing that must be held within 24 hours of arrest; other times the victim is still in the hospital at this time. The change to a 48 hour deadline will help the system make the victim's right to be present much more meaningful. It also allows for a cooling down time in many cases.

We also have heard people say that SB 252 would prohibit certain people from being released on bail. This is not correct. Defendants have a constitutional right to have bail set for their release. SB 252 simply changes certain procedures for the courts to follow in setting bail. In doing so, it would protect the public and discourage bail jumping much better than does current law.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: Richard Svobodny
Richard A. Svobodny
Deputy Attorney General

Enclosures

From: Henderson, Robert E (LAW)
Sent: Tuesday, January 19, 2010 5:09 PM
To: Carpeneti, R Anne D (LAW); Svobodny, Richard (LAW)
Cc: Novak, John J (LAW)
Subject: FW: Third Party Custodian Craigslist ad

Annie and Rick:

Laurie Eller is an LOA in our office who saw the craigslist posting asking someone to come forward as a TPC.

Robert E. Henderson
Assistant District Attorney
907.269.6300 (office)
907.269.6321 (fax)

From: Eller, Laurie A (LAW)
Sent: Tuesday, January 19, 2010 5:00 PM
To: Henderson, Robert E (LAW)
Subject: Third Party Custodian Craigslist ad

Rob, I finally remembered to look for that Craigslist ad from last summer about someone wanting to pay for a TPC. I found it and it is shown below. Let me know if I can be of further help. ☺

Date: 2009-08-24, 11:19AM AKDT
Reply to: job-k7j6y-1339990957@craigslist.org [Errors when replying to ads?]

Looking for third party in court case , court case is non violent, non-sexual,non- abusive. Its is a Misdeamoner , but requires THIRD PARTY for 30 days until next court date. Will pay handsomely$$$$$$

- Location: ANCHORAGE
- Compensation: Will Pay Handsomely$$$$$$$$$
- Principals only. Recruiters, please don't contact this job poster.
- Please, no phone calls about this job!
- Please do not contact job poster about other services, products or commercial interests.

PostingID: 1339990957

MEMORANDUM

STATE OF ALASKA

Department of Law - Criminal Division

To: Senate Judiciary Committee

Date: March 1, 2010

Thru: Richard Svobodny, Deputy Attorney General
Anne Carpeneti, Assistant Attorney General

From: Susan S. McLean SMc
Director, Criminal Division

Subject: **Other State Rules - First Appearance After Arrest**

General Considerations

The Fourth Amendment requires that a person must be released from custody after 48 hours if a court has not determined that there is probable cause for the arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44, 57-59, 111 S.Ct. 1661, 1670-1671 (1991). Violation of the rule is but one factor to consider in determining whether to suppress a defendant's in-custody statements.

- Since probable cause (and the amount of bail) must be determined before an arrest warrant issues, a probable cause determination only applies to warrantless arrests.
- Since probable cause may be determined on the basis of affidavits and sworn testimony after a warrantless arrest, the defendant's presence is not required at a probable cause hearing.
- Many states require appearance before a magistrate without unnecessary delay, but most courts have not defined "without unnecessary delay" as a specific amount of time, and determine meaning on a case by case basis.

Only 3 of the 24 states which set specific time limits mandate appearance within 24 actual hours of arrest.

Summary - First Appearance Following Warrantless Arrest, By Total Number of States

3 states - 24 hours, calculated including weekends and holidays (AK, FL, MD)
1 state - 24 hours, weekends and holidays *may* be included or excluded (WA)
6 states - 24 hours, calculated *excluding* weekends and holidays (AZ, CT, DE, ID, MA, NH)

1 state - 36 hours, calculated *excluding* day of arrest, Sundays and holidays (MN)

7 states- 48 hours, including weekends and holidays (AL, AR, GA, HI, MS, NE, TX)
1 state - 48 hours, *excluding* Sunday, holiday, and days when court not in session (CA)
1 state - 48 hours, *excluding* Saturday, Sunday and holidays (ME)
1 state - 48 hours if 1st appearance is combined w/prob. cause hearing (court decision) (WI)

2 states - 72 hours, including weekends and holidays (NJ, WY)
1 state - 72 hours, *excluding* Saturday, Sunday and holidays (LA)
1 state - 72 hours is "without delay", if probable cause w/in 48 hours (court decision) (TN)
21 states - "without unnecessary delay" (CO, IL, IA, KS, KY, MI, MT, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, UT, VT, WV)

2 states - "forthwith" (SC, VA)

1 state - "promptly" (repealed a 24- hour rule in 1995) (IN)

1 state - person must be released if not "charged" within 20 hours, but no provision for first appearance (MO)

State Time Limits for Initial Appearance Before Magistrate

State	Time Limit	Authority	Statutory language/construction
Alabama	48 hours - Warrantless arrest 72 hours - Arrest w/ warrant	Ala. R. Crim. P. 4.3(a)(1)(iii) Ala. R. Crim. P. 4.3(b)(2)(i)	
Alaska	24 hours, including weekends and holidays	Alaska R. Crim. P. 5(a)(1)	
Arizona	24 hours, excluding Sat., Sun and holidays	Ariz. R. Crim. P. 4.1(b) and Ariz. R. Crim. P. 1.3	*See, State v. Watkins,* 2008 WL 3171651 * 3 (Ariz. App. Aug.5, 2008) (Sat. Sun. and legal holiday excluded from calculation of 24 hrs; citing Rules 4.1(b) and 1.3))
Arkansas	48 hours Case law suggests that exception may exist for weekends and holidays	Ark. R. Crim. P. 4.1(e)	*See, Larson v. Dorney,*__ F.Supp.__, Slip. Op. 2009WL 903392 *4 (W.D. Ark, April 1, 2009)(delay between arrest on Good Friday and appearance on Monday was "as promptly as calendar would allow")
California	48 hours, excluding Sundays and holidays. If 48 hours expires when court is not in session, then next judicial day.	CA Penal Code § 825(a)(1) CA Penal Code § 825(a)(2)	
Colorado	without unnecessary delay	CRSA. § 16-2-112 Colo. R. Crim. P. 5	
Connecticut	24 hours, excluding Sat., Sun. and holidays	CRS 54-1(g) Conn. Practice Book R. 37-1	Statutory language "promptly before the court sitting next regularly" means the next court day, excluding weekends and holidays. *State v. Pirowski,* 11 Conn. App. 238,240, 526 A.2d 562 (1996)
Delaware	24 hours, excluding Sundays and holidays	11 Del. C. § 1909	
Florida	24 hours, including weekends and holidays	Fla. R. Crim. P 3.130	
Georgia	48 hours –warrantless arrest 72 hours – arrest with warrant	Ga. Uniform St. Ct. R. 26.1 Ga. St § 17-4-62; Ga. St § 117-4-26	
Hawaii	48 hours	H.R.S. 803-9(5)	
Idaho	24 hours, excluding Sat., Sun. and holidays	I.C.R. Rule 5(b)	
Illinois	without unnecessary delay	I.L.C.S. § 109-1	*See, People v. Willis,* 831 N.E.2d, 531, 538 (Ill., 2005) Ill Court cites *McLaughlin* as requiring 48 hours, but delay is only one factor to be examined in deciding whether confession is voluntary. Court has not otherwise defined "unnecessary delay".

Indiana	" promptly" 24 hr. rule repealed, 1995 Ct. decision implies that more than 48 hours can pass before initial appearance before magistrate	Ind. Code § 35-33-7-1	*See, State v. Larson,* 776 N.W.2d, 254, 258 (Ind. 2009) – probable cause must be determined with 48 hours, but can be based on hearsay and written testimony. "Arrested person has no right to be physically present at probable cause hearing." Ind. law does not provide for a specific period of time in defining how "promptly" a person is brought before magistrate
Iowa	without unnecessary delay	I.C.A. 804.22	
Kansas	without unnecessary delay	KSA 2003 Supp. 22- 2901	*See, State v. Carrow,* 2006 WL 399251 *4 (Kan. App., Feb. 17, 2006) - cites *McLaughlin* as defining "without unreasonable delay" to mean that period of delay "cannot be longer than 48 hours, excluding weekends and holidays"
Kentucky	without unnecessary delay	Ky. R. Crim. P. 3.02(2)	
Louisiana	72 hours excluding Sat., Sun, holidays 48 hours probable cause hearing, which is not adversarial and conducted without presence of defendant	LSA – C.Cr. P. Art. 230-1(A) LSA –C. Cr. P. Art. 230.2(A)	
Maine	48 hours, excluding Sat., Sun and holidays	Me. R. Crim. P. 5(a)	
Maryland	24 hours, including weekends and holidays	Md. Rule 4-212(e) and (f)	Although statute does not specifically state "including weekends", it is clear from case law. *See, e.g., Odum v. State,* 846 A. 2d 145 (Md. App. 2004)
Massachusetts	24 hours, excluding weekends and holidays (see judicial interpretation re probable cause determination)	Mass. R. Crim. P. 7	"accused shall be brought before court then in session, and, if not at its next session". Language at the court's "next session" suggests that if an accused is arrested on Friday, the next session would be a regular court day. *See, Jenkins v. Chief Justice of Dist. Court Dept.,* 619 N.E.2d 324, 337,339 (Mass, 1993) holding that probable cause must be determined within 24 hours but that the determination may be made ex parte upon written documents.
Michigan	without unnecessary delay	M.C.L.A. § 764.13	
Minnesota	36 hours, excluding day of arrest, Sun. and holidays	49 M.S.A. R. Crim. P. 4.02(5)	

Mississippi	without unnecessary delay, within 48 hours	M.C.A. 99-3-17 Uniform Cnty and Cir R 6.03	
Missouri	None – must be charged within 20 hours, but no requirement of personal appearance	V.Ann.Mo.C. Art. 544.170	All persons who are arrested without warrant shall be released if not charged and held by warrant within 20 hours of arrest
Montana	without unnecessary delay	MCA 46-7-101	*See, St. v. Brown,* 933 P.2d 672, 675-676 (Mont. 1999) acknowledging *McLaughlin* 48 hour time limit for probable cause determination, and holding that to be one factor in deciding voluntariness of confession.
Nebraska	48 hours	Neb. Crim. Rule 5.1(b)(1)	
Nevada	without unnecessary delay -warrantless arrest 72 hours- arrest with warrant	N.R.S. 171-1771 N.R.S. 171-178	*See, Powell v. State,* 930 P.2d 1123 (Nev. 1997), acknowledging that *McLaughlin* requires probable cause hearing within 48 hours
New Hampshire	24 hours, excluding Sat., Sun. and holidays	N.R.S. § 594:20(a)	
New Jersey	72 hours, provided that complaint showing probable cause is filed within 12 hours of arrest	N.J. Crim. Rules 3:4-1 and 3:4-2	
New Mexico	without unnecessary delay	NMSA § 31-1-5	
New York	without unnecessary delay	McKinney's CPL § 140.20 sub1	
North Carolina	without unnecessary delay	N.C.G.S.A. § 15A-511	
North Dakota	without unnecessary delay	N.D.C.C. 2906-25 N.D. Crim. Rule 5(a)	
Ohio	without unnecessary delay	O.R.C. § 29.35.05 Ohio Crim. Rule 4(e)	
Oklahoma	without unnecessary delay	22 Okl. Stat. Ann. § 181	*See, Black v. State, 871 P.2d 35, 39 (Okl.Cr.*1994).Citing *McLaughlin*, court recognized that delay longer than 48 hours in taking defendant to probable cause hearing is unreasonable.
Oregon	without unnecessary delay		
Pennsylvania	without unnecessary delay	Pa.R.Crim.P. 519	
Rhode Island	without unnecessary delay (unless charged w/ offense under RI Gen Law. 12.13.1.1*)	Super. R. Crim. P., Rule 5 Dist. R. Crim. P., Rule 9	*Unless charged w/ offense under RI Gen Laws, 12.13.1.1 (charges carrying life sentence or firearm offenses committed by persons previously convicted of offense carrying life sentence), in which case 48 hrs., excluding Sat., Sun. and holidays
South Carolina	Shall be forthwith carried before a magistrate and a warrant of arrest procured	S.C. Code 1976§ 22-5-200	

South Dakota	without unnecessary delay	SDCL § 23A-4-1	*State v. Larson*, 776 N.W. 2d 254, 258 (S.D., 2009) persons arrested without warrant are constitutionally entitled to probable cause determination within 24 hours.
Tennessee	"without unnecessary delay" – Judicially defined – 72 hours for appearance before magistrate 48 hrs for probable cause, but hearing unnecessary	Tenn. R. Crim. P. 5(a)	Due process is violated if probable cause is not determined within 48 hours, but a full adversarial hearing is not necessary. If an individual is not brought before a magistrate within 72 hours there has been an unnecessary delay within the definition of Tenn. R. Crim. P. 5.1. *State v. Carter*, 16 SW 762, 766 (Tenn. 2000)
Texas	48 hours	V.Ann. Tex. C.C.P. Art 14.06	
Utah	without unnecessary delay- 48 hours probable cause, but arrestee need not be present	U.C.A. 1953 § 77-723 Utah Criminal Rule 7	
Vermont	without unnecessary delay	Vt. R. Crim. P. 3(g)	
Virginia	"forthwith"	Va. Code Ann. § 19.2-82	Accused and officer appear together "forwith" for probable cause hearing. Does not apply to arrests with warrant
Washington	(Warrantless arrest only) 24 hours, including weekends and holidays 48 hours prob. cause, but hearing not required	Wash. Cr.RLJ 3.2.1 (c) Wash. Cr.RLJ 3.2.1(a)	"must be brought before a court of limited jurisdiction as soon as practicable after the detention is commenced, but in any event before the close of business on the next court day." Sat, Sun and holidays may be considered court days
West Virginia	Without unnecessary delay	W.Va. Code Sex. 62-1-5 W.Va. R. Crim. P. 5	
Wisconsin	Within a reasonable time Judicial definition - 48 hours implicitly the reasonable time	W.S.A. § 970.01	If the initial appearance also serves as the *Riverside* probable-cause hearing it must be held within 48 hours barring extraordinary circumstances. In cases where a defendant's *Riverside (v. McLaughlin)* determination was properly made in a proceeding prior to the initial appearance, court looks at the individual circumstances of the case to determine a "reasonable time" from the defendant's arrest *State v. Evans*, 522 N.W. 2d, 554, 563 (Wis. App., 1994) (Held: 4 days over a weekend not unreasonable)
Wyoming	without unnecessary delay and in no event more than 72 hours	W. R Crim P. 5(a)	

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CS FOR HOUSE BILL NO. 324(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to the crime of failure to appear; relating to arrest for violating certain conditions of release; relating to release before trial, before sentence, and pending appeal; relating to material witnesses; relating to temporary release; relating to release on a petition to revoke probation; relating to the first appearance before a judicial officer after arrest; relating to service of process for domestic violence protective orders; making conforming amendments; amending Rules 5 and 41, Alaska Rules of Criminal Procedure, and Rules 206 and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

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

* **Section 1.** AS 11.56 is amended by adding a new section to read:

Sec. 11.56.730. Failure to appear. (a) A person commits the crime of failure to appear if the person

(1) is released under the provisions of AS 12.30;

(2) knows that the person is required to appear before a court or judicial officer at the time and place of a scheduled hearing; and

(3) with criminal negligence does not appear before the court or judicial officer at the time and place of the scheduled hearing.

(b) In a prosecution for failure to appear under (a) of this section, it is an affirmative defense that unforeseeable circumstances, outside the person's control, prevented the person from appearing before the court or judicial officer at the time and place of the scheduled hearing, and the person contacted the court orally and in writing immediately upon being able to make the contact.

(c) A person who commits failure to appear incurs a forfeiture of any security for any appearance of the person that was given or pledged to the court for the person's release, and is guilty of a

(1) class C felony if the person was released in connection with a charge of a felony, or while awaiting sentence or appeal after conviction of a felony;

(2) class A misdemeanor if the person was released in connection with a

(A) charge of a misdemeanor, or while awaiting sentence or appeal after conviction of a misdemeanor; or

(B) requirement to appear as a material witness in a criminal proceeding.

*** Sec. 2.** AS 12.25.030(b) is amended to read:

(b) In addition to the authority granted by (a) of this section, a peace officer

(1) shall make an arrest under the circumstances described in AS 18.65.530;

(2) without a warrant may arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer,

(A) committed a crime involving domestic violence, whether the crime is a felony or a misdemeanor; in this subparagraph, "crime involving domestic violence" has the meaning given in AS 18.66.990;

(B) committed the crime of violating a protective order in

violation of AS 11.56.740; or

(C) violated a condition of release imposed under **AS 12.30.016(e)** [AS 12.30.025] or 12.30.027;

(3) without a warrant may arrest a person when the peace officer has **probable** [REASONABLE] cause for believing that the person has

(A) committed a crime under or violated conditions imposed as part of the person's release before trial on misdemeanor charges brought under AS 11.41.270;

(B) violated AS 04.16.050 or an ordinance with similar elements; however, unless there is a lawful reason for further detention, a person who is under [THE AGE OF] 18 **years of age** and who has been arrested for violating AS 04.16.050 or an ordinance with similar elements shall be cited for the offense and released to the person's parent, guardian, or legal custodian; or

(C) violated conditions imposed as part of the person's release **under the provisions of AS 12.30** [BEFORE TRIAL ON FELONY CHARGES BROUGHT UNDER AS 11.41.410 - 11.41.458].

* **Sec. 3.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.006. Release procedures. (a) At the first appearance before a judicial officer, a person charged with an offense shall be released or detained under the provisions of this chapter.

(b) At the first appearance before a judicial officer, a person who is charged with a felony may be detained up to 48 hours for the prosecuting authority to demonstrate that release of the person under AS 12.30.011(a) would not reasonably assure the appearance of the person or will pose a danger to the victim, other persons, or the community.

(c) A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If the judicial officer who imposed the conditions of release is not available, any judicial officer in the judicial district may review the conditions.

(d) If a person remains in custody after review of conditions by a judicial officer under (c) of this section, the person may request a subsequent review of conditions. Unless the prosecuting authority stipulates otherwise or the person has been incarcerated for a period equal to the maximum sentence for the most serious charge for which the person is being held, a judicial officer may not schedule a bail review hearing under this subsection unless.

(1) the person provides to the court and the prosecuting authority a written statement that new information not considered at the previous review will be presented at the hearing; the statement must include a description of the information and the reason the information was not presented at a previous hearing; in this paragraph, "new information" does not include the inability to post the required bail;

(2) the prosecuting authority and any surety, if applicable, have at least 48 hours' written notice before the time set for the review requested under this subsection; the defendant shall notify the surety; and

(3) at least seven days have elapsed between the previous review and the time set for the requested review.

(e) A judicial officer may solicit comments by the victim or a parent or guardian of a minor victim who is present at the bail review hearing and wishes to comment. The judicial officer shall consider those comments and any response by the person before making a decision concerning the release of the person.

(f) The judicial officer shall issue written or oral findings that explain the reasons the officer imposed the particular conditions of release or modifications or additions to conditions previously imposed. The judicial officer shall inform the person that a law enforcement officer may arrest the person without a warrant for violation of the court's order establishing conditions of release.

(g) Information offered or introduced at a bail hearing to determine conditions of release need not conform to the rules governing the admissibility of evidence.

*** Sec. 4.** AS 12.30 is amended by adding new sections to read:

Sec. 12.30.011. Release before trial. (a) Except as otherwise provided in this chapter, a judicial officer shall order a person charged with an offense to be released on the person's personal recognizance or upon execution of an unsecured appearance

bond, on the condition that the person

(1) obey all court orders and all federal, state, and local laws;

(2) appear in court when ordered;

(3) if represented, maintain contact with the person's lawyer; and

(4) notify the person's lawyer, who shall notify the prosecuting authority and the court, not more than 24 hours after the person changes residence.

(b) If a judicial officer determines that the release under (a) of this section will not reasonably assure the appearance of the person or will pose a danger to the victim, other persons, or the community, the officer shall impose the least restrictive condition or conditions that will reasonably assure the person's appearance and protect the victim, other persons, and the community. In addition to conditions under (a) of this section, the judicial officer may, singly or in combination,

(1) require the execution of an appearance bond in a specified amount of cash to be deposited into the registry of the court, in a sum not to exceed 10 percent of the amount of the bond;

(2) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash;

(3) require the execution of a performance bond in a specified amount of cash to be deposited in the registry of the court;

(4) place restrictions on the person's travel, association, or residence;

(5) order the person to refrain from possessing a deadly weapon on the person or in the person's vehicle or residence;

(6) require the person to maintain employment, or if unemployed, actively seek employment;

(7) require the person to notify the person's lawyer and the prosecuting authority within two business days after any change in employment;

(8) require the person to avoid all contact with a victim, a potential witness, or a codefendant;

(9) require the person to refrain from the consumption and possession of alcoholic beverages;

(10) require the person to refrain from the use of a controlled substance

as defined by AS 11.71, unless prescribed by a licensed health care provider with prescriptive authority;

(11) require the person to be physically inside the person's residence, or in the residence of the person's third-party custodian, at time periods set by the court;

(12) require the person to keep regular contact with a law enforcement officer or agency;

(13) order the person to refrain from entering or remaining in premises licensed under AS 04;

(14) place the person in the custody of an individual who agrees to serve as a third-party custodian of the person as provided in AS 12.30.021;

(15) if the person is under the treatment of a licensed health care provider, order the person to follow the provider's treatment recommendations;

(16) order the person to take medication that has been prescribed for the person by a licensed health care provider with prescriptive authority;

(17) order the person to comply with any other condition that is reasonably necessary to assure the appearance of the person and to assure the safety of the victim, other persons, and the community.

(c) In determining the conditions of release under this chapter, the court shall consider the following:

(1) the nature and circumstances of the offense charged;

(2) the weight of the evidence against the person;

(3) the nature and extent of the person's family ties and relationships;

(4) the person's employment status and history;

(5) the length and character of the person's past and present residence;

(6) the person's record of convictions;

(7) the person's record of appearance at court proceedings;

(8) assets available to the person to meet monetary conditions of release;

(9) the person's reputation, character, and mental condition;

(10) the effect of the offense on the victim, any threats made to the

victim, and the danger that the person poses to the victim;

(11) any other facts that are relevant to the person's appearance or the person's danger to the victim, other persons, or the community.

(d) In making a finding regarding the release of a person under this chapter,

(1) except as otherwise provided in this chapter, the burden of proof is on the prosecuting authority that a person charged with an offense should be detained or released with conditions described in (b) of this section or AS 12.30.016;

(2) there is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the victim, other persons, or the community, if the person is

(A) charged with an unclassified felony, a class A felony, a sexual felony, or a felony under AS 28.35.30 or 28.35.032;

(B) charged with a felony crime against a person under AS 11.41, was previously convicted of a felony crime against a person under AS 11.41 in this state or a similar offense in another jurisdiction, and less than five years have elapsed between the date of the person's unconditional discharge on the immediately preceding offense and the commission of the present offense;

(C) charged with a felony offense committed while the person was on release under this chapter for a charge or conviction of another offense;

(D) charged with a crime involving domestic violence, and has been convicted in the previous five years of a crime involving domestic violence in this state or a similar offense in another jurisdiction;

(E) arrested in connection with an accusation that the person committed a felony outside the state or is a fugitive from justice from another jurisdiction, and the court is considering release under AS 12.70.

Sec. 12.30.016. Release before trial in certain cases. (a) A judicial officer may impose, in addition to those required or authorized under AS 12.30.011, conditions of release for offenses described in this section, if necessary to reasonably assure the person's appearance or the safety of the victim, other persons, or the community.

(b) In a prosecution charging a violation of AS 04.11.010, 04.11.499, AS 28.35.030, or 28.35.032, a judicial officer may order the person

(1) to refrain from

(A) consuming alcohol beverages; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, alcoholic beverages;

(2) to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of alcoholic beverages by a peace officer who has reasonable suspicion that the person is violating the conditions of the person's release by possessing alcoholic beverages;

(3) to submit to a breath test when requested by a law enforcement officer;

(4) to provide a sample for a urinalysis or blood test when requested by a law enforcement officer;

(5) to take a drug or combination of drugs intended to prevent substance abuse;

(6) to follow any treatment plan imposed by the court under AS 28.35.028.

(c) In a prosecution charging a violation of AS 11.71 or AS 11.73, a judicial officer may order the person

(1) to refrain from

(A) consuming a controlled substance; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, a controlled substance or drug paraphernalia;

(2) to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of a controlled substance or drug paraphernalia by a peace officer who has reasonable suspicion that the person is violating the terms

of the person's release by possessing controlled substances or drug paraphernalia;

(3) to enroll in a random drug testing program, at the person's expense, to detect the presence of a controlled substance, with testing to occur not less than once a week, and with the results being submitted to the court and the prosecuting authority;

(4) to refrain from entering or remaining in a place where a controlled substance is being used, manufactured, grown, or distributed;

(5) to refrain from being physically present, within a two-block area of, or within a designated area near, the location where the alleged offense occurred or at other designated places, unless the person actually resides within that area; or

(6) to refrain from the use or possession of an inhalant.

(d) In a prosecution charging misconduct involving a controlled substance under AS 11.71.020(a)(2) for the manufacture of methamphetamine, or its salts, isomers, or salts of isomers, if the person has been previously convicted in this or another jurisdiction of a crime involving the manufacturing, delivering, or possessing methamphetamine, or its salts, isomers, or salts of isomers, a judicial officer shall require the posting of a minimum of $250,000 cash bond before the person may be released. The judicial officer may reduce this requirement if the person proves to the satisfaction of the officer that the person's only role in the offense was as an aider or abettor and that the person did not stand to benefit financially from the manufacturing.

(e) In a prosecution charging the crime of stalking that is not a crime involving domestic violence, a judicial officer may order the person to

(1) follow the provisions of any protective order to which the person is respondent;

(2) refrain from contacting in any manner, including by telephone or electronic communication, the victim;

(3) engage in counseling; if available in the community, the judicial officer shall require that counseling ordered include counseling about alternatives to aggressive behavior.

(f) In a prosecution charging a crime under AS 11.41.410 - 11.41.458, a judicial officer

(1) may order the person to have no contact with the victim except as specifically allowed by the court;

(2) may order the person to reside in a place where the person is not likely to come into contact with the victim of the offense;

(3) may order the person to have no contact with any person under 18 years of age except in the normal course of business in a public place;

(4) shall assure that the victim and the parent or guardian of a minor victim have been notified by a law enforcement agency or the prosecuting authority of a hearing where release is being considered, or that a reasonable effort at notification has been made; and

(5) shall solicit comments from the victim or a parent or guardian of the minor victim who is present and wishes to comment, and consider those comments before making a decision concerning the release of the person.

* **Sec. 5.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.021. Third-party custodians. (a) In addition to other conditions imposed under AS 12.30.011 or 12.30.016, a judicial officer may appoint a third-party custodian if the officer finds that the appointment will, singly or in combination with other conditions, reasonably assure the person's appearance and the safety of the victim, other persons, and the community.

(b) A judicial officer may appoint an individual as a third-party custodian if the proposed custodian

(1) provides information to the judicial officer about the proposed custodian's residence, occupation, ties to the community, and relationship with the person, and provides any other information requested by the judicial officer;

(2) is physically able to perform the duties of custodian of the person;

(3) personally, by telephone, or by other technology approved by the court, appears in court with the person and acknowledges to the judicial officer orally and in writing that the proposed custodian

(A) understands the duties of custodian and agrees to perform them; the proposed custodian must specifically agree to immediately report in accordance with the terms of the order if the person released has violated a

condition of release; and

(B) understands that failure to perform those duties may result in the custodian being held criminally liable under AS 09.50.010 or AS 11.56.758.

(c) A judicial officer may not appoint a person as a third-party custodian if

(1) the proposed custodian is acting as a third-party custodian for another person;

(2) the proposed custodian has been convicted in the previous three years of a crime under AS 11.41 or a similar crime in this or another jurisdiction;

(3) criminal charges are pending in this state or another jurisdiction against the proposed custodian;

(4) the proposed custodian is on probation in this state or another jurisdiction for an offense;

(5) the proposed custodian may be called as a witness in the prosecution of the person;

(6) the proposed custodian resides out of state; however a nonresident may serve as a custodian if the nonresident resides in the state while serving as custodian.

*** Sec. 6.** AS 12.30.027(a) is amended to read:

(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the **judicial officer** [COURT] shall consider the safety of the [ALLEGED] victim or other household member. To protect the [ALLEGED] victim, household member, **other persons,** and the **community** [PUBLIC] and to reasonably assure the person's appearance, the **judicial officer shall impose conditions required under AS 12.30.011, and** [COURT] may impose [BAIL AND] any of the conditions authorized under **AS 12.30.011** [AS 12.30.020], any of the provisions of AS 18.66.100(c)(1) - (7) and (11), and any other condition necessary to protect the [ALLEGED] victim, household member, **other persons,** and the **community** [PUBLIC], and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

* **Sec. 7.** AS 12.30.027(b) is amended to read:

(b) A **judicial officer** [COURT] may not order or permit a person released under (a) of this section to return to the residence **or place of employment** of the [ALLEGED] victim or the residence **or place of employment** of a petitioner who has a protective order directed to the person and issued or filed under AS 18.66.100 - 18.66.180 **unless**

(1) 20 days have elapsed following the date the person was arrested;

(2) the victim or petitioner consents to the person's return to the residence or place of employment;

(3) the person does not have a prior conviction for an offense under AS 11.41 that is a crime involving domestic violence; and

(4) the court finds by clear and convincing evidence that the return to the residence or place of employment does not pose a danger to the victim or petitioner.

* **Sec. 8.** AS 12.30.030 is repealed and reenacted to read:

Sec. 12.30.030. Appeal from conditions of release. (a) If a person remains in custody after a review provided for in AS 12.30.006(c) or (d), an appeal may be taken to the court having appellate jurisdiction over the court imposing the conditions. The appellate court shall affirm the order unless it finds that the lower court abused its discretion.

(b) If the appellate court finds that the lower court abused its discretion, the appellate court may modify the order, remand the matter for further proceedings, or remand the matter directing entry of the appropriate order, including release under AS 12.30.011(a). The appeal shall be determined promptly.

* **Sec. 9.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.031. Temporary release. (a) A person either before trial or after conviction who is detained under this chapter may be released temporarily if

(1) the person is being held in connection with a misdemeanor or class B or C felony;

(2) the release is requested because of the

(A) death of an immediate family member of the person;

(B) birth of the person's child if the defendant executes an affidavit of paternity before the release;

(C) person's need for a mental health or substance abuse assessment that the court finds cannot be accommodated in the facility or telephonically; or

(D) person's need for a medical or dental examination required for acceptance into a residential treatment facility; and

(3) the court solicits information from the Department of Corrections regarding the defendant's conduct while incarcerated and considers that information when making a decision under this subsection.

(b) If a court orders temporary release of a person under (a) of this section, the court shall order the person to appear in court during normal business hours at the end of the period of temporary release and before the person is returned to a correctional facility.

* **Sec. 10.** AS 12.30.040 is repealed and reenacted to read:

Sec. 12.30.040. Release before sentence; release after conviction. (a) Except as provided in (b) of this section, a person who has been convicted of an offense and is awaiting sentence or who has filed an appeal may be released under the provisions of this chapter if the person establishes, by clear and convincing evidence, that the person can be released under conditions that will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

(b) A person may not be released under (a) of this section if the person has been convicted of an offense that is

(1) an unclassified or class A felony;

(2) a sexual felony;

(3) a class B felony if the person has been convicted within the previous 10 years of a felony committed in this state or a similar offense committed in another jurisdiction; or

(4) a felony in violation of AS 11.41, and the person has been found guilty but mentally ill.

(c) A person who has been convicted of an offense and who has filed an application for post-conviction relief may not be released under this section until the court enters an order vacating all convictions against the person. A person who has prevailed in an application for post-conviction relief may seek release before trial in accordance with the provisions of this chapter.

* **Sec. 11.** AS 12.30.050 is repealed and reenacted to read:

Sec. 12.30.050. Release of material witnesses. (a) If the prosecution or defense establishes by affidavit or other evidence that the testimony of a person is material in a criminal proceeding, and that it may be impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and consider the release or detention of the person under the provisions of AS 12.30.011.

(b) A material witness may not be detained because of inability to comply with any condition of release if the testimony of the witness can adequately be secured by deposition, unless further detention is necessary to prevent a failure of justice.

(c) Release of a material witness under (a) of this section may be delayed for a reasonable period of time for the deposition of the witness to be taken.

* **Sec. 12.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.055. Persons appearing on petition to revoke. A person who is in custody in connection with a petition to revoke probation for a felony crime against a person under AS 11.41 does not have a right to be released under this chapter. A judicial officer may, however, release the person under the provisions of this chapter, if it is established by a preponderance of the evidence that the proposed release conditions will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

* **Sec. 13.** AS 12.30.075(a) is amended to read:

(a) Cash or other security posted by a **person** [DEFENDANT] under **AS 12.30.011** [AS 12.30.020] that would otherwise be forfeited shall be held by the court in trust for the benefit of the victim if, within 30 days after an order of the court establishing a failure to appear or a violation of conditions of release, the prosecuting authority gives notice that restitution may be requested as part of the sentence if the

person [DEFENDANT] is convicted.

*** Sec. 14.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.078. Conviction occurrence. In this chapter, a conviction occurs at the time the person is found guilty, either by plea or verdict, of the offense.

*** Sec. 15.** AS 12.30.080 is amended by adding new paragraphs to read:

(3) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(4) "knowingly" has the meaning given in AS 11.81.900;

(5) "peace officer" has the meaning given in AS 11.81.900;

(6) "sexual felony" has the meaning given in AS 12.55.185;

(7) "stalking" means a violation of AS 11.41.260 or 11.41.270.

*** Sec. 16.** AS 12.55.155(c)(12) is amended to read:

(12) the defendant was on release under **AS 12.30** [AS 12.30.020 OR 12.30.040] for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

*** Sec. 17.** AS 12.80.060(g)(2) is amended to read:

(2) "offense" means conduct subjecting a person to arrest as an adult offender, or as a juvenile charged as an adult,

(A) due to a violation of a federal or state criminal law, or municipal criminal ordinance;

(B) under AS 12.25.180;

(C) under **AS 11.56.730** [AS 12.30.060]; or

(D) under AS 12.70.

*** Sec. 18.** AS 18.65.530(a) is amended to read:

(a) Except as provided in (b) or (c) of this section, a peace officer, with or without a warrant, shall arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer, within the previous 12 hours,

(1) committed domestic violence, except an offense under AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;

(2) committed the crime of violating a protective order in violation of

AS 11.56.740;

(3) violated a condition of release imposed under **AS 12.30.016(e) or (f) or 12.30.027** [AS 12.30.025, 12.30.027, OR 12.30.029].

* **Sec. 19.** AS 18.66.160(a) is amended to read:

(a) **Unless, on the record in court, the person has already been provided a copy of the court's order, process** [PROCESS] issued under this chapter shall be promptly served and executed. If process is to be served upon a person believed to be present or residing in a municipality, as defined in AS 29.71.800, or in an unincorporated community, process shall be served by a peace officer of that municipality or unincorporated community who has jurisdiction within the area of service. If a peace officer of the municipality or unincorporated community who has jurisdiction is not available, a superior court, district court, or magistrate may designate any other peace officer to serve and execute process. A state peace officer shall serve process in any area that is not within the jurisdiction of a peace officer of a municipality or unincorporated community. A peace officer shall use every reasonable means to serve process issued under this chapter. **A judge may not order a peace officer to serve a petition that has been denied by the court.**

* **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 5(a)(1), Alaska Rules of Criminal Procedure, is amended to read:

(a) **Appearance Before the Judge or Magistrate.**

(1) Except when the person arrested is issued a citation for a misdemeanor or a violation and immediately thereafter released, the arrested person shall be taken before the nearest available judge or magistrate without unnecessary delay. This appearance may be accomplished by the use of telephonic or television equipment pursuant to Criminal Rules 38.1 and 38.2. **Necessary** [UNNECESSARY] delay within the meaning of this paragraph (a) is defined as a period not to exceed **forty-eight** [TWENTY-FOUR] hours after arrest, including Sundays and holidays.

* **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 5(a)(2), Alaska Rules of Criminal Procedure, is amended to read:

(2) If

(i) The judge or magistrate commits the arrested person to jail for a purpose other than to serve a sentence, and

(ii) The jail is situated in a different community from the place where the judge or magistrate committed the arrested person to jail, and

(iii) The arrested person is not represented by counsel, and

(iv) The arrested person has not previously had a bail review, and

(v) The arrested person has no date, time and place established for his or her next court appearance, then the arrested person shall be taken before a judge or magistrate in the community where the jail is located within **forty-eight** [TWENTY-FOUR] hours of the person's detention in that jail

(aa) in order for bail to be reviewed, and

(bb) in order to determine if the person is represented by counsel, and

(cc) in order for [THE] counsel to be appointed, if appropriate.

*** Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(a), Alaska Rules of Criminal Procedure, is amended to read:

(a) **Admission to Bail.** The defendant in a criminal proceeding is entitled to be admitted to bail pursuant to **AS 12.30.006 - 12.30.080** [AS 12.30.010 -12.30.080].

*** Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(b), Alaska Rules of Criminal Procedure, is amended to read:

(b) **Types of Bonds.** The court may require:

(1) the execution of an unsecured appearance bond in an amount specified, under the criteria set forth in **AS 12.30.011** [AS 12.30.010(a)];

(2) the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash [or other security], of a sum not to exceed 10 percent of the amount of the bond;

(3) the execution of a bail bond with sufficient solvent sureties or the deposit of cash; or

(4) the execution of a performance bond in a specified amount and the deposit in the registry of the court of cash [or other security].

* **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(c), Alaska Rules of Criminal Procedure, is amended to read:

(c) **Separate Bonds.** If a performance bond is required, it must be enforced separately from any appearance or bail bond.

(1) Appearance in court may not be a condition of a performance bond. **A court may not order that an appearance bond be concurrent with an appearance bond in a pending case unless the surety who posed the first appearance bond approves.**

(2) The court may not change a performance or appearance bail requirement without agreement by the surety, unless

(A) the surety waives the requirement for agreement in advance and in writing; or

(B) the court, in writing, finds that the change in the condition of bail poses no increase in risk of loss to the surety and the court sets out in writing the reason for finding that there is no increase in the risk of loss to the surety.

* **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 206(b), Alaska Rules of Appellate Procedure, is amended to read:

(b) **Release Pending Appeal.** When an appeal on the merits is pending, an appeal under **AS 12.30.030** [AS 12.30.030(b)] from an order refusing bail pending appeal or imposing conditions of release pending appeal shall be in the form of a motion filed in the merit appeal. The motion must be filed with the clerk of the appellate courts within 30 days after the date of the notice of the order from which review is sought. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c). The motion shall comply with Rule 503, and shall contain specific factual information relevant to **AS 12.30.011(c)** [AS 12.30.020(c)], including but not limited to the following:

(1) The full name of the appellant; the trial court case number; the offenses of which the appellant was convicted, if applicable; the date of sentencing; and the complete terms of the sentence;

(2) That application for release pending appeal has been made to the trial court, the reasons given by the trial court for denying the application in whole or in part, and facts and reasons demonstrating why the action of the trial court on the application was erroneous or an abuse of discretion;

(3) A concise statement of the question or questions to be raised on the appeal with a showing that the question or questions were raised in the trial court;

(4) Family: marital status; length of marriage; children, and their ages; other relatives in the area of residence;

(5) Employment and financial circumstances: name of employer at time of arrest and during pre-trial release; type of work; how long so employed; and offer or promise of employment if released pending appeal; assets of the appellant or of relatives or friends relevant to the ability to post money bail;

(6) Health: history of mental illness, alcoholism, or addiction to drugs, if any;

(7) Residence: length of residence in the city or town in which the appellant resided at the time of arrest;

(8) Criminal history: criminal convictions within ten years prior to the present arrest; if the appellant has ever forfeited bail, or had release, probation, or parole revoked, the date, the name and location of the court, and a brief description of

the circumstances; whether the present offense was committed while the appellant was on bail or other release or on probation or parole; any other criminal charges pending against the appellant at the time [OF] the motion is filed.

*** Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 603(b), Alaska Rules of Appellate Procedure, is amended to read:

(b) **Criminal Appeals.** If a sentence of imprisonment is imposed, **the court may admit the defendant to bail and stay the sentence as provided by law and by these rules** [ADMISSION TO BAIL WILL BE ALLOWED AND THE SENTENCE STAYED], pending appeal. A sentence to pay a fine or a fine and costs may be stayed, if an appeal is taken, by the district judge or magistrate or by the superior court upon such terms as the court deems proper. During appeal the court may require the defendant to deposit the whole or any part of the fine and costs in the registry of the superior court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his or her assets. An order placing the defendant on probation will be stayed if an appeal is taken.

*** Sec. 27.** AS 12.30.010, 12.30.020, 12.30.023, 12.30.025, 12.30.027(g), 12.30.029, and 12.30.060 are repealed.

*** Sec. 28.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) AS 11.56.730, enacted in sec. 1 of this Act, applies to acts committed on or after the effective date of this Act.

(b) The amendments to AS 12.25.030(b) made by sec. 2 of this Act apply to arrests for violation of conditions of release occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(c) AS 12.30.006 - 12.30.021, enacted in secs. 3 - 5 of this Act; AS 12.30.030, repealed and reenacted in sec. 8 of this Act; AS 12.30.031, enacted in sec. 9 of this Act; AS 12.30.040, repealed and reenacted in sec. 10 of this Act; AS 12.30.055, enacted in sec. 12 of this Act; and AS 12.30.078, enacted in sec. 14 of this Act apply to bail proceedings

occurring on and after the effective date of this Act for offenses occurring on or after the effective date of this Act.

(d) AS 12.30.050, repealed and reenacted in sec. 11 of this Act, applies to bail proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(e) The amendments to AS 12.30.027(a) and (b) made by secs. 6 and 7 of this Act; to AS 12.30.075 made by sec. 13 of this Act and to 12.30.080 made by sec. 15 of this Act apply to bail proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(f) The amendments to Rule 5, Alaska Rules of Criminal Procedure, made by secs. 20 and 21 of this Act apply to offenses occurring on or after the effective date of this Act.

(g) The amendment to Rule 41(c), Alaska Rules of Criminal Procedure, made by sec. 24 of this Act applies to bail proceedings occurring on or after the effective date of this Act.

(h) The amendment to Rule 603(b), Alaska Rules of Criminal Procedure, made by sec. 26 of this Act applies to convictions occurring on or after the effective date of this Act.

*** Sec. 29.** This Act takes effect July 1, 2010.

26-GH2910\E

CS FOR HOUSE BILL NO. 324(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/29/10
Referred: Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to the crime of failure to appear; relating to arrest for violating certain conditions of release; relating to release before trial, before sentence, and pending appeal; relating to material witnesses; relating to temporary release; relating to release on a petition to revoke probation; relating to the first appearance before a judicial officer after arrest; relating to service of process for domestic violence protective orders; making conforming amendments; amending Rules 5 and 41, Alaska Rules of Criminal Procedure, and Rules 206 and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

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

*** Section 1.** AS 11.56 is amended by adding a new section to read:

Sec. 11.56.730. Failure to appear. (a) A person commits the crime of failure to appear if the person

(1) is released under the provisions of AS 12.30;

(2) knows that the person is required to appear before a court or judicial officer at the time and place of a scheduled hearing; and

(3) does not appear before the court or judicial officer at the time and place of the scheduled hearing; in this paragraph, the person's act of not appearing is conduct that does not require a culpable mental state.

(b) In a prosecution for failure to appear under (a) of this section, it is an affirmative defense that unforeseeable circumstances, outside the person's control, prevented the person from appearing before the court or judicial officer at the time and place of the scheduled hearing, and the person contacted the court orally and in writing immediately upon being able to make the contact.

(c) A person who commits failure to appear incurs a forfeiture of any security for any appearance of the person that was given or pledged to the court for the person's release, and is guilty of a

(1) class C felony if the person was released in connection with a charge of a felony, or while awaiting sentence or appeal after conviction of a felony;

(2) class A misdemeanor if the person was released in connection with a

(A) charge of a misdemeanor, or while awaiting sentence or appeal after conviction of a misdemeanor; or

(B) requirement to appear as a material witness in a criminal proceeding.

*** Sec. 2.** AS 12.25.030(b) is amended to read:

(b) In addition to the authority granted by (a) of this section, a peace officer

(1) shall make an arrest under the circumstances described in AS 18.65.530;

(2) without a warrant may arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer,

(A) committed a crime involving domestic violence, whether the crime is a felony or a misdemeanor; in this subparagraph, "crime involving domestic violence" has the meaning given in AS 18.66.990;

(B) committed the crime of violating a protective order in violation of AS 11.56.740; or

(C) violated a condition of release imposed under **AS 12.30.016(e)** [AS 12.30.025] or 12.30.027;

(3) without a warrant may arrest a person when the peace officer has **probable** [REASONABLE] cause for believing that the person has

(A) committed a crime under or violated conditions imposed as part of the person's release before trial on misdemeanor charges brought under AS 11.41.270;

(B) violated AS 04.16.050 or an ordinance with similar elements; however, unless there is a lawful reason for further detention, a person who is under [THE AGE OF] 18 **years of age** and who has been arrested for violating AS 04.16.050 or an ordinance with similar elements shall be cited for the offense and released to the person's parent, guardian, or legal custodian; or

(C) violated conditions imposed as part of the person's release **under the provisions of AS 12.30** [BEFORE TRIAL ON FELONY CHARGES BROUGHT UNDER AS 11.41.410 - 11.41.458];

* **Sec. 3.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.006. Release procedures. (a) At the first appearance before a judicial officer, a person charged with an offense shall be released or detained under the provisions of this chapter.

(b) At the first appearance before a judicial officer, a person who is charged with a felony may be detained up to 48 hours for the prosecuting authority to demonstrate that release of the person under AS 12.30.011(a) would not reasonably assure the appearance of the person or will pose a danger to the victim, other persons, or the community.

(c) A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If the judicial officer who imposed the conditions of release is not available, any judicial

officer in the judicial district may review the conditions.

(d) If a person remains in custody after review of conditions by a judicial officer under (c) of this section, the person may request a subsequent review of conditions. Unless the prosecuting authority stipulates otherwise or the person has been incarcerated for a period equal to the maximum sentence for the most serious charge for which the person is being held, a judicial officer may not schedule a bail review hearing under this subsection unless

(1) the person provides to the court and the prosecuting authority a written statement that new information not considered at the previous review will be presented at the hearing; the statement must include a description of the information and the reason the information was not presented at a previous hearing; in this paragraph, "new information" does not include the inability to post the required bail;

(2) the prosecuting authority and any surety, if applicable, have at least 48 hours' written notice before the time set for the review requested under this subsection; the defendant shall notify the surety; and

(3) at least seven days have elapsed between the previous review and the time set for the requested review.

(e) Before a person may be released under this chapter, the person must sign and file a release agreement with the clerk of the court. The release agreement must describe the terms and conditions of the person's release and include the person's promise to abide by the terms and conditions.

(f) A judicial officer may solicit comments by the victim or a parent or guardian of a minor victim who is present at the bail review hearing and wishes to comment. The judicial officer shall consider those comments and any response by the person before making a decision concerning the release of the person.

(g) The judicial officer shall issue written or oral findings that explain the reasons the officer imposed the particular conditions of release or modifications or additions to conditions previously imposed. The judicial officer shall inform the person that a law enforcement officer may arrest the person without a warrant for violation of the court's order establishing conditions of release.

(h) Information offered or introduced at a bail hearing to determine conditions

of release need not conform to the rules governing the admissibility of evidence.

*** Sec. 4.** AS 12.30 is amended by adding new sections to read:

Sec. 12.30.011. Release before trial. (a) Except as otherwise provided in this chapter, a judicial officer shall order a person charged with an offense to be released on the person's personal recognizance or upon execution of an unsecured appearance bond, on the condition that the person

(1) obey all court orders and all federal, state, and local laws;

(2) appear in court when ordered;

(3) if represented, maintain contact with the person's lawyer; and

(4) notify the person's lawyer, who shall notify the prosecuting authority and the court, not more than 24 hours after the person changes residence.

(b) If a judicial officer determines that the release under (a) of this section will not reasonably assure the appearance of the person or will pose a danger to the victim, other persons, or the community, the officer shall impose the least restrictive condition or conditions that will reasonably assure the person's appearance and protect the victim, other persons, and the community. In addition to conditions under (a) of this section, the judicial officer may, singly or in combination,

(1) require the execution of an appearance bond in a specified amount of cash to be deposited into the registry of the court, in a sum not to exceed 10 percent of the amount of the bond;

(2) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash;

(3) require the execution of a performance bond in a specified amount of cash to be deposited in the registry of the court;

(4) place restrictions on the person's travel, association, or residence;

(5) order the person to refrain from possessing a deadly weapon on the person or in the person's vehicle or residence;

(6) require the person to maintain employment, or if unemployed, actively seek employment;

(7) require the person to notify the person's lawyer and the prosecuting authority within two business days after any change in employment;

(8) require the person to avoid all contact with a victim, a potential witness, or a codefendant;

(9) require the person to refrain from the consumption and possession of alcoholic beverages;

(10) require the person to refrain from the use of a controlled substance as defined by AS 11.71, unless prescribed by a licensed health care provider with prescriptive authority;

(11) require the person to be physically inside the person's residence, or in the residence of the person's third-party custodian, at time periods set by the court;

(12) require the person to keep regular contact with a law enforcement officer or agency;

(13) order the person to refrain from entering or remaining in premises licensed under AS 04;

(14) place the person in the custody of an individual who agrees to serve as a third-party custodian of the person as provided in AS 12.30.021;

(15) if the person is under the treatment of a licensed health care provider, order the person to follow the provider's treatment recommendations;

(16) order the person to take medication that has been prescribed for the person by a licensed health care provider with prescriptive authority;

(17) order the person to comply with any other condition that is reasonably necessary to assure the appearance of the person and to assure the safety of the victim, other persons, and the community.

(c) In determining the conditions of release under this chapter, the court shall consider the following:

(1) the nature and circumstances of the offense charged;

(2) the weight of the evidence against the person;

(3) the nature and extent of the person's family ties and relationships;

(4) the person's employment status and history;

(5) the length and character of the person's past and present residence;

(6) the person's record of convictions;

(7) the person's record of appearance at court proceedings;

(8) assets available to the person to meet monetary conditions of release;

(9) the person's reputation, character, and mental condition;

(10) the effect of the offense on the victim, any threats made to the victim, and the danger that the person poses to the victim;

(11) any other facts that are relevant to the person's appearance or the person's danger to the victim, other persons, or the community.

(d) In making a finding regarding the release of a person under this chapter,

(1) except as otherwise provided in this chapter, the burden of proof is on the prosecuting authority that a person charged with an offense should be detained or released with conditions described in (b) of this section or AS 12.30.016;

(2) there is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the victim, other persons, or the community, if the person is

(A) charged with an unclassified felony, a class A felony, or a sexual felony;

(B) charged with a felony, was previously convicted of a felony in this state or a similar offense in another jurisdiction, and less than five years have elapsed between the date of the person's unconditional discharge on the immediately preceding offense and the commission of the present offense;

(C) charged with an offense committed while the person was on release under this chapter for a charge or conviction of another offense;

(D) charged with a crime involving domestic violence, and has been convicted in the previous five years of a crime involving domestic violence in this state or a similar offense in another jurisdiction;

(E) arrested in connection with an accusation that the person committed a felony outside the state or is a fugitive from justice from another jurisdiction, and the court is considering release under AS 12.70.

Sec. 12.30.016. Release before trial in certain cases. (a) A judicial officer may impose, in addition to those required or authorized under AS 12.30.011,

conditions of release for offenses described in this section, if necessary to reasonably assure the person's appearance or the safety of the victim, other persons, or the community.

(b) In a prosecution charging a violation of AS 04.11.010, 04.11.499, AS 28.35.030, or 28.35.032, a judicial officer may order the person

(1) to refrain from

(A) consuming alcohol beverages; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, alcoholic beverages;

(2) to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of alcoholic beverages by a peace officer who has reasonable suspicion that the person is violating the conditions of the person's release by possessing alcoholic beverages;

(3) to submit to a breath test when requested by a law enforcement officer;

(4) to provide a sample for a urinalysis or blood test when requested by a law enforcement officer;

(5) to take a drug or combination of drugs intended to prevent substance abuse;

(6) to follow any treatment plan imposed by the court under AS 28.35.028.

(c) In a prosecution charging a violation of AS 11.71 or AS 11.73, a judicial officer may order the person

(1) to refrain from

(A) consuming a controlled substance; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, a controlled substance or drug paraphernalia;

(2) to submit to a search without a warrant of the person, the person's

personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of a controlled substance or drug paraphernalia by a peace officer who has reasonable suspicion that the person is violating the terms of the person's release by possessing controlled substances or drug paraphernalia;

(3) to enroll in a random drug testing program, at the person's expense, to detect the presence of a controlled substance, with testing to occur not less than once a week, and with the results being submitted to the court and the prosecuting authority;

(4) to refrain from entering or remaining in a place where a controlled substance is being used, manufactured, grown, or distributed;

(5) to refrain from being physically present, within a two-block area of, or within a designated area near, the location where the alleged offense occurred or at other designated places, unless the person actually resides within that area; or

(6) to refrain from the use or possession of an inhalant.

(d) In a prosecution charging misconduct involving a controlled substance under AS 11.71.020(a)(2) for the manufacture of methamphetamine, or its salts, isomers, or salts of isomers, if the person has been previously convicted in this or another jurisdiction of a crime involving the manufacturing, delivering, or possessing methamphetamine, or its salts, isomers, or salts of isomers, a judicial officer shall require the posting of a minimum of $250,000 cash bond before the person may be released. The judicial officer may reduce this requirement if the person proves to the satisfaction of the officer that the person's only role in the offense was as an aider or abettor and that the person did not stand to benefit financially from the manufacturing.

(e) In a prosecution charging the crime of stalking that is not a crime involving domestic violence, a judicial officer may order the person to

(1) follow the provisions of any protective order to which the person is respondent;

(2) refrain from contacting in any manner, including by telephone or electronic communication, the victim;

(3). engage in counseling; if available in the community, the judicial officer shall require that counseling ordered include counseling about alternatives to

aggressive behavior.

(f) In a prosecution charging a crime under AS 11.41.410 - 11.41.458, a judicial officer

(1) may order the person to have no contact with the victim except as specifically allowed by the court;

(2) may order the person to reside in a place where the person is not likely to come into contact with the victim of the offense;

(3) may order the person to have no contact with any person under 18 years of age except in the normal course of business in a public place;

(4) shall assure that the victim and the parent or guardian of a minor victim have been notified by a law enforcement agency or the prosecuting authority of a hearing where release is being considered, or that a reasonable effort at notification has been made; and

(5) shall solicit comments from the victim or a parent or guardian of the minor victim who is present and wishes to comment, and consider those comments before making a decision concerning the release of the person.

* **Sec. 5.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.021. Third-party custodians. (a) In addition to other conditions imposed under AS 12.30.011 or 12.30.016, a judicial officer may appoint a third-party custodian if the officer finds that the appointment will, singly or in combination with other conditions, reasonably assure the person's appearance and the safety of the victim, other persons, and the community.

(b) A judicial officer may appoint an individual as a third-party custodian if the proposed custodian

(1) provides information to the judicial officer about the proposed custodian's residence, occupation, ties to the community, and relationship with the person, and provides any other information requested by the judicial officer;

(2) is physically able to perform the duties of custodian of the person;

(3) either personally or by telephone, appears in court with the person and acknowledges to the judicial officer orally and in writing that the proposed custodian

(A) understands the duties of custodian and agrees to perform them; the proposed custodian must specifically agree to immediately report in accordance with the terms of the order if the person released has violated a condition of release; and

(B) understands that failure to perform those duties may result in the custodian being held criminally liable under AS 09.50.010 or AS 11.56.758.

(c) A judicial officer may not appoint a person as a third-party custodian if

(1) the proposed custodian is acting as a third-party custodian for another person;

(2) the proposed custodian has been convicted in the previous three years of a crime under AS 11.41 or a similar crime in this or another jurisdiction;

(3) criminal charges are pending in this state or another jurisdiction against the proposed custodian;

(4) the proposed custodian is on probation in this state or another jurisdiction for an offense;

(5) the proposed custodian may be called as a witness in the prosecution of the person;

(6) the proposed custodian resides out of state; however a nonresident may serve as a custodian if the nonresident resides in the state while serving as custodian.

*** Sec. 6.** AS 12.30.027(a) is amended to read:

(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the **judicial officer** [COURT] shall consider the safety of the [ALLEGED] victim or other household member. To protect the [ALLEGED] victim, household member, **other persons,** and the **community** [PUBLIC] and to reasonably assure the person's appearance, the **judicial officer shall impose conditions required under AS 12.30.011, and** [COURT] may impose [BAIL AND] any of the conditions authorized under **AS 12.30.011** [AS 12.30.020], any of the provisions of AS 18.66.100(c)(1) - (7) and (11), and any other condition necessary to protect the [ALLEGED] victim, household

member, **other persons,** and the **community** [PUBLIC], and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

* **Sec. 7.** AS 12.30.027(b) is amended to read:

(b) A **judicial officer** [COURT] may not order or permit a person released under (a) of this section to return to the residence **or place of employment** of the [ALLEGED] victim or the residence **or place of employment** of a petitioner who has a protective order directed to the person and issued or filed under AS 18.66.100 - 18.66.180 **unless**

(1) 20 days have elapsed following the date the person was arrested;

(2) the victim or petitioner consents to the person's return to the residence or place of employment;

(3) the person does not have a prior conviction for an offense under AS 11.41 that is a crime involving domestic violence; and

(4) the court finds by clear and convincing evidence that the return to the residence or place of employment does not pose a danger to the victim or petitioner.

* **Sec. 8.** AS 12.30.030 is repealed and reenacted to read:

Sec. 12.30.030. Appeal from conditions of release. (a) If a person remains in custody after a review provided for in AS 12.30.006(c) or (d), an appeal may be taken to the court having appellate jurisdiction over the court imposing the conditions. The appellate court shall affirm the order unless it finds that the lower court abused its discretion.

(b) If the appellate court finds that the lower court abused its discretion, the appellate court may modify the order, remand the matter for further proceedings, or remand the matter directing entry of the appropriate order, including release under AS 12.30.011(a). The appeal shall be determined promptly.

* **Sec. 9.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.031. Temporary release. (a) A person either before trial or after conviction who is detained under this chapter may be released temporarily if

(1) the person is being held in connection with a misdemeanor or class B or C felony;

(2) the release is requested because of the

(A) death of an immediate family member of the person;

(B) birth of the person's child if the defendant executes an affidavit of paternity before the release;

(C) person's need for a mental health or substance abuse assessment that the court finds cannot be accommodated in the facility or telephonically; or

(D) person's need for a medical or dental examination required for acceptance into a residential treatment facility; and

(3) the court solicits information from the Department of Corrections regarding the defendant's conduct while incarcerated and considers that information when making a decision under this subsection.

(b) If a court orders temporary release of a person under (a) of this section, the court shall order the person to appear in court during normal business hours at the end of the period of temporary release and before the person is returned to a correctional facility.

*** Sec. 10.** AS 12.30.040 is repealed and reenacted to read:

Sec. 12.30.040. Release before sentence; release after conviction. (a) Except as provided in (b) of this section, a person who has been convicted of an offense and is awaiting sentence or who has filed an appeal may be released under the provisions of this chapter if the person establishes, by clear and convincing evidence, that the person can be released under conditions that will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

(b) A person may not be released under (a) of this section if the person has been convicted of an offense that is

(1) an unclassified or class A felony;

(2) a sexual felony;

(3) a class B felony if the person has been convicted within the previous 10 years of a felony committed in this state or a similar offense committed in

another jurisdiction; or

(4) a felony in violation of AS 11.41, and the person has been found guilty but mentally ill.

(c) A person who has been convicted of an offense and who has filed an application for post-conviction relief may not be released under this section until the court enters an order vacating all convictions against the person. A person who has prevailed in an application for post-conviction relief may seek release before trial in accordance with the provisions of this chapter.

*** Sec. 11.** AS 12.30.050 is repealed and reenacted to read:

Sec. 12.30.050. Release of material witnesses. (a) If the prosecution or defense establishes by affidavit or other evidence that the testimony of a person is material in a criminal proceeding, and that it may be impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and consider the release or detention of the person under the provisions of AS 12.30.011.

(b) A material witness may not be detained because of inability to comply with any condition of release if the testimony of the witness can adequately be secured by deposition, unless further detention is necessary to prevent a failure of justice.

(c) Release of a material witness under (a) of this section may be delayed for a reasonable period of time for the deposition of the witness to be taken.

*** Sec. 12.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.055. Persons appearing on petition to revoke. A person who is in custody in connection with a petition to revoke probation does not have a right to be released under this chapter. A judicial officer may, however, release the person under the provisions of this chapter, if the person establishes by a preponderance of evidence that the proposed release conditions will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

*** Sec. 13.** AS 12.30.075(a) is amended to read:

(a) Cash or other security posted by a **person** [DEFENDANT] under **AS 12.30.011** [AS 12.30.020] that would otherwise be forfeited shall be held by the court in trust for the benefit of the victim if, within 30 days after an order of the court

establishing a failure to appear or a violation of conditions of release, the prosecuting authority gives notice that restitution may be requested as part of the sentence if the **person** [DEFENDANT] is convicted.

* **Sec. 14.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.078. Conviction occurrence. In this chapter, a conviction occurs at the time the person is found guilty, either by plea or verdict, of the offense.

* **Sec. 15.** AS 12.30.080 is amended by adding new paragraphs to read:

(3) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(4) "knowingly" has the meaning given in AS 11.81.900;

(5) "peace officer" has the meaning given in AS 11.81.900;

(6) "sexual felony" has the meaning given in AS 12.55.185;

(7) "stalking" means a violation of AS 11.41.260 or 11.41.270.

* **Sec. 16.** AS 12.55.155(c)(12) is amended to read:

(12) the defendant was on release under **AS 12.30** [AS 12.30.020 OR 12.30.040] for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

* **Sec. 17.** AS 12.80.060(g)(2) is amended to read:

(2) "offense" means conduct subjecting a person to arrest as an adult offender, or as a juvenile charged as an adult,

(A) due to a violation of a federal or state criminal law, or municipal criminal ordinance;

(B) under AS 12.25.180;

(C) under **AS 11.56.730** [AS 12.30.060]; or

(D) under AS 12.70.

* **Sec. 18.** AS 18.65.530(a) is amended to read:

(a) Except as provided in (b) or (c) of this section, a peace officer, with or without a warrant, shall arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer, within the previous 12 hours,

(1) committed domestic violence, except an offense under

AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;

(2) committed the crime of violating a protective order in violation of AS 11.56.740;

(3) violated a condition of release imposed under **AS 12.30.016(e) or (f) or 12.30.027** [AS 12.30.025, 12.30.027, OR 12.30.029].

*** Sec. 19.** AS 18.66.160(a) is amended to read:

(a) **Unless, on the record in court, the person has already been provided a copy of the court's order, process** [PROCESS] issued under this chapter shall be promptly served and executed. If process is to be served upon a person believed to be present or residing in a municipality, as defined in AS 29.71.800, or in an unincorporated community, process shall be served by a peace officer of that municipality or unincorporated community who has jurisdiction within the area of service. If a peace officer of the municipality or unincorporated community who has jurisdiction is not available, a superior court, district court, or magistrate may designate any other peace officer to serve and execute process. A state peace officer shall serve process in any area that is not within the jurisdiction of a peace officer of a municipality or unincorporated community. A peace officer shall use every reasonable means to serve process issued under this chapter. **A judge may not order a peace officer to serve a petition that has been denied by the court.**

*** Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 5(a)(1), Alaska Rules of Criminal Procedure, is amended to read:

(a) Appearance Before the Judge or Magistrate.

(1) Except when the person arrested is issued a citation for a misdemeanor or a violation and immediately thereafter released, the arrested person shall be taken before the nearest available judge or magistrate without unnecessary delay. This appearance may be accomplished by the use of telephonic or television equipment pursuant to Criminal Rules 38.1 and 38.2. **Necessary** [UNNECESSARY] delay within the meaning of this paragraph (a) is defined as a period not to exceed **forty-eight** [TWENTY-FOUR] hours after arrest, including Sundays and holidays.

*** Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 5(a)(2), Alaska Rules of Criminal Procedure, is amended to read:

(2) If

(i) The judge or magistrate commits the arrested person to jail for a purpose other than to serve a sentence, and

(ii) The jail is situated in a different community from the place where the judge or magistrate committed the arrested person to jail, and

(iii) The arrested person is not represented by counsel, and

(iv) The arrested person has not previously had a bail review, and

(v) The arrested person has no date, time and place established for his or her next court appearance, then the arrested person shall be taken before a judge or magistrate in the community where the jail is located within **forty-eight** [TWENTY-FOUR] hours of the person's detention in that jail

(aa) in order for bail to be reviewed, and

(bb) in order to determine if the person is represented by counsel, and

(cc) in order for [THE] counsel to be appointed, if appropriate.

*** Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(a), Alaska Rules of Criminal Procedure, is amended to read:

(a) **Admission to Bail.** The defendant in a criminal proceeding is entitled to be admitted to bail pursuant to **AS 12.30.006 - 12.30.080** [AS 12.30.010 -12.30.080].

*** Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(b), Alaska Rules of

Criminal Procedure, is amended to read:

(b) **Types of Bonds.** The court may require:

(1) the execution of an unsecured appearance bond in an amount specified, under the criteria set forth in **AS 12.30.011** [AS 12.30.010(a)];

(2) the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash [or other security], of a sum not to exceed 10 percent of the amount of the bond;

(3) the execution of a bail bond with sufficient solvent sureties or the deposit of cash; or

(4) the execution of a performance bond in a specified amount and the deposit in the registry of the court of cash [or other security].

*** Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(c), Alaska Rules of Criminal Procedure, is amended to read:

(c) **Separate Bonds.**

(1) If a performance bond is required, it must be enforced separately from any appearance or bail bond. Appearance in court may not be a condition of a performance bond.

(2) w/ same language

(2) The court may not change or add to a bond requirement that was ordered in a previous proceeding unless the surety has been notified and agrees to the change or addition.

*** Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 206(b), Alaska Rules of Appellate Procedure, is amended to read:

(b) **Release Pending Appeal.** When an appeal on the merits is pending, an appeal under **AS 12.30.030** [AS 12.30.030(b)] from an order refusing bail pending appeal or imposing conditions of release pending appeal shall be in the form of a motion filed in the merit appeal. The motion must be filed with the clerk of the appellate courts within 30 days after the date of the notice of the order from which

review is sought. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c). The motion shall comply with Rule 503, and shall contain specific factual information relevant to **AS 12.30.011(c)** [AS 12.30.020(c)], including but not limited to the following:

(1) The full name of the appellant; the trial court case number; the offenses of which the appellant was convicted, if applicable; the date of sentencing; and the complete terms of the sentence;

(2) That application for release pending appeal has been made to the trial court, the reasons given by the trial court for denying the application in whole or in part, and facts and reasons demonstrating why the action of the trial court on the application was erroneous or an abuse of discretion;

(3) A concise statement of the question or questions to be raised on the appeal with a showing that the question or questions were raised in the trial court;

(4) Family: marital status; length of marriage; children, and their ages; other relatives in the area of residence;

(5) Employment and financial circumstances: name of employer at time of arrest and during pre-trial release; type of work; how long so employed; and offer or promise of employment if released pending appeal; assets of the appellant or of relatives or friends relevant to the ability to post money bail;

(6) Health: history of mental illness, alcoholism, or addiction to drugs, if any;

(7) Residence: length of residence in the city or town in which the appellant resided at the time of arrest;

(8) Criminal history: criminal convictions within ten years prior to the present arrest; if the appellant has ever forfeited bail, or had release, probation, or parole revoked, the date, the name and location of the court, and a brief description of the circumstances; whether the present offense was committed while the appellant was on bail or other release or on probation or parole; any other criminal charges pending against the appellant at the time [OF] the motion is filed.

*** Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 603(b), Alaska Rules of Appellate Procedure, is amended to read:

(b) **Criminal Appeals.** If a sentence of imprisonment is imposed, **the court may admit the defendant to bail and stay the sentence as provided by law and by these rules** [ADMISSION TO BAIL WILL BE ALLOWED AND THE SENTENCE STAYED], pending appeal. A sentence to pay a fine or a fine and costs may be stayed, if an appeal is taken, by the district judge or magistrate or by the superior court upon such terms as the court deems proper. During appeal the court may require the defendant to deposit the whole or any part of the fine and costs in the registry of the superior court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his or her assets. An order placing the defendant on probation will be stayed if an appeal is taken.

* **Sec. 27.** AS 12.30.010, 12.30.020, 12.30.023, 12.30.025, 12.30.027(g), 12.30.029, and 12.30.060 are repealed.

* **Sec. 28.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) AS 11.56.730, enacted in sec. 1 of this Act, applies to acts committed on or after the effective date of this Act.

(b) The amendments to AS 12.25.030(b) made by sec. 2 of this Act apply to arrests for violation of conditions of release occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(c) AS 12.30.006 - 12.30.021, enacted in secs. 3 - 5 of this Act; AS 12.30.030, repealed and reenacted in sec. 8 of this Act; AS 12.30.031, enacted in sec. 9 of this Act; AS 12.30.040, repealed and reenacted in sec. 10 of this Act; AS 12.30.055, enacted in sec. 12 of this Act; and AS 12.30.078, enacted in sec. 14 of this Act apply to bail proceedings occurring on and after the effective date of this Act for offenses occurring on or after the effective date of this Act.

(d) AS 12.30.050, repealed and reenacted in sec. 11 of this Act, applies to bail proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(e) The amendments to AS 12.30.027(a) and (b) made by secs. 6 and 7 of this Act; to AS 12.30.075 made by sec. 13 of this Act and to 12.30.080 made by sec. 15 of this Act apply to bail proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(f) The amendments to Rule 5, Alaska Rules of Criminal Procedure, made by secs. 20 and 21 of this Act apply to offenses occurring on or after the effective date of this Act.

(g) The amendment to Rule 41(c), Alaska Rules of Criminal Procedure, made by sec. 24 of this Act applies to bail proceedings occurring on or after the effective date of this Act.

(h) The amendment to Rule 603(b), Alaska Rules of Criminal Procedure, made by sec. 26 of this Act applies to convictions occurring on or after the effective date of this Act.

* **Sec. 29.** This Act takes effect July 1, 2010.

HB 348

SENATE COMMITTEE REPORT

DATE: 4/14/10

FURTHER: Rules

DATE TURNED IN TO OFFICE: 4/15/10

Judiciary Committee considered CS FOR HOUSE BILL NO. 348(JUD)

HB 348 PERSONNEL BOARD MEMBERSHIP

"An Act relating to the membership of the state personnel board."

and recommends:

[ ] be **replaced** with [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt _____Letter of Intent

[ ] further referral to _____Committee

SENATE BILL:
[ ] Same Title
[ ] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Admin	03/09/10			X	1

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
John Coghill	Coghill		✓		
	Wielechowski	✓			
CHAIR:	French	✓			

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

LABOR & STATE AFFAIRS SECTION

SEAN PARNELL, GOVERNOR

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DIMOND COURT HOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
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April 14, 2010

The Honorable Hollis French
Alaska State Senate
Alaska State Capitol, Room 417
Juneau, Alaska 99801-1182

Re: CSHB 348 (JUD)

Dear Senator French:

The Department of Law has had an opportunity to review CSHB 348(JUD). As was explained during testimony by Assistant Attorneys General Mike Ford and Bill Milks this morning at the Senate State Affairs Committee, there is a significant separation of powers issue that should be considered as it raises questions regarding the constitutionality of the bill. This issue is discussed below.

Section 1 of the bill provides that "(t)he governor may make an appointment only from a list of at least three nominees selected by the chief justice of the Alaska Supreme Court, subject to the right of the governor to request additional nominations." Additionally, Section 1 provides that in making appointments, "the governor shall ensure that the board has at least one member of the political party that had the largest number of registered voters and one member of the political party that had the second largest number of registered voters at the time of the most recent general election at which a governor was elected." Currently, under AS 39.25.060(a), members are appointed by the governor and confirmed by the legislature.

Article III of the Alaska Constitution provides that the executive power of the state resides with the governor. Sections 25 and 26 of Article III address the governor's power of appointment. Section 25 states:

> The head of each principal department shall be a single executive unless otherwise provided by law. *He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session*, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the secretary of state. The heads of

> all principal departments shall be citizens of the United States. (Emphasis added).

Section 26 states:

> When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, *its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session*, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor. (Emphasis added).

The Alaska Supreme Court addressed the issue of the governor's power of appointment and the extent to which the legislature can place restrictions on the governor's appointment of executive branch officials in *Bradner v. Hammond,* 553 P.2d 1, 6-7 (Alaska 1976). In *Bradner,* the legislature passed a statute providing that the governor's appointments of deputy heads of each principal executive branch department and 19 specific directors of divisions were subject to legislative confirmation. The question before the Court was whether the statute's requirement that these officials be subject to legislative confirmation was unconstitutional. The Alaska Supreme Court held that the statute violated the separation of powers requirements of Alaska's Constitution because it infringed on the governor's power of appointment under Article III and exceeded the limited authority granted under the Constitution to the legislature in reviewing the appointment of executive officers.

The Court in *Bradner* held that "the appointment of executive officers is an executive function" and that "under Alaska's constitution confirmation is a specific attribute of the appointive power of the executive." *Id.* at 7. The Court considered whether or not Sections 25 and 26 of Article III "describe the outer limits of the legislature's confirmation authority." *Id.* The Court found that the provisions of Sections 25 and 26 "are clear and unambiguous" and that these provisions "delineate the full extent of the constitution's express grant to the legislative branch of checks on the governor's power to appoint subordinate executive officers." *Id.* The Court further commented that "sections 25 and 26 mark the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government." *Id.* at 7. Based on *Bradner*, it appears clear that the limitation on the executive's power of appointment in section 1 presents a significant constitutional issue.

The Department of Law is aware that there are a number of statutes that require that the governor make appointments to commissions or boards from lists of

nominees. *E.g.,* AS 41.21.163 (governor required to appoint members from nominations submitted by certain village and city councils); AS 23.15.550(a)(6)(governor required to appoint four representatives of organized labor from lists submitted by unions); AS 41.35.310(5)(governor required to appoint two persons from a list of recommended nominees submitted by Alaska Historical Society); AS 44.29.300(3)(D)(governor required to appoint one person recommended by Alaska Federation of Natives); AS 15.13.020(b)(governor required to appoint two members of each of the two political parties whose candidate for governor received the highest number of votes in recent election, based on a list submitted by each party).

The Department of Law, however, has issued opinions advising governors to resist legislative encroachment on their appointment power. In 1980, the Department of Law considered the nomination process for the Alaska Public Offices Commission: "The statutory requirement that the governor limit his choice of appointees to those nominated by the two major political parties clearly and unduly interferes with his power of appointment under section 26." 1980 Inf. Op. Att'y Gen. No. J-66-749-80, 1980 WL 27763 (June 2, 1980) (citations omitted). In 1987, the Department opined that requiring boards and commissions appointees to be registered to vote was probably unconstitutional: "Both sections 25 and 26 of article III require only that appointees be United States citizens, not that they be Alaska citizens or registered voters of this state. Given that appointment is an executive function, the legislature is limited in its ability to restrict the governor's appointment power." 1987 Inf. Op. Att'y Gen. No. 663-87-0555, 1987 WL 121097 (June 1, 1987). In 1996, an opinion of the Department revealed that for 21 years the governor's office had declined to comply with the statutory requirement of legislative confirmation for members of the Alaska Commission on Postsecondary Education in partial reliance on *Bradner*. 1996 Inf. Op. Att'y Gen. No. 883-96-0063, 1998 WL 915884 (May 24, 1996). *See also* 1980 Inf. Op. Att'y Gen. No. J-66-739-80 1980 WL 27759 (May 28, 1980) (Attorney General noted that if the council at issue was not largely advisory, the method by which appointments are made from nominees of village councils, a city council, and a non-profit corporation would likely be unconstitutional).

The Department of Law has determined in limited circumstances that restrictions on the appointment power of the governor are constitutional where the legislation provides that appointees possess reasonable relevant qualifications for a particular board or commission. For example, the Attorney General advised regarding legislation creating a council on domestic violence and sexual assault which contained some restrictions on individuals eligible for appointment to the council and stated that "reasonable qualifications may unquestionably be prescribed by law." 1981 Op. Att'y Gen. No. 66-698-81, 1981 WL 38632 (April 23, 1981). In another case, the Attorney General addressed qualifications for appointees to boards and commissions and

the requirements of Article III, section 26 and stated that it was probable "that technical, professional, occupational, or other like qualifications can be imposed without violating the constitution." 1979 Op. Att'y Gen. No. 663-80-0085, 1979 WL 23038 (August 13, 1979). A number of statutes establishing boards and commissions do contain requirements that members meet certain qualifications in order to be eligible for appointment. *See e.g.,* AS 08.04.020(a); AS 37.10.270; AS 44.29.115(4); AS 47.45.200(b).

In conclusion, it appears clear based on the language of Article III, sections 25 and 26 and the Alaska Supreme Court's decision in *Bradner* that there is a very strong argument that the restrictions on the governor's power of appointment contained in this bill are unconstitutional. The restrictions on appointment to the personnel board do not involve establishing relevant qualifications for service on the board. Instead, the bill simply inserts the chief justice into the appointment process and mandates that the governor select from a list selected by the chief justice. Additionally, the bill requires that at least two members be appointed from particular political parties. For these reasons, the Department of Law wishes to inform the Committee of these important legal issues.

If you need additional information on this matter, please contact the undersigned at 465-3600.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: William E. Milks
Assistant Attorney General

cc:
Honorable Bob Lynn, Chair, House State Affairs
Michael Ford, Legislative Liaison, Department of Law
Deborah Behr, Chief Assistant Attorney General, Department of Law
Jerry Gallagher, Legislative Director, Office of the Governor
Nicki Neal, Director of Division of Personnel, Department of Administration

26-LS1360\S.3
Bullard
4/9/10

AMENDMENT #1

OFFERED IN THE SENATE

TO: CSHB 348(JUD)

French

W/Withdrawn

Page 1, line 6:

Delete "**selected**"

Insert "**submitted**"

Page 1, line 8, following "**nominations.**":

Insert "**If the chief justice declines to submit additional nominees, the governor shall appoint a nominee from a list of nominees previously submitted by the chief justice for the vacancy.**"

Page 1, line 12:

Delete "**at which a governor was elected**"

3182

LEGAL SERVICES

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MEMORANDUM April 14, 2010

SUBJECT: Membership of the State Personnel Board
CSHB 348(JUD) (Work Order No. 26-LS1360\S)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard RAB
Legislative Counsel

You asked that I address separation of powers concerns raised by the committee substitute described above.

CSHB 348(JUD) provides that the governor would be required to appoint nominees from a list of at least three qualified persons submitted by the chief justice of the Alaska Supreme Court. This requirement, that the governor appoint board members from a list of persons selected by the chief justice, subject to the right of the governor to request additional nominations, raises a constitutional question as to whether the legislature may so constrain the governor's ability to choose whom to appoint to an executive board.

The power to appoint members of state boards, commissions, and councils is an executive function to be exercised by the governor. In Bradner v. Hammond, 553 P.2d 1, 5 - 6 (Alaska 1976), the Alaska Supreme Court recognized that the Alaska constitution envisioned a strong executive and "that the appointment of executive officers is an executive function. . . ." The legislature may prescribe qualifications for the members of boards and commissions that are reasonably related to either the position or to the aim of the legislation and do not interfere with the governor's appointment power or with qualifications set out in the constitution. Various state courts have reached this same conclusion and have upheld legislative designations of qualifications for public offices, such as memberships on a board or commission. See, e.g., State v. Matassarin, 217 P. 930 (Kansas 1923); State v. Eischen, 76 N.W.2d 385 (Minn. 1956); Humane Society of the United States v. New Jersey Fish and Game Council, 362 A.2d 20 (1976); Hurd v. Freeland, 442 P.2d 344 (Okla. 1966); State v. Wells, 112 N.W.2d 601 (S.D. 1961); State v. Millsap, 605 S.W.2d 366 (Tex. App. 1980).

However, the Department of Law, which has generally taken a position very protective of the governor's prerogatives, has asserted that the legislature may not restrict the governor's appointment powers, such as by requiring the governor to select from a list of

names provided by particular groups.[1] The Department of Law has repeatedly argued that such limitations on the governor's appointment power are unconstitutional infringements upon the governor's authority. Letter to Walter J. Hickel, Governor, from Charles E. Cole, Attorney General, June 11, 1991 (file no. 883-91-0071); 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; 1980 Inf. Alaska Atty. Gen. Op. (file no. J-66-164-80), September 17. However, courts in other states have held that statutes requiring a governor to make appointments to a state board from a list of nominees submitted by other parties are constitutional. Kentucky Association of Realtors v. Musselman, 817 S.W.2d 213 (Ky. 1991); Opinion of the Justices, 316 A.2d 174 (N.H. 1974); Seidenberg v. New Mexico Board of Medical Examiners, 452 P.2d 469 (N.M. 1969); Hurd v. Freeland, 442 P.2d 344 (Okla. 1966); Marks v. Frantz, 298 P.2d 316 (Kan. 1956); Ingard v. Barker, 147 P. 293 (Id. 1915).

Nonetheless, at least three Alaska attorney general opinions or letters of advice have accepted that the legislature may prescribe reasonable qualifications for gubernatorial appointments to boards or commissions. 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; Memorandum to Governor Hammond from R. Pegues, August 13, 1979; 1988 Inf. Alaska Atty. Gen. Op. (file no. 883-88-0079), May 24.

In this instance, I cannot say how a court would interpret the reasonableness of a statutory requirement that the governor appoint members of the board from lists of nominees chosen by the chief justice of the Alaska Supreme Court.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:plm
10-238.plm

[1] Note however that certain members of several state boards and commissions are currently chosen by the governor from lists submitted by other persons. These boards and commissions include the Professional Teaching Practices Commission (AS 14.20.410), the Alaska Public Offices Commission (AS 15.13.020), the Alaska Historical Commission (AS 41.35.310), the State Officers Compensation Commission (AS 39.23.500), the Workforce Investment Board (AS 123.15.550), and the Alaska Retirement Management Board (AS 37.10.210).

Alaska State Legislature

Chairman
State Affairs Committee

Member
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

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"Bob Lynn's Alaska Blog" www.RepLynnBlog.com

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Sponsor Statement for CSHB 348(JUD)

"An Act relating to membership of the state personnel board."

By Representative Bob Lynn

CSHB 348(JUD) brings a broader representation to the Personnel Board so it can operate, or at least appear to operate, with greater independence when addressing complaints, and carrying out its other powers and duties under AS 39.52 Alaska Executive Branch Ethics Act.

The bill increases board membership from three to five members, allowing the governor to make an appointment from a list of at least three nominees selected by the Chief Justice of the Alaska Supreme Court, subject to the right of the governor to request additional nominations. It also ensures that the board has at least one member of the two parties that had the largest number of registered voters in the most recent election for governor.

The Personnel Board, as currently constructed, lends itself to criticism that it's a creature of the governor rather than an independent body when it comes to investigating Executive Branch ethics complaints. As we know, perception can be the same as reality in the public eye.

HB 348 also prohibits certain conduct by board members that can lead to conflicts of interest or at least an appearance of conflict, such as: campaigning for elective office; being an officer of a political party or political group; lobbying; employing a lobbyist; or assisting in lobbying.

Like other ethics-related measures, the purpose of this bill is to build a better foundation of trust between the people of Alaska and those they elect to public office.

Contact: Mike Sica, 465-4965

Revised: March 31, 2010

Alaska State Legislature

Chairman
State Affairs Committee

Member
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
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District 31 Anchorage

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Sectional Analysis for CSHB 348(JUD)

"An Act relating to membership of the state personnel board."

Section 1. Amends AS 39.25.060(a) to increase the membership on the Personnel Board from three to five members. The governor may make an appointment from a list of at least three nominees selected by the chief justice of the Alaska Supreme Court, subject to the right of the governor to request additional nominations. It ensures that the board has at least one member of the two parties that had the largest number of registered voters in the most recent election for governor.

Section 2. Amends AS 39.25.060(b) to increase the number of board members who can be of the same political party from two to three of the five-member board.

Section 3. Adds new section AS 39.25.064 that prohibits board members from certain activities that that relate to possible conflicts of interest or at least an appearance of conflict.

Section 4. Amends AS 39.25.070 to add conforming language stating that three members constitute a quorum and three affirmative votes are required for final action on matter.

Section 5. Amends the uncodified law by adding a new section stating that a member of the personnel board serving on the effective date of this Act remains in office for the duration of the term which appointed and confirmed. Within 60 days of the effective date, the chief justice of the Alaska Supreme Court shall submit to the governor a list of at last six nominees for the two additional seats on the personnel board. The governor shall appoint one member to a five-year term and one member to a six-year term.

Contact: Mike Sica, 465-4965

Revised: March 31, 2010

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MEMORANDUM February 8, 2010

SUBJECT: Membership of the State Personnel Board
(Work Order No. 26-LS1360\A)

TO: Representative Bob Lynn
Attn: Mike Sica

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies the work order described above.

You asked for a bill that would make the appointment of Personnel Board (board) members under AS 39.25.060(a) similar to the manner in which public members are appointed to the Select Committee on Legislative Ethics under AS 24.60.130(b). You asked that the bill also include provisions addressing (1) the removal of board members, (2) the filling of vacancies and unexpired terms, (3) conflicts of interest, and (4) alternate members. I have a few comments.

Board members; increased membership and a constitutional concern relating to member appointment

The draft increases the number of board members (from three) to five,[1] making the membership of the board more difficult to "capture," and provides that the governor would be required to appoint nominees from a list of at least three qualified persons submitted by the chief justice of the Alaska Supreme Court. Note that this requirement that the governor appoint board members from a list of persons selected by the chief justice, subject to the right of the governor to request additional nominations, raises a constitutional question as to whether the legislature may so constrain the governor's ability to choose whom to appoint to an executive board.

[1] Mike Sica of your staff clarified that the intent of the legislation related to making sure that the board did not operate, or appear to operate, as a rubber stamp in investigating and addressing complaints concerning the governor. More members makes it less likely that (1) a majority of the board would be appointed by a sitting governor and (2) that the membership of the board would be of a single mind in any board proceeding. Because I increased the number of board members, I did not include a provision for alternate members.

The power to appoint members of state boards, commissions, and councils is an executive function to be exercised by the governor. In Bradner v. Hammond, 553 P.2d 1, 5 - 6 (Alaska 1976), the Alaska Supreme Court recognized that the Alaska constitution envisioned a strong executive and "that the appointment of executive officers is an executive function. . . ." The legislature may prescribe qualifications for the members of boards and commissions that are reasonably related to either the position or to the aim of the legislation and do not interfere with the governor's appointment power or with qualifications set out in the constitution. Various state courts have reached this same conclusion and have upheld legislative designations of qualifications for public offices, such as memberships on a board or commission. See, e.g., State v. Matassarin, 217 P. 930 (Kansas 1923); State v. Eischen, 76 N.W.2d 385 (Minn. 1956); Humane Society of the United States v. New Jersey Fish and Game Council, 362 A.2d 20 (1976); Hurd v. Freeland, 442 P.2d 344 (Okla. 1966); State v. Wells, 112 N.W.2d 601 (S.D. 1961); State v. Millsap, 605 S.W.2d 366 (Tex. App. 1980).

However, the Department of Law, which has generally taken a position very protective of the governor's prerogatives, has asserted that the legislature may not restrict the governor's appointment powers, such as by requiring the governor to select from a list of names provided by particular groups. The Department of Law has repeatedly argued that such limitations on the governor's appointment power are unconstitutional infringements upon the governor's authority. Letter to Walter J. Hickel, Governor, from Charles E. Cole, Attorney General, June 11, 1991 (file no. 883-91-0071); 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; 1980 Inf. Alaska Atty. Gen. Op. (file no. J-66-164-80), September 17.

Nonetheless, at least three Alaska attorney general opinions or letters of advice have accepted that the legislature may prescribe reasonable qualifications for gubernatorial appointments to boards or commissions. 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; Memorandum to Governor Hammond from R. Pegues, August 13, 1979; 1988 Inf. Alaska Atty. Gen. Op. (file no. 883-88-0079), May 24.

In this instance, I cannot say how a court would interpret the reasonableness of a statutory requirement that the governor appoint members of the board from lists of nominees chosen by the chief justice of the Alaska Supreme Court.

Quick notes

I included a provision, sec. 3 of the draft bill (prohibited conduct by board members and board employees and contractors), that relates to possible conflicts of interest and appearances of a conflict of interest. Is this what you had in mind? Please advise.

I did not prohibit a member appointed by the governor from participating in a proceeding that involved that same governor. Such a provision seemed unnecessary given that members are appointed from lists submitted by the chief justice.

I hope that this draft bill is consistent with your intent. If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw
10-062.ljw

Enclosure

Alaska State Legislature

Chairman
State Affairs Committee

Member
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
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Explanation of Changes in CSHB348 (JUD)

From original Version R to current Version E

Section 3: Amended the proposed section on prohibited conduct to include the word, **"political,"** after the word, **"or,"** on Page 2, line 14 in the latest Version E.

Section 3: Amended the proposed section on prohibited conduct to change and re-format Version R subsection (3) from **(3) lobby, employ, or assist a lobbyist** to now read in Version E on Page 2, lines 16-18:

(3) lobby:
(4) employ a lobbyist; or
(5) assist in lobbying.

From original Version E to current Version S

Section 1: Amended the section so that in appointing members to the personnel board, the governor ensures that at least one member be from the political party that had the largest number of **registered voters** (rather than votes) and that one member be from the political party with the second largest number of **registered voters** (rather than votes) at the time of the most recent general election at which a governor was elected.

Section 3: Amended section to delete board **employees** and **contractors** from the prohibited conduct section that applies to board members.

Section 3: Amended section to add the definitions of **"political group"** and **"political party"** as defined in AS 15.13.400.

Contact: Mike Sica, 465-4965 **Revised: March 31, 2010**

JuneauEmpire.com

House passes ethics panel bill without changes

Thursday, April 08, 2010

Story last updated at 4/8/2010 - 10:46 am

House passes ethics panel bill without changes
By Jeremy Hsieh | The Associated Press

JUNEAU - Same bill, different outcome.

The Alaska House passed a bill dealing with an executive branch ethics panel without changes by a nearly 3-to-1 margin Wednesday. It failed Monday in a 19-18 vote, but the vote was held for reconsideration.

The bill now goes to the Senate.

The bill would limit a governor's selection of members to the Personnel Board to names forwarded to him by the chief justice of the Alaska Supreme Court. The chief justice must nominate at least three people, but the governor can request more nominees indefinitely. It bars members from holding some political party and lobbyist roles. It also expands the board from three to five members.

It's intended to address possible conflicts of interest on the board, which arbitrates executive branch ethics complaints.

Reps. Max Gruenberg, D-Anchorage, and David Guttenberg, D-Fairbanks, flipped their votes at the last minute on Monday - stopping the bill - to try to bully through an amendment on reconsideration to further limit the governor's role in selecting board members. They weren't able to get enough votes to resurrect the failed amendment.

Minority Leader Beth Kertulla, D-Juneau, said putting restrictions on a governor's right to request unlimited nominees is important "for all of us who've lived through something similar."

It was a reference to former -Gov. Sarah Palin snubbing her last year. Palin refused to appoint Kertulla to fill an empty Senate seat after Democrats broke from tradition of nominating three candidates, sending only Kertulla's name to Palin for the open seat. Kertulla had been critical of the governor after Palin was chosen as Republican John McCain's running mate in the 2008 presidential election.

Juneau's Senate district went without representation for about half the legislative session as Palin cycled through additional nominees before naming Dennis Egan to the seat on the last day of the legislative session.

The failed amendment on the Personnel Board bill would have limited a governor to the chief justice's first set of at least three nominees and a second set of up to three nominees.

Bill sponsor Bob Lynn, R-Anchorage, said such a restriction leads to questionable legal territory

regarding separation of powers.

"This is not a perfect bill, but is significant improvement over the status quo," Lynn said. "I'm going to vote a conservative and progressive 'yes' on this bill."

Rep. Mike Doogan, D-Anchorage, had initially proposed the failed amendment and broke from his party voting against the overall bill.

The Personnel Board primarily deals with lower-level state employees where the conflict of interest issue the bill addresses is irrelevant, Doogan said.

The executive branch's elected officials, the governor and lieutenant governor, don't fit, and a better solution may be to lump all elected officials under one ethics panel, he said.

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Personnel board appointments get another look

By SEAN COCKERHAM
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(03/16/10 18:11:01)

Alaska legislators are talking about changing the law so governors can no longer appoint whoever they want to the state personnel board, the panel that dismissed ethics complaints against then-Gov. Sarah Palin on "Troopergate" and many other matters.

Anchorage Republican Rep. Bob Lynn, who has been supportive of Palin, sponsored a bill that would make the governor pick from a list submitted by the chief justice of the state supreme court. Lynn said it would reassure the public.

"It helps protect and insulate the governor from what could be, and usually is, unfair criticism from the public that you have the fox watching the hen house," Lynn said Tuesday, as the bill passed its first committee.

Anchorage Democratic Rep. Les Gara, no fan of Palin's, favors Lynn's House Bill 348. Gara said he thinks some of the people filing ethics complaints against Palin went overboard. But he said the current system casts a lot of doubt about the rulings made by members of the Personnel Board, who he said could be political allies of the governor.

"I did not follow every complaint in any great detail. But you always do wonder whether a personnel board appointed by Republican governors is going to be objective when it looks at conduct by a Republican governor," Gara said.

The three members of the Personnel Board are charged in Alaska law with looking into ethics complaints made against the governor and other members of the executive branch. The current members were all appointed by Republican governors, although two of them aren't registered with a political party.

The board members have six-year terms and only one, Alaska Christian College President Keith Hamilton, was appointed by Sean Parnell, the current governor. Board member Debra English was reappointed by Palin in 2008 and Al Tamagni was appointed in 2006 by Frank Murkowski.

Lynn said he does not think there's been a problem with the Personnel Board. "But there's always the perception out there and, in politics, perception often becomes reality in the public mind," he said.

Current law says only that the board members can't be state employees and no more than two of the three of can be registered with the same political party. They are appointed by the governor and then confirmed by the Legislature.

Lynn's bill would expand the board to five members. He said that would provide more of a broad range of opinion. The panel would also need to include at least one member from each of the top two political parties in the state.

The governor would be required to pick from a list of at least three nominees from the chief justice of the Alaska Supreme Court, although the governor could reject the entire list and ask the chief justice for another.

Gara said called that a loophole and said the governor shouldn't get to keep asking for new nominees over and over if he or she doesn't like the slate presented. But Lynn described it as a way to deal with potential separation of powers issues involved in the Legislature reducing a governor's ability to make appointments .

The attorney general's office raised the separation of powers issue Tuesday. But the Parnell administration didn't object to the bill as it passed from the House State Affairs Committee. The bill next goes to the judiciary committee, chaired by Fairbanks Republican Rep. Jay Ramras. Ramras last year deemed a "whitewash" the report commissioned by the personnel board that found Palin not responsible for any wrongdoing in the so-called Troopergate affair.

Zane Henning, who had two ethics complaints against Palin dismissed, last month testified to a legislative committee that elected officials rather than a governor's appointees should oversee the complaints. His concern seemed to resonate with some legislators. "I'm just wondering is there maybe too close of a relationship there," Sen. Kevin Meyer, R-Anchorage, asked during that hearing.

Assistant Attorney General Judy Bockmon said an independent counsel investigates ethics complaints against the governor, lieutenant governor or attorney general in an effort to separate the Personnel Board from those high-level officials.

The outcome of at least one Personnel Bard case from the Palin era remains a mystery. Independent Counsel Tom Daniel on July 14 found "probable cause" that Palin's legal defense fund violated state ethics law. But the board has taken no public action and the fund's Web site still solicits donations.

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Palin critics question ethics rules proposals

PALIN ERA: New regulations would address traveling on the state's dime, paying legal bills.

By LISA DEMER
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(02/08/10 22:44:25)

JUNEAU -- A legislative committee on Monday took up ethics issues that erupted during the Palin administration, but it's not clear whether the panel intends to take any action.

Attorney General Dan Sullivan has proposed state rules establishing when it's appropriate for the state to pay for the travel of family members of the governor or lieutenant governor. Another proposal sets out when the state should pay legal bills for state officials defending against ethics complaints.

Former Gov. Sarah Palin was hit with numerous ethics complaints during her 2 1/2 years in office. She said she quit in part because of what she called frivolous ethics complaints and personal legal bills amounting to an estimated $600,000.

Most of the ethics complaints against Palin were dismissed. But she settled one by reimbursing the state more than $8,000 for her children's air travel.

Some parts of the package Sullivan is proposing go beyond the Palin-era controversies. For instance, another proposed rule change would do away with a requirement for state officials to disclose as gifts any travel for state business paid by others. But they still would have to file travel reports, which would be public.

Sullivan is trying to make the changes through new state regulations, which don't need legislative approval.

Oversight comes from the joint House-Senate Administrative Regulation Review Committee, which examines regulations to make sure they are allowed under state law.

The panel agreed to hold a public hearing on the ethics measures after being pushed by Palin critic Andree McLeod. House leaders also requested it, said state Rep. Wes Keller, R-Wasilla, who is the committee chairman.

LEGAL FEES, FAMILY TRAVEL

Under the proposed rules, the state could cover the costs of defending a public official against ethics complaints if the official were exonerated, Assistant Attorney General Judy Bockmon told the committee.

Travel would be covered if the presence of a family member is required for state business or has a public purpose. The proposal says that would include a state-sponsored event that the family of the governor or lieutenant governor usually attends, or an event in which the family member is representing the state.

State Rep. David Guttenberg, D-Fairbanks, asked Bockmon whether state law gives any guidance on paying for family travel.

It doesn't, she said.

In that case, why try to decide when it's appropriate -- maybe it shouldn't be permitted at all, Guttenberg responded.

That's up to the Legislature, Bockmon said. There might be value to the state for the family to attend. It depends on the nature of the event.

State Rep. Carl Gatto, R-Palmer, said it might just save worry and time for a governor with young children to bring them along.

CRITICS TESTIFY

McLeod, who filed a number of ethics complaints against Palin and her staff, urged the committee to reject the changes.

"Are these changes valid? Do they improve the standards of public service? Do they promote the faith and confidence of the people in this state in their public officers? I submit that they do not," McLeod told the legislative committee.

McLeod said private citizens with questions about whether a public official has crossed a legal or ethical line can't get ethics opinions the way state employees can. So the public has no recourse except filing complaints to get answers, she said.

The Executive Branch Ethics Act is important, and the attorney general shouldn't be trying to change the law, another Palin critic, Zane Henning, told the committee. The Legislature should make any needed changes, he said.

"I object to the entire process that is being pushed through here," Henning said.

The ethics law needs reform, but not in the way the attorney general wants, Henning said. Elected officials, not the governor-appointed Personnel Board, should oversee ethics complaints against state officials, he said.

Both of his complaints against Palin were dismissed. One involved an interview about the vice presidential campaign that she gave to Fox News in her state office; the other concerned the fact she collected state expense payments while living in her own home in Wasilla.

ARM'S-LENGTH INVESTIGATORS

Henning's concerns about the Personnel Board seemed to resonate with legislators.

"I'm just wondering is there maybe too close of a relationship there," state Sen. Kevin Meyer, R-Anchorage, asked during the hearing.

Bockmon told the committee an independent counsel investigates ethics complaints against the governor, lieutenant governor or attorney general in an effort to separate the Personnel Board from those high-level officials.

The committee can't halt the regulations from taking effect during the annual legislative session,

but can express disapproval and propose new laws to override any objectionable regulations.

The Department of Law has solicited public comment and held a hearing on the ethics changes, Bockmon said. The period for comment has ended and the department must now decide what to do. It could adopt the provisions as is or with minor changes, or let the matter drop with no action.

The committee hasn't yet decided how to proceed, Keller said.

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Costs of dismissed Palin ethics complaints pile up

Personnel board member says tab is "close to about a third of a million dollars."

By SEAN COCKERHAM
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(05/27/09 21:57:12)

The Alaska Personnel Board, clearly frustrated with the pile of ethics complaints filed against Gov. Sarah Palin, wants to publicize the cost of dealing with them.

The personnel board members decided at a Wednesday meeting to work with the attorney general's office on how to make public the cost of addressing each ethics complaint, without violating the board's confidentiality rules.

"We've spent pretty close to about a third of a million dollars, and it's getting to be really expensive," said Al Tamagni, a member of the board.

Also Wednesday, the three-member board dismissed another complaint, this one involving Palin and her political action committee, and heard testimony from a woman who asserted fear of retaliation has prevented her from filing a complaint against the governor.

The governor's office said it is the 13th ethics complaint against Palin or her staff that has been resolved without finding of an executive ethics act violation. But Palin has agreed to reimburse the state in order to settle an ethics complaint over 10 state-paid trips taken by her children. A "few more" complaints are pending a decision by the personnel board, the governor's office said.

Andree McLeod, an Anchorage activist who has filed multiple ethics complaints against Palin and her staff, said after the meeting that the board is trying to squash accountability by saying it costs too much.

"The whole way to mitigate all this is for Palin to behave ethically," said McLeod, who filed the complaint that was dismissed by the board on Wednesday.

Valerie Henning told the board that fear of a backlash has prevented her from filing a complaint against the governor's practice of collecting per diem for time spent at her home in Wasilla. Henning's husband, Zane, earlier had an ethics complaint dismissed by the board. His complaint alleged Palin violated ethics law by holding national television interviews concerning her run for vice president from the governor's office.

Valerie Henning brought up to the board the statement that Palin's chief of staff, Mike Nizich, made on April 22 after the filing of an ethics complaint against Palin that was released to the press.

"I hope that the publicity-seekers will face a backlash from Alaskans who have a sense of fair play and proportion. I served six previous governors, and I've never seen anything like the attacks against governor Palin," Nizich said in a press release distributed by the governor's office.

Valerie Henning tried to get board members to suggest some alternative to making the ethics complaint, saying "I'm afraid of retaliation, basically."

Palin spokesman Bill McAllister said Nizich was simply asking that Alaskans who have a "sense of fair play and proportion" speak up about what's going on.

"I don't know what she means by retaliation, but certainly some people have been raising their voices in protest of this abuse of the ethics act," McAllister said. "People make these allegations against the governor and they keep getting dismissed and dismissed and dismissed, and some people are saying 'What's going on here?' "

Pro-Palin bloggers have assailed "ankle biter" ethics complainants in writing and KBYR talk radio host Eddie Burke has gone after McLeod on his show, saying he was going to hunt down evidence she was motivated by not getting a state job.

One of the personnel board members, Tamagni, last fall asked a state attorney if the board could charge attorney fees for Alaskans who file "a frivolous or meritless" ethics complaint. It's not clear how the state would judge a complaint frivolous, but charging for them would require changing the law.

Personnel board members spoke Wednesday about possibly pursuing changes in the law regarding their ethics complaint procedures -- such as changing the "thresholds for investigations."

Ethics complainants in the audience asked board chair Debra English for detail after the meeting, but she curtly brushed them off, saying the meeting was over and she wasn't going to say more.

English also refused to answer when a Daily News reporter asked what the board had in mind. She said the reporter should have come before the board and given public testimony in order to get any questions answered from its members.

Members of the personnel board are volunteers appointed by the governor, although all three of the current members were in place when Palin took office in 2006. Palin last year reappointed English to a six-year term but hasn't had a role yet in either of the two other positions, which have terms expiring in 2010 and 2012.

The governor also has the power to remove members of the personnel board, but only for cause.

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Chapter 13: State Election Campaigns

Sec. 15.13.400. Definitions.

In this chapter,

(8) "group" means

(A) every state and regional executive committee of a political party; and

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070 , whether or not control of the group has been disclaimed by the candidate;

(15) "political party" means any group that is a political party under AS 15.60.010 and any subordinate unit of that group if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, house district, or precinct;

Chapter 60: General Provisions

Sec. 15.60.010. Definitions.

In this title, unless the context otherwise requires,

(23) "party district committee" means the political party committee that performs the executive function for a region representing an area larger than a precinct and smaller than the state;

(24) "political group" means a group of organized voters which represents a political program and which does not qualify as a political party;

(25) "political party" means an organized group of voters that represents a political program and

(A) that nominated a candidate for governor who received at least three percent of the total votes cast for governor at the preceding general election or has registered voters in the state equal in number to at least three percent of the total votes cast for governor at the preceding general election;

(B) if the office of governor was not on the ballot at the preceding general election but the office of United States senator was on that ballot, that nominated a candidate for United States senator who received at least three percent of the total votes cast for United States senator at that general election or has registered voters in the state equal in number to at least three percent of the total votes cast for United States senator at that general election; or

(C) if neither the office of governor nor the office of United States senator was on the ballot at the preceding general election, that nominated a candidate for United States representative who received at least three percent of the total votes cast for United States representative at that general election or has registered voters in the state equal in number to at least three percent of the total votes cast for United States representative at that general election;

Sec. 39.25.060. Personnel board.

(a) The personnel board is composed of three members appointed by the governor and confirmed by the legislature meeting in joint session. The term of office of a member is six years. A vacancy in an unexpired term shall be filled by appointment by the governor for the remainder of the term. The appointment is subject to confirmation in the same manner as a full-term appointment.

(b) Members of the board may not be employees of the state. Not more than two members of the board may be members of the same political party.

(c) A board member may be removed by the governor only for cause.

(d) A member of the board may receive a per diem allowance and transportation expenses incurred in carrying out the member's duties.

Sec. 39.25.070. Powers and duties of personnel board.

In addition to the other duties imposed by this chapter, the personnel board shall

(1) approve or disapprove amendments to the personnel rules in accordance with AS 39.25.140 ;

(2) consider and act upon recommendations for the extension of the partially exempt service and the classified service as provided in AS 39.25.130;

(3) hear and determine appeals by employees in the classified service as provided in AS 39.25.170 ;

(4) establish its own rules of procedure; two members constitute a quorum for the transaction of business and two affirmative votes are required for final action on matters acted upon by the board;

(5) elect a chair from its membership;

(6) have the power to administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to a hearing authorized by this chapter;

(7) employ staff members, who shall be in the classified service;

(8) carry out its powers and duties under AS 39.52.

Sec. 39.25.080. Personnel records confidential; exceptions.

(a) State personnel records, including employment applications and examination and other assessment materials, are confidential and are not open to public inspection except as provided in this section.

(b) The following information is available for public inspection, subject to reasonable regulations on the time and manner of inspection:

(1) the names and position titles of all state employees;

(2) the position held by a state employee;

(3) prior positions held by a state employee;

(4) whether a state employee is in the classified, partially exempt, or exempt service;

(5) the dates of appointment and separation of a state employee;

(6) the compensation authorized for a state employee; and

(7) whether a state employee has been dismissed or disciplined for a violation of AS 39.25.160 (l) (interference or failure to cooperate with the Legislative Budget and Audit Committee).

(c) A state employee has the right to examine the employee's own personnel files and may authorize others to examine those files.

(d) An applicant for state employment who appeals an examination score may review written examination questions relating to the examination unless the questions are to be used in future examinations.

(e) In addition to any access to state personnel records authorized under (b) of this section, state personnel records shall promptly be made available to the child support services agency created in AS 25.27.010 or the child support enforcement agency of another state. If the record is prepared or maintained in an electronic data base, it may be supplied by providing the requesting agency with access to the data base or a copy of the information in the data base and a statement certifying its contents. The agency receiving information under this subsection may use the information only for child support purposes authorized under law.

Article 04. COMPLAINTS; HEARING PROCEDURES

Sec. 39.52.310. Complaints.

(a) The attorney general may initiate a complaint, or elect to treat as a complaint, any matter disclosed under AS 39.52.210 , 39.52.220, 39.52.250, or 39.52.260. The attorney general may not, during a campaign period, initiate a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for election to state office.

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

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

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

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

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

period that may be granted in writing by the attorney general, may be considered an admission of the allegations in the complaint.

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

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

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

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

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

Sec. 39.52.320. Dismissal before formal proceedings.

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

Sec. 39.52.330. Corrective or preventive action.

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

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

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

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

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

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

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

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

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

shall be available to respond to questions from the personnel board concerning the disposition of the complaint.

(f) After review of the summary, the personnel board may issue a report on the disposition of the complaint. If the matter is confidential and the board determines that publication of the name of the subject is in the public interest, the report may include a recommendation that the matter be made public.

(g) If the summary is confidential under (c) of this section,

(1) comments filed by the complainant, if any, are confidential;

(2) the personnel board shall conduct the review of the summary in executive session; and

(3) the personnel board report, if any, is confidential; the personnel board shall make available to the public an expurgated copy of a confidential report with sufficient deletions and editing to prevent disclosure of the identity of the persons involved in the matter.

(h) If the disposition of a complaint is not made public and the personnel board report under (f) of this section includes a recommendation that the matter be made public, an interested party may file an action against the state in superior court requesting that the court make public the complaint, the attorney general's disposition of the complaint, and the personnel board report. The court may order the matter or portions of the matter made public if the court determines that

(1) the dismissal or resolution of the complaint was clearly contrary to the requirements of this chapter;

(2) one or more of the allegations in the information to be released is supported by substantial evidence;

(3) the matter concerns the public interest; and

(4) release of the information will not infringe on any protected rights or liberties of the subject.

Sec. 39.52.340. Confidentiality.

(a) Except as provided in AS 39.52.335, before the initiation of formal proceedings under AS 39.52.350, the complaint and all other documents and information regarding an investigation conducted under this chapter or obtained by the attorney general during the investigation are confidential and not subject to inspection by the public. In the case of a complaint concerning

the governor, lieutenant governor, or attorney general, all meetings of the personnel board concerning the complaint and investigation before the determination of probable cause are closed to the public. If, in the course of an investigation or probable cause determination, the attorney general finds evidence of probable criminal activity, the attorney general shall transmit a statement and factual findings limited to that activity to the appropriate law enforcement agency. If the attorney general finds evidence of a probable violation of AS 15.13, the attorney general shall transmit a statement to that effect and factual findings limited to the probable violation to the Alaska Public Offices Commission. The attorney general and all persons contacted during the course of an investigation shall maintain confidentiality regarding the existence of the investigation.

(b) It is not a violation of this section for a person to contact an attorney or to participate in a criminal investigation.

(c) The subject of the complaint may, in writing, waive the confidentiality protection of this section.

Sec. 39.52.350. Probable cause for hearing.

(a) If the attorney general determines that there is probable cause to believe that a knowing violation of this chapter or a violation that cannot be corrected under AS 39.52.330 has occurred, or that the subject of a complaint failed to comply with a recommendation for corrective or preventive action, the attorney general shall initiate formal proceedings by serving a copy of an accusation upon the subject of the accusation. The accusation shall specifically set out the alleged violation. After service, the accusation is a public document open to inspection. Except as provided in AS 39.52.370 (c), all subsequent proceedings are open to the public.

(b) The subject of the accusation shall file an answer with the attorney general within 20 days after service of the accusation, or at a later time specified by the attorney general. If the subject of the accusation fails to timely answer, the allegations are considered admitted.

(c) If the subject of the accusation denies that a violation of this chapter has occurred, the attorney general shall refer the matter to the personnel board, which shall notify the chief administrative law judge (AS 44.64.010), who shall appoint an administrative law judge to serve as a hearing officer to conduct a hearing.

(d) If the subject of the accusation admits a violation of this chapter, the attorney general shall refer the matter to the personnel board to impose penalties under AS 39.52.410, 39.52.440, and 39.52.450, as appropriate.

Sec. 39.52.360. Hearings.

(a) The hearing officer may convene a prehearing conference to set a time and place for the hearing, and for stipulation as to matters of fact and to simplify issues, identify and schedule prehearing matters, and resolve other similar matters before the hearing.

(b) The hearing officer may administer oaths, hold hearings, and take testimony. Upon application by a party to the hearing, the hearing officer may issue subpoenas under AS 39.52.380 .

(c) The attorney general shall present the charges before the hearing officer. At a hearing, the attorney general has the burden of demonstrating by a preponderance of the evidence that the subject of the accusation has, by act or omission, violated this chapter.

(d) The parties to a hearing are the attorney general and the subject of the accusation. The subject of an accusation may be represented by counsel. Each party has an opportunity to be heard and cross-examine witnesses, who shall testify under oath.

(e) The Administrative Procedure Act does not apply to hearings under this section, except as provided in AS 39.52.380 .

(f) Technical rules of evidence do not apply, but the hearing officer's findings must be based upon reliable and relevant evidence. All testimony and other evidence taken at the hearing must be recorded and the evidence maintained. Copies of transcripts of the hearing record are available to the subject of the accusation at the subject's expense; however, upon request, a copy of the recording of the hearing must be furnished without charge to the subject of the accusation.

(g) At the conclusion of the formal hearing, the hearing officer may direct either or both parties to submit proposed findings of fact, conclusions of law, and recommendation to be filed within 10 days after the conclusion of the hearing.

(h) Within 30 days after the conclusion of a formal hearing, the hearing officer shall serve a written report on the personnel board and the parties, unless the personnel board grants an extension of time. The report must contain the officer's findings of fact, conclusions of law, and recommendation. The hearing officer shall submit the record to the personnel board.

Sec. 39.52.370. Personnel board action.

(a) Within 10 days after receipt of the hearing officer's report, either party may protest the officer's findings of fact, conclusions of law, and recommendation, and, if a protest is filed, shall serve a copy on the other party. Oral argument before the personnel board must be provided only if requested by either party. The board chair shall set the deadline for submission of requests for oral argument, and set the dates for submission of briefs and oral argument before the board, if requested.

(b) The board may issue subpoenas under AS 39.52.380, and may, for good cause shown, augment the hearing record, in whole or in part, or hold a hearing de novo.

(c) The personnel board shall review each report submitted by a hearing officer and shall either adopt or amend the findings of fact, conclusions of law, and recommendation of the officer. Deliberations of the personnel board must be conducted in sessions not open to the public.

(d) If the personnel board determines that a violation occurred, it may impose the penalties in AS 39.52.410, 39.52.440, and 39.52.450, as appropriate. If the board determines that no violation occurred, the board shall issue a written order of dismissal.

(e) The personnel board secretary shall promptly notify the parties and the public officer's designated supervisor of the board's action.

(f) The subject of the accusation may appeal the personnel board's decision by filing an appeal in the superior court as provided in the Alaska Rules of Appellate Procedure.

Sec. 39.52.380. Subpoenas.

(a) As provided in AS 39.52.310 (g), 39.52.360(b), and 39.52.370(b), the attorney general, independent counsel retained under AS 39.52.310 (c), a hearing officer, the subject of an accusation, and the personnel board may summon witnesses and require the production of records, books, and papers by the issuance of subpoenas.

(b) Subpoenas must be served in the manner prescribed by AS 44.62.430 and Rule 45 of the Alaska Rules of Civil Procedure. Failure or refusal to obey a subpoena issued under this chapter is punishable as contempt in the manner provided by law and court rule. The superior court may compel obedience to the subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.

Sec. 39.52.390. Service.

Service of an accusation must be accomplished in accordance with Rule 4 of the Alaska Rules of Civil Procedure. Service of any other pleading, motion, or other document must be accomplished in accordance with Rule 5 of the Alaska Rules of Civil Procedure.

Article 05. ENFORCEMENT; REMEDIES

Sec. 39.52.410. Violations; penalties for misconduct.

(a) If the personnel board determines that a public employee has violated this chapter, it

(1) shall order the employee to stop engaging in any official action related to the violation;

(2) may order divestiture, establishment of a blind trust, restitution, or forfeiture; and

(3) may recommend that the employee's agency take disciplinary action, including dismissal.

(b) If the personnel board determines that a nonsalaried member of a board or commission has violated this chapter, it (1) shall order the member to refrain from voting, deliberating, or participating in the matter; (2) may order restitution; and (3) may recommend to the appropriate appointing authority that the member be removed from the board or commission. A violation of this chapter is grounds for removal of a board or commission member for cause. If the personnel board recommends that a board or commission member be removed from office, the appointing authority shall immediately act to remove the member from office.

(c) If the personnel board determines that a former public officer has violated this chapter, it shall

(1) issue a public statement of its findings, conclusions, and recommendation; and

(2) request the attorney general to exercise all legal and equitable remedies available to the state to seek whatever relief is appropriate.

(d) If the personnel board finds a violation of this chapter by a public officer removable from office only by impeachment, it shall file a report with the president of the Senate, with its finding. The report must contain a statement of the facts alleged to constitute the violation.

Sec. 39.52.420. Disciplinary action for violation.

(a) In addition to any other cause an agency may have to discipline a public employee, an agency may reprimand, demote, suspend, discharge, or otherwise subject an employee to agency disciplinary action commensurate with the violations of this chapter. This section does not prohibit the review of a disciplinary action in the manner prescribed by an applicable collective bargaining agreement or personnel statute or rule.

(b) An agency may initiate appropriate disciplinary action in the absence of an accusation under this chapter or during the pendency of a hearing or personnel board action.

Sec. 39.52.430. Actions voidable.

(a) In addition to any other penalty provided by law, a state grant, contract, or lease entered into in violation of this chapter is voidable by the state. In a determination under this section of whether to void a grant, contract, or lease, the interests of third parties who could be damaged may be taken into account. The attorney general shall give notice of intent to void a state grant, contract, or lease under this section no later than 30 days after the personnel board's determination of a violation under this chapter.

(b) In addition to any other penalty provided for by law, the state may require a state loan received in violation of this chapter to become immediately payable.

(c) Any state action taken in violation of this chapter is voidable, except that the interests of third parties and the nature of the violation may be taken into account. The attorney general may pursue any other available legal and equitable remedies.

(d) The attorney general may recover any fee, compensation, gift, or benefit received by a person as a result of a violation of this chapter by a current or former public officer. Action to recover under this subsection must be brought within two years after discovery of the violation.

Sec. 39.52.440. Civil penalties.

The personnel board may impose on a current or former public officer civil penalties not to exceed $5,000 for a violation of this chapter. A penalty imposed under this section is in addition to and not instead of any other penalty that may be imposed according to law.

Sec. 39.52.450. Payment of twice the financial benefit.

The personnel board may, in addition to the civil penalties described in this chapter, require a current or former public officer who has financially benefited

a person in violation of this chapter to pay to the state up to twice the amount that the person realized from the violation.

Sec. 39.52.460. Criminal sanctions additional.

To the extent that violations under this chapter are punishable in a criminal action, that sanction is in addition to the civil remedies set out in this chapter.

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MEMORANDUM April 2, 2010

SUBJECT: Nominations to the state personnel board (Amendment "S.1" for CSHB 348(JUD)) (Work Order No. 26-LS1360\S.1)

TO: Representative Bob Lynn
Attn: Mike Sica

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies the amendment you requested.

As I expressed in a phone conversation yesterday with Mike Sica, amendment S.1. exacerbates existing separation of powers issues raised by CSHB 348(JUD).[1]

As presently drafted, the bill provides that the governor may make an appointment to the state personnel board only from a list of at least three nominees selected by the chief justice, subject to the governor's right to request additional nominations. The constraint placed on the governor's ability to select a nominee *only* from a list of individuals selected by the chief justice is "*subject to the governor's right to request additional nominations.*"

The requirement that nominees be selected by the chief justice in the existing bill can reasonably be interpreted as analogous to a "qualification" for appointment, because the governor may request, in theory, an infinite number of additional nominees from the chief justice. The amendment, which permits the chief justice to refuse to select and submit further nominees, changes the balance of power between the judicial and executive branches of government, in determining who is appointed to the board.[2]

---

[1] The separation of powers issues are identified in a February 8, 2010 memorandum to your office (10-062.ljw).

[2] The Department of Law, which has generally taken a position very protective of the governor's prerogatives, has asserted that the legislature may not restrict the governor's appointment powers, such as by requiring the governor to select from a list of names provided by particular groups. The Department of Law has repeatedly argued that such limitations on the governor's appointment power are unconstitutional infringements upon the governor's authority. Letter to Walter J. Hickel, Governor, from Charles E. Cole, Attorney General, June 11, 1991 (file no. 883-91-0071); 1981 Inf. Alaska Atty. Gen. Op.

If the chief justice refuses to select nominees beyond those on the justice's original list, a reasonable question is created as to whether it is the chief justice or the governor who has done more to determine who may be appointed (if the governor is to appoint anyone to fill the position on the board). The amendment shifts the weight of authority in determining who may be appointed to the board further toward the chief justice than what is currently provided by CSHB 348(JUD).

As a secondary issue, what happens if the chief justice elects not to select additional nominees? This eventuality should be addressed.

If you have any questions, please do not hesitate to contact me.

TLAB:ljw
10-234.ljw

Enclosure

(file no. J-66-698-81), April 23; 1980 Inf. Alaska Atty. Gen. Op. (file no. J-66-164-80), September 17. Nonetheless, at least three Alaska attorney general opinions or letters of advice have accepted that the legislature may prescribe reasonable qualifications for gubernatorial appointments to boards or commissions. 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; Memorandum to Governor Hammond from R. Pegues, August 13, 1979; 1988 Inf. Alaska Atty. Gen. Op. (file no. 883-88-0079), May 24.

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April 14, 2010

To: Senator Hollis French, Chairman
Senate Judiciary Committee

Fr: Representative Bob Lynn

Re: CSHB 348(JUD)
"An Act relating to the membership of the state personnel board."

Please schedule a hearing for CSHB 348(JUD) in the Senate Judiciary Committee at your earliest convenience. Attached is the most recent version of the bill (26-LS1360\S).

Also included in the bill packet: a sponsor statement, a sectional analysis, and other background material.

Thank you for considering my request for a hearing on CSHB 348(JUD), which I believe will broaden representation on the Personnel Board so it can operate, or at the very least, appear to operate with greater independence when addressing complaints against Executive Branch officials.

Contact: Mike Sica, 465-4965 **Revised: April 14, 2010**

HB 355

Member

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Alaska State Legislature

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SPONSOR STATEMENT AND BILL ANALYSIS
HB 355 – CRIMINAL FINES FOR ORGANIZATIONS

"An Act relating to criminal fines for organizations."

HB 355 does two things. First, it closes a loophole in existing law. An organization may not be imprisoned for its criminal acts; only a fine may be levied as punishment. Under current law, the court may impose the greater of (1) the maximum fines set out in the schedule under AS 12.55.035(c)(1), (2) three times the pecuniary gain realized by the defendant, or (3) three times the pecuniary damage or loss caused by the defendant to another. Under the particular factual situations of some crimes, the treble penalties are not applicable. One instance would be if a corporation bribes legislators to stop a piece of legislation (such as tax legislation), but the legislation passes anyway. In this case, there is neither a loss to the government nor a gain to the corporation. HB 355 would allow the court to issue fines in the amount of three times the pecuniary gain *sought* by the defendant or three times the pecuniary damage or loss to another *sought* by the defendant. These would provide alternatives to statutorily set fines.

Second, HB 355 increases the maximum fines that may be levied against a criminal organization under AS 12.55.035(c)(1). These fines are raised not only to keep up with inflation, but also because organizations potentially stand to gain extraordinary profits through criminal activity, and the increased fines will provide a meaningful deterrent against criminal activity by organizations.

If you have any questions about HB 355, please feel free to call my Legislative Aide, Gretchen Staft, at (907) 465-4940.

Member

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Alaska State Legislature

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EXPLANATION OF CHANGES

Changes between HB 355 and CSHB 355(JUD) (26-LS1385\P):

- On page 1, line 7, the fine for a felony offense or a misdemeanor that results in death was raised from $1,000,000 to $2,500,000.

- On page 1, line 9, the fine for a class A misdemeanor offense was raised from $200,000 to $500,000.

- On page 1, line 11, the fine for a class B misdemeanor offense was raised from $25,000 to $75,000.

- On page 1, line 13, the fine for a violation was raised from $10,000 to $25,000.

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March 15, 2010

Memorandum

TO: Representative Max F. Gruenberg
FROM: Roger Withington, Legislative Analyst
RE: Adjusting the Fines for Organizations Provisions of Alaska Statute 12.55.035(c)(1)(A through D) for Inflation
LRS Report 10.206

You asked about the fines delineated in Alaska Statute 12.55.035(c)(1)(A through D). Specifically, you asked for us for a brief history of these provisions. You also asked us to adjust the fines for inflation from the date the fines became law. We summarize these amendments and adjustments in Table 1.

Alaska Statute 12.55.035(c) first became law by Section 12 Chapter 166 SLA 1978 and read as follows:

> (c) Upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of
> (1) $100,000; or
> (2) an amount which is three times the pecuniary gain realized by the defendant as a result of the offense.

Using Consumer Price Index Information (CPI) from the Alaska Department of Labor and Workforce Development, the fine stated in AS 12.55.035(c)(1), adjusted for inflation from 1978 through 2009, would be approximately $273,140.

Section 1 Chapter 142 SLA 1990 amended Alaska Statute 12.55.035(c)(1) and created subsections A through D. This Session Law stated the following:

> (c) Upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of
> (1) an amount that is
> (A) $500,000 for a felony offense or for a misdemeanor offense that results in death;
> (B) $200,000 for a class A misdemeanor offense that does not result in death;
> (C) $25,000 for a class B misdemeanor offense that does not result in death;
> (D) $10,000 for a violation;

Again, adjusting these amounts from 1990 using Alaska Department of Labor and Workforce Development CIP information, today subsection A would be approximately $808,364; subsection B $323,346; subsection C $40,418; and subsection D $16,167.28.

Alaska Statute 12.55.035(c)(1) was amended again by Section 2 Chapter 131 SLA 2002. This Session Law amended AS 12.55.035(c)(1)(A) to read:

> (A) $1,000,000 for a felony offense or for a misdemeanor offense that results in death;

Adjusting this amount from 2002, using Alaska Department of Labor and Workforce Development CIP information, subsection A would be approximately $1,212,035 today.

Table 1: Fines for Organizations Provisions of Alaska Statute 12.55.035(c)(1)(A through D), and Adjustments to These Fines to Account for Inflation

Section 12 Chapter 166 SLA 1978			Section 1 Chapter 142 SLA 1990			Section 2 Chapter 131 SLA 2002		
Subsection	Initial Amount	Adjusted Amount	Subsection	Initial Amount	Adjusted Amount	Subsection	Initial Amount	Adjusted Amount
Section 1	$100,000	$273,139.6	A	$500,000	$808,364.25	A	$1,000,000	$1,212,035
			B	$200,000	$323,345.70			
			C	$25,000	$40,418.21			
			D	$10,000	$16,167.28			

Source: Consumer Price Index Information (CPI) is from the Alaska Department of Labor and Workforce Development, *http://laborstats.alaska.gov/?PAGEID=67&SUBID=285.*

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

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March 15, 2010

Memorandum
TO: Representative Max Gruenberg
FROM: Patricia Young, Manager
RE: Fines for Organizations Convicted of Criminal Offenses
LRS Report 10.204

You asked about fines for organizations convicted of criminal offenses. You were particularly interested in knowing such fines at the federal level and in a few other states.

The table on the following page presents maximum fines for organizations convicted of generalized levels of criminal offenses. As you will see, Delaware and Alaska appear to have the highest fines among states in this small sample. Unlike Alaska, however, neither Delaware nor Maine cap a fine for an offense resulting in death.

We attach the federal guidelines for sentencing of organization. As you will note, the sentencing scheme for organizations other than those deemed to exist for criminal purposes is far more complex than that in the states we identified. As such, we were unable to place federal fines within our matrix. We note, however, that the base for determining fines for organizations runs from the greatest of (1) $5,000 to $72,500,000 in fines, or (2) the amount of the pecuniary gain to the organization, or (3) the amount of the pecuniary loss caused by the organization, to the extent the loss was caused intentionally, knowingly, or recklessly.[1]

We hope this information is helpful. Please let us know if you have questions or need additional information.

[1] USSG, § 8C2.4, 18 U.S.C.A. Determining the Fine—Other Organizations; Base Fine.

Fines for Organizations Convicted of Criminal Offenses, Sample State Provisions

state	Citation	Most Serious Felony	2nd Level Felony	Most Serious Misdemeanor (not resulting in death)	2nd Level Misdemeanor	Violation		Alternatives / Additions		
Alaska	AS 12.55.035 (c)	$ 1,000,000 (for death) (felony or misdemeanor)		$ 200,000	$ 25,000	$ 10,000	or	3x pecuniary gain	or	3x pecuniary damage or loss
Arkansas	ACA § 5-4-201	$ 30,000		$ 5,000	$ 2,000	$ 200	or	2x pecuniary gain		
Delaware	11 Del. C. § 4208	court discretion (for death)	$ 500,000	$ 250,000	$ 75,000	$ 10,000	or	3x pecuniary gain	or	3x pecuniary damage or loss
Maine	17-A M.R.S.A. § 1301 (3)	any amount (for death)	$ 100,000	$ 40,000	$ 20,000	$ 10,000	or	2x pecuniary gain		
Mississippi	Miss. Code Ann. § 97-11-53	$ 5,000					and	barred from doing business with the state or other public entity for 5 years		
North Dakota	ND ST § 12/1-32-01.1	$ 50,000	$ 35,000	$ 15,000	$ 10,000		and	required to disclose conviction to victims by mail or by advertising in designated area		
Ohio	ORC § 2929.31	$ 100,000	$ 25,000	$ 5,000	$ 4,000	$ 1,000				

Notes : States' criminal statutory schemes vary widely in format. As such, our classification of crimes represent maximum amounts for generalized levels of crimes. Information for Mississippi are specific to offenses involving public officials.
Sources: State Statutes available through Westlaw.

Alaska Law Review
December, 2008

Article

*175 POLICING THE CORPORATE CITIZEN: ARGUMENTS FOR PROSECUTING ORGANIZATIONS

Daniel L. Cheyette[FNa1]

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Abstract

Alaska's corporate criminal liability statute exposes organizations to criminal liability for the actions of their agents, as long as agents intended the organization to benefit from their actions. Organizations cannot disclaim liability through codes of conduct or corporate policies, and their liability extends beyond any merger, consolidation, or dissolution. This Article argues that criminally prosecuting an organization is advantageous because it allows greater criminal fines and carries collateral consequences. In addition, criminally prosecuting an organization may be easier than criminally prosecuting an individual because Fifth Amendment privileges and hearsay obstacles do not apply. Corporations accrue the knowledge of their agents, so proving specific intent may also be less difficult. Finally, this Article describes considerations that should be weighed when deciding whether to prosecute a particular organization. The author argues that Alaska's corporate criminal liability statute is a powerful tool that, where appropriate, should be used more often.

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Introduction

When charging cases, Alaska prosecutors too often overlook crucial potential defendants: the organizations [FN1]--corporations, companies, partnerships, and other entities--on whose behalf individual wrongdoers act. Alaska law casts a wide net for liability by making organizations liable for the criminal conduct of their agents, [FN2] and by authorizing larger criminal fines against convicted organizations than *177 against convicted individuals. [FN3] These considerations beg the obvious question: why are organizations not investigated and prosecuted more frequently? The most likely explanation is that few prosecutors are aware of how far-reaching an organization's criminal liability extends. In addition, correctly or incorrectly, some prosecutors likely view the prosecution of an organization as an unwanted hassle--the prosecution would be different than their typical cases and may well involve high-paid corporate counsel unfamiliar with criminal practice. [FN4] Finally, some prosecutors might mistakenly believe that organizational prosecutions punish innocent shareholders rather than actual wrongdoers. [FN5] Thus, it has not been common practice in state prosecutor offices to charge organizations. [FN6]

The Author hopes this Article will change these views and encourage prosecutors to examine their caseloads for potential organizational defendants. There are significant benefits to be gained by charging organizations rather than individuals: courts will likely impose larger fines against organizations, prosecution of an organization may effect change within the organization, and negative publicity and other collateral consequences will pressure the organization to settle. Furthermore, should the case go to trial, the defense will not be able to protect organizations' records or utilize certain other evidentiary tools to hamstring the prosecution's presentation of evidence.

The aftermath of the 1989 Exxon Valdez oil spill provides a good illustration of why prosecuting an organization is often superior to prosecuting an individual wrongdoer. The 1989 grounding of the tanker Exxon Valdez spilled approximately eleven million gallons of crude oil into Prince William Sound. [FN7] Following the grounding, the State of Alaska prosecuted Joseph Hazelwood, the captain of the ill-fated vessel. [FN8] Hazelwood was convicted by a jury of negligent discharge of oil [FN9] but *178 received only a conditionally suspended sentence. [FN10] Conversely, the United States prosecuted Exxon, ultimately resulting in a negotiated plea agreement and a combined criminal fine of one hundred million dollars. [FN11] The latter was a better use of prosecutorial resources and obtained a better result. [FN12]

It is particularly common for organizations to be defendants in several niche areas of Alaska criminal law. For example, Title 4 criminalizes various aspects of alcohol-related behavior. [FN13] Bush pilots who knowingly or negligently allow passengers to carry alcohol aboard their flights can expose their air carrier to criminal liability. [FN14] Titles 8 and 16 criminalize violations of the state's hunting and fishing laws and regulations. [FN15] Fishing guides who assist their clients by knowingly or negligently violating state fishing regulations expose their employers, such as lodges or guiding outfits, to criminal liability. [FN16]

These principles also apply to the more "traditional" crimes defined in Title 11 of the Alaska Criminal Code. One well-publicized example of such a prosecution was that of Whitewater Engineering Corporation. [FN17] Gary Stone, a Whitewater employee, was killed in an *179 avalanche at a Whitewater jobsite near Cordova. [FN18] Prosecutors charged the corporation and its president, Thom A. Fischer, with manslaughter because key employees failed to heed avalanche warnings and failed to observe necessary safety precautions. [FN19] Although charges against Fischer were ultimately dismissed, the company pled no contest to a charge of criminally negligent homicide. [FN20]

This Article examines criminal liability of organizations under Alaska law. Part I begins with the historical development of organizational criminal liability in the United States and Alaska. Part II covers the current contours of organizational criminal liability, as codified in the Alaska Statutes and interpreted by Alaska courts. Part III discusses the various consequences typically flowing from a conviction. Additionally, Part IV explores practical considerations for prosecutors, and Part V explores

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charging considerations for prosecutors who decide to file charges against an organization. Within these sections and in the Conclusion, this Article explains why it is advantageous to prosecute organizations as opposed to solely prosecuting the individual wrongdoers.

I. Historical Underpinnings

Courts were the first to recognize corporations as legal entities capable of suing and being sued. [FN21] Early decisions established that corporations could be sued in tort. In Philadelphia, Wilmington and Baltimore R.R. Co. v. Quigley, [FN22] the United States Supreme Court explained in detail the policy considerations that mandated this result. [FN23] Quigley sued the railroad for libel due to the conduct of one of its ***180** employees. The company argued that a corporation could only act within the limits of its charter and therefore could not be held liable for any acts of its agents that exceeded those limits. The Court rejected this argument because it would allow corporations to do business and interact with the public while escaping liability when corporate agents, conducting corporate business, injure members of the public. [FN24] By the latter part of the nineteenth century, corporate tort liability was no longer in dispute and lawsuits against corporations were commonplace. [FN25] The law imputed tortious intent from the agent to the corporation, making the corporation liable for actual damages. The courts would not, however, impute the intent necessary to award punitive damages for any injuries absent a showing of wrongdoing by the corporation itself. [FN26]

Corporate criminal liability grew from these civil liability roots. Courts slowly acknowledged that corporations could be criminally liable for the conduct of their agents. For example, in Commonwealth v. Proprietors of New Bedford Bridge, [FN27] the Massachusetts Supreme Court upheld the indictment of a corporation for a public nuisance. [FN28] In 1899, the same court affirmed that corporations could be guilty of criminal contempt in Telegram Newspaper Co. v. Commonwealth. [FN29] Regarding corporate criminal liability, the court stated:

> ***181** We think that a corporation may be liable criminally for certain offenses, of which specific intent may be a necessary element. There is no more difficulty in imputing to a corporation specific intent in criminal proceedings than in civil. A corporation cannot be arrested and imprisoned in either civil or criminal proceedings; but its property may be taken, either as compensation for a private wrong or as punishment for a public wrong. [FN30]

The United States Supreme Court affirmed the general principle of corporate criminal liability in New York Central & Hudson River Railroad Co. v. United States, [FN31] in which it upheld convictions of the railroad corporation for paying illegal rebates. [FN32] The Court applied the principles governing civil liability and held that the acts of agents are imputed to their employers, who may be penalized when the employees act within the scope of their employment. [FN33] Without expressly mentioning the legal concept of respondeat superior, the Court was using it to impute criminal liability to the corporation from the acts of its agents. Numerous Ninth Circuit cases have endorsed this principle. [FN34]

Courts in Alaska slowly recognized organizational criminal liability. The Alaska federal district court first addressed corporate criminal liability in United States v. Alaska Packers' Ass'n. [FN35] There, the court considered the defendant corporation's indictment for fishing violations. The corporation took the position that it could not be indicted for a felony because corporations cannot be imprisoned, a punishment for a felony. [FN36] The court disagreed, pointing out that a corporation may be fined just like an individual, [FN37] that such a penalty may be levied for ***182** acts which would result in imprisonment for individuals, [FN38] and that there was no reason a corporation should escape such punishment. [FN39] Essentially, the district court came to the same conclusion that the Massachusetts Supreme Court reached fifty years earlier in Proprietors of New Bedford Bridge [FN40]-- criminal conduct and criminal intent can be imputed to an organization from its agents. [FN41]

The Alaska legislature codified organizational criminal liability in 1978 when it revised the state criminal code according to the recommendations of the Alaska Criminal Code Revision Commission. [FN42] The first version of section 11.16.130 of the Alaska Statutes proposed by the Commission was very limited. [FN43] The Commission extended criminal liability only to corporations and only in instances when the alleged offense was a violation, a misdemeanor, or otherwise defined so as to clearly indicate a legislative intent to impose criminal liability on a corporation. [FN44] The statute also applied to a company if the conduct was "engaged in, authorized, solicited, requested, commanded or knowingly tolerated by" the corporation's board of directors or a "high managerial agent." [FN45]

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The Commission greatly expanded the scope of the preliminary draft in the course of its deliberations. Significantly, the Commission extended criminal liability to "organizations," [FN46] and the definition of the ***183** term was nearly identical to the current definition of the term. [FN47] The Commission also changed the requirements for imposing liability under the first subparagraph to the disjunctive, thus imposing liability if the act was committed by the employee in the scope of his employment or to benefit the organization. [FN48] The legislature ultimately rejected this construction, however, and required that the act be committed both in the scope of the employment and to benefit the organization. The version of the statute ultimately passed by the legislature mirrors the current version of the statute. [FN49]

II. Current Contours of Organizational Liability

An organization, once constituted, has a legal identity distinct from its owners, officers and directors. [FN50] It is, by statute, an artificial, legal "person." [FN51] As such, an organization may commit crimes and may be charged as a defendant in criminal cases. [FN52] The criminal liability of organizations is defined in section 11.16.130 of the Alaska Statutes:

> (a) Except as otherwise expressly provided, an organization is legally accountable for conduct constituting an offense if the conduct
>
> (1) is the conduct of its agent, and
>
> (A) within the scope of the agent's employment and in behalf of the organization; or
>
> (B) is solicited, subsequently ratified, or subsequently adopted by the organization; or
>
> (2) consists of an omission to discharge a specific duty of affirmative performance imposed on organizations by law.
>
> ***184** (b) In this section "agent" means a director, officer, or employee of an organization or any other person who is authorized to act in behalf of the organization.

The Alaska Court of Appeals described the essence of this liability in State v. ABC Towing. [FN53] The decision contrasts the theories of organizational criminal liability, set forth in section 11.16.130 of the Alaska Statutes, with the better known theories of accomplice criminal liability, set forth in section 11.16.110 of the Alaska Statutes. [FN54] In drawing this comparison, the court of appeals noted organizations face broader criminal liability than individuals because organizations are liable for conduct of their agents that owners, members, officers or directors do not know about until after the fact. [FN55]

The kinds of entities subject to such liability are also defined by statute: "'[O]rganization' means a legal entity, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, government, society, union, club, church, or any other group of persons organized for any purpose." [FN56] As such, organizations are broadly exposed to criminal liability for the acts of their agents. This poses an obvious problem for organizations, whose main purpose is to pool resources, maximize profit potential, and limit the liability of those individuals involved. [FN57] At cross purposes with this last principle, Alaska law imposes criminal liability in cases where individual conduct, when appropriately construed as corporate conduct, runs afoul of state criminal law.

Many critics question whether organizations should be prosecuted at all and argue that such prosecutions punish innocent shareholders rather than the actual wrongdoer. The Ninth Circuit provided a succinct rebuttal to that suggestion in United States v. Hilton Hotels Corp:

> Legal commentators have argued forcefully that it is inappropriate and ineffective to impose criminal liability upon ***185** a corporation, as distinguished from the human agents who actually perform the unlawful acts . . . particularly if the acts of the agents are unauthorized. . . . But it is the legislative judgment that controls, and "the great mass of legislation calling for corporate criminal liability suggests a widespread belief on the part of legislators that such liability is necessary to effectuate a regulatory policy." [FN58]

The crux of the argument is that organizational criminal liability prompts organizations to more rigorously police their agents. Regardless of whether this is true, the existence of corporate and, more generally, organizational criminal liability is beyond debate. [FN59]

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A. Alaska Jurisprudence

Most examples of organizational criminal liability in Alaska occur under section 11.16.130(a)(1)(A) of the Alaska Statutes--conduct of an agent that is done in the scope of the agent's employment and on behalf of the organization. [FN60]

The Alaska appellate courts have discussed the substance of organizational criminal liability only twice. [FN61] In State v. ABC Towing, [FN62] the court of appeals was called on to determine whether a towing company, formed as a sole proprietorship, could be prosecuted for violating a state pollution law, based on an employee's illegal discharge of gasoline. The issue for the court was whether a sole proprietorship is an "organization" as defined in section 11.81.900 of the Alaska Statutes. [FN63] The court held that it was not, because a sole proprietorship is the mere alter ego of the sole proprietor. [FN64] In other words, there is no legal ***186** distinction between the sole proprietor and the proprietorship; to prosecute the proprietorship, the state must charge the proprietor. [FN65]

The court of appeals provided more recent guidance in State v. Greenpeace, Inc. [FN66] The State prosecuted and convicted Greenpeace, Inc. for bringing a Greenpeace ship, the M/V Arctic Sunrise, into state waters without a state-approved oil spill contingency plan or a certificate of financial responsibility. [FN67] Following the jury's guilty verdicts against the corporation, the district court granted a defense motion for acquittal and set the convictions aside. [FN68] The court of appeals affirmed the district court based on findings that Greenpeace, Inc., a United States corporation, was not in charge of the ship and did not control its operators. [FN69] According to the court, the prosecution charged the wrong parties. [FN70] The case involved Stichting Phoenix, [FN71] a Dutch foundation that owned the Arctic Sunrise, and Stichting Marine Services (SMS), a second Dutch foundation that operated it. [FN72] SMS chartered the ship to Greenpeace International, a third Dutch entity, that owns the name "Greenpeace." [FN73] Greenpeace International licenses this name to independent environmental organizations around the world including Greenpeace, Inc. in the United States. [FN74] In 2004, Greenpeace International agreed to let Greenpeace, Inc. use the Arctic Sunrise for an anti-logging campaign. [FN75] SMS supplied the crew and was also responsible for making sure the ship complied with all local regulatory requirements. [FN76] The prosecution argued that SMS and the Arctic Sunrise ***187** captain were agents of Greenpeace, Inc. and, therefore, Greenpeace, Inc. was liable for the criminal conduct. [FN77] The court of appeals disagreed:

> A person or organization does not qualify as the authorized agent of a principal unless the principal controls or has the right to control the purported agent. The State offered no evidence that Greenpeace, Inc., controlled how (or if) SMS or [the captain] operated the Arctic Sunrise or complied with Alaska's requirements for nontank vessels. [FN78]

The prosecution also argued that Greenpeace, Inc. ratified or adopted the criminal conduct of SMS and the Arctic Sunrise and was therefore liable for their conduct. [FN79] Again, the court of appeals disagreed. The court held that adoption or ratification requires the principal's "awareness of the misconduct and some action to ratify or adopt the misconduct." [FN80] It found that the prosecution had not produced any evidence Greenpeace, Inc. knew of the illegal conduct or took any actions to ratify or adopt that conduct. [FN81]

Though the court does not explicitly say, its decision suggests that SMS, or arguably Greenpeace International, was the proper defendant. [FN82] This holding nevertheless begs the question of whether Alaska could effectively prosecute either of these foreign entities in state court. Service of process on these entities would be problematic, [FN83] and even if service were achieved, the entities would likely argue that the Alaska state ***188** courts lack personal jurisdiction over them. [FN84] Finally, it is difficult to imagine how the state could effectively enforce any sentence ultimately imposed by its courts.

Collectively, ABC Towing and Greenpeace, Inc. confirm the existence of organizational criminal liability under state law. These decisions do little, however, to define the contours and limitations of that liability and, in fact, highlight problems with the existing laws. ABC Towing carves out an exemption for sole proprietorships. [FN85] Greenpeace is also problematic in that it illustrates the ease with which organizations might compartmentalize their operations or duplicate themselves and thereby thwart criminal prosecution. [FN86] These are shortcomings legislators need to address if the prosecution of organizations is to be effectively and consistently utilized.

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Given the paucity of pertinent Alaska jurisprudence regarding organizational criminal liability, Alaska courts would likely rely on relevant federal authority. [FN87] Federal cases frequently acknowledge that a ***189** corporation can act only through its officers, agents, and employees. [FN88] Courts therefore hold that a corporation may be liable for the acts of its officers, employees, and other agents even though the questioned act may be illegal, contrary to specific company policy, or not expressly authorized beforehand by the corporation. [FN89]

B. Existence of Organization Policies Prohibiting the Criminal Conduct and the Requisite Quantum of Benefit

Federal cases hold that an organization may be found guilty of a criminal offense as long as the employee was motivated, at least in part, to benefit the organization. [FN90] It follows that organizations often attempt to absolve themselves of liability by relying on corporate policies that preclude criminal conduct. These attempts have generally been unsuccessful. The Ninth Circuit addressed such an effort in the context of Sherman Act prosecutions. [FN91] In Hilton Hotels Corp., [FN92] charges were premised on proof that the hotel's purchasing agent threatened a supplier with the loss of the hotel's business unless the supplier paid an assessment to a trade association of which the hotel was a member. [FN93] Hotel personnel testified that company policy required purchasing ***190** supplies solely on the basis of price, quality, and service, and they had specifically instructed the purchasing agent not to boycott suppliers. [FN94] The Ninth Circuit held that the hotel could not insulate itself from criminal liability by adopting general instructions not to participate in a boycott if it did not take sufficient actions to enforce those instructions. [FN95] The fact remained that the hotel authorized a purchasing agent to act on its behalf and the agent exercised complete authority as to those responsibilities and, pursuant to that authority, added the hotel's buying power to the force of the boycott. [FN96] Other circuits have taken a similar position when employees act contrary to company policy. [FN97]

An important corollary is that courts generally permit defendants to admit evidence of corporate policies or instructions that forbid the conduct at issue to support an argument that an agent was acting outside the scope of employment or to the principal's detriment. The Ninth Circuit summarized this view:

> [A] corporation may be liable for acts of its employees done contrary to express instructions and policies, but that the ***191** existence of such instructions and policies may be considered in determining whether the employee in fact acted to benefit the corporation. Merely stating or publishing such instructions and policies without diligently enforcing them is not enough to place the acts of an employee who violates them outside the scope of his employment. It is a question of fact whether measures taken to enforce corporate policy in this area will adequately insulate the corporation against such acts . . . [FN98]

Other courts have reached similar rulings. [FN99]

It is not necessary that the organization actually accrue a benefit from the agent's actions for criminal liability to attach. In Beusch, [FN100] the Ninth Circuit rejected a corporation's argument that it could not be liable if the criminal conduct did not in fact benefit the corporation. [FN101] The Fourth Circuit's decision in United States v. Automated Medical Laboratories, Inc. [FN102] is frequently cited on this point--the court affirmed a jury's conviction of American Medical Laboratories for falsifying logbooks and records required to be maintained by the Federal Drug Administration. [FN103] In Automated Medical Laboratories, the court held that benefit was an evidential fact, stating:

> [W]hether the agent's actions ultimately redounded to the benefit of the corporation is less significant than whether the agent acted with the intent to benefit the corporation. The basic purpose of requiring that an agent have acted with the intent to benefit the corporation, however, is to insulate the corporation from criminal liability for actions of its agents which be inimical to the interests of the corporation or which may have been undertaken solely to advance the interests of that agent or of a party other than the corporation. [FN104]***192** These cases collectively illustrate that whether the agent's conduct benefits the organization is a question of fact for the jury. The cases also demonstrate that appellate courts will let convictions stand so long as there is some evidence that the organization gained some benefit. In comparison, criminal conduct by an agent falling outside the scope of employment will not be imputed to the organization

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> where the conduct solely benefits the agent. Such was the case in Standard Oil Co. of Texas v. United States, [FN105] in which the Fifth Circuit reversed convictions against two corporate defendants because the criminal acts by the employees, while benefiting themselves, actually injured the corporation. [FN106]

Alaska cases contemplating the application of respondeat superior liability in the context of tort claims have echoed the holding of Standard Oil. Notable among these are Taranto v. North Slope Borough, [FN107] Northern Fabrication Co., Inc. v. Arco, Inc., [FN108] and Ondrusek v. Murphy. [FN109] All three cases apply the Restatement (Second) of Agency section 228 criteria to determine whether an agent acted in the scope of his employment. Pursuant to section 228, conduct is only in the scope of employment if--among other requirements--it is done at least in part to serve the employer. Thus, in Northern Fabrication Co., Inc., the Alaska Supreme Court reversed the trial court's grant of summary judgment in favor of the defendant corporations and held that the corporations could only negate the plaintiff's claim of vicarious liability for the theft of equipment by the defendants' employees if the corporations could prove they did not control the employees' actions and the employees acted solely in furtherance of their own personal motives. [FN110]

These cases demonstrate that an organization cannot insulate itself from liability with general policies or guidance that forbid the conduct at issue. However, an organization can use policies or guidance in an effort to convince a jury that the organization took sufficient action to prevent the wrongful conduct and should not be liable for the actions of an agent. Moreover, the organization will not be liable for conduct that an agent takes solely for his or her own benefit, or that is inimical to the organization's interests.

*193 C. Collective Corporate Knowledge

For a time, specific intent crimes that require proof of knowing or intentional conduct were difficult to apply against large or diverse organizations. Organizations tend to compartmentalize their operations and decision-making between different units or divisions. Therefore the requisite mens rea or conduct is often not present in any one individual, making imputing mens rea to the organization difficult. Many courts have resolved this problem through the collective corporate knowledge theory best described by the First Circuit in United States v. Bank of New England. [FN111]

> The acts of a corporation are, after all, simply the acts of all of its employees operating within the scope of their employment. The law on corporate criminal liability reflects this. . . . Similarly, the knowledge obtained by corporate employees acting within the scope of their employment is imputed to the corporation. Corporations compartmentalize knowledge, subdividing the elements of specific duties and operations into smaller components. The aggregate of those components constitutes the corporation's knowledge of a particular operation. It is irrelevant whether employees administering one component of an operation know the specific activities of employees administering another aspect of the operation . . . [FN112]

This line of reasoning enables prosecutors to impute the summed knowledge of various employees to the organization as a whole. [FN113]

*194 D. Effect of Merger, Consolidation, and Dissolution

Any liability imputed to an organization will generally survive the organization's merger, consolidation, or dissolution. The common law analogized the dissolution of an organization (either directly, or by merger or consolidation) to the death of a natural person, [FN114] meaning that dissolved, merged, or consolidated organizations could not be prosecuted. [FN115]

State statutes that continue the legal existence of these entities have eroded this common law principle. It is now generally true that organizations can be prosecuted (or sued civilly) following their dissolution, merger or consolidation. In Melrose Distillers, Inc. v. United States, [FN116] the United States Supreme Court discussed this abrogation of the common law. Prosecutors indicted three related corporations for violations of the Sherman Act. [FN117] While the indictments were pending, the corporations dissolved and became new divisions in a single, separate corporation. [FN118] The district court and court of appeals held that the dissolution of the original corporations did not abate the indictments. [FN119] The Supreme Court affirmed, looking to both Maryland and Delaware law and finding that the states had statutes "saving" claims against dissolved

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corporations. [FN120] The Court interpreted these statutes to include criminal charges under the Sherman Act. [FN121] Other courts have come to the same conclusion respecting corporations and partnerships organized under the laws of other states. [FN122]

*195 There is no analogous holding in Alaska case law. The closest case on point, Gossman v. Greatland Directional Drilling, Inc., [FN123] discusses the viability of civil claims brought against a dissolved corporation for negligent conduct during the corporation's existence. [FN124] Greatland dissolved in 1993 following the purchase of its assets by Anadrill, a distinct corporation. [FN125] In 1995, plaintiff Gossman was injured while working for Anadrill at one of the facilities Anadrill purchased from Greatland. [FN126] The injury was caused by a piece of equipment that had been negligently modified by a Greatland employee years before the corporation's dissolution. [FN127] In 1996, Gossman filed negligence claims against Greatland. [FN128] The Alaska Supreme Court looked to section 10.06.678 of the Alaska Statutes--a survival statute for claims against corporations--to determine whether any provision abrogated the common law abatement theory. [FN129] At the time (and currently), section 10.06.678, in pertinent part, provided:

> (a) A corporation that is dissolved voluntarily or involuntarily continues to exist for the purpose of winding up its affairs, defending actions against it, and enabling it to collect and discharge obligations, dispose of and convey its property, and collect and divide its assets. A dissolved corporation does not continue to exist for the purpose of continuing business except so far as necessary for winding up the business.
>
> (b) An action or proceeding to which a corporation is a party does not abate by the dissolution of the corporation or by reason of proceedings for winding up and dissolution of the *196 corporation. A corporation that is dissolved voluntarily or involuntarily may not commence a court action, except for a court action under [section] 10.06.675. [FN130]

The court reviewed the legislative history of section 10.06.678 and examined treatment of similar statutes in other jurisdictions before deciding claims do not abate against a dissolved corporation. [FN131]

Gossman does not address criminal prosecutions. However, the court's analysis in this civil case mirrors the analysis the Supreme Court used in Melrose Distillers in a criminal context. [FN132] There is no reason to believe an Alaska court would analyze the issue any differently in the context of a criminal case. Moreover, Alaska courts routinely rely on federal authorities when interpreting Alaska law that has no case precedent and is similar to federal laws. [FN133] A number of jurisdictions have adopted Melrose Distillers, [FN134] and Alaska courts have cited Melrose Distillers for other propositions. [FN135]

Further, as is discussed above, the Alaska Supreme Court in Gossman interpreted section 10.06.678 of the Alaska Statutes liberally to include claims that accrued after the dissolution of the corporation. [FN136] This suggests that the court would likewise liberally interpret the statute if faced with the question of whether the statute is inclusive of criminal charges. In short, dissolution, merger, and consolidation of a corporation should not foreclose the State's ability to prosecute the corporation, although it might make it more difficult to collect fines that are ultimately imposed. [FN137]

*197 Alaska has similar survival statutes that are applicable to other organizations. However, some of the survival statutes--such as those that apply to non-profit corporations [FN138] or limited liability companies [FN139]--carry time limitations which may affect potential claims or charges.

III. Prosecutorial Consequences

A. Penalty Provisions

Organizations are not subject to the same penalties as individual defendants. While organizations can only act through their agents, organizations cannot be punished in the same way as their agents. [FN140]

Special penalty provisions exist for organizations based on the severity of the underlying crime. [FN141] In assessing a fine under these provisions the sentencing court considers:

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(1) measures taken by the organization to discipline an officer, director, employee, or agent of the organization;

(2) measures taken by the organization to prevent a recurrence of the offense;

(3) the organization's obligation to make restitution to a victim of the offense, and the extent to which imposition of a fine will impair the ability of the organization to make restitution; and

(4) the extent to which the organization will pass on to consumers the expense of the fine. [FN142]*198 These considerations are in addition to statutory and common law factors Alaska courts consider in deciding any criminal sentence. [FN143] Generally, it is not difficult to frame these factors in a way to justify substantial fines under any of the penalty matrices available for use against organizations. If the organization is large, a substantial fine would be justified so that it has an appreciable penalty or deterrent impact on the organization's operations. The fine would likewise need to be large to cause other similarly situated organizations to take notice and action to ensure they do not commit similar errors.

Consider two examples. First, if a fishing lodge allows its clients to commit hunting and fishing violations to ensure they catch a lot of fish and have a good time, a small fine would not act as a sufficient deterrent. Because these lodges often have significant revenues, fines at the top of the penalty range set forth in section 12.55.035(c) of the Alaska Statutes would be necessary and justified. These are common sense arguments that are likely to have traction with the sentencing court. Second, imagine a service station operating as an LLC that knowingly functions with leaking underground fuel tanks. The situation comes to light when diesel range organics are discovered in a nearby creek. Investigation traces the fuel back to the service station and additional investigation produces evidence that the manager had been aware of the leak for several months. The Alaska Department of Environmental Conservation (DEC) hires a private environmental services firm to design and implement a clean-up and remediation plan for the polluted land and water and to monitor the water quality of the creek for five years. The total cost for these services exceeds a million dollars. Under section 12.55.035(c)(3) of the Alaska Statutes, the potential fine against the LLC could exceed three million dollars. This fine could be in addition to the restitution owed to the state for the cost of the clean-up and remediation work itself. Admittedly, the sentencing court, in imposing the fine, would have to consider how section 12.55.035(e)(3) of the Alaska Statutes would affect the company's ability to pay restitution to the DEC. However, if the company is large enough, it is easy to picture the court imposing the full fine. Penalties of this magnitude can *199 provide a strong incentive for organizations to resolve potential criminal liability quickly. [FN144]

Because criminal conduct exposes the organization to potentially substantial criminal penalties and negative publicity, an organization will often terminate or discipline the responsible employees, cooperate with investigating agencies, and may hire consultants for the design of new protocols to avoid similar mistakes in the future. These are all constructive steps moving forward from the misconduct and are factors a sentencing court is to consider in assessing a fine against an organization pursuant to section 12.55.035(e) of the Alaska Statutes.

B. Collateral Consequences

Collateral consequences triggered by a conviction will also be a powerful force shaping the course of many prosecutions. Organizations are generally required to report all pending liabilities in their annual financial statements. This typically includes pending criminal cases as well as any completed cases for which the organization is on probation. [FN145] Disclosure of a pending criminal case or conviction can be damaging to an organization's public image or reputation. The publicity from prosecution would likely tarnish the image of a company and undo any marketing efforts that the company previously undertook. Further, the prosecution would likely damage the company's image amongst stockholders, creditors and Wall Street analysts, causing significant financial repercussions.

Debarment is another significant collateral consequence. Both federal and state law allows the respective sovereigns to refuse to do business with organizations that have been convicted of or otherwise suspected of crimes or dishonest business practices. [FN146] At the federal level, the Environmental Protection Agency (EPA) is particularly vigilant in debarring organizations that are convicted or suspected of *200 environmental crimes. [FN147] Debarment is damaging because a large percentage of Alaska companies are the recipients of federal or state contracts. [FN148] The loss of these contracts can be financially crippling to companies. The State of Alaska also has legislative authority to debar companies but, unfortunately, rarely uses that power. [FN149]

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By way of an example, consider a small bush air service that transports mail year round and a steady number of government biologists as passengers during the summer. If the company knowingly allows passengers to transport alcohol to local option dry communities [FN150] on its flights, it could be prosecuted for violations of Alaska's alcohol importation laws. [FN151] A conviction could potentially trigger federal or state debarment and thereby jeopardize the air service's ability to retain the mail or biologist travel contracts. This could constitute another financial blow to the company in addition to the fines or consequences that flow from the prosecution. [FN152]

*201 IV. Practical Considerations for Prosecutors

A. No Fifth Amendment Privilege

Prosecutors gain several practical advantages by filing charges against organizations as opposed to individuals. The first, and perhaps most significant, is that an organization does not have a Fifth Amendment right against self-incrimination. A prosecutor can use organizational agents as witnesses to testify about corporate practices or records. [FN153] In Amato v. United States, [FN154] the First Circuit, relying largely on the Supreme Court's decision in Braswell v. United States, [FN155] explained why the Fifth Amendment's protection against self-incrimination does not protect corporate records. [FN156]

The Alaska Supreme Court subscribed to the collective-entity doctrine in Pratt v. Kirkpatrick. [FN157] Citing many of the same cases relied upon in Amato, the court held that a records custodian for the financial records of a limited partnership could not rely upon the Fifth Amendment or Article I, section 9 of the Alaska Constitution to resist a subpoena for the partnership's financial records. [FN158] Importantly, the court found the self-incrimination protections provided by the Alaska Constitution were no broader than protections provided by the Fifth Amendment to the United States Constitution. [FN159]

Because of these principles, defense attorneys will be hard-pressed to successfully preclude the production of an organization's documents sought pursuant to a subpoena or search warrant. Organizations are prolific producers of documents, reports, memoranda, and email that evidence their decisions and actions. In the event of criminal conduct, *202 any such documents would be invaluable to the prosecution, as they may demonstrate the organization's knowledge or intent. At the very least, the documents can confirm the individual agent's intent or knowledge.

B. Avoiding Hearsay

Common hearsay problems can also be avoided if an organization rather than an individual is charged. Employee or agent statements regarding the conduct of the organization will be admissible against the organization should the declarant invoke a personal Fifth Amendment right not to testify or otherwise make him or herself unavailable for trial. The admissions of these agents are not hearsay if offered against the organization because the law imputes them to the organization itself; under Alaska Rule of Evidence 801(d)(2), the admissions are considered admissions of the party opponent. [FN160] This subsection excludes as non-hearsay statements that are made by an agent or servant concerning matters within the scope of that individual's agency or employment and made during the existence of the agency or employment relationship. This is a broadly interpreted exclusion [FN161] that encompasses a wide range of employee statements regarding employer practices, work conditions, and decision-making that frequently provide invaluable evidence for the prosecution.

C. Corporations Can Be Tried In Absentia

Corporations cannot ignore a summons to appear for arraignment. Pursuant to Rule 4(a)(3) of the Alaska Rules of Criminal Procedure, corporations that fail to appear may be tried in absentia. [FN162] The trial of an absent corporation would be a slam-dunk for the state. The prosecutor could admit evidence to the jury without objection. The *203 prosecutor could then ask the jury to convict a business which was perfectly happy to injure Alaska or Alaskans in some way but was unwilling to show up when invited to an Alaskan courtroom for its own trial. Assuming the prosecutor has presented sufficient evidence of the charged offenses, it is likely juries will feel little compunction in returning guilty verdicts. Upon conviction, the prosecutor could ask the judge to issue a judgment against the corporation and that judgment could be sent to the Attorney General's

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D. Organizations Engender Less Sympathy

The criminal jury instructions commonly employed in Alaska state courts invariably include an instruction that directs the jury to disregard any sympathy for the defendant during its deliberations. [FN163] Nevertheless, any prosecutor will tell you that jurors rarely dispatch their obligations without sympathizing to some degree with the defendant. If an employee engages in improper conduct to primarily benefit his or her employer (as opposed to directly benefiting him or herself) or if the employee engages in conduct at the behest of his or her employer, jurors may be loathe to find the individual guilty of the offense. This problem is largely eliminated if the company is tried. Regardless of the factual scenario involved, juries are far less prone to feel sympathy for an organization. [FN164] Most often, the organization is a for-profit company, and juries realize their decision, like the organization's decision to engage in the criminal conduct, is a decision about money. Juries seem to struggle far less with the question of whether an organization should pay a fine than the question of whether an individual should go to jail.

*204 V. Charging Considerations

A. Factors to Weigh

The foregoing discussion is meant to illustrate that organizational criminal liability is very broad and has potential application to many situations. Nevertheless, these prosecutions can be complex and time intensive, and the outcome of any such prosecution is seldom, if ever, certain. It follows that a prosecution may not be warranted or be the best use of limited resources in every instance. A number of practical considerations should inform any decision to prosecute or not prosecute an organization.

Assuming the prosecutor believes he or she can prove all the elements of the potential charges, the foremost consideration is the prosecution's objective in pursuing the criminal charges against this organization. Key to this concern is the question of punishment. Is the goal to punish the organization? Is the goal to achieve restitution? Or is the goal to ensure future compliance by this organization or similarly-situated organizations? Most often the answer is a mixture of all three, but that is not always the case. If the organization is one that has few assets or no longer exists, the prosecution may yield a conviction and a fine or restitution order that cannot be collected. Alternatively, if the organization continues to operate and the conduct at issue could reoccur, or involves an activity that has not been monitored or heavily regulated in the past, a better result may be achieved through less adversarial means. Instead of a criminal prosecution, perhaps there is an administrative or civil remedy. [FN165]

In answering these questions, the prosecutor should consider the following factors. [FN166] The first and foremost consideration is whether the prosecution is deserved. Multiple factors will weigh on this determination, including whether the injury was caused by egregious or intentional conduct or a rogue employee, and the degree to which management was complicit in causing the injury. It will also be important to determine whether the conduct was an isolated violation or part of a series of violations, and if the organization knew the conduct was prohibited.

*205 These factors beg the question: is a prosecution warranted? A corollary to this question is the recognition that a criminal prosecution carries a significant stigma and is not warranted or necessary in every circumstance. With respect to considerations of practicality, the following factors should be evaluated and go to the central question of what can and will be achieved by prosecuting the organization:

First, will prosecution deter this organization? Answering this question will require analyzing the likelihood of significant penalties such as fines or probation. It will also mean determining if any illegal gains will be returned, and if the conduct gave the organization an advantage over its competitors. [FN167]

Second, will prosecution deter other similarly-situated organizations? Determining this means researching whether similarly-situated organizations exist and if the potential penalties would deter them. The penalties may also impact the industry as

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a whole.

Third, will prosecution promote future compliance? Prosecutors must consider whether including a compliance program in the penalty would address the conduct at issue.

Fourth, is restitution owed to a broad range of entities or individuals? Considerations will include the necessity of prosecution to obtain restitution, the effectiveness of individual claims, and the ability of the organization to pay damages.

Finally, will a prosecution play well in the public's view? Prosecutors should determine whether the public will support legal action, an enforcement program more generally, and participate in such a program by reporting violations.

Depending on the answers to these questions, a prosecutor may determine that prosecution is not the best alternative. The best practice is to make this determination early and not to pursue prosecutions in situations not warranting the effort or resources.

To illustrate these points, consider as an example the potential prosecution of a bartender for selling alcohol to an underage patron. Faced with an underage "furnishing" crime, police officers will typically *206 cite the individual bartender for a Title 4 "furnishing" offense. [FN168] If convicted, and if a first-time offender, the bartender will likely receive a suspended imposition of sentence, a year's probation, and a small fine, assuming the prosecutor can convince a jury not to nullify the verdict. On the other hand, if there is a good reason to charge the bartender's employer--perhaps a large bar or restaurant--with the same Title 4 violation, that employer will face a much larger potential fine. If the employer has committed similar offenses through other employees, each of those incidents may be brought to the sentencing judge's attention and would powerfully bolster the prosecutor's sentencing case. Fines could be conditioned on the employer ensuring that its employees commit no further violations. The employer could also be affirmatively required to notify law enforcement officers of any and all future violations. [FN169] In addition, the court may require the employer to provide enhanced training for employees at their own expense. Prosecuting the employer is a better use of prosecutorial resources. Importantly, the prosecution of the employer provides a mechanism to prevent future, similar infractions by other employees. The employer will likely be more proactive in policing its employees and will be under an affirmative duty to report all future violations. Further, it is likely that other similar establishments or employers will take notice of the sentence and will likewise do a better job of policing their operations and employees. These would all be positive outcomes.

B. Case Study: Strategica Import-Export Financial Group, LLC

A four-defendant case recently prosecuted by the Office of Special Prosecutions, State v. Jeremy Oliver, [FN170] further illustrates why prosecutors should consider charging organizations and how they can use those prosecutions to achieve better case outcomes.

The case arose from a failed salmon processing facility in Ekuk, Alaska in 2004. [FN171] The failure was an economic disaster for the local economy. [FN172] None of the fishermen who had delivered fish to the facility *207 were paid for their catches and none of the workers who had worked at the facility were paid for their labor. [FN173] Jeremy Oliver, a young man with limited fishing and processing experience, had formed Wild Alaskan Seafood Company, LLC ("Wild Alaskan Seafood Company") for the purpose of the Ekuk processing venture. [FN174] Oliver was able to lease and open the Ekuk facility using financing brokered by Jay Enis, a Florida merchant banker. [FN175] Enis formed Strategica Import-Export Financial Group, LLC ("Strategica") for the purpose of financing the Ekuk salmon processing venture. [FN176] Oliver and Wild Alaskan Seafood Company hired dozens of workers to run the facility and accepted more than a million pounds of fish from the fishermen. [FN177] The venture failed before the fish could be processed, and very little of the fish was ever delivered to a purchaser. [FN178] The vast majority of the fish spoiled and ultimately had to be destroyed. [FN179] As a result, the fishermen and Ekuk processors were never paid. [FN180]

Alaska statutes criminalize the processing of adulterated seafood. [FN181] The offense is a class A misdemeanor. [FN182]

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The state prosecuted all four defendants--Oliver, Wild Alaska Seafood Company, Enis, and Strategica--for this offense, as well as several additional, related offenses. [FN183] Ultimately, Oliver, Wild Alaskan Seafood Company and Strategica each pled guilty to a charge. [FN184] The court sentenced Oliver to serve 180 days in jail (with 140 days suspended) and to pay, along with Wild Alaskan Seafood Company, more than $56,000 in restitution to the fishermen and workers. [FN185] Because Oliver and Wild Alaskan Seafood *208 Company have few assets, [FN186] it is unlikely that much of this restitution will ever be paid. Oliver and Wild Alaskan Seafood Company were prosecuted to punish them for their misdeeds rather than to make the injured fishermen and workers whole. [FN187] The court ordered Strategica to pay more than $180,000 in restitution. [FN188] The state agreed to dismiss the charges against Enis in exchange for Strategica's plea and payment. [FN189] The case against Strategica was meant to prosecute that company for its misconduct, as well as to provide at least some restitution to the fishermen and workers.

Oliver was clearly the primary culprit of this scheme. Oliver came up with the plan to operate the Ekuk facility and was in charge when it failed. Nevertheless, once the scheme failed, Oliver and Wild Alaskan Seafood Company lacked assets and would never be able to pay much in restitution. Enis and Strategica had assets but were not as directly involved in the management and operation of the Ekuk facility. Thus, the question for the Office of Special Prosecutions was whether it could prove Enis and Strategica were criminally liable for the Ekuk failure and, if so, whether they warranted criminal prosecution. The answer to both questions was "yes." [FN190]

Strategica's conduct was egregious. Enis and Strategica had no experience in the Alaska seafood industry. Nevertheless, with little due diligence and equally little oversight, Strategica provided Wild Alaskan *209 Seafood Company with $650,000 in financing for a risky venture [FN191] that would operate in a remote locale more than five thousand miles from Strategica's location in Miami. [FN192] Strategica enabled Oliver and Wild Alaskan Seafood Company by providing the financial means for them to launch the Ekuk facility. Thereafter, Strategica did little to oversee their operations or to ensure their success. This conduct was careless, it was intentional, and it had a devastating impact on the Ekuk fishery and the local economy.

Practical considerations also supported the decision to prosecute Strategica. Most importantly, the State believed prosecution would be the most effective way to collect restitution for the fishermen and workers. More than a hundred, perhaps more than two hundred, people were financially injured due to the Ekuk failure. [FN193] While some of these people filed civil actions against the defendants, those suits made little progress and, even if successful, stood to benefit a small number of individuals. In contrast, a criminal prosecution could recover restitution for all those who did not get paid. Of the potential defendants, only Enis and Strategica had any real financial resources. [FN194] Therefore, it was important that Strategica be prosecuted.

Additionally, the prosecution of Strategica would play well in the realm of public opinion. Strategica was a company that recklessly entered the state fishing industry to make a profit for out-of-state investors and ended up causing significant financial injuries to many Alaskans. In addition to the direct financial losses inflicted on the Ekuk fishermen and workers, Strategica's actions could have inflicted significant harm to the reputation of Alaskan salmon. The Alaska seafood industry relies on the high reputation of "wild Alaskan salmon" to market its product and has spent years and millions of public relations dollars to build up that reputation. [FN195] If some of the damaged Ekuk salmon had actually made it into the marketplace and sickened unsuspecting consumers, the reputation and marketability of Alaskan salmon would have been dealt a significant blow. Considering the *210 reckless manner in which Strategica acted to enable and finance Oliver and Wild Alaskan Seafood Company, the State believed the Alaskans would overwhelmingly support Strategica's prosecution and the Department of Environmental Conservation's continued efforts to regulate seafood processing facilities.

Finally, the State believed prosecuting Strategica would serve as a deterrent to future reckless investment in the Alaska seafood industry by outside entities. The prosecution resulted in significant financial penalties-- the restitution payment--and would receive significant publicity. This result would certainly deter Strategica from future similar conduct and, it is hoped, would deter other similarly situated entities from doing anything similar.

Conclusion

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The ability to file criminal charges against an organization in addition to, or in lieu of, charges against individual agents is a powerful tool available to prosecutors. The prosecution of organizations must be considered, whenever feasible, to deter future wrongdoing. Furthermore, it is far more efficient to prosecute the organization that controls a large number of agents engaging in prohibited conduct rather than prosecuting each agent individually.

Prosecuting the organization makes sense for a variety of additional reasons. First, significant criminal fines can be imposed against organizations. Second, organizations--rational entities with a bottom line and a strong preference against negative publicity--tend to be prosecution averse. This fact is good news for the prosecution because it means a trial can be avoided and constructive changes can be implemented as part of any resolution. [FN196] Third, organizations enjoy fewer constitutional protections than do individual defendants and, as such, can make use of fewer evidentiary rules to limit the prosecution's evidence. Lastly, the prosecution of an organization as well as individual defendants could strengthen the prosecution's hand during plea negotiations. The organization may be persuaded to accept a plea in ***211** return for dismissal against certain individual officers, or vice-versa. By charging both, the prosecution increases its options for a successful and beneficial resolution.

Several potential explanations for why Alaska prosecutors rarely charge organizations for the criminal conduct of their agents are proffered in the introduction. None satisfactorily explain this phenomenon. Yes, such prosecutions will likely differ in some respects from the prosecution of individual defendants. Yes, organizational defendants may hire experienced defense counsel. And yes, such prosecutions might, in some cases, penalize stockholders who did not know about the wrongdoing. But these drawbacks, to the extent they are legitimate at all, are insignificant compared to the potential benefits that such prosecutions can realize. Quite simply, prosecutors should file charges against organizations more frequently. Such change may not happen quickly; nonetheless, it is time to adjust course and to start looking more closely at organizational targets. Successful criminal prosecutions of organizations can be a significant deterrent that causes organizations to take significant steps to better monitor the behavior of their agents and to prevent criminal conduct in the course of their operations.

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[FN1]. The term "organization" is used throughout this article because, under Alaska criminal law, "organization" encompasses multiple entity types. Alaska Stat. § 11.81.900(b)(43) (2006). Nevertheless, much of the case law and academic work on this topic is couched in terms of "corporations." For the purposes of this article, there is no distinction between these terms and they are used interchangeably.

[FN2]. See Alaska Stat. § 11.16.130 (2006).

[FN3]. See Alaska Stat. § 12.55.035 (2006).

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[FN4]. The court of appeal's recent decision in State v. Greenpeace, Inc., 187 P.3d 499 (Alaska Ct. App. 2008), which is discussed infra Part II.A, will do little to dispel such trepidation.

[FN5]. See Spencer R. Fisher, Corporate Criminal Liability, 41 Am. Crim. L. Rev. 367, 368 (2004) (citations omitted).

[FN6]. The author is not aware of any statistics kept by the Department of Law that quantify how often organizations are charged with crimes. However, the department is small and, anecdotally, it is evident that prosecutors bring charges against organizations infrequently.

[FN7]. State v. Hazelwood, 836 P.2d 943, 944 (Alaska Ct. App. 1992), aff'd in part, rev'd in part, 866 P.2d 827 (Alaska 1993).

[FN8]. See id.

[FN9]. See id. at 945. The negligent discharge of oil is a misdemeanor. Id. at 944.

[FN10]. Id. The court imposed ninety days of suspended jail time and a one thousand dollar suspended fine. Hazelwood was required to serve a one-year period of probation and complete one thousand hours of community work service. Id.

[FN11]. Press Release, Envtl. Prot. Agency, Exxon to Pay Record One Billion Dollars in Criminal Fines and Civil Damages in Connection with Alaskan Oil Spill (Mar. 13, 1991) (on file with author). The U.S. Department of Justice prosecuted both Exxon Corporation and Exxon Shipping Corporation. The plea agreements reached with these companies required Exxon Corporation to plead guilty to a misdemeanor violation of the Migratory Bird Treaty Act and Exxon Shipping Company to plead guilty to misdemeanor violations of the Clean Water Act, Refuse Act, and Migratory Bird Treaty Act. Id.

[FN12]. The author does not mean to criticize the choices made by either state or federal prosecutors in the Exxon Valdez matter. The author was not a party to those decisions but is confident those involved thoroughly and adequately debated the matter.

[FN13]. See Alaska Stat. §§ 4.11.501, 16.205 (2006) (importation of alcohol to dry bush communities); Alaska Stat. § 4.16.030 (2006) (sale of alcohol to already-intoxicated individuals); Alaska Stat. §§ 4.16.051-.052 (2006) (sale of alcohol to people less than twenty-one years of age).

[FN14]. See Alaska Stat. §§ 4.11.501, 4.16.205 (2006) (importation of alcohol to dry bush communities).

[FN15]. See Alaska Stat. §§ 8.54.720, 16.40.290, 16.43.970 (2006).

[FN16]. See Alaska Stat. §§ 16.40.290, 43.970 (2006).

[FN17]. See State v. Whitewater Eng'g Corp., No. 3AN-S00-5235CR (Alaska Super. Ct. indicted July 21, 2000); State v. Thom Fischer, No. 3AN-S00-6147CR (Alaska Super. Ct. indicted July 21, 2000).

[FN18]. Ashby Jones, Pardons Received in Whitewater (No, Not That Whitewater), Wall St. J., January 26, 2008, http://blogs.wsj.com/law/2007/01/26/pardons-received-in-whitewater-no-not-that-whitewater.

[FN19]. Id.

[FN20]. See State v. Whitewater Eng'g Corp., No. 3AN-S00-5235CR (Alaska Super. Ct. entered judgment Nov. 14, 2001). The

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Whitewater case was in the news again at the end of Governor Frank Murkowski's term in office. Governor Murkowski granted the corporation a pardon. See Megan Holland, Company Off Hook Thanks to Pardon; Family Stunned: Man was killed in an avalanche near Cordova in 1999, Anchorage Daily News, Dec. 24, 2007, at A1.

[FN21]. Cf. Bank of the United States v. Deveaux, 9 U.S. (5 Cranch) 61 (1809); Louisville, Cincinnati, and Charleston R.R. Co. v. Leston, 43 U.S. (2 How.) 497 (1844) (recognizing that corporations can sue and be sued but holding that the court would look to the citizenship of the individuals who comprise the corporation to determine jurisdiction); N.Y. Cent. & Hudson River R.R. Co. v. United States, 212 U.S. 481 (1909) (providing a detailed discussion of the development of corporate liability, including criminal liability).

[FN22]. 62 U.S. 202 (1958).

[FN23]. Id. at 210.

[FN24]. Id. at 209-10 ("There is scarcely an object of general interest for which some association has not been formed .... The powers of the corporation are placed in the hands of a governing body selected by members, who manage its affairs, and who appoint agents that exercise its faculties for the accomplishment of the object of its being. But these agents may infringe the rights of persons who are unconnected with the corporation, or who are brought into relations of business or intercourse with it. As a necessary correlative to the principle of the exercise of corporate powers and faculties by legal representatives, is the recognition of a corporate responsibility for the acts of those representatives.").

[FN25]. See Reed v. Home Sav. Bank, 130 Mass. 443, 445 (Mass. 1881) ("The books of reports for a quarter of a century show that a very large proportion of actions of this nature, both for nonfeasance and for misfeasance, are against corporations.")

[FN26]. See Quigley, 62 U.S. at 213-14; Lakeshore & Michigan Ry. Co. v. Prentice, 147 U.S. 101, 116-17 (1893).

[FN27]. 68 Mass. (2 Gray) 339 (Mass. 1854).

[FN28]. Id. at 353 (upholding the indictment for constructing and maintaining a bridge obstructing navigation on the Acushnet River).

[FN29]. 52 N.E. 445, 446 (Mass. 1899). The contempt arose from a newspaper story about an ongoing civil case. Silas Loring had sued the town of Holden seeking compensation for a piece of land taken by the town during a railroad modification project. Id. The offending story included details about how much the town had offered Loring before the filing of the suit and how much money Loring demanded. Neither fact was admissible in the ongoing trial. Id. at 447. When the presiding judge learned of the story, he, on his own initiative, instituted the contempt proceeding, issued subpoenas for the corporations to appear, and held the corporations in contempt when they appeared. Id. at 445-46.

[FN30]. Id. at 446. ("That a corporation may be indicted for a misfeasance as well as for a nonfeasance had been decided in this commonwealth.").

[FN31]. 212 U.S. 481 (1909).

[FN32]. Id. at 494. The corporations had paid illegal rebates to parties that had shipped sugar on the corporation's railway. Id. at 489-91.

[FN33]. Id. at 494.

[FN34]. See United States v. Hilton Hotels Corp., 467 F.2d 1000, 1004-07 (9th Cir. 1972), and cases cited therein. See also

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United States v. Miller, 676 F.2d 359, 362 (9th Cir. 1982) (holding knowledge and acts of company agents could be imputed to company and were sufficient to sustain criminal convictions against company); United States v. Beusch, 596 F.2d 871, 877 (9th Cir. 1979) (holding company liable for criminal acts of agent committed in scope of agent's employment).

[FN35]. 1 Alaska 217 (D. Alaska 1901).

[FN36]. Id. at 219.

[FN37]. Id.

[FN38]. Id. at 222-23.

[FN39]. Id. at 223.

[FN40]. 68 Mass. (2 Gray) 339, 345-46 (1854) (holding that a corporation could be prosecuted for misfeasance and nonfeasance crimes committed by its agents if committed in the scope of the agent's employment and to benefit the corporation).

[FN41]. Interestingly, a Ninth Circuit court hearing an appeal on an Alaska case expressed some reservations about applying the theory of respondeat superior to impute criminal intent to a corporation. In Empire Printing Co. v. Roden, 247 F.2d 8 (9th Cir. 1957), a case concerning libel claims brought by the former territorial governor, treasurer and highway engineer against a Juneau newspaper, the court provided dicta on point. The court of appeals stated that the doctrine of respondeat superior does not generally apply to impose criminal liability because the requisite mens rea cannot be inferred through agency relationships. Id. at 17.

[FN42]. Alaska Crim. Code Rev. Introduction at 11-14 (Preliminary Report 1976). The Commission was made up of legislators, lawyers, judges, law enforcement officers, and correctional agency personnel. Id. at 11.

[FN43]. See id. at 115-16. The original version of the statute considered by the Criminal Code Revision Commission was based on Or. Rev. Stat. § 161.170 (1971) and was similar to N.Y. Penal Law § 20.20 (1965) and Model Penal Code § 2.07 (1962). Id., Commentary at 1116 (Preliminary Report 1976).

[FN44]. See id.

[FN45]. See id.

[FN46]. Alaska Crim. Code Rev., Part 2 at 27-28 (Tentative Draft 1977). The Commentary explains this change: "[T]he considerations which support holding corporations liable for crimes apply equally to organizations which happen to be unincorporated. This conclusion is embodied in the Proposed Federal Criminal Code § 402 and the Revised Arkansas Criminal Code § 41-402." Id. at 37.

[FN47]. Id. at 36. The definition did not include "government" in the list of included entities; the legislature added that term in 1982. H.C.S. C.S.S.B. 535, 12th Leg., 2d Sess. (Alaska 1982).

[FN48]. See id. (emphasis in original) (explaining the Commission's intent in making this change was to "expand the principle of respondeat superior on an organization" under either scenario).

[FN49]. S.C.S. C.S.H.B. 661, 10th Leg., 2d Sess. (Alaska 1978).

[FN50]. See State v. ABC Towing, 954 P.2d 575, 577 (Alaska Ct. App. 1998).

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[FN51]. Alaska Stat. §01.10.060(a)(8) (2006) ("'[P]erson' includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person.").

[FN52]. Alaska Stat. § 11.16.130 (2006).

[FN53]. 954 P.2d 575 (Alaska Ct. App. 1998).

[FN54]. See id. at 576-77.

[FN55]. See id.

[FN56]. Alaska Stat. § 11.81.900(b)(43) (2006). The definition does not include "sole proprietorship." The court of appeals interprets this omission to mean the legislature did not intend to expose such entities to criminal liability in their own right. To the contrary, a sole proprietorship is the alter ego of the sole proprietor and therefore any charges must be alleged against the sole proprietor in his or her individual capacity. ABC Towing, 954 P.2d at 577-78.

[FN57]. 1 William Mead Fletcher et al., Fletcher Cyclopedia of the Law of Private Corporations §§ 1-5 (rev. vol. 2006). The common law fostered this purpose; it did not expose organizations to criminal liability. N.Y. Cent. & Hudson River R.R. Co. v. United States, 212 U.S. 481, 492-93 (1909).

[FN58]. 467 F.2d 1000, 1006 (9th Cir. 1972) (internal citations omitted), cert. denied, 409 U.S. 1125 (1973). The court continued: "Moreover, the strenuous efforts of corporate defendants to avoid conviction, particularly under the Sherman Act, strongly suggests that Congress is justified in its judgment that exposure of the corporate entity to potential conviction may provide a substantial spur to corporate action to prevent violations by employees." Id.

[FN59]. See Steere Tank Lines, Inc. v. United States, 330 F.2d 719, 721 (5th Cir. 1963) ("It is now beyond doubt that a corporation may be held criminally liable.").

[FN60]. That this is the most typical mode of organizational criminal liability is not surprising. Most organizations, do not typically solicit, ratify, adopt criminal conduct, or fail to do something required by law. Alaska Stat. § 11.16.130(a)(1)(B)-(a)(2) (2006).

[FN61]. It was briefly commented on in a third case, Stock v. State, 526 P.2d 3 (Alaska 1974).

[FN62]. 954 P.2d 575 (Alaska Ct. App. 1998).

[FN63]. Id. at 579.

[FN64]. Id. at 577-78.

[FN65]. Further discussion regarding this holding is beyond the scope of this article. However, the author takes issue with the court's reasoning because it needlessly insulates sole proprietorships from criminal liability where one of its agents commits a wrong in furtherance of a business enterprise. The legislature should fix this omission by amending the "organization" definition to specifically include sole proprietorships. See supra note 60 and accompanying text.

[FN66]. 187 P.3d 499 (Alaska Ct. App. 2008).

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[FN67]. Id. at 500.

[FN68]. Id.

[FN69]. Id. at 503-11. The district court also granted a motion for acquittal propounded by the captain of the Arctic Sunrise who had also been convicted. Id. The court of appeals affirmed as to the first count but reversed as to the second. Id.

[FN70]. Id. at 505.

[FN71]. "Stichting" is the Dutch word for "foundation." Id. at 500.

[FN72]. Id. at 501.

[FN73]. Id. at 504.

[FN74]. Id.

[FN75]. Id.

[FN76]. Id. at 505.

[FN77]. See id. at 504. The State further argued that Greenpeace, Inc., Greenpeace International, and SMS were all the same organization but were constructed as separate entities as part of a "shell game" to avoid liability. The court disagreed with this argument as well. Id.

[FN78]. Id. at 505.

[FN79]. See id. at 505-06; see also Alaska Stat. § 11.16.130(a)(1)(B) (2006).

[FN80]. Id. at 506.

[FN81]. Id. This was a somewhat curious conclusion considering the fact that Greenpeace, Inc.'s chief financial officer was on board the Arctic Sunrise at the time of the infractions.

[FN82]. See id. ("It was SMS, not Greenpeace, Inc., that hired and paid for the ship's agent in Portland.... [I]t was SMS's obligation to comply with regulatory requirements for the vessel.").

[FN83]. See Alaska Crim. R. 4(c)(2) (making service difficult by limiting the service of a summons to places "within the jurisdiction of the State of Alaska"); see also Alaska Stat. § 10.06.763 (2006) (service on foreign corporations); Alaska Stat. §10.20.046 (2006) (service on not-for-profit corporations); Alaska Stat. §10.40.130 (2006) (service on religious corporations); and Alaska Stat. §10.50.065 (2006) (service on limited liability companies). But see Alaska Stat. §§10.06.175(b), 06.765 (2006) (allowing the Alaska Commissioner of Commerce, Community and Economic Development to be served if a corporation fails to appoint or maintain a registered agent in the state).

[FN84]. In fact, Alaska's jurisdiction is quite broad. Under section 44.03.010 of the Alaska Statutes, state territorial jurisdiction extends to waters offshore and encompasses the "high seas" to the extent the United States exercises its jurisdiction. The Alaska Supreme Court has interpreted this provision broadly to include all ocean waters seaward of the Alaska coast. See State v. Jack, 125 P.3d 311, 315-16 (Alaska 2005) (allowing defendant to be prosecuted in Alaska for sexual assault that took place onboard

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an Alaska Marine Highway ferry while in Canadian waters during a voyage between Alaska and Washington). Arguably, both entities would have sufficient contacts with the State of Alaska, based on the sailing and operation of the Arctic Sunrise in Alaska waters, to make them subject to the personal jurisdiction of a state court. See Int'l Shoe Co. v. Wash., 326 U.S. 310, 317-19 (1945) (holding contacts exist when the in-state activities of the corporation give rise to the liabilities at issue, or the corporation fails to satisfy obligations that exist due to its in-state activities); Kuk v. Nalley, 166 P.3d 47, 51 (Alaska 2007) (explaining that International Shoe and its progeny significantly broadened the understanding of personal jurisdiction).

[FN85]. See 954 P.2d 575, 577-79 (Alaska Ct. App. 1998). The ABC Towing decision is unsatisfying. Id. The court of appeals favorably compared sole proprietorships and partnerships--both are the alter egos of the proprietor or partners, both exist solely to carry out the business purpose for which they were created, and both are not common law "legal entities." Id. Nevertheless, the court interprets the definition of "organization" in a way that treats the two entities differently, i.e., partnerships can be prosecuted, sole proprietorships cannot. Id. The ruling is defensible from a statutory construction standpoint, but it is unsatisfactory from a public policy standpoint. The same policy arguments that support the prosecution of partnerships for criminal offenses apply to sole proprietorships. See id. There is no reason these entities should be treated differently.

[FN86]. See supra notes 63-81 and accompanying text.

[FN87]. See State v. Lee, 999 P.2d 755, 761 (Alaska 2000) (noting Alaska courts use federal Sherman Act cases to construe Alaska antitrust law); State v. Abbott, 498 P.2d 712, 717 (Alaska 1972) (holding where no Alaska cases are on point, court may rely on federal cases that discuss a similarly worded federal statute); Langfeldt-Haaland v. Saupe Enter., Inc., 768 P.2d 1144, 1147 (Alaska 1989) (Moore, J., dissenting) (noting Alaska courts rely on interpretations of federal rules when interpreting a similarly worded Alaska rule).

[FN88]. See, e.g., Braswell v. United States, 487 U.S. 99, 110 (1988) (citing Bellis v. United States, 417 U.S. 85, 90 (1974)).

[FN89]. Meyer v. Holley, 537 U.S. 280, 285 (2003); Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 756 (1998); see also N.Y. Cent. & Hudson R.R. v. United States, 212 U.S. 481, 494 (1909) ("[A] corporation is held responsible for acts not within the agent's corporate powers strictly construed, but which the agent has assumed to perform for the corporation when employing the corporate powers actually authorized, and in such cases there need be no written authority under seal or vote of the corporation in order to constitute the agency or to authorize the act.").

[FN90]. United States v. Philip Morris USA, Inc., 449 F. Supp. 2d 1, 892-93 (D.D.C. 2006) ("[I]f a corporate agent exercises the authority conferred upon him and performs an act within the course of his employment, the corporation is liable--even if the act was unlawful or was done contrary to instructions or policies, as long as the agent acted with an intent to benefit the corporation."); United States v. Cincotta, 689 F.2d 238, 241-42 (1st Cir. 1982) ('[C]riminal liability may be imposed on the corporation only where the agent is acting within the scope of his employment. That, in turn, requires that the agent be performing acts of the kind which he is authorized to perform, and those acts must be motivated--at least in part--by an intent to benefit the corporation.').

[FN91]. United States v. Hilton Hotels Corp., 467 F.2d 1000 (9th Cir. 1972); see also Bank of U.S. v. Deveaux, 9 U.S. (5 Cranch) 61 (1809); Louisville, Cincinnati & Charleston R.R. Co. v. Leston, 43 U.S. (2 How.) 497 (1844).

[FN92]. 467 F.2d 1000 (9th Cir. 1972).

[FN93]. Id. at 1002.

[FN94]. Id. at 1005.

[FN95]. Id. at 1007 (affirming trial court's ruling excluding a jury instruction that precluded criminal liability where the employee's acts were unauthorized by the corporation).

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[FN96]. Id. ("The purchasing agent was authorized to buy all of appellant's supplies. Purchases were made on the basis of specifications, but the purchasing agent exercised complete authority as to the source. He was in a unique position to add the corporation's buying power to the force of the boycott. Appellant could not gain exculpation by issuing general instructions without undertaking to enforce those instructions by means commensurate with the obvious risks.").

[FN97]. In United States v. Potter, 463 F.3d 9 (1st Cir. 2006), the First Circuit squarely rejected an argument that a corporation might fend off liability by adopting abstract rules that no agent can make an unlawful price-fixing contract or that no driver may exceed the speed limit. Id. at 25-26 (citing United States v. Automated Med. Labs., Inc., 770 F.2d 399, 406 & n. 5 (4th Cir. 1985)). Thus, a corporation may be charged and convicted, even if there is a specific company directive forbidding the questioned acts. The court explained that this is simply an extension of familiar agency law principles: the principal is held liable for acts done on its account by an agent which are customarily actions the agent is authorized to perform. Potter, 463 F.3d at 26 (citing H. Reuschlein & Gregory, The Law of Agency and Partnership 167 (1990) (footnote omitted)).

The Fourth Circuit adopted very similar reasoning in United States v. Basic Constr. Co., wherein it rejected a corporation's attempt to insulate itself from liability using evidence that the corporation had expressly forbidden the conduct at issue. 711 F.2d 570, 573 (4th Cir. 1983), cert. denied, 464 U.S. 956 (1983).

The Restatement (Second) of Agency explains the general rule these decisions expound by way of an illustration: P directs the salesman in selling guns, never to insert a cartridge while exhibiting a gun. A, a salesman, does so, and negligently harms a bystander. Notwithstanding P's instructions otherwise, the salesman's act is within the scope of employment. Restatement (Second) of Agency § 230, illus. 1 (1958) (forbidden acts).

[FN98]. United States v. Beusch, 596 F.2d 871, 878 (9th Cir. 1979).

[FN99]. See, e.g., Basic Constr. Co., 711 F.2d at 572-73 (allowing a jury to consider a company's antitrust compliance policy in the prosecution of the company for Sherman Act antitrust violations by its employees who rigged bidding on state road paving contracts); Potter, 463 F.3d at 26 (allowing a jury to consider a company president's specific instructions to a subordinate not to make illegal payments in considering fraud charges against company who bribed a state representative).

[FN100]. 596 F.2d at 877.

[FN101]. Id.; see also Liu v. Republic of China, 892 F.2d 1419, 1428-29 (9th Cir. 1989) (having purpose to benefit the principal is required, rather than actual benefit, if agent's actions are to be imputed to the principal).

[FN102]. 770 F.2d 399 (4th Cir. 1985).

[FN103]. Id. at 407-08.

[FN104]. Id. at 407 (emphasis in original; internal citations omitted).

[FN105]. 307 F.2d 120 (5th Cir. 1962).

[FN106]. Id. at 129. The employees falsified documents related to shipments of oil through a pipeline. The employees personally profited by this deceit, but their employer, the owner of the oil, lost money. Id.

[FN107]. 909 P.2d 354 (Alaska 1996).

[FN108]. No. S-8368, 1999 WL 33958767 (Alaska Jan. 27, 1999).

[FN109]. 120 P.3d 1053 (Alaska 2005).

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[FN110]. 1999 WL 33958767, at *2 (citing Los Ranchitos v. Tierra Grande, Inc., 861 P.2d 263 (N.M. App. 1993)).

[FN111]. 821 F.2d 844 (1st Cir. 1987).

[FN112]. Id. at 856 (internal citations omitted) (quoting United States v. T.I.M.E.-D.C., Inc., 381 F.Supp. 730, 738 (W.D. W. Va. 1974) ("[A] corporation cannot plead innocence by asserting that the information obtained by several employees was not acquired by any one individual who then would have comprehended its full import. Rather the corporation is considered to have acquired the collective knowledge of its employees and is held responsible for their failure to act accordingly.")).

[FN113]. See Riss & Co. v. United States, 262 F.2d 245, 250 (8th Cir. 1958); Inland Freight Lines v. United States, 191 F.2d 313, 315 (10th Cir. 1951); Camacho v. Bowling, 562 F. Supp. 1012, 1025 (N.D. Ill. 1983); United States v. T.I.M.E.-D.C., Inc., 381 F. Supp. 730, 738-39 (W.D. W. Va. 1974); United States v. Sawyer Transp., Inc., 337 F. Supp. 29 (D. Minn. 1971), aff'd, 463 F.2d 175 (8th Cir. 1972); People v. Am. Med. Ctrs. of Mich., Ltd., 324 N.W.2d 782, 793 (Mich. Ct. App. 1982); State v. Zeta Chi Fraternity, 696 A.2d 530, 535 (N.H. 1997). The author is unaware of any similar Alaska or Ninth Circuit cases.

[FN114]. H. Lowell Brown, Successor Corporate Criminal Liability: The Emerging Federal Common Law, 49 Ark. L. Rev. 469, 471 (1996) (citing Okla. Natural Gas Co. v. Okla., 273 U.S. 257, 259 (1927)).

[FN115]. Id.

[FN116]. 359 U.S. 271 (1959).

[FN117]. Id. at 271.

[FN118]. Id. at 272-73.

[FN119]. Id. at 272.

[FN120]. See id. at 272-74. The applicable Maryland statute provided that dissolution did not "'abate any pending suit or proceeding by or against the corporation.'" Id. at 273 (citing Flack's Md. Code Ann., art. 23, § 78(a) (1951)). The applicable Delaware statute provided that "any 'proceeding' begun by or against a corporation before or within three years after dissolution shall continue 'until any judgments, orders, or decrees therein shall be fully executed.'" Id. (citing Del. Code Ann. tit. 8, § 278 (1953)).

[FN121]. Id. at 273-74.

[FN122]. See, e.g., United States v. Mobile Materials, Inc., 776 F.2d 1476, 1479-80 (10th Cir. 1985) (holding Sherman Act and mail fraud prosecutions of Oklahoma corporation and partnership, both of which dissolved prior to their indictments, did not abate under Oklahoma statutory law); United States v. Polizzi, 500 F.2d 856, 906-09 (9th Cir. 1974) (Duniway, J., concurring) (noting that criminal charges against surviving corporation of a merger, formed when a former New York company merged into its New York parent corporation, that arose from the criminal conduct of the former subsidiary, did not abate under New York corporation law which contains a saving statute preserving claims against merged or consolidated corporations); United States v. San Diego Grocers Ass'n, Inc., 177 F. Supp. 352, 354-55 (C.D. Cal. 1959) (holding that Sherman Act prosecution against California corporations that dissolved before indictments were filed did not abate under California Code where Code contains section extending life of dissolved corporations for the purpose of defending actions against it); Commonwealth v. Lavelle, 555 A.2d 218, 230 (Pa. Super. Ct. 1989) (holding that state corruption prosecution against successor corporation did not abate under Pennsylvania law where there was a de facto merger or fraudulent transaction).

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[FN123]. 973 P.2d 93 (Alaska 1999).

[FN124]. Id. at 94-95.

[FN125]. Id. at 94.

[FN126]. Id.

[FN127]. Id.

[FN128]. Id.

[FN129]. See id. at 95 n.4. (citing Hood Bros. Partners, L.P. v. USCO Distrib. Servs. Inc., 140 F.3d 1386, 1387-88 (11th Cir. 1998) (finding that a survival statute extended the life of a corporation for litigation purposes)).

[FN130]. Alaska Stat. § 10.06.678(a)-(b) (2006).

[FN131]. Gossman, 973 P.2d at 95-99. If Gossman were to obtain a judgment against Greatland, he could seek to recover the damages from Anadrill because Anadrill purchased all of Greatland's liabilities. Id. at 99.

[FN132]. 359 U.S. 271 (1959).

[FN133]. See Odom v. Lee, 999 P.2d 755, 761 (Alaska 2000) (Alaska courts use federal Sherman Act cases to construe Alaska antitrust law); see also State v. Abbott, 498 P.2d 712, 717 (Alaska 1972) (where no Alaska cases on point, court may rely on federal cases discussing similarly worded federal statute).

[FN134]. See United States v. Polizzi, 500 F.2d 856, 908 (9th Cir. 1974) (Duniway, J. concurring); People v. Boyce, 509 N.E.2d 776, 778 (Ill. App. 2d Dist. 1987); People v. Pymm Thermometer Corp., 591 N.Y.S.2d 459, 460 (N.Y. App. Div. 1992).

[FN135]. See Univ. of Alaska v. Thomas Architectural Products, Inc., 907 P.2d 448, 450 (Alaska 1995) (recognizing that Washington survival statutes supplant the common law rule of abatement and prolong the life of a corporation so that it can be sued); Hartwell v. State, 423 P.2d 282, 283 (Alaska 1967).

[FN136]. Gossman, 973 P.2d 95-99.

[FN137]. See id. Under Alaska law, corporations, prior to dissolution, must provide for their outstanding liabilities by purchasing liability insurance, setting aside assets, or having a successor assume its liabilities. Id. at 99 (citing §§Alaska Stat. 10.06.620(2), 06.668(1)). Anadrill had assumed all of Greatland's liabilities and this would include any judgment plaintiff Gossman obtained from his lawsuit. Id. The State would face a similar situation if it successfully prosecuted a dissolved corporation. Depending on how the corporation provided for its post-dissolution liabilities, the State may try to collect the penalties imposed against an insurance policy, against a successor corporation, or against a finite pool of assets set aside prior to the corporation's dissolution. In that final scenario, the assets might be insufficient, particularly if the corporation left numerous creditors, and the State could get stuck with a judgment it cannot collect (or not easily collect without some veil-piercing litigation).

[FN138]. Alaska Stat. §10.20.450 (2006).

[FN139]. Alaska Stat. §10.50.440 (2006).

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[FN140]. Melrose Distillers, Inc. v. United States, 359 U.S. 271, 274 (1959) (holding that corporations cannot be sent to jail, they can only be fined).

[FN141]. Under section 12.55.035(c)(1) of the Alaska Statutes, an organization can be fined up to a million dollars for felony offenses or misdemeanor offenses that result in death, up to two hundred thousand dollars for Class A misdemeanor offenses, up to twenty five thousand dollars for Class B misdemeanor offenses, and up to ten thousand dollars for violations. Alternatively, greater fines can be imposed under sections 12.55.035(c)(2) or (3) of the Alaska Statutes, which allow for fines up to three times the pecuniary gain realized, or three times the damages caused by the offense.

[FN142]. Alaska Stat. §12.55.035(e) (2006).

[FN143]. The court considers a defendant's prospects for rehabilitation, the need to confine or isolate the defendant to prevent further public harm, the extent to which the sentence to be imposed will deter the defendant as well as other members of the community from future criminal conduct, and the extent to which the sentence will reaffirm societal norms or the community's condemnation of the conduct. See Alaska Stat. § 12.55.005; State v. Chaney, 477 P.2d 441, 443 (Alaska 1970).

[FN144]. Defense attorneys commonly argue that the State should not seek the full measure of fines authorized by section 12.35.055 of Alaska Statutes because doing so would preclude the organization from devoting resources to correct the problem that led to the violation, or to pay restitution. This is a fair argument in many instances.

[FN145]. Probation is imposed by the sentencing court and can be up to ten years. Alaska Stat. § 12.55.090(c) (2006).

[FN146]. In response to Congressional oversight hearings regarding the mismanagement of federal contracts, the Office of Management and Budget developed a government-wide debarment and suspension system in the early 1980s. See Brief History of EPA's Debarment Program, http:// www.epa.gov/ogdunix1/sdd/history.htm (last visited Oct. 9, 2008).

[FN147]. The EPA is statutorily required to debar companies convicted of violations of section 508 of the Clean Water Act or section 306 of the Clean Air Act. The EPA also has the discretionary authority to suspend or debar companies based on indictments, information or adequate evidence involving environmental crimes, contract fraud, embezzlement, theft, forgery, bribery, poor performance, non-performance, or false statements. See Suspension and Debarment Program, http://www.epa.gov/ogdunix1/sdd/debarment.htm (last visited Oct. 10, 2008.) Other executive branch agencies also have the authority to suspend and debar.

[FN148]. Based on the Author's anecdotal observations that the federal government is very active in Alaska and therefore contracts with many Alaskan companies for services and products.

[FN149]. While the state has legislative authority to debar entities, it rarely does so. State debarment is controlled by sections 36.30.635-36.30.685 of the Alaska Statutes. The grounds for debarment are set out in section 36.30.640 of the Alaska Statutes and include a broad range of unethical or fraudulent conduct. Nevertheless, these consequences are rarely, if ever, invoked. In response to an inquiry to the Alaska Department of Law, the Department told the Author of only one state suspension or debarment matter. In the Author's view, the State, by failing to more proactively utilize its debarment authority, forgoes a powerful deterrence tool.

[FN150]. Communities can elect to ban the sale or possession of alcohol. Alaska Stat. § 4.11.491 (2006).

[FN151]. The Alaska Statutes criminalize such conduct. Alaska Stat. §§ 4.11.499, 16.200(e) (2006).

[FN152]. Significantly, the plane used to illegally transport the alcohol could be subject to forfeiture. Alaska Stat. §

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4.16.220(a)(3) (2006).

[FN153]. This presumes the agent does not have a personal Fifth Amendment right to assert.

[FN154]. 450 F.3d 46 (1st Cir. 2006).

[FN155]. 487 U.S. 99 (1988).

[FN156]. 450 F.3d at 49-50 (holding that the Fifth Amendment privilege is a personal privilege enjoyed only by individuals). The Fifth Amendment's privilege "'is designed to prevent the use of legal process to force from the lips of the accused individual the evidence necessary to convict him or to force him to produce and authenticate any personal documents or effects that might incriminate him.'" Id. (quoting United States v. White, 322 U.S. 694, 698 (1944)). This is true even if the records incriminate the custodian personally. Id. (citing Bellis v. United States, 417 U.S. 85, 88 (1974)).

[FN157]. 718 P.2d 962, 967-68 (Alaska 1986).

[FN158]. See id. at 968.

[FN159]. Id. ("While we are not limited by the federal courts in interpreting our own constitution, in this instance we are not persuaded by [the appellant's] arguments to interpret the Alaska self-incrimination provision more broadly than the federal courts have construed the fifth amendment.").

[FN160]. See also United States v. Petraia Mar., Ltd., 489 F. Supp. 2d 90, 94-99 (D. Me. 2007) (discussing the analogous provision under the federal rules).

[FN161]. See Klawock Heenya Corp. v. Dawson Constr., 778 P.2d 219, 220 (Alaska 1989) (the exclusion covers statements that "merely 'concern' the employee's duties" (citations omitted)).

[FN162]. The rule provides, "[i]f a defendant corporation fails to appear after being duly summoned, a plea of not guilty shall be entered by the court if the court is empowered to try the offense for which the summons was issued and the court may proceed to trial and judgment without further process." Alaska R. Crim. Proc. 4(a)(3). The rule does not define "corporation" and the author is not aware of any case that interprets this rule. Admittedly, a court could interpret "corporation" to be narrower than the term "organization" as it is used in section 11.16.130 (2006) of the Alaska Statutes. It is therefore unclear whether other types of organizations could be tried in absentia.

[FN163]. Alaska Pattern Jury Instruction 1.07, "Evaluation of Evidence," is one such example. It instructs jurors "not be influenced by sentiment, prejudice, passion or public opinion" in evaluating the evidence. Criminal Pattern Jury Instruction Committee, Pattern Jury Instruction 1.07, available at http://www.state.ak.us/courts/ins/1.07.doc.

[FN164]. This is true notwithstanding Alaska Pattern Jury Instruction 1.48, "Corporate Defendant," which instructs juries not to treat a corporate defendant any differently than it would an individual defendant. Criminal Pattern Jury Instruction Committee, Pattern Jury Instruction 1.48, available at http://www.state.ak.us/courts/ins/1.48.doc.

[FN165]. To be sure, if such options exist, defense counsel will suggest it to the prosecution.

[FN166]. This list is not exhaustive or universally applicable. Depending on the circumstances, other factors not listed may be relevant and some listed factors may be irrelevant.

[FN167]. A sentencing court may suspend criminal fines for the period of probation. Alaska Stat. §§12.55.080, 12.55.090

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(2006). Such "suspended fines" are used as a "hammer" to force a defendant to comply with the conditions of probation the court imposes. If, during the probation period, the defendant does not comply with these conditions, the prosecution can petition the sentencing court to revisit the sentence and impose all or a portion of the sentence that was suspended. Those determinations are made by the trial judge pursuant to a preponderance of the evidence standard. See Wallace v. State, 829 P.2d 1208, 1210 (Alaska Ct. App. 1992); Andrew v. State, 835 P.2d 1251, 1254 (Alaska Ct. App. 1992).

[FN168]. Alaska Stat. §4.16.051 (2006).

[FN169]. As explained supra Part IV.A, organizations do not have Fifth Amendment protection and may be compelled to make statements against their interest.

[FN170]. These defendants were prosecuted as codefendants under case numbers 3DI-07-016CR, 3DI-07-017CR, 3DI-07-018CR, 3DI-07-019CR, respectively (Alaska Dist. Ct. information filed Jan. 5, 2007).

[FN171]. Information at 7, State v. Strategica Imp.-Exp. Fin. Group, LLC, 3DI-07-018CR (Nov. 26, 2007).

[FN172]. Id. at 18.

[FN173]. Id.

[FN174]. Id. at 4, 7-8.

[FN175]. Id. at 7-10 .

[FN176]. Id.

[FN177]. Id. at 15.

[FN178]. Id. at 17.

[FN179]. Id.

[FN180]. Id. at 18.

[FN181]. See Alaska Admin. Code tit. 18, § 34.030 (2006); Alaska Stat. § 17.20.305 (2006).

[FN182]. See Alaska Stat. § 17.20.305 (2006).

[FN183]. Information at 1-2, State v. Strategica Imp.-Exp. Fin. Group, LLC, 3DI-07-018CR (Nov. 26, 2007).

[FN184]. State v. Jeremy Oliver, 3DI-07-015CR (Alaska Dist. Ct. judgment entered Nov. 26, 2007); State v. Wild Alaska Seafood, LLC, 3DI-07-016CR (Alaska Dist. Ct. judgment entered Nov. 26, 2007); State v. Strategica Imp.-Exp. Fin. Group, 3DI-07-017CR (Alaska Dist. Ct. judgment entered Nov. 26, 2007).

[FN185]. State v. Oliver, 3DI-07-015CR (Alaska Dist. Ct. judgment entered Nov. 26, 2007); State v. Wild Alaskan Seafood Co., LLC, 3DI-07-016CR (Alaska Dist. Ct. judgment entered Nov. 26, 2007).

[FN186]. Information at 8-11, State v. Strategica Imp.-Exp. Fin. Group, LLC, 3DI-07-018CR (Nov. 26, 2007).

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[FN187]. Though Oliver had few assets, there was a financial interest that the Author suspects prompted Oliver to plea the case on his behalf and on behalf of Wild Alaskan Seafood Company. When Oliver formed that company, he included his father Michael, a real estate agent in California, as a member. Information at 7, State v. Strategica Imp.-Exp. Fin. Group, LLC, 3DI-07-018CR (Nov. 26, 2007). Oliver's father had assets and was troubled about his potential financial exposure for the company's liabilities. The father signed off on the plea agreement for Wild Alaskan Seafood Company on the understanding that he would not be a prosecution target and would most likely not have to personally satisfy the restitution judgment entered against Wild Alaskan Seafood Company. Michael Oliver Aff., State v. Wild Alaska Seafood, LLC, 3DI-07-016CR.

[FN188]. State v. Strategica Imp.-Exp. Fin. Group, LLC, 3DI-07-018CR (Alaska Dist. Ct. judgment entered Nov. 26, 2007). Strategica's restitution was paid up-front. The plea agreement required Strategica to pay the total restitution amount prior to the company's change of plea and sentencing. Id.

[FN189]. State v. Enis, 3DI-07-019CR (Alaska Dist. Ct. dismissal signed Nov. 23, 2007).

[FN190]. Both Enis and Strategica warranted prosecution for the same reasons. The discussion herein is limited to Strategica because of the focus of this article on organizational criminal liability.

[FN191]. Salmon processing is by its very nature a risky undertaking. Catches, and the market, vary from year to year and can always be impacted by factors--fish counts, weather events, economic uncertainties--that are beyond anyone's control.

[FN192]. Information at 6-8, 11, State v. Strategica Imp.-Exp. Fin. Group, LLC, 3DI-07-018CR (Nov. 26, 2007).

[FN193]. Id. at 18.

[FN194]. Id. at 8.

[FN195]. See, e.g., Press Release, Sarah Palin, Governor, State of Alaska, Palin Asks for Changes to Fish Farm Proposal (Apr. 4, 2007), available at http://gov.state.ak.us/archive-51004.html.

[FN196]. For example, in pollution cases, resolutions often require defendant companies to implement environmental compliance management systems-- detailed plans that dictate the specific procedures and safety measures the company is required to implement for a period of time. These compliance agreements are typically more stringent than any planning or contingency plan requirements imposed by statute or regulation. In other words, to resolve the criminal charges, organizations will agree to be far more proactive in guarding against future infractions. Such agreements are not only helpful, but also provide good publicity for both the organization and the prosecution.

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END OF DOCUMENT

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HB

381

SENATE COMMITTEE REPORT

DATE: 4/13/10

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 381(JUD)

HB 381 SELF DEFENSE

"An Act relating to self defense in any place where a person has a right to be."

and recommends:

[ ] be **replaced** with [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt _____Letter of Intent

[ ] further referral to _____Committee

SENATE BILL:
[ ] Same Title
[ ] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#
LAW			✓		3
DPS				✓	1

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Wielechowski			✓	
	EGAN			✓	
	McGuire	✓			
CHAIR:	French			✓	

HB381

1. Rescind action in reporting the bill out of committee with the SCS.

OK

2. Rescind action in adopting conceptual amendment

OK

3. Move CS for HB381 (JUD) [the bill that came to us] out of committee w/individual recs and attached.

OK

HB36:

1. Adopt SCS for HB36 (backslash "T") .

2. Move out with individual recs and attached fiscal notes.

26-LS1534\S.2
Luckhaupt
4/16/10

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 381(JUD)

Page 2, line 3:

Delete all material and insert:

"**(5) in any other place where the person has a right to be and the person reasonably believes that the danger of harm under (a)(1) - (7) of this section is imminent and can only be avoided by the use of deadly force**."

3255

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax

Pages (including cover sheet): 1

Date: April 16, 2010

To: Jerry Luckhaupt
From: Cindy Smith

RE: Amendment to HB381

Please draft the following amendment to HB381:

Add at the end of (5):

Provided, that such person may use deadly force against an intruder or attacker in a place that is not his or her residence without a duty to retreat only if the person reasonably believes that he or she or another is in imminent danger of death or serious bodily harm from which he or she or another can only be saved by the use of deadly force against the intruder or attacker.

Senator Hollis French

Capitol Room 417
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amendment #1 adopted

HB 381

Suggestions for rewriting the last sentence

The bill would add a section to AS 11.81.335(b), which provides that a person has no duty to retreat if the person is:

(5) "in any place that the person has a right to be"

Could add the language below to following the word "be" at the end of (5):

(1) provided, that such person may use deadly force against an intruder or attacker in a place that is not his or her residence without a duty to retreat only if the person reasonably believes that he or she or another is in imminent danger of death or serious bodily harm from which he or she or another can only be saved by the use of deadly force against the intruder or attacker.

OR

(2) provided that such person may no use force unless the person has first asked the attacker to desist and has given verbal warning before using deadly force.

OR

Don't add (5), but add a section which reads

(3)

(c) In a prosecution in which a person used deadly force without retreating under circumstances other than those described in (b)(1) –(4), it is an affirmative defense that the person was in a place that the person had a right to be and was otherwise justified in using deadly force.

(d) Where a person raises an affirmative defense under (c) the jury may consider whether the failure to retreat was reasonable under the circumstances.

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

SEAN PARNELL, GOVERNOR

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April 15, 2010

The Honorable Hollis French
Alaska State Legislature
Chair, Senate Judiciary Committee
Alaska State Capitol, Room 417
Juneau, AK 99801

Re: HB 381 – Self-Defense

Dear Senator French:

Attached please find copies of the pattern jury instruction which is given in cases involving use of deadly force in defense of self or others. Since the instruction refers to the use of non-deadly force, I have also attached that instruction.

I wish to take this opportunity to clarify an earlier document which was sent to your committee. We had forwarded a letter from Assistant Attorney General John Skidmore to your committee. Mr. Skidmore's letter referenced an earlier version of HB 381. It is no longer relevant as to the portions of the bill which have been changed, and is pertinent only to the issues which remain regarding the duty to retreat. I apologize for any confusion this may have caused.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: Susan McLean
Susan McLean
Division Director

cc: Senate Judiciary Committee Members
Representative Mark Neuman

The law of self defense regarding the use of deadly force is as follows:

A defendant may use deadly force upon another person when and to the extent the use of non-deadly force in self defense is justified, and the defendant reasonably believes the deadly force is necessary for self defense against [death] [serious physical injury] [kidnapping] [sexual assault in the first degree] [sexual assault in the second degree] [robbery in any degree].[However, a defendant may not use deadly force in self defense if the defendant knows that, with complete personal safety and with complete safety as to others, the defendant can avoid the necessity of using deadly force by retreating. [This "duty to retreat" does not apply if the defendant is [on premises which the defendant owns or leases, and the defendant is not the initial aggressor] [a peace officer acting within the scope and authority of the officer's employment] [assisting someone whom the defendant reasonably believes is a peace officer in making an arrest or terminating or preventing an escape].]]

Unless the state has proven beyond a reasonable doubt that the defendant did not act in self defense, you shall find the defendant not guilty.

USE NOTE

This instruction must be given together with instruction 11.81.330 (use of nondeadly force in self defense).

The following terms are defined in other instructions:

"deadly force" – 11.81.900(b)
"force" - 11.81.900(b)
"leased" – 11.81.900(b)
"nondeadly force" - 11.81.900(b)
"peace officer" – 11.81.900(b)
"physical injury" – 11.81.900(b)
"premises" – 11.81.900(b)
"serious physical injury" – 11.81.900(b)

The decision about whether to instruct the jury on self defense belongs to the trial judge. The defendant bears the burden of producing some evidence in support of a claim of self defense before the court must give the instruction. The court need not give an instruction if the only basis for a self defense claim is speculation. Hamilton v. State, 59 P. 3d 760 (Alaska App. 2002). The "some evidence" burden, however, is not a heavy one, and is satisfied when the evidence, viewed in the light most favorable to the defendant, might arguably lead a juror to entertain a reasonable doubt as to the defendant's guilt. Paul v. State, 655 P.2d 772, 775 (Alaska App. 1982). Even a weak or implausible self defense claim is a question for the jury, and the trial judge should not evaluate the credibility, strength, or weight of evidence in determining whether the burden has been met. Folger v. State, 648 P.2d 111, 113 (Alaska App. 1982); Paul v. State, 655 P.2d at 776. "Some evidence" may consist, for example, solely of the uncorroborated testimony of the defendant. Brown v. State, 698 P.2d 671, 674 (Alaska App. 1985). But the defendant need not testify so long as there is other evidence of self defense. Blackhurst v. State, 721 P.2d 645 (Alaska App. 1986).

In determining whether there is some evidence of self defense, the court must examine every element of the justification, depending upon the particular facts of the case. For example, the court must evaluate whether there is some evidence that (1) the defendant actually believed the use of nondeadly force was necessary, and (2) a reasonable person would have held such a belief under the same circumstances. Weston v. State, 682 P.2d 1119, 1121 (Alaska, 1984). Similarly, it may be necessary in a particular case to determine whether there is some

evidence that the defendant was not an initial aggressor. Brown v. State, 698 P.2d 671, 673-74 (Alaska App. 1985).

The definition of "force" in AS 11.81.900(b) includes actual bodily impact, restraint, or confinement, as well as the threat of imminent bodily impact, restraint, or confinement. Thus, self defense may apply where a defendant reasonably perceived a threat of harm, so long as the perceived harm was imminent. Ha v. State, 892 P.2d 184, 194 (Alaska App. 1995).

The reasonableness of a defendant's beliefs must be evaluated by the jury based on the circumstances of the situation facing the defendant, including any relevant knowledge the defendant had about the other person; physical attributes of all persons involved (including the defendant); and any prior experiences that could provide a reasonable basis for the defendant's beliefs. Ha v. State, 892 P.2d 184, 194-95 (Alaska App. 1995). Reasonable belief means that a reasonable person would have held such a belief under the same circumstances. Weston v. State, 682 P.2d 1119, 1121 (Alaska 1984). A defendant's distorted perceptions due to mental illness, however, may not be a factor in evaluating the reasonableness of the defendant's beliefs. Ha v. State, 892 at 195-96.

This pattern instruction may require slight modification when a defendant claims that an act of self defense was prompted by the danger posed by a group of attackers, and not just the danger posed by the alleged victim named in the charging document. Under such circumstances, the defendant is entitled to have the jury assess the defendant's actions in light of the total danger posed (or apparently posed) by the group. Allen v. State, 51 P.3d 949, 958-59 (Alaska App. 2002).

The law of self-defense regarding the use of nondeadly force is as follows:

A defendant may use nondeadly force upon another when and to the extent the defendant believes it is necessary for self-defense against what the defendant believes to be the use of unlawful force by the other person. The defendant's beliefs must be reasonable under the circumstances.

However, a defendant may not use nondeadly force in self-defense if

(1) the defendant used the force in mutual combat not authorized by law; or

(2) the defendant provoked the other's conduct with intent to cause physical injury to the other; or

(3) the defendant was the initial aggressor; or

(4) the force used was the result of using a deadly weapon or dangerous instrument the defendant possessed while [acting alone or with others to further a felony criminal objective of the defendant or one or more other defendants] [a participant in a felony transaction or purported transaction or in immediate flight from a felony transaction or violation of AS 11.71] [acting alone or with others in revenge for, retaliation for, or response to actual or perceived conduct by a rival or perceived rival, or a member or perceived member of a rival group, if the defendant,

or the group on whose behalf the defendant is acting, has a history or reputation for violence among civilians.]

In any of these circumstances, the defendant may use nondeadly force if the defendant has withdrawn from the encounter and effectively communicated the withdrawal to the other person and the other person persists in continuing the incident by the use of unlawful force.

Unless the state has proven beyond a reasonable doubt that the defendant did not act in self-defense, you shall find the defendant not guilty.

USE NOTE

The following terms are defined in other instructions:

"deadly force" – 11.81.900(b)
"force" - 11.81.900(b)
"nondeadly force" - 11.81.900(b)

In circumstances where the exceptions set forth in the third paragraph are not applicable, those portions may be deleted.

The decision whether to instruct the jury on self-defense belongs to the trial judge. The defendant bears the burden of producing some evidence in support of a claim of self-defense before the court must

give the instruction. The court need not give an instruction if the only basis for a self-defense claim is speculation. Hamilton v. State, 59 P. 3d 760 (Alaska App. 2002). The "some evidence" burden, however, is not a heavy one, and is satisfied when the evidence, viewed in the light most favorable to the defendant, might arguably lead a juror to entertain a reasonable doubt as to the defendant's guilt. Paul v. State, 655 P.2d 772, 775 (Alaska App. 1982). Even a weak or implausible self-defense claim is a question for the jury, and the trial judge should not evaluate the credibility, strength, or weight of evidence in determining whether the burden has been met. Folger v. State, 648 P.2d 111, 113 (Alaska App. 1982); Paul v. State, 655 P.2d at 776. "Some evidence" may consist, for example, solely of the uncorroborated testimony of the defendant. Brown v. State, 698 P.2d 671, 674 (Alaska App. 1985). But the defendant need not testify so long as there is other evidence of self-defense. Blackhurst v. State, 721 P.2d 645 (Alaska App. 1986).

In determining whether there is some evidence of self-defense, the court must examine every element of the justification, depending upon the particular facts of the case. For example, the court must evaluate whether there is some evidence that (1) the defendant actually believed the use of nondeadly force was necessary, and (2) a reasonable person would have held such a belief under the same circumstances. Weston v. State, 682 P.2d 1119, 1121 (Alaska, 1984). Similarly, it may be necessary in a particular case to determine whether there is some evidence that the defendant was not an initial aggressor. Brown v. State, 698 P.2d 671, 673-74 (Alaska App. 1985).

The definition of "force" in AS 11.81.900(b) includes actual bodily impact, restraint, or confinement, as well as the threat of imminent bodily impact, restraint, or confinement. Thus, self-defense may apply where a defendant reasonably perceived a threat of harm, so long as the perceived harm was imminent. Ha v. State, 892 P.2d 184, 194 (Alaska App. 1995).

The reasonableness of a defendant's beliefs must be evaluated by the jury based on the circumstances of the situation facing the defendant,

including any relevant knowledge the defendant had about the other person; physical attributes of all persons involved (including the defendant); and any prior experiences that could provide a reasonable basis for the defendant's beliefs. Ha v. State, 892 P.2d 184, 194-95 (Alaska App. 1995). A defendant's distorted perceptions due to mental illness, however, may not be a factor in evaluating the reasonableness of the defendant's beliefs. Id. at 195-96.

This pattern instruction may require slight modification when a defendant claims that an act of self-defense was prompted by the danger posed by a group of attackers, and not just the danger posed by the alleged victim named in the charging document. Under such circumstances, the defendant is entitled to have the jury assess the defendant's actions in light of the total danger posed (or apparently posed) by the group. Allen v. State, 51 P.3d 949, 958-59 (Alaska App. 2002).

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

SEAN PARNELL, GOVERNOR

Mailing: 310 K Street, Suite 308
Anchorage, Alaska 99501
Phone: (907) 269-6250
Fax: (907) 269-7939

April 14, 2010

Hon. Hollis French
Chair, Senate Judiciary Committee
Alaska State Capitol, Room 417
Juneau, Alaska 99801

Re: House Bill 381

Dear Chairman French:

I am writing to express my serious concern over the current language in House Bill 381. Every experienced prosecutor with whom I have spoken about this bill uniformly agrees that it would promote violence and be a bad idea for our state. We believe that as drafted this bill will ***encourage*** unnecessary violence in our state. Whatever source one thinks our laws should be drawn from – the ten commandments which say "thou shall not kill," simple morality, utilitarianism principles of the greater good, or simply the concept that life is sacred –this bill would encourage the needless taking of human life.

AS 11.81.335(b) as currently written sets forth the duty to retreat before resorting to deadly force. It requires that if "with complete personal safety and with complete safety to others being defended, the person can avoid the necessity of using deadly force by leaving the area" then the person must do so. This avoids the ***unnecessary*** loss of life and encourages our citizens to seek ways other than violence to resolve disputes. The addition of subsections 5 and 6 to this statute eradicates the duty to retreat - in fact should they be enacted, there would no longer be a duty to retreat in Alaska. That is to say if person A could avoid killing person B by walking away, he/she would no longer be required to do so, but instead would be authorized ***by law*** to kill person B. This does not promote the protection of our citizens or suggest that Alaska as a state places a high value on life itself. While this is highly unlikely to have been the goal of the bill's sponsors, it is nevertheless the result of what has been proposed. This is best explained by closely examing the language of the proposed changes and additions.

Section 1 of the bill proposes amending AS 11.81.335(b) by adding a subsection (5) that would say there would be no duty to retreat when the person is "in a vehicle" owned, leased, used, or even just occupied with the owner's consent. Here are but just three examples of how this would encourage violence:

First example:

A person picks up a hitchhiker, or offers a ride to someone, and, for whatever reason, a confrontation arises while in the vehicle such that deadly force could be used, but for the duty to retreat. Under the current law the hitchhiker must leave your vehicle if he knows he can do so safely. Under the proposed amendment, that hitchhiker would be authorized to kill the driver instead -- even if he could have simply walked away. These facts are similar of a recent murder trial in Anchorage, but they are close. The defendant was convicted of and sentenced for second-degree murder. The case is now on appeal. Why would we want to say killing another person is okay when it could be avoided? Why would we want to authorize the taking of a life when one could walk away in complete safety?

Second Example:

Joe Smith drives to a party. At the party he gets into an altercation and is thrown out of the party. He goes to his car and gets inside to leave. Before leaving, Mr. Smith sees the person with whom he got into the altercation. Though Mr. Smith is in his car, behind the wheel and ready to leave, he fears the other guy may come after him. Instead of driving off – which he could do with complete personal safety, he gets out of his car and grabs a shotgun from the trunk and kills the other man. Again, these are facts similar to a recent murder trial in Anchorage. The defendant was convicted of and sentenced for manslaughter. The case is now on appeal. This is yet another situation in which our current law requires our citizens to walk away if they can do so with safety, but this proposed change in the law would authorize killing another human being instead.

Third Example:

An occupant in car A points a gun at the occupant in car B. If the occupant in car B can drive away with complete safety, then under the current law he must do so. Under the proposed change, the driver in car B would be authorized by this bill to open fire instead of driving away. The law of self-defense in Alaska requires the state to prove beyond a reasonable doubt a defendant's claim of self-defense is not true. It is difficult to prove a negative. If the state cannot prove the negative beyond a reasonable doubt, then at least the state can try to prove that the driver of car B had a duty to retreat and could have done so. This law would eliminate that duty. That is a recipe for inviting gang violence on our streets. These facts are in fact very similar to another case prosecuted by our department. In 2006 there was a shooting at Reka and Bragaw in Anchorage. Two vehicles with young men exchanging gunfire. One young man was killed and the two men in the other vehicle were convicted of murder. One of those cases is on appeal. This loss of life occurred for one of the participants. What about the innocent bystander? For example, there was the election day shooting in Anchorage when a campaign worker for former Gov. Murkowski was hit by a stray bullet at campaign HQ in Anchorage across from the Sears mall. That case involved two vehicles with young men – not in gangs, but still rivals – who opened fire on one another. While we did prosecute the shooters in that case, do so would have been impossible under this law.

This bill would unintentionally encourage such conduct by making it legal or at least offering a defense – which even if not true – could not be disproved. In each of the four examples the defendants were convicted, but this proposed change would make such prosecutions much harder, if even possible.

The proposed subsection (6) in AS 11.81.330(b) would almost completely eliminate the duty to retreat. That subsection says there is no such duty when a person is "in any place where the person has a right to be." That means in the Diamond Mall, Sears Mall, McDonalds, or any other public location a person is no longer required to walk away from a confrontation, but instead may kill another citizen even if they could have walked away with complete safety. This does not express a value for human life. This does not encourage finding a resolution for disputes other than violence. The only time there would be a duty to retreat is if the person is some place they have no right to be – they must be trespassing, or committing a burglary in order to have such a duty. With this change you might as well simply eliminate the duty to retreat completely from our statutes.

The bill also proposes adding a new section that whittles away some of the other protections put in place to prevent unnecessary taking of human life. Our current self- defense law is set up with both a subjective and objective test to determine when deadly force is authorized. The subjective test means the person using the force believes he/she needs to do so. The objective tests means the "reasonable person" would have concluded the same thing. The added section proposes to eliminate the objective test in several circumstances: burglary, carjacking, and kidnapping. That is it takes away from the jury the question of whether a reasonable person would view a particular event as unlawful force against a person that required a response of deadly force. At first blush this seems reasonable. However, when you examine what is proposed more closely, it becomes very disturbing. To understand why, you must first understand each of the three crimes it references.

Burglary is found in AS 11.46 and not AS 11.41 because it is a crime against property, not a person. Burglary requires a person to enter a building with the intent to commit a crime – theft, vandalism, and assault are all examples. What must be noted though is that no person needs to be in the building in order for this to be a crime. If a person breaks into a home or business to steal something, this is a burglary. If a student breaks into a school to vandalize it, this is a burglary. If a person breaks into a home to assault another person – even if no one is home, this is still a burglary because burglary only addresses the entry of premises with the intent to commit a crime (called a target crime) whether that (target) crime is committed or not. This is why burglary is classified as a crime against property and not against a person.

Under current law ***non***-deadly force may be used to protect property, and deadly force is ***only*** authorized when terminating an arson or attempted arson on a dwelling or occupied building (*See* AS 11.81.350(b)), or when terminating a burglary upon an occupied building or dwelling if the person using the force is in possession or control of that premises, or is a guest. *See* AS 11.81.350(c)).

The current bill would now authorize deadly force against a person who burgles a dwelling whether anyone was home or not. Thus deadly force may be used even when no human life is at risk.

The proposed bill would also authorize ***any*** person to use deadly force as compared to only a person who is in possession or control of or is an invited guest in the dwelling. This means the guy driving down the street may kill a person he thinks is breaking into a home. The state must disprove defense of property, so the state must disprove that a victim was committing burglary. While this new section is fraught with the potential for misunderstandings to lead to the unnecessary loss of human life, there is another more serious problem with this section. This new section authorizes deadly force against a person who is currently committing or ***had committed*** a burglary. This language authorizes vigilantism. It authorizes deadly force against any person whom the person using the force "had reason to believe" ***had*** – past tense – had committed a burglary. This new section says such force ***is*** reasonable. The only question left is if the person using the force also thought it was "reasonable."

The section on carjacking does the same thing. It authorizes the use of deadly force against someone who ***had*** -- past tense -- taken a car by force. Even if no human life was at risk in the taking, this law would say it is okay to kill to keep your car from being taken from you or afterwards. That sounds like retaliation and vigilantism, not like a legislature enacting laws to protect our citizens and improve our lives.

The kidnapping subsection has the same issue with past tense. In each and every section this bill would legalize and authorize vigilantism.

Finally the bill also says no arrest may be made "unless the agency" determines that there is probable cause that the force that used was unlawful. This puts the police in a difficult position especially when confronting gang related violence. It is also unclear to whom "the agency" refers. This could potentially require magistrates and grand juries to start deciding if self-defense has been disproven. This in turn would require the state to act as defense counsel for the defendant to present such a defense only to have to then disprove it. This may sound confusing, and that is because this bill could cause serious problems in the criminal justice system with regard to self-defense law.

Thank you for your consideration of this letter.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By:
John Skidmore
Assistant Attorney General

DSS:JS:vr

cc: Senate Judiciary Committee Members

LIO Mat-Su

From: Clarence Everingham [klink22hank@mtaonline.net]
Sent: Wednesday, April 14, 2010 3:51 PM
To: LIO Mat-Su
Subject: HB381

Senate Judiciary Committee Members and Senator Menard,

Support of HB381 is important to me so that self defense measures for myself and my family will be strengthened, no matter where I am. The ability to protect myself should not be questioned, because of my location. Terrible life threatening situations occur everywhere, not only in the home. Please support this Bill and fortify my ability for self protection, thus continuing to preserve the original content of the founders of the second amendment.

Thank you for considering my opinion,

Clarence Everingham
5001 Hovey drive
Wasilla, Alaska 99654
907-373-5188

ALASKA STATE LEGISLATURE

Co-Chair:
House Committee on Natural Resources

Vice Chair
House Committee on Labor and Commerce

Member:
House Committee on Rules, House Special Committee on Economic Development, Trade, and Tourism, and Legislative Budget & Audit Committee

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REPRESENTATIVE MARK NEUMAN
Rep.Mark.Neuman@legis.state.ak.us

Sponsor Statement

CSHB 381 (JUD)
SELF DEFENSE

The House Judiciary CS for HB 381 recognizes that Alaskan residents have right to use deadly force to protect their families, persons and property whether they are at home, work, or in any place they have a right to be present. It does this by expanding your right to stand your ground to where they have a right to be.

By expanding the rights of Alaskans to stand their ground to any place they are legally present we tell our residents that their decision to use deadly force to defend themselves and their families will not be second judged, and makes it clear that it is ***criminals*** who have a duty to retreat.

I believe that HB 381 strengthens the legal recognition of the basic human right of self defense and ask for your support.

26-LS1534\S

ALASKA STATE LEGISLATURE

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REPRESENTATIVE MARK NEUMAN
Rep.Mark.Neuman@legis.state.ak.us

Summary of Changes

CH for HB 381 (JUD)
Self Defense

The current form of HB 381 has a narrowed focus that only addresses the requirement to retreat when threatened with specific crimes.

The Judiciary CS removed all sections except for two lines that stated there was no duty to leave the area of a threat if a person had a right to be there.

This change was made to make the bill narrow in its effect and scope allowing for adequate discussion during the remaining legislative session.

Specific changes to the original bill text are as follows:

Page 2, lines 3-4, deleted.

Section 2, deleted.

Section 1, subsection 6, renumbered as section 1, subsection 5.

For version 26-LS1534\S

Utah Code
Title 76 Utah Criminal Code
Chapter 2 Principles of Criminal Responsibility
Section 402 Force in defense of person -- Forcible felony defined.

76-2-402. Force in defense of person -- Forcible felony defined.

(1) A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that force is necessary to defend himself or a third person against such other's imminent use of unlawful force. However, that person is justified in using force intended or likely to cause death or serious bodily injury only if he or she reasonably believes that force is necessary to prevent death or serious bodily injury to himself or a third person as a result of the other's imminent use of unlawful force, or to prevent the commission of a forcible felony.

(2) A person is not justified in using force under the circumstances specified in Subsection (1) if he or she:

(a) initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant;

(b) is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or

(c) (i) was the aggressor or was engaged in a combat by agreement, unless he withdraws from the encounter and effectively communicates to the other person his intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force; and

(ii) for purposes of Subsection (i) the following do not, by themselves, constitute "combat by agreement":

(A) voluntarily entering into or remaining in an ongoing relationship; or

(B) entering or remaining in a place where one has a legal right to be.

(3) A person does not have a duty to retreat from the force or threatened force described in Subsection (1) in a place where that person has lawfully entered or remained, except as provided in Subsection (2)(c).

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
555 CAPITOL MALL, SUITE 625
SACRAMENTO, CALIFORNIA 95814
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STATE & LOCAL AFFAIRS DIVISION
BRIAN JUDY, ALASKA STATE LIAISON

April 5, 2010

TO: Representative Mark Neuman
CC: Members of the House Finance Committee
FROM: Brian Judy, NRA-ILA Alaska State Liaison
RE: House Bill 381 – **SUPPORT**

I am writing on behalf of the National Rifle Association – Institute for Legislative Action to express **support for House Bill 381.** HB 381 is important self-defense legislation that would provide that a law-abiding person has "no duty to retreat" from an attack if the person is in any place the person has a legal right to be.

Existing Alaska law already provides that there is no duty to retreat if the person is on premises which the person owns or leases, where he or she resides or in a building where the person works. In any other place, however, if a person "knows" that he or she can safely retreat from an encounter, the person is legally required to do so.

Notwithstanding the question of retreat, a person using deadly force in self-defense must have justification and must consider that question in the split second she has to decide whether to respond with force. Removing the additional question as to whether or not the person can retreat with complete safety provides for one less thing a potential victim must concern herself with in the life-or-death split-second decision-making process. Removing the duty to retreat does not in any way change the fact that a person must be justified in using deadly force and must be lawfully in the place where the act of self-defense takes place.

The basic principle still remains that a person, in self-defense, may only use deadly force upon another person when and to the extent the person *reasonably* believes the use of deadly force is *necessary* for self-defense against death, serious physical injury, kidnapping, sexual assault or robbery. AS 11.81.335(a).

Under current law, a person who resists an aggressor bears the risk of a finding that, although the response was proportional to the reasonably-perceived threat, the person overestimated the difficulty of getting away unscathed and was therefore not justified in reacting with defensive force. Removing the retreat provision shifts some of the risk calculation back to the aggressor.

The opposition to HB 381 has suggested that the bill would encourage the needless taking of human life and violates the concept that life is sacred. Sanctity-of-life issues are somewhat less compelling, however, in circumstances in which the person whose life was taken was behaving in such a way that the person who took his life *reasonably* feared being raped or killed. A rapist isn't deterred by rape laws; but the hesitation of his law-abiding victim to employ defensive force while she still has the chance (but while she considers retreat capability) may mean the difference for *her* between life and death. The sanctity-of-life issue cuts both ways.

Victims should have the protection of law...not criminals! Law-abiding citizens should not fear criminal prosecution when they stand their ground and defend themselves without retreating from any place they have a legal right to be.

Please support House Bill 381!

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

SEAN PARNELL, GOVERNOR

Mailing: 310 K Street, Suite 308
Anchorage, Alaska 99501
Phone: (907) 269-6250
Fax: (907) 269-7939

March 15, 2010

Hon. Jay Ramras
Chair, House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801

Re: House Bill 381

Dear Chairman Ramras:

I am writing to express my serious concern over the current language in House Bill 381. Every experienced prosecutor with whom I have spoken about this bill uniformly agrees that it would promote violence and be a bad idea for our state. We believe that as drafted this bill will ***encourage*** unnecessary violence in our state. Whatever source one thinks our laws should be drawn from – the ten commandments which say "thou shall not kill," simple morality, utilitarianism principles of the greater good, or simply the concept that life is sacred –this bill would encourage the needless taking of human life.

AS 11.81.335(b) as currently written sets forth the duty to retreat before resorting to deadly force. It requires that if "with complete personal safety and with complete safety to others being defended, the person can avoid the necessity of using deadly force by leaving the area" then the person must do so. This avoids the ***unnecessary*** loss of life and encourages our citizens to seek ways other than violence to resolve disputes. The addition of subsections 5 and 6 to this statute eradicates the duty to retreat - in fact should they be enacted, there would no longer be a duty to retreat in Alaska. That is to say if person A could avoid killing person B by walking away, he/she would no longer be required to do so, but instead would be authorized ***by law*** to kill person B. This does not promote the protection of our citizens or suggest that Alaska as a state places a high value on life itself. While this is highly unlikely to have been the goal of the bill's sponsors, it is nevertheless the result of what has been proposed. This is best explained by closely examing the language of the proposed changes and additions.

Section 1 of the bill proposes amending AS 11.81.335(b) by adding a subsection (5) that would say there would be no duty to retreat when the person is "in a vehicle" owned, leased, used, or even just occupied with the owner's consent. Here are but just three examples of how this would encourage violence:

First example:

A person picks up a hitchhiker, or offers a ride to someone, and, for whatever reason, a confrontation arises while in the vehicle such that deadly force could be used, but for the duty to retreat. Under the current law the hitchhiker must leave your vehicle if he knows he can do so safely. Under the proposed amendment, that hitchhiker would be authorized to kill the driver instead -- even if he could have simply walked away. These facts are similar of a recent murder trial in Anchorage, but they are close. The defendant was convicted of and sentenced for second-degree murder. The case is now on appeal. Why would we want to say killing another person is okay when it could be avoided? Why would we want to authorize the taking of a life when one could walk away in complete safety?

Second Example:

Joe Smith drives to a party. At the party he gets into an altercation and is thrown out of the party. He goes to his car and gets inside to leave. Before leaving, Mr. Smith sees the person with whom he got into the altercation. Though Mr. Smith is in his car, behind the wheel and ready to leave, he fears the other guy may come after him. Instead of driving off – which he could do with complete personal safety, he gets out of his car and grabs a shotgun from the trunk and kills the other man. Again, these are facts similar to a recent murder trial in Anchorage. The defendant was convicted of and sentenced for manslaughter. The case is now on appeal. This is yet another situation in which our current law requires our citizens to walk away if they can do so with safety, but this proposed change in the law would authorize killing another human being instead.

Third Example:

An occupant in car A points a gun at the occupant in car B. If the occupant in car B can drive away with complete safety, then under the current law he must do so. Under the proposed change, the driver in car B would be authorized by this bill to open fire instead of driving away. The law of self-defense in Alaska requires the state to prove beyond a reasonable doubt a defendant's claim of self-defense is not true. It is difficult to prove a negative. If the state cannot prove the negative beyond a reasonable doubt, then at least the state can try to prove that the driver of car B had a duty to retreat and could have done so. This law would eliminate that duty. That is a recipe for inviting gang violence on our streets. These facts are in fact very similar to another case prosecuted by our department. In 2006 there was a shooting at Reka and Bragaw in Anchorage. Two vehicles with young men exchanging gunfire. One young man was killed and the two men in the other vehicle were convicted of murder. One of those cases is on appeal. This loss of life occurred for one of the participants. What about the innocent bystander? For example, there was the election day shooting in Anchorage when a campaign worker for former Gov. Murkowski was hit by a stray bullet at campaign HQ in Anchorage across from the Sears mall. That case involved two vehicles with young men – not in gangs, but still rivals – who opened fire on one another. While we did prosecute the shooters in that case, do so would have been impossible under this law.

This bill would unintentionally encourage such conduct by making it legal or at least offering a defense – which even if not true – could not be disproved. In each of the four examples the defendants were convicted, but this proposed change would make such prosecutions much harder, if even possible.

The proposed subsection (6) in AS 11.81.330(b) would almost completely eliminate the duty to retreat. That subsection says there is no such duty when a person is "in any place where the person has a right to be." That means in the Diamond Mall, Sears Mall, McDonalds, or any other public location a person is no longer required to walk away from a confrontation, but instead may kill another citizen even if they could have walked away with complete safety. This does not express a value for human life. This does not encourage finding a resolution for disputes other than violence. The only time there would be a duty to retreat is if the person is some place they have no right to be – they must be trespassing, or committing a burglary in order to have such a duty. With this change you might as well simply eliminate the duty to retreat completely from our statutes.

The bill also proposes adding a new section that whittles away some of the other protections put in place to prevent unnecessary taking of human life. Our current self- defense law is set up with both a subjective and objective test to determine when deadly force is authorized. The subjective test means the person using the force believes he/she needs to do so. The objective tests means the "reasonable person" would have concluded the same thing. The added section proposes to eliminate the objective test in several circumstances: burglary, carjacking, and kidnapping. That is it takes away from the jury the question of whether a reasonable person would view a particular event as unlawful force against a person that required a response of deadly force. At first blush this seems reasonable. However, when you examine what is proposed more closely, it becomes very disturbing. To understand why, you must first understand each of the three crimes it references.

Burglary is found in AS 11.46 and not AS 11.41 because it is a crime against property, not a person. Burglary requires a person to enter a building with the intent to commit a crime – theft, vandalism, and assault are all examples. What must be noted though is that no person needs to be in the building in order for this to be a crime. If a person breaks into a home or business to steal something, this is a burglary. If a student breaks into a school to vandalize it, this is a burglary. If a person breaks into a home to assault another person – even if no one is home, this is still a burglary because burglary only addresses the entry of premises with the intent to commit a crime (called a target crime) whether that (target) crime is committed or not. This is why burglary is classified as a crime against property and not against a person.

Under current law ***non***-deadly force may be used to protect property, and deadly force is ***only*** authorized when terminating an arson or attempted arson on a dwelling or occupied building (*See* AS 11.81.350(b)), or when terminating a burglary upon an occupied building or dwelling if the person using the force is in possession or control of that premises, or is a guest. *See* AS 11.81.350(c)).

The current bill would now authorize deadly force against a person who burgles a dwelling whether anyone was home or not. Thus deadly force may be used even when no human life is at risk.

The proposed bill would also authorize ***any*** person to use deadly force as compared to only a person who is in possession or control of or is an invited guest in the dwelling. This means the guy driving down the street may kill a person he thinks is breaking into a home. The state must disprove defense of property, so the state must disprove that a victim was committing burglary. While this new section is fraught with the potential for misunderstandings to lead to the unnecessary loss of human life, there is another more serious problem with this section. This new section authorizes deadly force against a person who is currently committing or ***had committed*** a burglary. This language authorizes vigilantism. It authorizes deadly force against any person whom the person using the force "had reason to believe" ***had*** – past tense – had committed a burglary. This new section says such force ***is*** reasonable. The only question left is if the person using the force also thought it was "reasonable."

The section on carjacking does the same thing. It authorizes the use of deadly force against someone who ***had*** -- past tense -- taken a car by force. Even if no human life was at risk in the taking, this law would say it is okay to kill to keep your car from being taken from you or afterwards. That sounds like retaliation and vigilantism, not like a legislature enacting laws to protect our citizens and improve our lives.

The kidnapping subsection has the same issue with past tense. In each and every section this bill would legalize and authorize vigilantism.

Finally the bill also says no arrest may be made "unless the agency" determines that there is probable cause that the force that used was unlawful. This puts the police in a difficult position especially when confronting gang related violence. It is also unclear to whom "the agency" refers. This could potentially require magistrates and grand juries to start deciding if self-defense has been disproven. This in turn would require the state to act as defense counsel for the defendant to present such a defense only to have to then disprove it. This may sound confusing, and that is because this bill could cause serious problems in the criminal justice system with regard to self-defense law.

Thank you for your consideration of this letter.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: John Skidmore
Assistant Attorney General

DSS:JS: sf

cc: House Judiciary Committee Members

Alaska State Legislature

Please enter into the record my testimony to the FINANCE
Committee name

Committee on HB 381, dated 29 MAR 2010
Bill/Subject

I Fully support This bill.
no American should be required by LAW
TO retreat From AN Aggressor. Anyone
who THINKS otherwise is a TRAITOR, and a
coward. As For The Poppycock issued
by The Dept. of LAW, whose They claim increased
COSTS, more TRIALS, and Needing More LAWyers,
Maybe They should QUIT WASTEing TIME
+ $ on plea-deals, And JUST do Their
Jobs? were it up TO me, They would
have Less LAWyers, STARTing with Annie
carpenet:.

Signed: Russell K Butts 156. ARMOR, Retired
Testifier

Representing (Optional)

BX 872642 WASILLA 99687
Address

376 3558
Phone number

[redacted]

From: Beth Schneider
Sent: Tuesday, March 16, 2010 10:59 AM
To: Rep. Mark Neuman; Jim Ellis
Subject: HB 381 Self Defense POM

Gregory Prothero of Wasilla (13) wrote the following message On 3/16/2010 at 08:23 In support of *HB 381 SELF DEFENSE*

Message:

HB381 is a great idea. Keep after it! It's something that the law abiding citizenry needs.

Contact Info:

Gregory Prothero
4501 N Cedarwood Dr
Wasilla 99654
Email:gjinak@mtaonline.net
day:373-6520
`~ `·., ><((((º> `~ `·.,. ><((((º> `~ `·.,.><((((º>

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[redacted]

From: Beth Schneider
Sent: Wednesday, March 17, 2010 2:00 PM
To: Jim Ellis
Subject: HB 381

+----------+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to stewart@nopeople.com If suspected Spam please forward to: support@housemajority.org
+----------+

From: stewart@nopeople.com

Hello Representative Neuman,
Keep up the good work on this bill - Alaskans need this! I hope you can keep the teeth in the next version you submit. Please don't let it get watered down so much that it can't help protect someone that ends up in a situation like Phillip Mielke.

Thank you, Stewart Amgwert

~ Stewart Amgwert
Zip Code: 99645

.

please don't print this e-mail unless necessary

[redacted]

From: stureder [stureder@mtaonline.net]
Sent: Tuesday, March 30, 2010 9:59 PM
To: Rep. Mark Neuman
Subject: Re: Neuman's e-news brief
Attachments: image001.gif

Mark,
Thank you for the "no need to retreat" gun legislation. Please keep me informed how it ends up.
Stu Reder

----- Original Message -----
From: Rep. Mark Neuman [redacted]
To: undisclosed-recipients:
Sent: Tuesday, March 30, 2010 2:07 PM
Subject: Neuman's e-news brief

Get Your PFD Applications In!
DEADLINE IS MARCH 31st!
Apply online at http://www.pfd.state.ak.us/index.aspx

If you have a friend or neighbor that does not have a computer and hasn't completed and already mailed a paper application, please remind or assist them to file on-line today. The ladies at the Mat-Su LIO (in Wasilla) have computers available and are available to assist you. Call them at 376-3704 if you need more information.

CAPITAL BUDGET
It's been a busy few weeks here in Juneau, but soon, SB 230, the Capital Budget bill, will be heard. The first scheduled hearing is on April 1st at 9 AM in Senate Finance. After hearings in Senate Finance it will pass to the Senate Floor for a vote before it comes to the House for consideration.

FY10 SUPPLEMENTAL BUDGET
The Alaska State House unanimously passed House Bill 326, the Fiscal Year 2010 supplemental budget authorizing operating appropriations and fund transfers. The bill appropriates a total of $1,682.6 billion dollars, of which $1,520.5 billion is in fund transfers, $5.0 million for fund capitalization, and $157.1 million for agency operations.

HB 326 authorizes two significant fund transfers: $1.1 billion to forward-fund K-12 education for Fiscal Year 2011 and $401 million to fully repay past borrowings from the Constitutional Budget Reserve Fund, or CBR. The fund transfer to the CBR is a significant accomplishment representing a concerted effort by legislators over the past three years of high oil prices to repay the debt owed to the state's savings account.

[redacted]

From: housemajority_email@housemajority.org
Sent: Wednesday, March 31, 2010 6:43 AM
To: Rep. Mark Neuman
Subject: Your Gun Bill

+----------+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to akleatherneck@mtaonline.net If suspected Spam please forward to: support@housemajority.org
+----------+

From: akleatherneck@mtaonline.net

Rep. Neuman
I want to take a moment and thank you for responding to my previous email pertaining to Alaskans' Right to self defense. This morning I heard on AM700 that you have written a bill to change the requirements for the use of deadly force within our state. If I understand correctly your bill would eliminate the requirment to flee the area. If this description is accurate, I support you and this Legislation completly. How can I find out more info on this Legislation and spread the word to my fellow ALaskans?
Thank you for standing on RIGHT, and speaking out against WRONG. Has Carl Gatto come out to support this legislation?
Respectfully
Ryan J Clark USMC Vt

~ Ryan J Clark USMC Vt
Zip Code: 99645

+----------+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to akleatherneck@mtaonline.net If suspected Spam please forward to: support@housemajority.org
+----------+

[redacted]

From: Paul Brown [pkbrown@alaska.edu]
Sent: Wednesday, March 31, 2010 1:36 PM
To: Rep. Mark Neuman
Subject: HR381

I am in support of HR 381

thanks

paul brown

3287

[redacted]

From: RICHARD ELMQUIST [sportec@mtaonline.net]
Sent: Wednesday, March 31, 2010 1:54 PM
To: Rep. Mark Neuman
Subject: HB381

THANKS MARK, I'M ALL FOR IT! WHAT CAN WE DO SO IT WILL GET PASSED? LIVE IN MEADOW LAKES BUT HAVE A HOUSTON ADDRESS.

[redacted]

From: Kim Skipper
Sent: Wednesday, March 31, 2010 4:35 PM
To: Rep. Mark Neuman
Subject: FW: Support of House Bill 381

Rep. Neuman,

Copy of an e-mail in support of HB 381 from an Eagle River constituent ~

Kim Skipper
Legislative Aide
Rep. Anna Fairclough
State Capitol – Room 421
Juneau, AK 99801

From: rguising@mtaonline.net [mailto:rguising@mtaonline.net]
Sent: Wednesday, March 31, 2010 1:45 PM
To: Rep. Anna Fairclough
Subject: Support of House Bill 381

Anna, as a constituent in your district I urge you to support House Bill 381, as well as any additional rights guaranteed by the second amendment.

Thank you.

Robert Guisinger
Eagle River, Alaska
(907) 622-1228

House Bill 381, an important self-defense reform measure, is currently on the move in Juneau.

Simply stated, HB381, introduced by State Representative Mark Neuman (R-15), would remove the duty to retreat in Alaska. Under this bill, Alaskans would have the right to use force, including deadly force, for self-defense anywhere they have a right to be.

[redacted]

From: Rep. Anna Fairclough
Sent: Wednesday, March 31, 2010 4:36 PM
To: Rep. Mark Neuman
Subject: FW: HB381

Rep. Neuman,

Copy of an e-mail in support of HB 381 from an Eagle River constituent ~

Kim Skipper
Legislative Aide
Rep. Anna Fairclough
State Capitol – Room 421
Juneau, AK 99801

From: Jeff Rukes [mailto:jrukes@gmail.com]
Sent: Wednesday, March 31, 2010 1:42 PM
To: Rep. Anna Fairclough
Subject: HB381

I am e-mailing you in support of HB381. Self defense in an inalienable right and I do not feel that an individual should be required by law to retreat. This is common sense.

Thanks

[redacted]

From: Rep. Anna Fairclough
Sent: Wednesday, March 31, 2010 4:38 PM
To: Rep. Mark Neuman
Subject: FW: HB 381

Rep. Neuman,

Copy of an e-mail in support of HB 381 from an Eagle River constituent ~

Kim Skipper
Legislative Aide
Rep. Anna Fairclough
State Capitol – Room 421
Juneau, AK 99801

From: Alaskan Campbells [mailto:alaskancustoms@gmail.com]
Sent: Wednesday, March 31, 2010 2:26 PM
To: Rep. Anna Fairclough
Subject: HB 381

Rep. Fairclough,

I urge you to support HB 381. Thank you for you support on this issue.

Andrew Campbell
11328 Bridger Pl
Eagle River, AK 99577

Ph. 907-696-4656

[redacted]

From: Mark Greig [greig_mark@hotmail.com]
Sent: Wednesday, March 31, 2010 1:50 PM
To: Rep. Mark Neuman
Subject: HB 381

Dear Representative Neuman,

I am writing to say thank you for introducing HB 381 and expressing my support for the bill.

Best Regards,

Mark greig

Hotmail: Trusted email with powerful SPAM protection. Sign up now.

[redacted]

From: James Skinner [james36@mtaonline.net]
Sent: Wednesday, March 31, 2010 9:15 PM
To: Rep. Mark Neuman
Subject: HB381

Dear Mark,

I have not been able to get to your town hall meetings to personally voice my concerns. HB381 has come to my attention. I would urge you to support this bill.

As rural Alaskans we are not afforded the same police protection as those in the city. We need to maintain the provisions that HB381 provides us. The legal ability under the law to protect our property and our personal well being.

Thank you for your attention to this matter. Keep me informed.

Sincerely,

James Skinner

[redacted]

From: housemajority_email@housemajority.org
Sent: Wednesday, March 31, 2010 10:22 PM
To: Rep. Mark Neuman
Subject: HB 381

+----------+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to taurusetursa@yahoo.com If suspected Spam please forward to: support@housemajority.org
+----------+

From: taurusetursa@yahoo.com

Thank you for being the prime sponsor of HB 381. If passed, it may spare law-abiding Alaskans and their families from extreme personal duress and the often debilitating financial costs of defending themselves in criminal and civil proceedings for having protected themselves or their loved ones by the proper and timely application of deadly force. Thank you again for your leadership in sponsoring this important and reasonable legislation.

~ Mick Rosenberg
Zip Code: 99508
Voter ID: 00590359

+----------+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to taurusetursa@yahoo.com If suspected Spam please forward to: support@housemajority.org
+----------+

[redacted]

From: mud flat [mudflat@hotmail.com]
Sent: Wednesday, March 31, 2010 10:26 PM
To: Rep. Alan Austerman; Rep. Nancy Dahlstrom; Rep. Les Gara; Rep. John Harris; Rep. Craig Johnson; Rep. Beth Kerttula; Rep. Kurt Olson; Rep. Bill Stoltze; Rep. Bob Buch; Rep. Mike Doogan; Rep. Berta Gardner; Rep. Mike Hawker; Rep. Reggie Joule; Rep. Bob Lynn; Rep. Pete Petersen; Rep. Bill Thomas; Rep. Mike Chenault; Rep. Bryce Edgmon; Rep. Carl Gatto; Rep. Bob Herron; Rep. Scott Kawasaki; Rep. Charisse Millett; Rep. Jay Ramras; Rep. Chris Tuck; Rep. Sharon Cissna; Rep. Anna Fairclough; Rep. Max Gruenberg; Rep. Wes Keller; Rep. Cathy Munoz; Rep. Woodie Salmon; Rep. Peggy Wilson; Rep. Harry Crawford; Rep. Neal Foster; Rep. David Guttenberg; Rep. Kyle Johansen; Rep. Mike Kelly; Rep. Mark Neuman; Rep. Paul Seaton; Rep. Tammie Wilson
Subject: HB381, introduced by State Representative Mark Neuman

Dear Representative,
I am writing to ask you to support HB 381. I believe this to be an important piece of legislation, and one that is needed in Alaska and the rest of the country.

Yours sincerely,

Nic

holas Atkinson

Address: 3004 W. Northern Lights Blvd. 10C
Anchorage, AK 99517

Hotmail: Trusted email with powerful SPAM protection. Sign up now.

[redacted]

From: Rep. Anna Fairclough
Sent: Thursday, April 01, 2010 10:38 AM
To: Rep. Mark Neuman
Subject: FW: Bill HB381

Rep. Neuman,

Copy of an e-mail in support of HB 381 from an Eagle River constituent ~

Kim Skipper
Legislative Aide
Rep. Anna Fairclough
State Capitol – Room 421
Juneau, AK 99801

From: judie@ak.net [mailto:judie@ak.net]
Sent: Thursday, April 01, 2010 10:23 AM
To: Rep. Anna Fairclough
Subject: Bill HB381

Please support passage of bill HB381.

Chuck Link
10918 Sun Eagle Circle
Eagle River

907-696-2068

[redacted]

From: Rep. Anna Fairclough
Sent: Thursday, April 01, 2010 10:34 AM
To: Rep. Mark Neuman
Subject: FW: HB 381

Rep. Neuman,

Copy of an e-mail in support of HB 381 from an Eagle River constituent ~

Kim Skipper
Legislative Aide
Rep. Anna Fairclough
State Capitol – Room 421
Juneau, AK 99801

From: alaskaneagles@gci.net [mailto:alaskaneagles@gci.net]
Sent: Wednesday, March 31, 2010 10:00 PM
To: Rep. Anna Fairclough
Subject: HB 381

Representative Fairclough:

The primary reason I'm writing it to ask for your support on HB381. I would appreciate your help in getting this passed.

I've been doing my best to keep up with all the happenings in Juneau but can't keep up with everything. I appreciate all your hard work fighting for us back here in Eagle River.

Respectfully,

Stevan W. Cady
17910 Meadow Creek Drive
Eagle River, AK 99577

P.S. I still use my address labels when signing in to our town hall meetings.

[redacted]

From: Jeff Brown [k9abnmp45@hotmail.com]
Sent: Thursday, April 01, 2010 10:08 AM
To: Rep. Mark Neuman; charlie_huggins@legis.state.ak.us; linda_menard@legis.state.ak.us; wes_keller@legis.state.ak.us

Gentleman,

Please support HB381, Thanks

Jeff Brown
907-355-5529

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The New Busy is not the old busy. Search, chat and e-mail from your inbox. Get started.

[redacted]

From: housemajority_email@housemajority.org
Sent: Thursday, April 01, 2010 8:49 AM
To: Rep. Mark Neuman
Subject: Email to Rep. Neuman

+--+
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Then change the TO: address to bbcates@hotmail.com If suspected Spam please forward to: support@housemajority.org
+--+

From: bbcates@hotmail.com

Thank you so much for HB 381. With all that has been going on in our government in recent years we need all the laws we can get to protect our right to protect ourselves.

Thank You Again
Brandon Cates

~ Brandon Cates
Zip Code: 99709

+--+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to bbcates@hotmail.com If suspected Spam please forward to: support@housemajority.org
+--+

[redacted]

From: housemajority_email@housemajority.org
Sent: Thursday, April 01, 2010 12:13 PM
To: Rep. Mark Neuman
Subject: HB 381

+----------+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to huntn101@mtaonline.net If suspected Spam please forward to: support@housemajority.org
+----------+

From: huntn101@mtaonline.net

Honorable Mark Neuman,
Thank you for sponsoring HB 381 Alaskan Self Defense Reform. Many of us live in places that are remote from a timely response from law enforcement. My house is 6 miles from Wasilla and the one time I called Troopers for an emergency it took 25 minutes for them to get here. This is due to our geographical size in the Valley. It is comforting to know I will be able to defend myself without retribution if that unfortunate situation ever presents itself. You and Rep Keller need to keep up the great work. Thanks Again, Julie Gillette

~ Julie A Gillette
Zip Code: 99654

+----------+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to huntn101@mtaonline.net If suspected Spam please forward to: support@housemajority.org
+----------+

[redacted]

From: taurusetursa [taurusetursa@yahoo.com]
Sent: Thursday, April 01, 2010 12:58 PM
To: Rep. Mark Neuman
Subject: Re: HB 381 Support

Mark ~

Thank you for acknowledging my note so promptly, the promising news and, again, your sponsorship of this important bill.

Mick

From: Rep. Mark Neuman <Representative_Mark_Neuman@legis.state.ak.us>
To: "taurusetursa@yahoo.com" <taurusetursa@yahoo.com>
Sent: Thu, April 1, 2010 9:22:22 AM
Subject: RE: HB 381 Support

Mick,

Thank you for your note of support. The legislation is picking up more sponsors as it heads to its next hearing in Finance. I hope that you have contacted your local legislators as well.

Mark

-----Original Message-----
From: housemajority_email@housemajority.org [mailto:housemajority_email@housemajority.org]
Sent: Wednesday, March 31, 2010 10:22 PM
To: Rep. Mark Neuman
Subject: HB 381

+----------+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org
To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to taurusetursa@yahoo.com
If suspected Spam please forward to: support@housemajority.org
+----------+

From: taurusetursa@yahoo.com

Thank you for being the prime sponsor of HB 381. If passed, it may spare law-abiding Alaskans and their families from extreme personal duress and the often debilitating financial costs of defending themselves in criminal and civil proceedings for having protected themselves or their loved ones by the proper and timely application of deadly force. Thank you again for your leadership in sponsoring this important and reasonable legislation.

~ Mick Rosenberg
Zip Code: 99508
Voter ID: 00590359

+----------+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org
To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to taurusetursa@yahoo.com
If suspected Spam please forward to: support@housemajority.org
+----------+

[redacted]

From: John Lime III [john.limeiii@gmail.com]
Sent: Friday, April 02, 2010 2:06 PM
To: Rep. John Harris; Rep. Alan Austerman; Rep. Nancy Dahlstrom; Rep. Les Gara; Rep. Craig Johnson; Rep. Beth Kerttula; Rep. Kurt Olson; Rep. Bill Stoltze; Rep. Bob Buch; Rep. Mike Doogan; Rep. Berta Gardner; Rep. Mike Hawker; Rep. Chris Tuck; Rep. Reggie Joule; Rep. Jay Ramras; Rep. Charisse Millett; Rep. Scott Kawasaki; Rep. Bob Herron; Rep. Carl Gatto; Rep. Bryce Edgmon; Rep. Bob Lynn; Rep. Pete Petersen; Rep. Bill Thomas; Rep. Mike Chenault; Rep. Peggy Wilson; Rep. Woodie Salmon; Rep. Cathy Munoz; Rep. Sharon Cissna; Rep. Anna Fairclough; Rep. Max Gruenberg; Rep. Lindsey Holmes; Rep. Wes Keller; Rep. Harry Crawford; Rep. Neal Foster; Rep. David Guttenberg; Rep. Kyle Johansen; Rep. Mike Kelly; Rep. Mark Neuman; Rep. Paul Seaton; Rep. Tammie Wilson
Subject: Crime and Self Defense

Follow Up Flag: Follow up
Flag Status: Flagged

To the Honorable Alaska State Representantives.

I am writting you today to urge you all to pass House Bill 381, Rep Mark Neuman's "***An Act relating to self defense in any place where a person has a right to be.***"

This Bill has personal importance to me as last year (June 10, 2009) I was assaulted by a drug dealer at work. I was getting a plate number off a vehicle being driven by the dealers wife. The dealer jumped out of the moving vehicle and struck me several times in the head and face as I tried to retreat back into the building. The Anchorage Police have been unable to locate this person or the vehicle since. I had to have an operation to repair my partially severed ear and a second operation to remove my eyeball from my sinus cavity and to repair my eye socket. I still have a sensitivity to light and now have to wear corrective lenses that were not needed prior to the attack. I missed 2 months of work, and as the percentage of my base pay that was paid in workmans compensation was minimal, and that I had to pay 2 months of medical, dental and life insurance premiums as soon as I went back to work, my family is still trying to recover financially from this incident.

As the current law requires a person to retreat if possible, I believe that this new legislation would prove to be a great deterent from future attacks of this sort in our state if passed and signed into law and then publicized to let the criminal elements in our society know that we as citizens will not be victimized anymore.

Please consider the following taken from www.crimemapping.com as provided by the Anchorage Police Department:

For the last week here are the statistics of crimes in the Anchorage bowl area:

4-1-2010: 79 crimes commited. 9 Assaults. 5 Robberies. 12 Disturbances/Disorderly Conduct. 5 Burglaries. 4 Drugs. 4 DUI. 10 Fraud/Forgery. 25 Theft. 2 Vandalism. 2 Vehicle Theft. 1 Weapons Offense.

3-31-2010: 75 crimes commited. 8 Assaults. 3 Disturbances/Disorderly Conduct. 8 Burglaries. 10 Drugs. 6 DUI. 15 Fraud/Forgery. 19 Theft. 4 Vandalism. 2 Vehicle Theft.

3-30-2010: 62 crimes commited. 7 Assaults. 3 Disturbances/Disorderly Conduct. 7 Burglaries. 2 Drugs. 2 DUI. 11 Fraud/Forgery. 24 Theft. 6 Vandalism.

3-29-2010: 74 crimes commited. 4 Assaults. 4 Robberies. 13 Disturbances/Disorderly Conduct. 3 Burglaries. 6 Drugs. 3 DUI. 13 Fraud/Forgery. 2 Vehicle Theft. 24 Theft. 9 Vandalism.

3-28-2010: 63 crimes commited. 14 Assaults. 6 Disturbances/Disorderly Conduct. 3 Burglaries. 3 Drugs. 6 DUI. 4 Fraud/Forgery. 4 Vehicle Theft. 17 Theft. 5 Vandalism. 1 Weapoms Offense.

3-27-2010: 93 crimes commited. 15 Assaults. 2 Robberies. 15 Disturbances/Disorderly Conduct. 2 Burglaries. 3 Drugs. 10 DUI. 8 Fraud/Forgery. 3 Vehicle Theft. 27 Theft. 8 Vandalism.

3-26-2010: 68 crimes commited. 8 Assaults.1 Robberies. 8 Disturbances/Disorderly Conduct. 3 Burglaries. 4 Drugs. 4 DUI. 8 Fraud/Forgery. 4 Vehicle Theft. 19 Theft. 7 Vandalism. 2 Weapons Offenses.

Thank you all for your representation and help.

Semper Fidelis!
In God We Trust
John F. Lime III
2221 Muldoon Rd, Spc 52
Anchorage, AK 99504-3630
(907) 338-0747
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john.limeiii@gmail.com

[redacted]

From: Don & Cristina Smith [doncristina@gmail.com]
Sent: Friday, April 02, 2010 10:25 PM
To: Rep. Mark Neuman
Subject: HB381

Rep Mark Neuman,
Great bill!
Don Smith
POB 427
Willow, Ak.
99688

From: Tabitha and Asher [atdymoke@gmail.com]
Sent: Saturday, April 03, 2010 10:39 AM
To: Rep. Mark Neuman
Subject: Support
Attachments: image001.jpg

Representative Neuman,

Please know my husband and I support HB 381!!!! We live in Wasilla, and we wanted you to know we support you and this bill!!!!

Keep up the good work you are doing!!
Tabitha and Asher Dymoke

[redacted]

From: Tim Hilliard [timh2661@yahoo.com]
Sent: Sunday, April 04, 2010 9:25 AM
To: Sen. Johnny Ellis; Sen. Con Bunde; Sen. Lesil McGuire; Sen. Bert Stedman; Sen. Linda Menard; Sen. Hollis French; Sen. John Coghill; Sen. Bettye Davis; Sen. Lyman Hoffman; Sen. Kevin Meyer; Sen. Joe Thomas; Sen. Fred Dyson; Sen. Charlie Huggins; Sen. Donny Olson; Sen. Tom Wagoner; Sen. Dennis Egan; Sen. Albert Kookesh; Sen. Joe Paskvan; Sen. Bill Wielechowski; Rep. Les Gara; Rep. John Harris; Rep. Craig Johnson; Rep. Kurt Olson; Rep. Bill Stoltze; Rep. Bob Buch; Rep. Mike Doogan; Rep. Berta Gardner; Rep. Mike Hawker; Rep. Reggie Joule; Rep. Bob Lynn; Rep. Pete Petersen; Rep. Bill Thomas; Rep. Bryce Edgmon; Rep. Mike Chenault; Rep. Kyle Johansen; Rep. Beth Kerttula; Rep. Carl Gatto; Rep. Bob Herron; Rep. Scott Kawasaki; Rep. Charisse Millett; Rep. Jay Ramras; Rep. Chris Tuck; Rep. Sharon Cissna; Rep. Anna Fairclough; Rep. Max Gruenberg; Rep. Lindsey Holmes; Rep. Wes Keller; Rep. Cathy Munoz; Rep. Woodie Salmon; Rep. Peggy Wilson; Rep. Harry Crawford; Rep. Neal Foster; Rep. David Guttenberg; Rep. Kyle Johansen; Rep. Mike Kelly; Rep. Mark Neuman; Rep. Paul Seaton; Rep. Tammie Wilson
Subject: HB381

Please support HB381. The right of law abiding citizens to protect themselves, their families, and their property should never have been called into question. The duty to retreat concept has served no purpose other than to embolden those with criminal or violent intent. Please help restore a fundamental liberty to all law abiding Alaskans by supporting HB381. Thank you

[redacted]

From: Jeff De Broeck [jeffde@mtaonline.net]
Sent: Monday, April 05, 2010 5:40 PM
To: Rep. Mark Neuman
Subject: HB381

Follow Up Flag: Follow up
Flag Status: Flagged

I strongly support your bill. What additional contacts can I make in support of this legislation?

Jeffrey DeBroeck
2783 west stable circle
Wasilla ,AK
99654

[redacted]

From: Lucy Groh [cjgroh@alaska.net]
Sent: Monday, April 05, 2010 6:56 PM
To: Rep. Mark Neuman
Subject: HB381

I am writing to support this bill1 I will send you a copy of the response I got from the link forward to me as a place to signal my support. It apparently will not be delivered so I am ensuring that this message will do so! Lucy W. Groh, Anchorage, Alaska

[redacted]

From: buddg@gci.net on behalf of Budd G [buddg@gci.net]
Sent: Tuesday, April 06, 2010 10:05 AM
To: Rep. Wes Keller; Rep. Carl Gatto; Rep. Mark Neuman; Rep. Reggie Joule
Subject: HP 381 Support Opinion Message

Please support HB 381 and get it passed this Session.
Budd Goodyear
Barrow and the Mat Valley
Voter ID 01115829

[redacted]

From: Kelly Caraway [kellytim@mtaonline.net]
Sent: Saturday, April 03, 2010 12:49 AM
To: Rep. Mark Neuman
Subject: HB381

Thank you for introducing this legislation. We fully support it.

Tim & Kelly Caraway
HC 38 Box 2622
Wasilla AK 99654

3310

Alaska Statutes

Sec. 11.81.330. Justification: Use of nondeadly force in defense of self.

(a) A person is justified in using nondeadly force upon another when and to the extent the person reasonably believes it is necessary for self-defense against what the person reasonably believes to be the use of unlawful force by the other person, unless

(1) the person used the force in mutual combat not authorized by law;

(2) the person claiming self-defense provoked the other's conduct with intent to cause physical injury to the other;

(3) the person claiming self-defense was the initial aggressor; or

(4) the force used was the result of using a deadly weapon or dangerous instrument the person claiming self-defense possessed while

(A) acting alone or with others to further a felony criminal objective of the person or one or more other persons;

(B) a participant in a felony transaction or purported transaction or in immediate flight from a felony transaction or purported transaction in violation of AS 11.71; or

(C) acting alone or with others in revenge for, retaliation for, or response to actual or perceived conduct by a rival or perceived rival, or a member or perceived member of a rival group, if the person using deadly force, or the group on whose behalf the person is acting, has a history or reputation for violence among civilians.

(b) A person who is not justified in using force in self-defense in the circumstances listed in (a)(1) - (3) of this section is justified in using force in self-defense if that person has withdrawn from the encounter and effectively communicated the withdrawal to the other person, but the other person persists in continuing the incident by the use of unlawful force.

Sec. 11.81.335. Justification: Use of deadly force in defense of self.

(a) Except as provided in (b) of this section, a person who is justified in using nondeadly force in self-defense under AS 11.81.330 may use deadly force in self-defense upon another person when and to the extent the person reasonably believes the use of deadly force is necessary for self-defense against

(1) death;

(2) serious physical injury;

(3) kidnapping, except for what is described as custodial interference in the first degree in AS 11.41.320 ;

(4) sexual assault in the first degree;

(5) sexual assault in the second degree;

(6) sexual abuse of a minor in the first degree; or

(7) robbery in any degree.

(b) A person may not use deadly force under this section if the person knows that, with complete personal safety and with complete safety as to others being defended, the person can avoid the necessity of using deadly force by leaving the area of the encounter, except there is no duty to leave the area if the person is

(1) on premises

(A) that the person owns or leases;

(B) where the person resides, temporarily or permanently; or

(C) as a guest or express or implied agent of the owner, lessor, or resident;

(2) a peace officer acting within the scope and authority of the officer's employment or a person assisting a peace officer under AS 11.81.380;

(3) in a building where the person works in the ordinary course of the person's employment; or

(4) protecting a child or a member of the person's household.

Sec. 11.81.340. Justification: Use of force in defense of a third person.

A person is justified in using force upon another when and to the extent the person reasonably believes it is necessary to defend a third person when, under the circumstances as the person claiming defense of another reasonably believes them to be, the third person would be justified under AS 11.81.330 or 11.81.335 in using that degree of force for self-defense.

Sec. 11.81.350. Justification: Use of force in defense of property and premises.

(a) A person may use nondeadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the commission or attempted commission by the other of an unlawful taking or damaging of property or services.

(b) A person may use deadly force upon another when and to the extent the person reasonably believes it necessary to terminate what the person reasonably believes to be the commission or attempted commission of arson upon a dwelling or occupied building.

(c) A person in possession or control of any premises, or a guest or an express or implied agent of that person, may use

(1) nondeadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the commission or attempted commission by the other of criminal trespass in any degree upon the premises;

(2) deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be a burglary in any degree occurring in an occupied dwelling or building.

(d) *[Repealed, Sec. 7 ch 68 SLA 2006].*

(e) A person

(1) in a vehicle, or forcibly removed from a vehicle, may use deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be a carjacking of that vehicle at or about the time the vehicle is carjacked;

(2) outside of a vehicle may use deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the theft of that vehicle when another person, other than the perceived offender, is inside of the vehicle; this paragraph does not apply to a person outside of a vehicle who is involved in a dispute with a person inside of the vehicle who is a household member of that person; in this paragraph, "household member" has the meaning given in AS 18.66.990 .

(f) A person justified in using force under this section does not have a duty to leave or attempt to leave the area of the encounter before using force.

(g) In (e) of this section,

(1) "carjacking" means a robbery involving the taking or attempted taking of a vehicle from a person in possession of the vehicle;

(2) "vehicle" means a "motor vehicle" as defined in AS 28.40.100 , an aircraft, or a watercraft.

776.031 Use of force in defense of others.--A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. However, the person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony. A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

History.--s. 13, ch. 74-383; s. 1189, ch. 97-102; s. 3, ch. 2005-27.

Utah Code
Title 76 Utah Criminal Code
Chapter 2 Principles of Criminal Responsibility
Section 402 Force in defense of person -- Forcible felony defined.

76-2-402. Force in defense of person -- Forcible felony defined.

(1) A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that force is necessary to defend himself or a third person against such other's imminent use of unlawful force. However, that person is justified in using force intended or likely to cause death or serious bodily injury only if he or she reasonably believes that force is necessary to prevent death or serious bodily injury to himself or a third person as a result of the other's imminent use of unlawful force, or to prevent the commission of a forcible felony.

(2) A person is not justified in using force under the circumstances specified in Subsection (1) if he or she:

(a) initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant;

(b) is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or

(c) (i) was the aggressor or was engaged in a combat by agreement, unless he withdraws from the encounter and effectively communicates to the other person his intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force; and

(ii) for purposes of Subsection (i) the following do not, by themselves, constitute "combat by agreement":

(A) voluntarily entering into or remaining in an ongoing relationship; or

(B) entering or remaining in a place where one has a legal right to be.

(3) A person does not have a duty to retreat from the force or threatened force described in Subsection (1) in a place where that person has lawfully entered or remained, except as provided in Subsection (2)(c).

HB

386

HB 386
Uniform Citations - Overview
Prepared by Representative Mike Hawker's Office

HB 386 establishes and requires the use of a uniform format, process and standard deadlines for citations issued in the state. The process is contained in sections 21 – 31 of the bill. The rest of the bill adopts the standard process for various citations.

Uniform Citation Process and Format contained in AS 12.25.175 – 12.25.230:

- 12.25.175 (new section of law) sets out requirements for the standard citation format, requires the commissioner of the Department of Public Safety to provide or prescribe the standard citation formats, and enables the commissioner to adopt regulations. Uniform citations must adhere to a statewide numbering system and contain specific information described in AS 12.25.200 (b). The citation issuer is also required to make an oath or affirmation, if authorized to do so, or make a statement under penalty of perjury that the citation was true and personally served on the person charged.

- 12.25.180 (existing law) clarifies when an officer can issue a citation instead of making an arrest. Most of the changes reword existing law for clarity and have no substantive effect.
  - In (a)(2), the requirement that the officer have "reasonable and probable cause to believe" that a person is a danger to self or others is replaced with "reasonably believes." Probable cause indicates there are certain elements that must be met, whereas a reasonable belief can be articulated more easily. Because it is within the officer's discretion to arrest or issue a citation, that determination should be based on a reasonable belief, rather than probable cause.
  - In (b)(2), the requirement that the person receiving the citation provide a written promise to appear in court is removed to facilitate electronic transmission of the citation. The required issuer's oath or statement that a copy of the citation was correctly served (required by AS 12.25.175) satisfies the intent of this statute.

- 12.25.190 (existing law) clarifies when a person shall be given a five-day notice to appear in court. Most of the changes are language repeals to accommodate the standard process adopted in this legislation and rewording for clarity.
  - The provision allowing a person to request a hearing earlier than five days after the citation is issued is repealed. Officers in the field cannot always forward a citation to the court for a hearing in fewer than five days.

- 12.25.195 (existing law) outlines the disposition of "scheduled offenses" – violations that have an established bail or fine amount. If a person doesn't contest the citation, there is a standard 30 day deadline for paying the bail or fine, regardless of the type of citation.

- 12.25.200 (existing law) specifies a format for citations. The changes to this section expand its applicability to all citations, instead of just those issued by law enforcement.

- 12.25.210 (existing law) outlines recordkeeping requirements for citation issuers. The changes to this section expand its applicability to all citations, instead of just those issued by law enforcement. This section also sets a 10 working day deadline for citations to be filed with the court and clarifies that missing the filing deadline does not negate the citation.

- 12.25.230 (existing law) outlines the penalties for failure to pay a fine or appear in court, as required by a citation. The current language is confusing. While having two sections implies

that that each offense should have a different penalty, because the type of misdemeanor is not defined, they can be interpreted to apply the same penalty to both types of citation. Under HB 386, there would be a bright line between offenses that require a court appearance and "scheduled offenses" which carry a particular fine and can be paid by mail.

- 12.25.230 (a) states that the penalty for failing to appear to answer a citation that requires a court appearance would be a class A misdemeanor (see penalties above).
- 12.25.230 (b) states that the penalty for failing to appear or pay the bail or fine for a citation for a "scheduled offense" is a class B misdemeanor, which is punishable by up to a $2,000 fine and/or imprisonment of up to 90 days.

Statutory changes to implement the Uniform Citation Process and Format for various violations:

- Sections 1, 4, 7, 9, 14, 17, 32, 35, 38, 39, 40, 41, 45, 46, 50, 57 and 59 are statutory references changed or added to reference the standard citation process and format:

- Sections 2, 5, 33, 36, 42, 55, and 57 reflect the standard deadline of 30 days for payment for a "scheduled offense" citation (see AS 12.25.195). These sections also add language specifying that this deadline is for violators who plead "no contest," since a person contesting the citation wouldn't be sending in a payment.

- Sections 3, 6, 34, 37, 43, 54, 56 and 58 are individual penalty sections that are amended or repealed and reenacted to adopt the uniform penalties in AS 12.25.230.

- Sections 10, 14, 18, 46 and 50 remove the condition that a citation be "in writing" (see notes for AS 12.25.180 (b)(2)).

- Sections 11, 15, 19, 47, and 51 reflect the five day notice and repeal language allowing a person to request an earlier hearing (see notes for AS 12.25.190).

- Sections 12 and 52 reflect the 10 day deadline for a citation to be filed with the court by the citation issuer (see AS 12.25.210).

- Sections 13, 16, 20, 48, and 53 repeal language specifying what needs to be in particular citations and instead state that a citation that complies with the uniform format is considered to be a lawful complaint for the purposes of prosecution.

Miscellaneous Sections:

- Sections 8 and 24 ensure that the law is consistent after other previously enacted bills sunset. The language mirrors language found in sections 7 and 23, respectively.

- Section 44 allows citations to be given for violations in the Knik River Public Use Area.

- Section 49 allows DPS to establish regulations to implement standardized citations.

- Section 60 repeals statutes regarding citation formats that are made moot by adoption of the standardized format in this bill.

- Sections 61-65 provide applicability instructions, transitional provisions and effective dates.

Representative Mike Hawker
Alaska State Legislature

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Whittier
Sunrise
Hope

House Bill 386
Sponsor Statement

"An Act establishing a uniform format and procedure for citations for certain violations of state law; relating to the form, issuance, and disposition of citations for certain violations; relating to certain crimes and penalties for noncompliance with citations; and providing for an effective date."

House Bill 386 gives the Department of Public Safety necessary authority to prescribe a uniform citation format and process. Standardizing the citation process will improve efficiency and interdepartmental communications, facilitating electronic sharing of citation data between law enforcement, prosecution, courts and state and municipal collection departments.

By standardizing deadlines for payments, responses and paperwork filing by the citation issuer, HB 386 will also reduce confusion for citizens receiving citations and allow more fines to be paid through the courts' online e-payment system. A standard process is also an integral step in preparing for a statewide database and digital interoperability.

Staff Contact: Juli Lucky 465-4949 3/30/2010

HB

408

Alaska State Legislature
House Judiciary Committee

Representative Jay Ramras
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Committee Members
Representative Nancy Dahlstrom
Vice Chairman
Representative Bob Lynn
Representative Carl Gatto
Representative Bob Herron
Representative Max Gruenberg
Representative Lindsey Holmes

Sponsor Statement
HB408 "An Act relating to misconduct involving weapons"

Under Alaska law, an individual who has been convicted of a felony can carry hand guns and have their right to bear arms restored by any of three occurrences: (1) a pardon, (2) the underlying conviction having been set aside under AS 12.55.085, or (3) by the passage of ten years time from an unconditional discharge.

However, the U.S. Supreme Court in the case of *Caron v. U.S.*, 524 U.S. 308 (1988), ruled that if a person who has been previously convicted of a felony is prohibited from possessing firearms, in any way, under state law, then they are prohibited from possessing firearms under federal law.

While under state law a previously convicted ex-felon's right to possession of firearms is fully restored, there are still limitations on carrying concealed weapons. Ex-felons can carry concealed on their own property, while engaged in lawful hunting, fishing, or trapping, or while engaged in other lawful activities that necessarily involves the carrying of a weapon for personal protection.

However, the ATF and the FBI are interpreting Alaska's statute to be a restriction upon possession. Due to this interpretation, Alaskans who under state law are allowed to possess firearms are being threatened with prosecution for serious Federal offenses.

This bill addresses the language in AS 11.61.200, Misconduct Involving Weapons in the Third Degree. AS 11.61.200(a)(12) bars all people convicted of felonies from caring concealed weapons, while AS 11.61.200(g) sets out exemptions to (a)(12)'s blanket ban.

The Alaska State Legislature has made its own policy decision about how to handle the gun rights of ex-felons; however the Federal Government has stripped Alaska of the right to make its own judgments, excepting an all-or-nothing decision on gun rights for ex-felons. HB408 is one of many bills that have been drafted in this legislation session to bring this issue back before the Alaska State Legislature for consideration.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 16, 2010

SUBJECT: Misconduct Involving Weapons and Felons
(Work Order No. 26-LS1459\A)

TO: Representative Bill Stoltze
Attn: Ben Mulligan

FROM: Gerald P. Luckhaupt
Legislative Counsel

Enclosed is the bill draft you requested. As I have previously informed Ben, I have a few comments.

1. History of AS 11.61.200

AS 11.61.200(a)(1) does not completely include all conduct prohibited under AS 11.61.200(a)(12).

AS 11.61.200(a)(1) and (12) provide:

> (a) A person commits the crime of misconduct involving weapons in the third degree if the person
> (1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory;
> . . .
> (12) knowingly possesses a firearm that is concealed on the person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory.

AS 11.61.200(a)(1) prohibits a felon from possessing a firearm capable of being concealed on the person.[1] An affirmative defense is provided to AS 11.61.200(a)(1) in (b)(1) of that section.

> (b) It is an affirmative defense to a prosecution
> (1) under (a)(1) of this section that
> (A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;
> (B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or
> (C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(1) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory . . . .

This affirmative defense allows the felon to possess a handgun if one of these requirements is met but does not necessarily allow the felon to carry the handgun concealed. The felon is prohibited from carrying the handgun concealed by AS 11.51.200(a)(12). An affirmative defense is provided to AS 11.61.200(a)(12) in (g) of that section.

> (g) It is an affirmative defense to a prosecution under (a)(12) of this section that
> (1) either
> (A) the defendant convicted of the prior offense on which the action is based received a pardon for that conviction;
> (B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or
> (C) a period of 10 years or more has elapsed between the date of the defendant's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(12) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory; and
> (2) at the time of possession, the defendant was
> (A) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or

---

[1] For ease of discussion in this memorandum I will refer to "a firearm capable of being concealed on the person" as a handgun even though other firearms are capable of being concealed on the person.

(B) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

This provision allows the felon to only carry a handgun concealed if the felon meets the requirements for possessing a handgun in the affirmative defense to (a)(1) and the felon is either in or on the felon's own property or otherwise engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity.

These provisions are different because one allows the handgun to be openly carried and the other sets a higher bar for the felon to carry the handgun concealed.

AS 11.61.220(a)(12) was enacted in 1998 as part of amendments to the concealed handgun permit laws. HCS CSSB 141(FIN) am H, by Senator Lyda Green, made substantial changes to the eligibility requirements to receive a concealed handgun permit and repealed almost all the restrictions on where a permittee could carry a concealed handgun. The rationale provided by Senator Lyda Green's staff was that anyone eligible to possess a handgun under state or federal law should be eligible to receive a concealed handgun permit and a person who has received a permit should be able to carry a concealed handgun anywhere not otherwise prohibited under state or federal law. To this end certain misdemeanor offenses that previously barred a person from receiving a permit were eliminated. In addition provisions relating to carrying a concealed firearm without a permit were strengthened and clarified while restrictions on where firearms could be possessed were mostly eliminated except for a few limited circumstances where those restrictions were applied generally to everyone (where previously the restrictions only had applied to persons holding permits to carry concealed weapons). As a part of this clarification AS 11.61.200(a)(12)[2] was enacted so that felons who possessed a handgun that was concealed were punished at a greater level than regular members of the public who carried a concealed handgun without a permit. And so a felon who might be permitted to possess a handgun due to the affirmative defense provided in AS 11.61.200(b)(1), would still be subject to a felony penalty if they carried that handgun concealed unless they (1) met the requirements to possess a handgun and (2) were in or on their own property or engaged in certain lawful outdoor activities.

In 2003 the Alaska Legislature enacted CSHB 102(STA) which removed restrictions on members of the public from carrying concealed deadly weapons, including firearms. CSHB 102(STA) made the concealed handgun permit system permissive; no longer would a permit be necessary to carry a handgun concealed.[3] Presumably at this time the legislature could have repealed AS 11.61.200(a)(12) and (g) as Alaska no longer

[2] As well as the affirmative defense of AS 11.61.200(g).

[3] Although a permit could still be obtained if a person wanted to avail themselves of reciprocity provisions of other states and carry concealed in those states.

distinguished between open or concealed possession of firearms. But the legislature did not. I cannot say that the legislature merely overlooked those provisions as I remember some concern by at least some members about extending the right to carry concealed to those that had committed felonies.

2. Do you want to allow all felons convicted of crimes outside of AS 11.41 to be able to carry concealed handguns?

To build on my comment #1 above, the changes in this bill draft would allow felons convicted of crimes outside of AS 11.41 to carry concealed handguns, if they have received a pardon, a set aside, or 10 years have elapsed from the felon's unconditional discharge for the offense. Felonies outside of AS 11.41 include unclassified felonies and class A through C felonies, such as arson, misconduct involving controlled substances (including engaging in a continuing criminal enterprise, delivering drugs to children and methamphetamine manufacture and delivery), burglary of a dwelling or while armed with a firearm, promoting prostitution, and distribution and possession of child pornography. Clearly, felons who have received a pardon should be treated differently and a change in current law is clearly warranted in this regard. To a lesser extent persons who have received a set aside under AS 12.55.085(e) are probably deserving of a change in current law. The question becomes whether felons who have not had someone pass upon their character, whether that be the governor in issuing a pardon or a judge when issuing a set aside, should be able to possess concealed handguns merely because of the passage of time.. If so, should this apply to all felonies, even felonies that are considered more egregious or comparable to crimes against a person under AS 11.41?

3. Changing affirmative defense to nonapplicability provision.

The bill draft changes the affirmative defense provided in AS 11.61.200(b) to a nonapplicability provision. This change may have an extreme impact upon the ability of the state to prosecute felons possessing concealable firearms. Currently an affirmative defense is provided for felons to show that they have received a pardon, a set aside, or 10 years have elapsed from their conviction for a felony other than a crime against a person. The reason this is an affirmative defense is because the information necessary to establish the defense is within the knowledge and control of the felon and may not be available to the prosecution. A felon knows if they have received a pardon, a set aside, or 10 years have elapsed while the prosecution does not always have access to this information.[4] By making this a nonapplicability section, the prosecution may be required to disprove the existence of a pardon or set aside, or prove that 10 years have not elapsed, prior to the case proceeding. In many cases this may not be possible.

GPL:plm
10-076.plm

[4] Indeed, there is no organized way of searching for this information in most states.

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STATE & LOCAL AFFAIRS DIVISION
BRIAN JUDY, ALASKA STATE LIAISON

March 11, 2010

Background Information
House Bill 408
Restoration of Firearm Rights in Alaska

• Under Alaska State law, a person who has been convicted of a felony is NOT prohibited from possessing a rifle or shotgun. In effect, the person's right to possess such a firearm is restored by operation of law upon the person's release from incarceration.

• Under Alaska State law, a person who has been convicted of a felony IS prohibited from possessing a firearm *capable of being concealed* on one's person (Alaska Stat. § 11.61.200(a)(1)) and, separately, IS prohibited from possessing a firearm that *is actually concealed* on the person (Alaska Stat. § 11.61.200(a)(12)).

• Alaska State law also provides, however, for an "affirmative defense" to a prosecution under either the felon-in-possession-of-a-*concealable*-firearm statute or the felon-in-possession-of-a-*concealed*-firearm statute if the person's civil rights have been restored as follows:

(1) For possession of firearms *capable of being concealed*, if the person has received a pardon or if the conviction has been set aside or if a period of ten years or more has elapsed since the date of the person's unconditional discharge (Alaska Stat. § 11.61.200(b)); and

(2) For possession of firearms that *are actually concealed*, if the person has received a pardon or if the conviction has been set aside or if a period of ten years or more has elapsed since the date of the person's unconditional discharge. The restoration of the right to possess a *concealed* firearm is further limited, however, to the following circumstances: in the person's dwelling, on land owned or leased by the person appurtenant to the dwelling or while the person is actually engaged in lawful hunting, fishing, trapping or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection (Alaska Stat. § 11.61.200(g)).

• Further, it is important to note that under Alaska State law, restoration, by operation of law after the passage of time, of the right to possess either a firearm that is *capable of being concealed* or a firearm that *actually is concealed* is limited to persons who were NOT convicted of an offense against the person (Alaska Stat § 11.41).

• It is also important to note that under Alaska State law, the rights to vote (and, as a qualified voter, to hold public office) and to serve on a jury are lost upon conviction of a felony but automatically restored, by operation of law, immediately upon the person's unconditional discharge (Alaska Stat. §§ 09.20.020; 15.05.030(a); 33.30.241).

• Under Federal law, a person who has been convicted of a "crime punishable by imprisonment for a term exceeding one year" may not possess a firearm (18 USC § 922(g)).

• Federal law also provides, however, that "any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction...*UNLESS* such pardon, expungement, or restoration of civil rights expressly provides that the person may not...possess firearms" (18 USC § 921(a)(20)).

• In the case of Caron v. United States (524 U.S. 308 (1998)), the Supreme Court of the United States:

(1) Found that "nothing in the text of §921(a)(20) requires a case-by-case decision to restore civil rights" so restoration of such rights by operation of law is sufficient; and

(2) Interpreted the aforementioned "unless clause" found in 18 USC § 921 (a)(20). The Court held that an "all-or-nothing" test must be applied and that "a state weapons 'limitation' activates the uniform ban on possessing any firearm at all." In other words, a state must completely restore "all" of a person's rights and treat the person whose rights have been restored in the same manner that other law-abiding citizens are treated. If a person does not have "all" rights restored by the state then, for the purpose of federal law, the person has no rights. Subsequent cases have held that complete restoration of "all" rights includes, not only ALL firearm rights, but also the rights to vote, hold public office and serve on a jury.

• Alaska State law contains two "limitations" on persons who have had their right to possess firearms otherwise restored that are not imposed on persons who have never lost their rights and which, therefore, activate the federal ban on possessing any firearm at all:

(1) A person whose right to possess firearms has been otherwise restored can not possess a firearm concealed outside their dwelling, property or while engaged in a lawful outdoor activity (Alaska Stat. § 11.61.200(g)(2); and

(2) A person whose right to possess firearms has been otherwise restored would be in the position of having to raise an affirmative defense to a charge of either possessing a concealable firearm (Alaska Stat. § 11.61.200(b)) or carrying a firearm concealed (Alaska Stat. § 11.61.200(g)), while a person who never lost his or her rights cannot be charged with such a crime whatsoever.

• Unless the Alaska State Legislature amends existing law to modify these two limitations, the existing policy of the State of Alaska to allow for the restoration of firearm rights cannot be implemented without impacted persons being subject to felony prosecution under Federal law.

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STATE & LOCAL AFFAIRS DIVISION
BRIAN JUDY, ALASKA STATE LIAISON

March 11, 2010

TO: Representative Bill Stoltze
CC: Members of the House Judiciary Committee
FROM: Brian Judy, NRA-ILA Alaska State Liaison
RE: House Bill 408 – **SUPPORT**

I am writing on behalf of the National Rifle Association – Institute for Legislative Action to express **support for House Bill 408.** HB 408 would facilitate the implementation of the current Alaska state law that allows persons who have long-past felony convictions but whose rights have been restored to possess firearms in the state. Although the legislative fix necessary to solve this problem is simple, the reason it is necessary is quite a technical and complicated interaction between state law, federal law and a U.S. Supreme Court decision (attached is a detailed summary of the various issues at conflict).

While many advocates for the restoration of voting rights for persons with past felony convictions talk about dignity, with respect to the restoration of firearm rights there is not only the issue of dignity but of life and death. The nature of life in Alaska, especially in the rural areas, makes possession of firearms a necessity not only for food but for protection in the field.

Current Alaska State law provides for the restoration of roughly 95% of firearms rights to those former offenders who qualify. They can possess rifles and shotguns, they can possess handguns, they can carry handguns openly and they can carry handguns concealed in their home, on their property and while engaged in lawful outdoor activities out in public. The only thing they cannot do under state law is put on a coat and cover a handgun when they are somewhere other than those places previously listed.

The problem is that, based on the Court decision discussed in my attachment, because the State of Alaska does not restore 100% of an affected person's firearm rights, under federal law the person is considered to have NO rights whatsoever! In a Legal Services Memorandum dated April 1, 2009, Legislative Counsel Gerald Luckhaupt described the Court's conclusion as "obviously incorrect." While the NRA would completely agree with Mr. Luckhaupt, only three Supreme Court Justices shared such a view and the decision was 6-3 in this case.

As discussed in my attachment, there are two changes that must be made to State law: first, the restriction on concealed carry must be repealed and second, two affirmative defenses found in AS § 11.61.200 must be changed to exceptions. With these two changes, Alaska State law would treat persons who have had their rights restored exactly the same as those who have never lost their rights and the problem would be solved.

It is the hope of the National Rifle Association that legislators can get beyond the perceived stigma of "giving firearms to felons" and realize the legitimacy of allowing persons, who have long ago paid their debt to society, to attain the restoration of their rights already provided by the State of Alaska but extinguished by an "obviously incorrect" U.S. Supreme Court decision.

Please support House Bill 408.

03-24-10

Dear Honorable House Judiciary Committee,

I regret I am not able to testify today. I am piloting a rescue helicopter in remote austere conditions where help is days away if trouble arises. I am on a search for an overdue individual 60 NM south of Kaktovik on the Arctic Slope. Not far from where we shot and killed a 3 year old grizzly that mauled and consumed two persons a few years ago. Last night I assisted Pt. Hope whalers on floating sea ice pans that broke loose from shorefast in high winds.

Article 3, subpart 21 of the Alaska Constitution gives the power of clemency exclusively to the executive branch. The clemency process is long, difficult, thorough and exhausting. It is rarely granted and requires extraordinary circumstances. It also requires exemplary efforts at rehabilitation. I assure you the chances of criminal recidivism after earning a pardon are zero.

Below are some definitions and laws. It is clear that both Congress and the Alaska Legislature intended to provide restorative avenues for ex offenders regarding firearm possession. Needless to say today I do not have the survival tools I need to protect myself, family or those I serve. Even after earning a full unconditional pardon I am still being punished in the worst way. Inability to protect my own life. I pray you will rectify the law to allow its intended design ring true. Allow those that earn pardons have all punishment removed. Thank you for defending the Alaska Constitution and the unique lifestyles we live.

Federal law on firearms disability:

18 U.S.C. §921(a)(20) provides:

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly [or implicitly as a matter of state law] provides that the person may not ship, transport, possess, or receive firearms.

Note: It is clear Congress intended for a restorative legal option. It also does not mention conceal has a limitation. This was added by the US Supreme court Caron split decision. (All or nothing)

Excerpt from the current State of Alaska Clemency handbook:

<u>Pardons</u>
A pardon is a form of Executive Clemency, which if full and unconditional, relieves an offender from further punishment and disabilities imposed by reason of a criminal offense. It is an act of grace which represents forgiveness for a particular crime.

Definition of a pardon from Black's Law Dictionary:

In contrast to a reprieve or a commutation, a "pardon" releases the offender from the entire punishment prescribed for the offense. BLACK'S LAW DICTIONARY, 1113 (6th ed. 1990).
See also, 1985 N.D. Op. Att'y Gen. 158 and 1988 N.D. Op. Att'y Gen. 65.
A pardon is usually an action that mitigates or sets aside punishment for a crime after a conviction. Black's Law Dictionary defines it as an 'act or an instance of officially nullifying punishment or other legal consequences of a crime' (ibid., at 1137).

Respectfully yours,

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Edward L. Miner
Tamara Huffman, paralegal

6 January 2009

[redacted]
State Capitol
Juneau, AK 99801

Dear [redacted]

Several weeks ago, I furnished you some prosed draft legislation involving possession problems under Alaska law for persons who were pardoned or received suspended imposition of sentences for felony charges I have since run our proposed changes by the NRA attorneys and they have some improvements. As a result, I am resending this to you with what we originally sent along with the suggested improvements. This, then, is an updated version of what was sent previously. Please note the highlighted portions of the last paragraph.

The laws regarding possession of firearms in Alaska—laws which were contemplated and enacted by our own state legislature—are being attacked, gutted and rewritten by bureaucrats at the ATF and FBI. Attempts to correct these errors at the federal level have been ignored. It is now incumbent upon the Alaska legislature to take action to defend the rights of Alaskans. In this letter I will explain the source of the problem, illustrate particular grievances against the federal agencies involved, and offer the proper solution—a recrafting of Alaska Statute 11.61.200(g)(2).

Under Alaska law, an individual who has been convicted of a felony can have their right to bear arms restored by any of three occurrences: a pardon, a suspended imposition of sentence, or by the passage of ten years from unconditional discharge. The Alaska legislature, recognizing both the distinctions of life in Alaska and also the profound respect that the majority of Alaskans

have for the right to bear arms, has made the decision to establish a means by which individuals who have previously been convicted of a felony may regain their right to bear arms. The bureaucrats at the ATF and FBI have subverted the goals of the Alaska legislature through the tortured and twisted application of limited U.S. Supreme Court cases to Alaska law. In doing so, these agencies have wrongfully deprived Alaskans of their rights.

In Caron v. U.S., the U.S. Supreme Court held that if a person who has previously been convicted of a felony is prohibited from possessing any type of firearm under state law, then they are prohibited from possessing all firearms under federal law.[1] Prior to this ruling, several states allowed previously convicted felons to regain the right to possess rifles and shotguns but prohibited them from possessing handguns.[2] Alaska law draws no distinctions among the types of firearms which a previously convicted felon may posses.[3] Alaska law allows an individual whose rights have been restored to possess rifles, shotguns and handguns. The only limit contained in our state law is upon the carrying of a concealed firearm by a person whose rights have been restored.[4] While the right of possession is fully restored, an individual who has previously been convicted of a felony may only carry a firearm concealed under limited circumstances - either while he is upon his own land or while he is engaged in outdoor activities that would "necessarily involve the carrying of a weapon for personal protection."[5]

An accurate reading of the Alaska statutes reveals that our state law should not be impacted by the Court's holding in Caron. Alaska law does not limit the "type" of firearms which a previously convicted felon may possess. Furthermore, the single limitation in place for previously convicted felons proscribes only their ability to carry a firearm in a concealed manner, and does not limit their right of possession in any way. The ATF and FBI are, however, interpreting the Alaska statute as a restriction upon possession. Because of this interpretation, Alaskans who have led productive lives, but who have convictions sometimes decades in their past, are being denied their right to own guns, and even being threatened with prosecution for serious Federal offenses.

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[1] Caron v. U.S., 524 U.S. 308, 314 (1988).
[2] See U.S. v. Tomlinson, 67 F.3d 508 (4th Cir. 1995); see also U.S. v. Dahms, 938 F.2d 131 (9th Cir. 1991).
[3] See AS 11.61.200(a) and (b).
[4] AS 11.61.200(a)(12) and (g)(2).
[5] Id. The Alaska appellate courts have not established an objective test or enumerated specific criteria to consider when determining which activities Anecessarily involve the carrying of a weapon for personal protection.@

To better understand the plight of the individuals being affected by this law, I will offer some specific examples. In 1970, at the tender age of 19, R.S. made the mistake of getting caught up in recreational drug use. He was arrested for the possession of hallucinogens and convicted of a felony. As a first-time youthful offender, he was granted a suspended imposition of sentence, and given the opportunity to mend his ways. He is now a happily married 56-year-old father. He has worked, hunted and fished his entire life. He only learned recently, when he applied for the purchase of a new firearm, that he is now suddenly prohibited from owning firearms, despite having been granted a suspended imposition of sentence more than 30 years ago.

R.P. was convicted of a felony in 1992. After paying for his crime, he went straight to work helping the public. He became the director of the search and rescue organization for an Alaskan borough. Governor Murkowski granted him a full pardon, expressly for the purpose of allowing him to possess a firearm to help him fulfill his duties. He recently became aware of the fact that—despite the Governor's pardon—federal law prohibits him from possessing firearms.

The Federal law has stripped Alaska of the right to make its own decision on restoring gun rights to ex-felons. The overreaching actions of the bureaucrats at the ATF and FBI have left Alaska with a single option - to amend AS 11.61.200 to remove the disability on carrying a concealed weapon by a person convicted of a felony who has had their rights restored. By removing this disability in Alaska's law, the ATF and FBI will have no basis whatsoever to challenge Alaska's laws, and we can allow ex-felons who have proven their rehabilitation to participate in the full rights that all Alaskans enjoy.

I have included the text of two sample bills that would amend AS 11.61.200, and restore Alaska's policy of allowing rehabilitated ex-felons to own firearms. **I had the proposed legislation reviewed by the NRA and the NRA still sees problems with our proposed solutions. I've enclosed a copy of the memo I received from the NRA outlining such problems and the NRA's suggested proposal. We would urge the Legislature to adopt these changes, as suggested by the NRA,** to assure the continued support of the right of Alaskans to bear arms for the defense of themselves and others.

Sincerely,

Wayne Anthony Ross
Attorney at Law
Director, NRA

cc Brian Judy, NRA

Memorandum

Re: Proposed legislation
File: *11.61.220 Project*
Date: 9 September 2008

Several of our clients have experienced problems in either being denied an Alaska Concealed Handgun Permit (CHP) or denied permission to purchase firearms during a "National Instant Criminal Background Check System" (NICS) check.

These problems stem from the language of AS 11.61.200, the Alaska Statute for Misconduct Involving Weapons in the Third Degree. AS 11.61.200(a)(12) bars all people convicted of felonies from carrying a concealed weapon, while AS 11.61.200(g) sets out the exceptions to (a)(12)'s blanket ban.

Because of the limited nature of subsection (g)'s exceptions, the Alaska Department of Public Safety takes the position, upheld by the Alaska Supreme Court in *Gabrielle v. State of Alaska*, that anyone with a felony conviction is ineligible for an Alaska CHP. Additionally, the FBI has taken the position that the limit on a felon's ability to carry a concealed weapon under AS 11.61.200(a)(12) & (g) activate the federal ban on the possession of any firearm under 18 USC §922(g), as intepreted in *Caron v. U.S.*

I shall attempt to describe how the particular provisions of Alaska and Federal law have created these twin problems, and what we can do to attempt to fix them by changing Alaska's law.

The Alaska CHP Issue

The Alaska Department of Public Safety has taken the position that anyone with a prior felony conviction, regardless of the time since the conviction or whether the conviction was set aside or pardoned, does not qualify for an Alaska CHP. They have based this determination on the limited scope of the exceptions in AS 11.61.200(g) to the total ban in 11.61.200(a)(12) of any felon carrying a concealed firearm.

AS 11.61.200(g) only allows a convicted felon to carry a concealed firearm if; (1) the conviction has been pardoned, (2) the conviction has been set aside, or (3) 10 years have elapsed since the conviction, and either (a) the person was in their home or on land immediately adjacent to their home, or (b) was engaged in an outdoor activity that necessitated carrying the weapon for personal protection. Thus, without both some evidence of rehabilitation in (1)-(3), and observing the limited conditions for carrying in (a)-(b), a person convicted of a felony is guilty of

Misconduct Involving Weapons in the Third Degree if they carry a concealed weapon.

The Alaska Department of Public Safety's interpretation of AS 11.61.200 was upheld in *Gabrielle v. State of Alaska.*[1] There, the Supreme Court of Alaska held that a person with a felony record of any description, though not prohibited from applying for an Alaska CHP under the statutes and regulations governing eligibility for the permit, nevertheless was not entitled to an Alaska CHP because of the restrictions found in AS 11.61.200. Because this issue has been appealed to the highest court capable of deciding the issue, the only way to change this outcome is through legislation.

The NICS Check / 18 USC §922(g)(1) Issue

The FBI's National Instant Criminal Background Check System implements a federal requirement that all federally licensed firearms dealers conduct a background check on all prospective firearms purchasers. The background check screens those that have been disqualified from purchasing firearms through operation of federal law. Information is entered into the NICS system by multiple state and federal agencies, but the FBI determines whether the information provided disqualifies an individual from purchasing firearms.

Many of the federal restrictions on possession of firearms are found at 18 U.S.C. §922(g). §922(g)(1) prohibits anyone who has been convicted of a felony from possessing a firearm, however §921(a)(20) contains an exception for those felons who have had their civil rights restored (through operation of law, a pardon, or any similar means). The exception in §921(a)(20) has its own exception, however, prohibiting those convicted of a felony whose civil rights have been restored from possessing a firearm if state law prohibits them from possessing a weapon of any type.

The exception to the exception found in §921(a)(20) was interpreted by the U.S. Supreme Court in *Caron v U.S.*[2] There, the Court faced a person whose civil rights had been restored under Massachusetts law, including the right to possess long guns and handguns. However, he was not allowed to carry handguns outside his home or business, though this right was afforded to non-felons. The Supreme Court found that this restriction, though not strictly a prohibition against of possession of handguns, was enough of a restriction to activate the exception to the exception found in §921(a)(20).

Applying *Caron* to Alaska law, the FBI has taken the position that the restrictions on ex-felons carrying concealed weapons found in AS 11.61.200(a)(12) & (g) are sufficient to activate the exception to the exception found in 18 U.S.C. §921(a)(20). Because of this interpretation, ex-

[1] 158 P.3d 813 (Alaska 2007).

[2] 524 U.S. 308 (1998).

felons in Alaska, even those who have had convictions set aside or pardoned, are barred from possessing any firearm by §922(g)(1).

The FBI's interpretation of the effect of AS 11.61.200 on the application of 18 U.S.C. §922(g)(1) is contrary to the Alaska Supreme Court's interpretation in *Gabrielle* (which was not binding on the FBI), and has been questioned in other federal cases such as the unpublished *U.S. v Flores*.[3] However, given the similarity between Alaska law and the Massachusetts law at question in *Caron* (both allowed possession of all types of weapons, but restricted where and how handguns could be carried), the FBI's interpretation of the law is not clearly incorrect. It would be possible to challenge the FBI in court, but it is far from certain that we could obtain a favorable result.

The Common Factor

The common factor in both of these issues is AS 11.61.200, and the restriction on ex-felons carrying concealed weapons in Alaska, except under certain narrow exceptions. While Alaska has several statutes covering the crime of "Misconduct Involving Weapons," enumerating different degrees of the offense, no other iteration of the statute implicates the carrying or possession of weapons by ex-felons, and so would not impact either eligibility for an Alaska CHP or eligibility under the FBI's NICS system.

Likewise, Alaska's statutes and regulations governing Alaska's CHP program (AS 18.65.700-790, 13 AAC 30.010-900) set out eligibility requirements, including disqualifications if an applicant has had multiple recent misdemeanor offenses or has been ordered by a court to attend a drug- or alcohol-rehabilitation clinic. However, none of the requirements for a CHP touch on the status of the applicant as an ex-felon; pardoned, conviction set aside, or otherwise. Thus, none of these statutes or regulations need to be revised in addressing either the CHP or NICS issue.

Therefore, a legislative fix to this issue need only modify the restrictions on ex-felons carrying or possessing weapons that are found in AS 11.61.200.

The Possible Solutions

Alaska is unusually *laissez-faire* in its approach to gun rights (being one of two states that allows concealed carry of firearms without a permit). However, Alaska also tends towards a tougher stance on crime issues than other states. In attempting to change the policy embodied in AS 11.61.200 towards the gun rights of ex-felons, we will be working in the cross-currents of these two conflicting political priorities.

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[3] 118 Fed. Appx. 49 (C.A.6 (Mich.)).

From a strictly political perspective, we could attempt to counter some of the turbulence of a legislative proposal by noting that it is federal law that has forced us to seek a modification of our state law, in order to allow us to pursue our own policy of granting forgiveness to, and restoring the rights of, ex-felons. Federal law has stripped Alaska of its right to make its own determination of how ex-felons are to exercise their gun rights, and leaves us only a simplistic all-or-nothing choice as to whether ex-felons should regain their gun rights.

There are several different methods we could pursue to change AS 11.61.200 so as to allow for ex-felons to apply for an Alaska CHP and to bypass the federal ban on possession found in 18 U.S.C. §922(g)(1). The principal question in changing the restrictions found in AS 11.61.200, however, is how far to expand the re-enfranchisement of gun rights to ex-felons.

First, in order to permit ex-felons to apply for an Alaska CHP, or to possess a weapon under 18 U.S.C. §922(g)(1) and *Caron*, we must remove the restrictions on where an ex-felon may carry a concealed weapon found in AS 11.61.200(g)(2) (I have attached two sample proposed bills with this memo for you to review). This would allow an ex-felon to carry a concealed weapon under the same circumstances that any other citizen would be able to. This would broaden the rights of ex-felons, as it allows them to carry concealed weapons where previously they were not allowed to. However, this is the only means of restoring their right to own weapons at all, given the FBI's interpretation of 18 U.S.C. §922(g)(1).

As for how far to extend re-enfranchisement, currently AS 11.61.200(g) identifies three groups of ex-felons that it restores gun rights to; ex-felons who (1) received a pardon, (2) had their conviction set aside, or (3) had more than 10 years elapse since they finished serving their sentence and who had not committed a violent felony. There is a strong argument that all three groups should be granted full re-enfranchisement, as all three demonstrate some individualized showing of rehabilitation, rather than automatically granting an ex-felon gun rights as soon as they get out of jail.

Conclusion

Alaska has made its own policy decision about how to handle the gun rights of ex-felons, however the Federal Government has stripped Alaska of the right to make our own judgments except for an all-or-nothing decision on the gun rights of ex-felons. That message of Federal interference with Alaska's laws is the message we should emphasize in attempting to amend AS 11.61.200, in order to restore the gun rights of those denied them under the federal government's ban.

State of Alaska
Department of
Public Safety

Sarah Palin, Governor
Walt Monegan, Commissioner

May 13, 2008

[redacted]

By certified mail with return receipt

Dear Mr. [redacted]

I received your e-mail dated April 6, 2008 appealing the denial of your application to obtain an Alaska Concealed Handgun Permit, and have given careful consideration to your appeal. Your appeal is denied. An explanation of the reason for this denial is as follows.

In stating your case, you provide abundant evidence of your good character and legal standing, as well as expressing frustration with an action by this department which you feel unwarranted in your circumstances.

The original decision to deny your application was based upon your convictions for 2nd degree burglary. Sentencing for your convictions was suspended and eventually your convictions were set aside. Burglary in the second degree is a felony. A felony conviction disqualifies an applicant from obtaining an Alaska Concealed Handgun Permit. A felony conviction that has been set aside is still a disqualifier for the issuance of an Alaska Concealed Handgun Permit. State law (13 AAC 30.900(6)) defines a conviction as meaning "...that a person has entered a plea of guilty or no contest to, or has been found guilty by a court or jury of, a criminal offense, **regardless of whether the judgment was after that set aside under AS 12.55.086** or a similar procedure in another jurisdiction, or was the subject of a pardon or other executive clemency..." (emphasis added) Consequently, because of your set aside felony convictions, we are prohibited, by law, from issuing you an Alaska Concealed Handgun Permit.

Your message also indicates that you have not been denied a firearm transfer when presenting yourself for a NICS check. Although it is logical to assume that you are eligible to possess a firearm under federal law, an Alaska Concealed handgun permit may only be granted to those who are eligible to possess a handgun under both federal and state law. Alaska law (AS 11.61.200(a)(12)) prohibits you from carrying a concealable firearm. There is no unrestricted right to carry a concealed handgun for a convicted felon under Alaska law.

As a final administrative decision, the appeal to this action is denied.

You are reminded of your right to seek judicial review of this decision under Alaska Statute 44.62.560-570 within 30 days of receipt of this letter.

Sincerely,

John D. Glass
Deputy Commissioner

To whom it my Concern,

My name is [redacted] and I'm writing this letter in regards to the denial of a concealed carry permit that I applied for in the beginning of [redacted] of 2008.I have taken the concealed carry course and paid a considerable amount of money for that course to try and be a law abiding gun owner and carrier, even though in the state of Alaska it is not necessary to do so.

I'm a 36 year old father of [redacted] and a devoted husband,and I'm currently a superintendent for a multi-million dollar [redacted] and work year round at that job.I'm a tax payer,a voter and a yearly supporter of our Alaska Peace Officers and Public Safety Employee Association and a Member of the N.R.A. I'm a law abiding citizen that does not drink or do drugs and haven't even had a traffic violation in over ten years.

I was 17 years old when I found myself on the wrong side of the law for the first and only time in my life.
I was young and dumb as we've all been, and made a bad choice in my young life, I was involved in a non-violent crime in which a felony was charged.I plead no contest because I knew what I did was wrong and there was no sense in fighting it andwaisting the courts time.I did a short jail term and was ordered to payrestitution and do 3 years probation.And because I was so young and payed my restitution in full and did my probation with no problems or violations. I was given a S.I.S (Suspended Imposition of Sentencing) my conviction was Dropped, Dismissed by a federal judge.(I'm not concidreda felon.)So why put me in that category.

I was given a seoond chance and have made a great life with that second chance, I'm allowed to vote,buy and posses firearms and I"m a avid hunter and sportsman.(Because I'm not concidered a felon that is all possible.)

In the State of Alaska I'm allowed to carry a concealed weapon without a permit,but yet I can't get a concealed carry permit if I want one.It doesn't make sense, why you would not want me on paper to show law enforcement that I would carry a concealed weapon.I have court documents,F.B.I and N.I.C.S background checks to prove my eligibility to own a handgun. I have talked to people at the permits and licensing unit that agree and don't understand it either.

I ask of you to grant me the right and please allow me to get my concealed carry permit and to go on paper as a permit holder and to be able to give law enforcement officers the ability to know that I have a weapon on my person and to be a law abiding and safety trained citizen.

Sincerely,

[redacted]

State of Alaska
Department of Public Safety
Division of

Statewide Services

Sarah Palin, Governor
Walt Monegan, Commissioner

June 9, 2008

CERTIFIED RETURN RECEIPT

[redacted]

RE: Alaska Concealed Handgun Permit

Dear Mr. [redacted]

This is to notify you that your application for renewal of your Alaska Concealed Handgun permit is denied. Enclosed please find your cash in the amount of $25.00.

Upon receiving an application for renewal, we are obliged to review the eligibility status of the applicant. In your case we have determined that you are not eligible to hold a concealed handgun permit and that the original issue was done in error.

Effective immediately, your concealed handgun permit is revoked. You must surrender the permit to the nearest peace officer. We recommend that you surrender the permit at the nearest State Trooper office or police department.

We apologize for any inconvenience this may cause you but the law does not allow any other course of action.

Alaska statute 18.65.705 states that, in order to be eligible for a permit, an applicant "must be eligible to own or possess a handgun under the laws of this state and under federal law." We understand that your right to possess a firearm has been returned to you under federal law but Alaska law continues to bar you from unrestricted possession of a firearm. As a result, you may not be issued an Alaska concealed handgun permit.

Presidential pardon!

Under Alaska statute 11.61.200, misconduct involving weapons in the third degree, it is a class C felony for a person to knowingly possess a firearm capable of being concealed on

Alaska Concealed Handgun Permits
5700 E. Tudor Road - Anchorage, AK 99507 - Voice (907) 269-0392 - Fax (907) 269-5609

one's person or to knowingly possess a firearm that is concealed on the person after having been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory.

The same statute does provide for two affirmative defenses to a prosecution for these offenses but does not make it legal conduct for a convicted felon. In your case, your felony convictions will forever bar you from unrestricted possession of a firearm in Alaska even in light of the fact that the federal government has apparently restored your federal rights.

Presidential pardon!

The person who initially reviewed your eligibility status mistakenly interpreted the restoration of your federal rights to possess a firearm as restoring your state right as well. It does not. Pardons do not create an exception. Set asides, whether court ordered or statutory, do not create an exception.

Please surrender your permit immediately to insure compliance with Alaska law.

Alaska statute 18.64.740 provides that you may appeal this revocation decision to the commissioner of the Department of Public Safety. The appeal must be received in writing within 30 days after the date of the notice of revocation, and must set out the reasons for the appeal.

Sincerely,

Terrie Satterfield
Permits and Licensing Unit

Alaska Concealed Handgun Permits
5700 E. Tudor Road - Anchorage, AK 99507 - Voice (907) 269-0392 - Fax (907) 269-5609

Terrie,

Here is what I had this e-mailed to me on the Pardon. Here is what I was told:

I meet the requirements of AS 18.65.705
There was "no change" on the renewal application
I meet all Federal and State laws to own and posses a handgun
Pardon granted by President not Governor of State of Alaska
Per AS a "Pardon" is the only way to restore rights lost and remove disabilities under Alaska Law
The ACHP Rules .doc was an information paper created by someone in DPS, not the State Attorney's Office

I have no idea of all the all the AS that apply and have been told that several contradict one another. In several AS it states that when a Pardon is issued it is as though the conviction never occurred. I have had CCW permits in several states (including Alaska).

If this does not clear it up to everyones satisfaction, please forward me the appeal procedures so I may address this to the Commissioner of Public Safety.

Thank you for your patience with me! I really do appreciate all your help!

Respectfully,

[redacted]

back to him. He objected. A replevin petition was filed in the Circuit Court of Phelps County on June 18, 2005, seeking return of his revolver. On October 20, 2005, the Attorney General filed his answer. The state's position was that Mr. Troyer needs a permit to acquire a pistol prior to obtaining custody of the revolver. The court held a hearing on August 21, 2006. The parties subsequently signed on October 5, 2006, a stipulation for dismissal. Mr. Troyer agreed to drop his lawsuit and the police agreed to return the revolver to Mr. Troyer without requiring that he obtain a pistol acquisition permit. The revolver was returned.

MONTANA

Van der Hule, Frank (Montana). The issue is whether Montana's restoration of rights satisfies the requirements of 18 U.S. Code section 921(a)(20), or is it insufficient based on the holding in Caron v. United States, 118 S.Ct. 2007 (1998), which held a person cannot be convicted under federal law of being a felon in possession of a firearm stemming from a state felony conviction if the state law that removed the disability allows the person to possess all firearms (rifle, shotgun, pistol). On the other hand, a person may be convicted under federal law of being a felon in possession of a firearm stemming from a state felony conviction if state law allows such a person to possess only certain firearms, e.g., rifles and shotguns, but not pistols. In this case, Mr. Van de hule was denied permission to purchase a hunting rifle following a background check. A lawsuit was filed. Plaintiff subsequently filed a motion for summary judgment. The government likewise filed a motion for summary judgment. Mr. Van der hule filed his reply on November 6, 2006. Oral argument occurred on March 23, 2007. The court held on September 21, 2007, that Montana's refusal to grant a license to carry a pistol to a person whose civil rights have been restored meant that under Caron he could not possess any firearm under federal law. However, there is a possibility that Montana law grants a licensing official discretion to grant the carrying license to such a person. Therefore, the court certified the question to the Montana Supreme Court.

NEW HAMPSHIRE

Lone Pine Hunter's Club, Inc. (New Hampshire). This is an effort to shut down a shooting range. New Hampshire has a range protection statute. The club has been operating a shooting range on the property since 1966. The case resulted in two reported decisions. Lone Pine Hunters' Club v. Town of Hollis, 149 N.H. 668, 826 A.2d 582 (2003), held that evidence was sufficient to uphold finding that the zoning board of adjustment's finding that, 34 years earlier, it merely decided that hunt club did not need a variance to build a proposed addition, rather than deciding that the club did not need a variance to use the property as a fish and game club. Consequently, under the 1999 zoning ordinance the club's use of the property could be approved as special exception. The club would have to cease and desist unless the club applied for a special exception and presented a site plan to the planning board depicting the nature of the club's entire operation. Residents Defending Their Homes v. Lone Pine Hunters' Club, Inc., 924 A.2d 366 (N.H. 2007), held that the range protection statute only protected a shooting range that was in lawful operation at its inception. The court held the club was not operating lawfully from its inception in 1966. Accordingly, the club must obtain approval from the town, in compliance with the zoning provisions allowing for a special exception as a shooting range.

LAW OFFICES
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August 26, 2009

Richard Svodony
Assistant Attorney General
PO Box 110300
Juneau, AK 99811

Dear Richard:

This letter is a follow-up to our recent conversation regarding the Lauterbach Amendment and your interpretation of the law.

Specifically, as indicated to you, the primary concern that I have is that the Department of Probation and Parole has apparently been advising individuals who have retained an SIS that they no longer have weapons rights. I believe that this is incorrect advice. I furthermore suggest that your office's interpretation of Judge Steinkruger's opinion is incorrect, as well. My analysis will follow shortly.

Recognizing that you indicated to me that the assistant attorney general for the state was essentially interpreting federal law, might I suggest that the state take an alternate position? Specifically, why cannot the state simply advise individuals that federal law may or may not impact their ability to own weapons, and that they should be aware that federal law may restrict the right to own weapons, but that the state law does not do so? This may solve the problem.

As indicated to you, the analysis of Judge Steinkruger in the case you referenced, I believe, contradicts your position as set forth to me on the phone. Specifically, I have reviewed a copy of the email communication between Assistant Attorney General John J. Novak and Assistant Attorney General John K. Bodick from April 3, 2009. In the email communication Mr. Novak opines that certain language regarding the right to keep and bear arms that is included in the restoration of rights letter typically distributed to offenders that successfully complete probation or parole is inaccurate. Respectfully, Mr. Novak's analysis is wrong for the following reasons:

First, Mr. Novak states that a felony conviction is a felony conviction even though the court grants an SIS that is later set aside. This is inaccurate. An SIS that is set aside is, by very definition, not a felony conviction, because in order to be a felony conviction a person must be found guilty and sentenced. A person who receives an SIS that is set aside is never sentenced, and is therefore never convicted. Moreover, 18 USC § 921(a)(20), provides that "any conviction which has been...set aside...shall not be considered a conviction for purposes of [lawful firearms

possession]." Thus, an SIS that is later set aside is not a felony conviction under either state or federal law. Mr. Novak's assertion to the contrary is wrong.

Mr. Novak then states that a person commits the crime of misconduct involving a weapon in the third degree, in violation of AS 11.61.200(a)(12), by knowingly possessing a firearm concealed on one's person after having been convicted of a felony offense *even when the court granted an SIS for the prior offense that was later set aside.* Again, Mr. Novak's analysis is dead wrong, as he fails to mention AS 11.61.200(g)(1)(B) which states that "it is an affirmative defense to a prosecution under (a)(12) of this section that the underlying conviction upon which the action is based has been set aside under AS 12.55.085. Thus, AS 11.61.200 clearly states that it is **not** a crime to knowingly possess a concealed firearm if a person has been granted an SIS.

I submit that, Mr. Novak is also incorrect when he states that a person commits the federal offense of felony possession in violation of 18 USC 922(g)(1) by possessing a firearm or ammunition after having been convicted of a felony with the only exception being those cases where an Alaska Court granted an SIS between May 19, 1986, and April 14, 1998. It is truly baffling where this opinion comes from. As stated above, 18 USC § 921(a)(20) clearly states that a person who was granted an SIS is not a convicted felon for purposes of the felon in possession of a firearm statute. The date of the SIS is irrelevant, as 921 (a)(20) is not limited by date, and is currently valid federal law.

Perhaps, Mr. Novak's confusion is a misunderstanding of the interplay between federal and state law. As previously explained, once a felony conviction is set aside, there are no longer any restrictions under federal or state law for firearms possession. It is, however, true that, under federal law, once a person is released from probation or parole from a felony conviction (not an SIS) he may not possess any firearms whatsoever until 10 years has passed from the date of unconditional discharge, which is generally the date the person is released from probation and/or parole. Under state law, however, a person is still allowed to possess long guns, i.e., rifles and shotguns, upon being released from probation and parole since there is no state law prohibiting such. Under the Carone v. US decision, mentioned by Mr. Novak in his email, it is accurate that such possession, although not prohibited by state law, would still be a violation of federal law until the 10 year period has passed. Once the 10 year period has passed, even a convicted felon who did not receive an SIS can possess any firearm they choose in Alaska, concealable or not, under both state and federal law.

Thank you once again for your kind consideration of this matter.

Sincerely,

William R. Satterberg, Jr.

Cc: Dan Sullivan, Attorney General

WRS:alm

July 27, 2009

Daniel S. Sullivan
Attorney General
P.O. Box 110300
Juneau, AK 99811-0300

Dear Dan:

I enjoyed visiting with you briefly on July 26, 2009, when you were in Fairbanks. Unfortunately, time did not allow us to discuss a matter which I think is of rather serious concern.

Specifically, for many years, SIS sentences have been given out to felony offenders. Upon successful completion of the SIS, the offender has then been able to have their civil rights restored which, parenthetically, has included the right to commence hunting once again and owning firearms.

In April of this year, a decision was issued out of Anchorage as an Attorney General's opinion by Assistant Attorney General John Novak, copy attached, which essentially indicated that people who had an SIS record were still precluded from owning firearms because they "had been convicted" of a felony, even though the conviction had been set aside.

Needless to say, I disagree strongly with that decision, but the unfortunate byproduct is that the Department of Corrections is now taking the position based upon that letter of opinion that anybody who has an SIS conviction is still legally precluded from ever owning a firearm. I believe that this is incorrect, and I am also concerned that criminal charges may eventually be filed by somebody who has received advice either by defense counsel, or even the court, as well as from prior probation officers, that they are able to own a firearm once their rights have been restored, upon successful completion of the SIS.

Finally, it should be noted that one of the incentives for many individuals to plead guilty to a charge and obtain an SIS has been the understanding that they will be able to own a firearm at some future date, recognizing how important hunting is in Alaska. This latest decision, which may simply be further advocacy of gun control, is going to have a most chilling effect upon those decisions as well.

If possible, might you please consider having the decision reevaluated, and, if the decision is made to reverse your predecessor's position, taking appropriate steps? One of the important factors to this is that I am trying to avoid litigation which could be filed as a declaratory judgment action, to address the issue as well. If the Attorney General changes his position on the matter, however, the issue will be resolved.

Sincerely,

William R. Satterberg, Jr.

Encl.

WRS:alm

RECEIVED JUN 23 2009

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

STATE OF ALASKA,)
)
Plaintiff(s),)
vs.)
)
)
ALLEN WILSON,)
)
Defendant(s).)
)

Case No. 4FA-S99-3528 CR

ORDER RE: DEFENDANT'S MOTION FOR ORDER ALLOWING HIM TO POSSESS FIREARM

In December 1999, Allen Wilson was charged with one count of theft in the second degree (AS 11.46.130(a)), a Class C felony and 24 counts of unsworn falsification (AS 11.56.210(a)), a Class A misdemeanor in connection with false claims for unemployment compensation. A jury found him guilty on all counts. On December 8, 2000, this court sentenced Mr. Wilson to pay restitution to the Alaska Department of Labor in the amount of $7552, which Mr. Wilson paid in full the same day. In 2001, Mr. Wilson attempted to get his convictions set aside in order to get his permit to carry a concealed weapon reinstated. This court denied his request.

On January 18, 2005, Mr. Wilson wrote a letter to the court requesting that his right to possess a gun for hunting be restored so that he can hunt for subsistence purposes. This court has considered the letter and motion.

Discussion:

1. Can Allen Wilson Legally Possess a Firearm for Hunting at This Time?

Under AS 11.61.200, Mr. Wilson is prohibited from possessing a firearm, which is either concealed or is capable of being concealed on his person, for ten years after the date of unconditional discharge from the felony offense. The statute applies to all felony convictions, regardless of whether violence was involved in the offense. See AS 11.61.200. Therefore, the restriction applies to Mr. Wilson even though he was convicted of theft in a completely non-violent situation.

The term "unconditional discharge" requires "completion of any sentence of imprisonment, discharge from parole or probation, and release from any other restriction directly imposed as part of the judgment of conviction." Singleton v. State, 921 P.2d 636, 638 (Alaska App. 1996); AS 12.55.185(16); AS 11.61.200(h)(2). Mr. Wilson paid the restitution on the same day he was sentenced. No other restrictions were imposed by the judgment of conviction. Thus, Mr. Wilson was unconditionally discharged on December 8, 2000, and will be eligible to possess a firearm capable of being concealed on his person in December 2010.

Rifles or shotguns manufactured for hunting are generally too large to be considered "capable of concealment on one's person" under AS 11.61.200(a). Therefore, state law appears to permit Mr. Wilson to possess a firearm like a hunting rifle, so long as it is not covered or concealed.

Several other states along with Alaska have statutes that prohibit a convicted felon from possessing handguns or other concealable firearms while permitting them to possess rifles and

shotguns. E.g., United States v. Qualls, 172 F.3d 1136, 1138-39 (9th Cir. 1999); New York v. Adams, 747 N.Y.S.2d 909, 912-15 (Sup. Ct. 2002).

Under federal law, a felon may be charged under 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 921(a)(20) for possessing any firearm, including those permitted under state law. Caron v. United State, 524 U.S. 308, 313-317, 118 S. Ct. 2007, 2011-2012, 141 L. Ed. 2d 303 (1998); Adams, 747 N.Y.S.2d at 915; Qualls, 172 F.3d at 1138-39. The United States Supreme Court has interpreted the language in 18 U.S.C. § 921(a)(20) to prohibit convicted felons from possessing *all* firearms of *any* type for as long as *any* state restriction on possession of *any* type of firearm due to the felony conviction remains. Caron v. United State, 524 U.S. 308, 313-317, 118 S. Ct. 2007, 2011-2012, 141 L. Ed. 2d 303 (1998).[1]

Conclusion:

State law prohibits Mr. Wilson from possessing a firearm concealed or capable of being concealed until December 8, 2010. Federal law prohibits Mr. Wilson from possessing any firearm until December 8, 2010. This court is without jurisdiction to grant Mr. Wilson permission to possess a firearm. The Motion is DENIED.

Dated this 25 day of May, 2005, at Fairbanks, Alaska.

Niesje J. Steinkruger
Superior Court Judge

[1] Although the Court did not use a preemption analysis, the opinion observed that "the Federal Government has an interest in a single, national, protective policy, broader than required by state law." Caron, 524 U.S. at 316, 118 S. Ct. at 2012.

I certify that a copy of the foregoing was distributed via:
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RECEIVED JUN 16 2009

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Subject: FW: Firearm Possession Following Completion of Felony Probation/Parole
From: "Mercer, Delila D (DOC)" <delila.mercer@alaska.gov>
Date: Mon, Jun 15, 2009 4:54 pm
To: office@satterberg.net

6

Mr. Satterberg,

Sorry it's taken this long to get back to you regarding SIS and firearm rights. Here's what I have regarding that decision. The first email at the bottom is from John Novak, Assistant Attorney General. He explains his interpretation.

Delila Mercer
Criminal Justice Technician II

Department of Corrections
Division of Probation & Parole
Region 2, Fairbanks Office
455 Third Avenue, Suite 130
Fairbanks, AK 99701
Ph: 907-458-6830, Fx: 907-458-6831

From: Bacon, Glenn H (DOC)
Sent: Friday, April 17, 2009 2:26 PM
To: DOC - All FAIPO
Subject: Firearm Possession Following Completion of Felony Probation/Parole
Importance: High

Please read the text below. It clarifies an important point for which we apparently have been providing misinformation for years. According to the Department of Law, those offenders with an SIS also lose their firearms rights, even if the conviction is later set aside. Make sure this is covered in the orientation. For those POs who supervise someone with an SIS, please cover this information with them and enter a chrono that you did so. Thanks.

-- Glenn

From: Correa, Martie J (DOC)
Sent: Friday, April 17, 2009 1:06 PM
To: Bacon, Glenn H (DOC); Herning, Jennifer L (DOC)
Subject: FW: Firearm Possession Following Completion of Felony Probation/Parole

Hi,

This is the reason for the change in the language in the new case closing form that was sent out. Thanks.

Martie

From: Novak, John J (LAW)
Sent: Friday, April 03, 2009 3:10 PM
To: Bodick, John K (LAW)
Cc: McLean, Susan S (LAW); Gaffney, Eric L (DPS)
Subject: Firearm Possession Following Completion of Felony Probation/Parole

John,

I recently spent a considerable amount of time researching and determining the law concerning the legality of possessing firearms in Alaska following a conviction for a felony offense. In my efforts, probation/parole officer Cris Sanders provided me a restoration of rights sample letter for an offender that successfully completed probation/parole. That letter contained the following text:

"Although your above rights have been restored [rights to vote, jury service, and to hold elected office], you should be aware that your right to keep and bear arms is automatically restored only if you received a suspended imposition of sentence and your record has been set aside. If you did not receive a SIS, your rights to keep and bear arms are subject to applicable state laws. Contact your attorney if you have questions."

This above quoted language is wrong. It is my suggestion that DOC restoration letters not include this erroneous language. I will attempt to briefly explain the law and why the above language is wrong.

First, a felony conviction - whether by plea or jury verdict - is a felony conviction, even when the court grants an SIS that is later set aside.

Second, a person commits the crime of misconduct involving a weapon in the third degree (a class C felony) in violation of AS 11.61.200(a)(12), by knowingly possessing on or after April 14, 1998 (the effective date of the statute section) a firearm concealed on the person after having been convicted of any felony offense even when the court granted a SIS for the prior offense that later was set aside.

And third, a person commits the federal offense of felon in possession in violation of 18 USC 922(g)(1) in Alaska by knowingly possessing any firearm or ammunition (including all handguns, shotguns and rifles as well as all types of ammunition) after having been convicted of any felony, with the only exception being those cases where the Alaska court granted a SIS and where a set aside order was issued between the dates of May 19, 1986 and April 14, 1998. *See*, *Caron v. United States*, 524 US 308 (1998); *United States v. Brown*, 69 F Supp 2d 925 (E.D. Mich. 1999); and effective date of federal Firearms Owners Protection Act of 1988.

The bottom line is that in the vast majority of cases a person will commit a felony offense (whether under state or federal law) by possessing any firearm or any ammunition after having been convicted of a felony, regardless if a SIS was granted and a court later issued a set aside order.

I suggest the following language be included in "restoration letters":

"Although your above rights have been restored [rights to vote, jury service, and to hold elected office], you should be aware that your right to possess firearms (all shotguns, rifles, as well as handguns) and ammunition remains restricted. Possession of any rifle, shotgun, rifle and/or ammunition likely will subject you to prosecution for felony criminal offense under state or federal law even if you received a suspended imposition of sentence and an order setting aside the conviction has been issued. You should contact your attorney if you have questions."

I will leave it to you to pass this information on to the appropriate folks at DOC. If desired, I am happy to further discus this matter.

John Novak
Assistant Attorney General
Counsel for the Department of Public Safety
269-6330

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Hidden punishment

In rural Alaska, where gun rights matter most, there's no way for reformed felons—even non-violent ones—to get them back.

Story and photos by Scott Christianse

ON SEPTEMBER 24, former state Representative Beverly Masek was sentenced for conspiracy to commit bribery at the federal courthouse in Anchorage.

Masek admitted to accepting about $4,000 in bribes from Bill Allen, the former CEO of Veco. She also admitted to introducing legislation that would raise oil taxes, then pulling her bill after wringing a cash payment out of Allen—a bit of arm-twisting on a man who was famous for dumping cash into Alaska politics long before an FBI undercover investigation began to uncover Pomeroy's Corrupt Bastards Club.

U.S. District Judge Ralph Beistline gave Masek, a Republican from Willow, six months in prison. That's 12 months shy of the minimum in the federal guideline, and the second-to-lightest sentence so far for any convicted Bastards Club member (South Anchorage Senator John Cowdery got six months of house arrest).

But that felony conviction also took something else: It takes away Masek's gun rights, likely forever.

This is a woman convicted of a non-violent offense. A woman who grew up in the Interior village of Anvik and who finished the Iditarod four times. Now she's a member of the tiny club of Alaska politicians who got caught in the FBI dragnet. She's also in a much larger club: the growing number of people whose Second Amendment rights have been extinguished by a government that has no intention of giving them back.

"The tragic thing is, under state law you can possess a firearm as long as it can't be concealed, so you can have a long rifle or shotgun," says federal public defender Richard Curtner, the attorney who represented Masek and had to explain this part of the law to her. "Having a firearm in rural Alaska is a necessity, not just for food, but for protection when you are traveling in the field."

This isn't the first time a state law and a federal law collided. In Alaska, a person can't toss a rock without having it land on some spot where state and federal laws don't match—fisheries management, marijuana prohibitions, subsistence rights, and an education law that proposes closing schools based on student test scores.

The federal gun law could use an Alaska exemption, Curtner says.

"But people convicted of crimes don't have any lobby. There are all kinds of exceptions written into law for banks and for corporations, but when you're done something wrong in your past, there's no lobbyist for that," he says.

The federal government has a process for reinstating civil rights. In the case of gun rights, a felon who has paid their debt to society or been exonerated by a presidential pardon, can file an application for reinstatement of rights with the Bureau of Alcohol Tobacco Firearms and Explosives. The bureau's agents process the application, performing a background check to make certain the applicant qualifies.

But ATF agents don't do those background checks anymore, and haven't for the last 17 years. That's according to a form letter ATF sends to anyone who inquires about reinstatement of rights. The letter calls Second Amendment rights "federal firearms privileges" and says that from 1992-1997, Congress has used the bureau's annual budget appropriation to prohibit the ATF from spending money to "investigate or act upon" any restoration of rights application. The letter also says the convict may seek a presidential pardon, and gives the address of the Pardon Attorney's Office at the U.S. Department of Justice. Couple that with a federal law that created strict point-of-sale background checks for firearms, and you have some tall legal hurdles to leap.

And even though the federal public defenders occasionally represent clients seeking certain kinds of post-conviction relief, Curtner says helping a client reinstate their gun rights would be outside his office's ability to help.

"It's kind of beyond our representation, and I don't know that anywhere in the country there is a case where (a public defender) is pursued this."

IN THE LOWER 48, this issue might stand out as a mostly philosophical debate over Second Amendment rights, modern interpretations of the U.S. Constitution, or the hypothetical threat of a hostile government crackdown.

In rural Alaska, barring past felons from possessing a gun has specific real-world implications, ones that aren't just theoretical.

"Every village has a felon, at least one," says Winfred Olanna, who works as a village public safety officer in Brevig Mission, an Inupiaq village of about 375 people on the Seward Peninsula. Olanna says he doesn't know enough about federal firearm prohibitions to talk about them. But as a VPSO, he's tasked with knowing everyone in Brevig, including everyone who returns from prison.

"My stepbrother, he's a felon, so he can't have any firearms in his house—no rifles, no shotgun," Olanna says.

The nearest probation officer to Brevig Mission is based in Nome, a 45-mile airplane ride from the village. Olanna checks in on every person on probation in the village. He's even responsible for keeping people there up-to-date with drug testing, when it's required. "It's part of our job description to work with the P.O.s, because they hardly could come to every village twice a month for every felon," Olanna says.

Olanna also takes his brother-in-law hunting. After all, there's more work to a hunt than the split-second it takes to shoot a caribou or bearded seal—piloting the boat, spotting animals, field dressing and packing the meat—there's work a hunter can do without holding a gun.

"There's plenty to do," Olanna says. "He just can't carry a firearm—and we're all just happy that he is following his probation. He happy because his probation ends next year."

Conversations about gun rights in rural Alaska inevitably lead one place. Is there a "don't ask, don't tell" policy when it comes to enforcing these laws? Olanna says there isn't in Brevig Mission.

One Alaska State Trooper, with experience as a VPSO overnight officer, says troopers are never encouraged to let anyone slide. "I have not practiced any kind of selective enforcement like that, and I've never been asked to. In fact, just the opposite," says Trooper Terrence Shanigan.

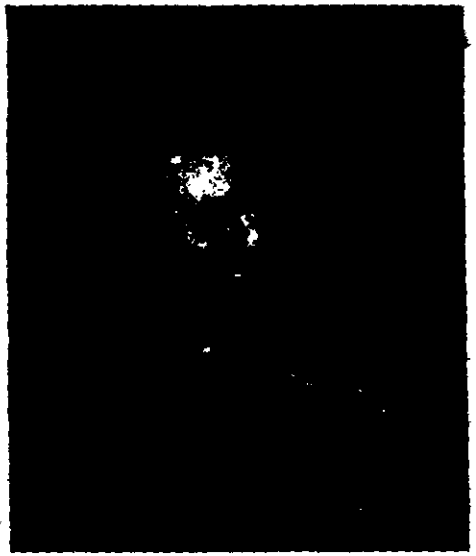
Shanigan, who is 38, grew up in rural Alaska, in the Bristol Bay villages of Pilot Point and Ugashik. He remembers being one of the excited village kids who would run, not walk, to the airstrip when state trooper landed at Ugashik.

"I only knew him as 'trooper' but it was always exciting when he came to town," he says, adding troopers were piled with coffee and aluminum. He says a successful state trooper or VPSO must insert themselves into the community, making a point to attend potlatches and community events such as planning meetings.

Troopers are charged with enforcing state laws, and that's where their focus is. Shanigan current patrols the Parks Highway from Talkeetna north to Cantwell. When he worked as a VPSO overnight officer, he was sometimes assigned to villages with only on-and-off VPSO coverage, where he made frequent visits even though he couldn't be there every day. He's trained in wildlife enforcement, so he knows how to prosecute hunting and fishing violations.

Shanigan says it's possible that a trooper might come into contact with a felon on probation—someone the state law doesn't allow to

3358



Alaska State Trooper Torrance Shanigan: "Someone with that knowledge might say, 'Hey, that trooper let somebody go'—but that's not really what they saw," he says.

armed—without the information on-hand to charge that person with a probation violation.

"When you go down to the river, well, everybody is packing firearms," Shanigan says, but the trooper may not know who on the river has had their rights revoked until he is back at the office, running names through databases. "Now someone with that knowledge might say, 'Hey, that trooper let somebody go'—but that's not really what they saw," he says.

Cops can be suspicious for all kinds of reasons, Shanigan says, but they have to be careful to not trounce on anyone's rights. "You have to make decisions based on what you know to be true," he says.

ALL OF THE COMPETING STATE and federal regulations are further complicated by something called the National Instant Criminal background Check System. NICS, as it's informally known, is the background check licensed gun dealers use to see if federal gun control laws allow a particular customer to purchase a gun. And the NICS system has flagged people who have their rights restored in their home state.

Anchorage attorney and gun-rights activist Wayne Anthony Ross has represented people attempting to earn their gun rights back. Ross says the reason NICS flags all Alaska felons is fallout from a U.S. Supreme Court ruling called Caron v. U.S. The case was decided in 1993, and requires that a person have all gun rights restored before the federal government recognizes any of their gun rights. The FBI applies this "all-or-nothing" approach to managing NICS.

Alaska law allows for restoration of most, but not all, of a felon's gun rights. A state felon cannot have a concealed weapon, Ross says, unless the felon wears the weapon on private property. (His interpretation differs slightly from that of Curtner, who tells clients they can't own a "concealable" weapon.)

A state felon is also prohibited from receiving Alaska's concealed weapons permit. The permit itself is an odd-duck. It's no longer required in order to carry a concealed weapon in Alaska. Yet the state continues to offer them because gun rights activists want the right to carry in other states where Alaska has reciprocal agreements.

"The problem is that this Supreme Court case that says if there is any state prohibition on having firearms, no matter how minimal, then you can't own a firearm at all," Ross says. "So a guy who feeds his family through subsistence, and has paid his debt to society, isn't able to do that."

Ross believes changing state law can solve the NICS problem for some felons. He's even drafted model legislation, but it hasn't been introduced despite his efforts to recruit a legislator to sponsor it. "I've got clients who have received pardons. There is one guy who has received a presidential pardon and others are people who have completed their probation. So we have multiple classes of people who are affected by this," he says.

In a letter to state Senator Charlie Huggins, Ross identified two clients by their initials and related their stories. One was convicted in 1970, becoming a felon at age 19 after being caught with hallucinogenic drugs, Ross wrote. "He has worked, hunted and fished his entire life. He only learned recently, when he applied for purchase of a new firearm, tat he is now suddenly prohibited form owning firearms, despite having been granted a suspended imposition of sentence more than 30 years ago."

Ross's second example was a man convicted of felony assault in 1992 and granted a full pardon by Governor Frank Murkowski in 2006. The man was a search and rescue pilot who wanted to carry a weapon while performing his job.

FEDERAL GUN LAWS ARE STRONGEST when applied to felons in possession of weapons, or people accused of using a gun while committing a felony crime. A drug dealer or repeat violent offender can have up to five years added to their sentence if they have a gun in their home. Newsrooms often get press releases from the U.S. Attorneys office touting new indictments and sentences related to such charges.

"We use our discretion when applying the law," Assistant U.S. Attorney Frank Russo says. "Usually we are applying the law at the request of the local community."

The implication is there won't be hordes of FBI or ATF agents flying around Alaska and rappelling into hunting camps to check IDs and round up gun owners. But defense attorneys aren't really satisfied with that.

"A client might know that it's very unlikely that they would be charged (for being a felon in possession)," Curtner says. "But I can't tell my people that, to trust the government not to charge you. I can only advise the client on the law, and the law in this case says you can't own a weapon."

So that's what Curtner told Beverly Marek, and every other nonviolent offender he's represented who was found guilty. "We talked about it, and it's one of those things that's 'what are you going to do?'" Curtner says. "There is just no getting around it." ◆

scott@anchoragepress.com

Bethel Mission VPSO Winfred Gianas: "Every village has a felon, at least one."

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Services
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
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Alaska State Legislature

House of Representatives

Interim:
1292 Sadler Way, Suite 324
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Phone: (907) 452-1088
Fax: (907) 452-1146
Toll Free: (877) 465-3004

House District 10

Memo

To: Senator Hollis French
Chair Senate Judiciary Committee

From: Representative Ramras

Date: April 11, 2010

Re: Request for HB408 to be heard in Senate Judiciary

Please accept this memo as a request for HB408 to be heard in Senate Judiciary. Attached please find the following documents:

- Sponsor Statement
- CSHB408(JUD) 26-LS1459\U
- LAW zero fiscal note
- DPS zero fiscal note
- HB408 26-LS1459\E
- Leg. Legal memo 2.16.10
- Support

Representative_Jay_Ramras@legis.state.ak.us

HJR

17

Need change to correct - Pg 2 of line 2

26-LS0555\R

CS FOR HOUSE JOINT RESOLUTION NO. 17(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/18/09
Referred: Rules

Sponsor(s): REPRESENTATIVES HARRIS, Stoltze, Chenault, Coghill, Foster, Johnson, Lynn, Neuman, Kawasaki, Keller, Ramras, Millett, Wilson, Kelly, Gatto, Muñoz, Austerman, Buch, Cissna, Crawford, Dahlstrom, Doogan, Edgmon, Fairclough, Gara, Gardner, Gruenberg, Guttenberg, Hawker, Herron, Holmes, Johansen, Joule, Kerttula, Olson, Petersen, Salmon, Seaton, Thomas, Tuck

SENATORS Therriault, Bunde, Dyson, McGuire, Menard, Meyer, Huggins, Stedman, Olson, Stevens

A RESOLUTION

Urging the United States Congress to reject H.R. 45, the Blair Holt's Firearm Licensing and Record of Sale Act of 2009.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the Second Amendment to the United States Constitution enunciates a citizen's right to keep and bear arms, stating that that right shall not be infringed; and

WHEREAS art. I, sec. 19, Constitution of the State of Alaska, provides that the right of the people to keep and bear arms shall not be infringed and further states that the individual right to keep and bear arms shall not be denied or infringed; and

WHEREAS H.R. 45 has been introduced in the United States Congress to require licensure of firearm owners and extensive recordkeeping of transactions that result in the transfer of certain firearms, including handguns and semiautomatic rifles; and

WHEREAS H.R. 45, referred to as the Blair Holt's Firearm Licensing and Record of Sale Act of 2009, would make it a federal felony to possess a firearm without a license; and

WHEREAS H.R. 45 would also make it a federal felony to transfer a firearm to another person who is not licensed; and

WHEREAS H.R. 45 directs the Attorney General of the United States to establish and

maintain a federal system documenting the sale and transfer of firearms; and

WHEREAS H.R. 45 would make it a federal felony to fail to report the loss or theft of a firearm to the attorney general within 72 hours; and

WHEREAS, under H.R. 45, a firearm owner could be charged with a federal felony based on the actions of a juvenile who might gain access to the firearm; and

WHEREAS H.R. 45 directs the attorney general to establish and maintain a firearm injury information clearinghouse, to conduct studies of firearm-related deaths and injuries, and to collect and maintain production and sales data from licensed firearm manufactures; and

WHEREAS the provisions of H.R. 45 cumulatively constitute a gun registration system and an assault on the Second Amendment rights of United States citizens; and

WHEREAS the private ownership of firearms has always been a key component of our national defense and constitutes a constructive notice to our enemies that Americans are a free people and a people free to defend themselves; and

WHEREAS H.R. 45 would diminish this traditional component of our national defense; and

WHEREAS there are other methods of addressing the problem of gun violence and gun-related deaths, such as increased education on the proper handling and use of firearms, that would be more effective and less intrusive into the private lives of American citizens and would not diminish a constitutionally guaranteed right;

BE IT RESOLVED that the Alaska State Legislature opposes the Blair Holt's Firearm Licensing and Record of Sale Act of 2009, urges the United States Congress to reject H.R. 45, and further urges the members of the Alaska Congressional delegation to oppose and defeat H.R. 45; and be it

FURTHER RESOLVED that members of the Alaska Congressional delegation are urged to support and expand federal funding of firearm education programs.

COPIES of this resolution shall be sent to the Honorable Joseph R. Biden, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Harry Reid, Majority Leader of the U.S. Senate; the Honorable Mitch McConnell, Minority Leader of the U.S. Senate; the Honorable Nancy Pelosi, Speaker of the U.S. House of Representatives; the Honorable John Boehner, Minority Leader of the U.S. House of Representatives; and the Honorable Lisa Murkowski and the Honorable Mark Begich, U.S. Senators, and the

Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Alaska State Legislature

Interim: (June – Dec.)
716 West 4TH Avenue, Suite 600
Anchorage, Alaska 99501-2133
(907) 269-0129
Fax (907) 269-0128

Session: (Jan. – May)
State Capitol, Room 403
Juneau, Alaska 99801-1182
(907) 465-4859
Fax (907) 465-3799

REPRESENTATIVE JOHN HARRIS

Sponsor Statement

Committee Substitute for House Joint Resolution 17 (Judiciary)

Urging Congress to Reject H.R. 45, the Blair Holt's Firearm Licensing and record of Sale Act of 2009

House Joint Resolution 17 asks the United States Congress to oppose and defeat House Resolution 45, a measure that has been introduced in Congress that would significantly diminish Alaskans' right to keep and bear arms.

Among other things, HR 45 would require Americans to go through onerous federal licensure in order to possesses a firearm; it would make it a felony to transfer a firearm to someone who does not have a license; it would make it a felony to fail to timely report such a transfer or to fail to report the loss or theft of a firearm within 72 hours to the U.S. Attorney General; and, it requires the attorney general to establish and maintain a data base of firearm transfers.

It is important that Congress receive a message from the Alaska Legislature as soon as possible that Second Amendment rights to keep and bear arms shall not be infringed.

Alaska State Legislature

Interim: (June – December)
716 West 4th Avenue, Suite 600
Anchorage, Alaska 99501-2133
(907) 269-0129
Fax (907) 269-0128

Session: (January – May)
State Capitol, Room 403
Juneau, Alaska 99801-1182
(907) 465-4859
Fax (907) 465-3799

REPRESENTATIVE JOHN HARRIS

March 4, 2009

Honorable Hollis French, Chairman
Senate Judiciary Committee
Alaska State Capitol, Room 417
Juneau, Alaska 99801

Re: Request for a hearing on CSHJR 17 (Judiciary)

Dear Senator French:

I respectfully request that you schedule a Senate Judiciary Committee hearing on Committee Substitute for House Joint Resolution 17 (Judiciary), "Urging the United States Congress to reject H.R. 45, the Blair Holt's Firearm Licensing and Record of Sale Act of 2009."

Attached please find a copy of the resolution, a sponsor statement, and a fiscal note.

Thank you,

Rep. John Harris

HJR

48

Representative Beth Kerttula

House Minority Leader

Sponsor Statement

HOUSE JOINT RESOLUTION NO. 48

Urging the United States Congress to pass the Crime Victims Fund Preservation Act.

Created by the Victims of Crime Act (VOCA) in 1984, the Crime Victims Fund provides critical funding for victim compensation and often life-saving direct services. Victim assistance programs, funded through state VOCA grants, help over four million crime victims every year, including victims of domestic violence, sexual assault, child abuse, elder abuse and drunk driving, as well as family members of homicide victims. The Crime Victims Fund is financed entirely from a collection of criminal fines, forfeitures and special assessments, not taxpayer revenues. To ensure a stable level of program funding from a fund dependent on fluctuating deposits, Congress began capping annual obligations that can be made from the Fund starting in 2000. Under the VOCA statutory formula, state assistance grants receive whatever amount remains after all the other VOCA programs are funded. Unless the cap is high enough, increases in other VOCA programs and new costs reduce the amount available for state victim assistance grants. Despite unprecedented deposits into the Crime Victims Fund, state VOCA victim assistance grants were cut significantly between 2006 and 2008, creating a gap of at least $106 million between funding requests and funds available.

The Crime Victims Fund Preservation Act would preserve and enhance federal assistance to crime victims under the Victims of Crime Act. A new $705 million VOCA cap in 2010 will restore stable VOCA assistance funding and take a small first step in meeting the growing needs of victims. The direct services supported by VOCA grants include crisis intervention and counseling, emergency shelters, hotlines, legal advocacy and assistance in participating in the criminal justice system. Reduced funding has meant hundreds of thousands fewer crime victims received services in 2008 than the previous year. In Alaska, there was an $189,000 reduction from 2006 to 2008 in victim assistance grants.

The impact of VOCA assistance grant cuts is devastating to those who, through no fault of their own, have become victims of the most vicious crimes. Without this funding and the direct services it supports, crime victims go without advocacy, medical, mental health, and/or legal services, which are crucial in a victim's healing process. I appreciate your consideration of House Joint Resolution No. 48.

Alaska State Legislature ✧ District 3 ✧ Juneau
State Capitol ✧ Juneau, Alaska 99801-1182 ✧ (907) 465-4766 ✧ Fax (907) 465-4748
Rep.Beth.Kerttula@legis.state.ak.us ✧ www.kerttula.net

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

VIOLENT CRIMES COMPENSATION BOARD

SEAN PARNELL, GOVERNOR

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JUNEAU, ALASKA 99811-0230
PHONE: (907) 465-3040
TOLL FREE: 1-800-764-3040
FAX: (907) 465-2379

February 22, 2010

Representative Beth Kerttula
State Capitol
Juneau, AK 99801

Dear Representative Kerttula:

On behalf of our organization, I want to thank you introducing a resolution urging the United States Congress to pass the Crime Victims Fund Preservation Act. As a victim service provider, we have seen a clear increase in the number of victims of crime and the growing need for victim assistance and compensation. Although there has been an increase in recent years of criminal fines and penalties collected into the Crime Victims Fund, due to "capping" of Fund obligations, crime victim assistance requests typically far exceed available resources. The reduction in state assistance grant funding experienced by all states including Alaska, together with the current economic climate, has proved devastating to victim service providers, deeply affecting the well-being and recovery of many crime victims. The Crime Victims Fund is one of the main sources of money and support for crime victims and crime victim services; we believe the Fund can provide more help.

Congress has reaffirmed its commitment to stable program funding and has the ability to provide predictable growth. The Crime Victims Fund Preservation Act would establish a minimum funding level for programs under VOCA to ensure reasonable growth in victim services through FY 2014. Providing a stable funding stream will help states with their ongoing program efforts, as well as expansion of programs and outreach to a growing number of crime victims. The cost of this does not come from taxpayer funds but will come exclusively from Federal criminal fines and penalties. The additional funding is greatly needed right now and would be sincerely appreciated by victim service providers and the millions of victims they serve. This legislation is a small first step in meeting victims' needs.

Sincerely,

Gerad Godfrey
Chairman

Printed on recycled paper by Alaska Litho, Inc.

CDVSA
Council on Domestic Violence & Sexual Assault

State of Alaska
Department of Public Safety
Council on Domestic Violence & Sexual Assault

Sean Parnell, Governor
Joseph A. Masters, Commissioner

March 10, 2010

The Honorable Beth Kerttula
Alaska State House of Representatives
State Capitol
Juneau, AK 99801

Dear Representative Kerttula:

On behalf of the Council on Domestic Violence & Sexual Assault, I want to thank you for introducing a resolution urging the United States Congress to pass the Crime Victims Fund Preservation Act. As the funding agency through which victim assistance is distributed in Alaska, we have seen an increase in the number of victims of crime and the growing need for victim assistance and compensation.

Although there has been an increase in recent years of criminal fines and penalties collected into the Crime Victims Fund, due to "capping" of Fund obligations, crime victim assistance requests typically far exceed available resources. The reduction in state assistance grant funding experienced by all states including Alaska, together with the current economic climate, has made it difficult for victim service providers to continue to offer the level of service necessary to meet all the needs of crime victims. The Crime Victims Fund is one of the main sources of money and support for crime victims and crime victim services, we believe the Fund can provide more help.

Congress has reaffirmed its commitment to stable program funding and has the ability to provide predictable growth. The Crime Victims Fund Preservation Act would establish a minimum funding level for programs under VOCA to ensure reasonable growth in victim services through FY 2014. Providing a stable funding stream will help states with their ongoing program efforts, as well as expansion of programs and outreach to a growing number of crime victims. The cost of this does not come from taxpayer funds but will come exclusively from Federal criminal fines and penalties. The additional funding is greatly needed right now across the nation and would be sincerely appreciated by victim service providers and all of the victims they serve. This legislation is a small first step in meeting victims' needs.

Sincerely,

Sandy Samaniego
Executive Director

AUTHENTICATED
U.S. GOVERNMENT
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111TH CONGRESS
1ST SESSION

S. 1340

To establish a minimum funding level for programs under the Victims of Crime Act of 1984 for fiscal years 2010 to 2014 that ensures a reasonable growth in victim programs without jeopardizing the long-term sustainability of the Crime Victims Fund.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2009

Mr. LEAHY (for himself and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To establish a minimum funding level for programs under the Victims of Crime Act of 1984 for fiscal years 2010 to 2014 that ensures a reasonable growth in victim programs without jeopardizing the long-term sustainability of the Crime Victims Fund.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Crime Victims Fund Preservation Act of 2009".

SEC. 2. CRIME VICTIMS FUND.

Section 1402(c) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(c)) is amended—

(1) by inserting "(1)" after "(c)"; and

(2) by adding at the end the following:

"(2) The amount made available from the Fund for the purposes of paragraphs (2), (3), and (4) of subsection (d) shall be not less than—

"(A) $705,000,000 for fiscal year 2010;

"(B) $867,150,000 for fiscal year 2011;

"(C) $1,066,594,500 for fiscal year 2012;

"(D) $1,311,911,235 for fiscal year 2013; and

"(E) $1,613,650,819 for fiscal year 2014.".

○

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111TH CONGRESS
1ST SESSION

H. R. 3402

To establish a minimum funding level for programs under the Victims of Crime Act of 1984 for fiscal years 2010 to 2014 that ensures a reasonable growth in victim programs without jeopardizing the long-term sustainability of the Crime Victims Fund.

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2009

Mr. POE of Texas (for himself and Mr. COSTA) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To establish a minimum funding level for programs under the Victims of Crime Act of 1984 for fiscal years 2010 to 2014 that ensures a reasonable growth in victim programs without jeopardizing the long-term sustainability of the Crime Victims Fund.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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"(C) $1,066,594,500 for fiscal year 2012;

"(D) $1,311,911,235 for fiscal year 2013; and

"(E) $1,613,650,819 for fiscal year 2014.".

○

Crime Victims Fund Preservation Act of 2009
S. 1340 and H.R. 3402
Fact Sheet

- The Crime Victims Fund is a special account made up entirely of fines and other penalties paid by convicted federal offenders and dedicated exclusively to a variety of services to help crime victims; **there are no taxpayer dollars** in the Fund.

- Grants to state VOCA victim assistance programs fund services to more than 4 million victims of all types of crimes, including, among others, domestic violence, sexual assault, child abuse, survivors of homicide victim, drunk driving crashes, stalking, identity theft, and elder abuse.

- Because of fluctuations in Fund deposits, Congress limits or "caps" annual obligations from the Fund, resulting in an accumulated "rainy day" balance to ensure stable funding for victim services.

- Because the VOCA cap did not keep pace with the costs of programs, state crime victim assistance grants were cut by $87 million (22 percent) from 2006 to 2008.

- During this same period, however, the Fund's "rainy day" balance increased by more than $700 million — from $1.3 billion in 2006 to $2 billion in 2008. Based on criminal fines that federal courts have already imposed but not yet collected, the balance is projected to grow even more through 2014.

- **Crime victims' needs continue to increase.** Although these prior cuts were restored by a combination of the 2009 Appropriations Act and the economic recovery act, the need to support crime victim services continue to increase. Examples:
    - According to U.S. Department of Justice Office for Victims of Crime, 366,000 *fewer* crime victims received VOCA funded victim assistance services in 2008 than in 2007.
    - The National Census of Domestic Violence Services reports that, on one day in 2008, nearly 61,000 adults and children sought support from local domestic violence programs. But on that same day, almost 9,000 requests were unmet due to lack of resources.
    - Calls to the National Crime Victim Hotline operated by the National Center for Victims of Crime have increased, especially for victims of a variety of frauds, such as work at home, secret shopper and investment schemes, mortgage and construction fraud.

- **S. 1340 (introduced by Senators Patrick Leahy and Mike Crapo) and H.R. 3402 (introduced by Representatives Ted Poe and Jim Costa) are essential to preserving the Fund and meeting victims' needs.** These bills will statutorily establish a minimum annual cap on VOCA through 2014. The caps will increase the VOCA cap by 23 percent each year yet leave a balance of at least $800 million, enough to ensure the Fund's sustainability.

- The bills will provide a steady, reasonable and predictable growth in victim services through 2014 without jeopardizing the Fund's ability to continue supporting victim services.

For more information, contact Steve Derene, Executive Director, National Association of VOCA Assistance Administrators, steve@navaa.org, (608) 233-2245 or Susan Howley, Director of Public Policy, National Center for Victims of Crime, showley@ncvc.org, (202) 467-8722.

Crime Victims Fund Preservation Act of 2009
S. 1340 and H.R. 3402

S. 1340, introduced by Senators Patrick Leahy and Mike Crapo, and **H.R. 3402**, introduced by Representatives Ted Poe and Jim Costa, are bipartisan companion bills that establish a minimum funding level for VOCA programs for fiscal years through 2014. The minimum VOCA caps in the bills will ensure a reasonable growth in victim programs without jeopardizing the long-term sustainability of the Crime Victims Fund.

The Crime Victims Fund is a special account dedicated solely to supporting services to help crime victims. The money comes *entirely* from fines and other penalties paid by federal criminal offenders, **not from taxpayers**. Until 2000, all amounts deposited into Fund were distributed the following year according to a statutory formula. Because of large fluctuations in Fund deposits, Congress began delaying (capping) annual obligations from the Fund; this resulted in a balance ("rainy day reserve") being retained in the Fund to ensure stable funding for victim services in future years.

The annual VOCA cap has varied from year to year. Because of VOCA's allocation formula, grants for state victim assistance programs (that supports more than 4,000 local agencies that provide services to 4 million crime victims every year) are dependent on the size of the cap, and increases in the amount used for other VOCA funded program areas. Because the cap has not kept pace with these costs, funding for state victim assistance grants had been cut by $87 million (22 percent). During this same period, the Fund balance actually increased from $1.3 billion to $2 billion. Fortunately, these cuts were restored by the combination of the 2009 Omnibus Appropriations Act and one-time Recovery Act funds.

Meanwhile, as the Fund's rainy day reserve continues to grow to unprecedented levels, victim programs' capacity to provide essential assistance to crime victims has eroded in the face of reduced overall funding and constantly growing unmet needs. According to the U.S. Justice Department, 336,000 fewer crime victims received VOCA assistance services in 2008 than during the previous year. The National Census of Domestic Violence Services reports that, on one day in 2008, nearly 61,000 adults and children sought support from local domestic violence programs. But on that same day, almost 9000 requests were unmet due to lack of resources.

S. 1340 and H.R. 3402 address these issues by establishing minimum caps on the Fund though fiscal year 2014. In so doing, the bill steadily draws down a portion of the accumulated Fund balance to be used exclusively for victim services as intended by Congress. The total amount to be released will ensure a steady, predictable and manageable growth to meet ongoing crime victims' needs.

Under the bills, the minimum funding level for 2010 will be $705 million and then increase by 23 percent through 2014 by amending the VOCA statute (42 U.S.C. 10601) to provide the following minimum cap amounts:

(a) $705,000,000 for fiscal year 2010;
(b) $867,150,000 for fiscal year 2011;
(c) $1,066,594,500 for fiscal year 2012;
(d) $1,311,911,235 for fiscal year 2013; and
(e) $1,613,650,819 for fiscal year 2014.

These funds will be allocated according to the current VOCA statute to support Children's Justice Act grants, set-asides for the U.S. Attorneys victim/witness coordinators, FBI victim assistance specialists, federal victim notification system, OVC discretionary grants for training, technical assistance and services for victims of federal crimes, state crime victim compensation grants and state victim assistance grants.

Based on currently known future Fund deposits, it is projected that even with these minimum caps, the Fund will have a balance of at least $1.3 billion at the end of 2014, thus ensuring the Fund's sustainability without the need for other revenue sources.

Crime victims continue to desperately need critical services. S. 1340 and H.R. 3402 will help meet these needs, without taxpayer funds, and as Congress intended.

For more information, contact Steve Derene, Executive Director, National Association of VOCA Assistance Administrators, steve@navaa.org, (608) 233-2245 or Susan Howley, Director of Public Policy, National Center for Victims of Crime, showley@ncvc.org, (202) 467-8722

Victims of Crime Act (VOCA) Crime Victims Fund

2011
Briefing Background

Prepared by

National Association of VOCA Assistance Administrators
(NAVAA)
Steve Derene, Executive Director
608-233-2245
steve@navaa.org
www.navaa.org

Victims of Crime Act (VOCA)
Crime Victims Fund

Background Information

- Created by the Victims of Crime Act (VOCA) in 1984, the Crime Victims Fund provides critical funding that helps millions of victims of all types of crimes every year. The Fund comes from the collection of Federal criminal fines and penalties; ***not taxpayer revenues***.
- The Office of Management and Budget estimates that the Crime Victims Fund will open 2011 with a $4.3 billion balance, with an additional $1 billion to be deposited during the year.
- VOCA-funded state victim assistance grants support direct services, such as emergency shelter, crisis intervention, counseling and assistance in participating in the criminal justice system, through 4,400 agencies to about 4 million victims of all types of crimes every year. VOCA-funded projects employ 13,500 FTE advocates, counselors and other direct victim service providers.
- 2008: Despite unprecedented deposits into the Crime Victims Fund, state VOCA victim assistance grants were cut by $86.5 million (22 percent) between 2006 and 2008. Because of reduced funding, 336,580 *fewer* crime victims received services in 2008 than during the previous year.
- 2009: Congress took important steps to reverse this downward trend by restoring $56 million for state VOCA victim assistance grants. Combined with one-time Recovery Act grants, these grants in 2009 were restored to the 2006 funding level (including inflation).
- 2010: The $705 million cap is expected to keep state VOCA victim assistance programs at roughly the same total amount available in 2009.
- Meanwhile, crime victims' needs for assistance continue to increase. The economic downturn has resulted in greater incidences of domestic and family violence; new types of crimes (e.g. identify theft, financial frauds, dating violence, stalking) have emerged and new types of services are required.
- The Administration's proposed 2011 VOCA budget raises the VOCA cap but the increase would be more than offset by new and expanded earmarks. These additional costs mean that state assistance grants could be cut by as much as $20 million in 2011.
- **An $867 million cap would support core VOCA assistance grants with a 3.5 percent increase in real dollars over the amount received in 2006.**

Programs currently supported by the Crime Victims Fund:

- Children's Justice Act grants
- U.S. Attorney's victim/witness coordinators (170 FTEs)
- F.B.I. victim assistance specialists (112 FTEs)
- Federal victim notification system
- OVC discretionary grants for nationwide training/technical assistance and services to victims of Federal crimes
- State compensation formula grants
- State victim assistance formula grants
- Antiterrorism Emergency Reserve

Administration 2011 Budget – New/Expanded VOCA Programs

- $100 million discretionary grants for victims of violence against women
- Increase USAO victim witness coordinators to 240 FTEs
- Increase FBI victim assistance specialists to 155 FTEs

VOCA's Crime Victims Fund

- The Crime Victims Fund is a "separate account" made up entirely of "special and trust fund receipts" from Federal criminal fines, forfeitures and special assessments – not taxpayer revenues – which, by law, are to be used exclusively to support victim services.
- The Victims of Crime Act of 1984 originally created the Crime Victims Fund solely to support direct victim assistance services and state crime victim compensation programs. Over the years, additional programs and activities became dependent upon the Fund.
- From 1985 to 2009, $11.7 billion has been deposited into the Fund. According to OMB estimates, the Fund will have a balance of $4.3 billion at the beginning of 2011 with an additional $1 billion expected to be deposited during the year. Thus, $5.3 billion will be available to support VOCA programs in 2011.
- Since its inception, amounts deposited into the Fund in one year were distributed for victim services the next year. Because of fluctuations in Fund deposits, Congress in 2000 started delaying or "capping" the annual obligations that can be made from the Fund in order to ensure stable funding for victim services. By law, amounts not spent are kept in the Fund for victim services in future years.
- The VOCA statute sets out the formula for the annual distribution of VOCA funds. Under this formula, the amount available for state victim assistance grants is, in effect, whatever remains after the other programs are funded. (See next page.)
- ***Unless the annual cap on total VOCA spending is high enough, state grants for direct victim assistance are reduced as funding for other programs increase or other "under the cap" earmarks and costs are added.***
- Between 2006 and 2008, state victim assistance grants were cut by $87 million (22 percent). The Office for Victims of Crime (OVC) reported that 336,580 *fewer* crime victims received VOCA assistance funded services in 2008 compared to 2007.
- In 2009, Congress raised the VOCA cap and added $100 million in Recovery Act funds for VOCA programs which, together, raised state assistance grants back to the 2006 level. 2010 grants are expected to remain level with the total 2009 funding, i.e. VOCA formula plus Recovery Act grants.
- While the Administration proposes a 2011 VOCA cap of $800 million, that is not enough to offset a new $100 million earmark for discretionary grants to support assistance for victims of violence against women, and significantly expanded use of VOCA to fund victim witness coordinators in United States Attorneys' Offices and victim assistance specialists in the FBI.
- Despite the proposed 13.5 percent increase in the total VOCA cap, the Administration's budget could ***cut*** state VOCA assistance grants by $20 million (5 percent).

A 2011 VOCA cap of $867 million will support state VOCA victim assistance grants with a 3.5 percent increase in real dollars over 2006 grants.

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HOW THE CRIME VICTIMS FUND IS DISBURSED

The following amounts are allocated according to the VOCA statutory formula (42 U.S.C. 10601(d)):

Under the cap on annual obligations:

- The first $10 million to $20 million is used for formula grants to states to improve the investigation and prosecution of child abuse (Children's Justice Act);

- After that, funds are set aside for certain Federal victim services at levels specified by Congress:
  - Victim witness coordinators in U.S. Attorneys' offices (170 FTE);
  - Victim assistance staff in FBI offices (112 FTE);
  - Federal Victim Notification System ($5 million per year).

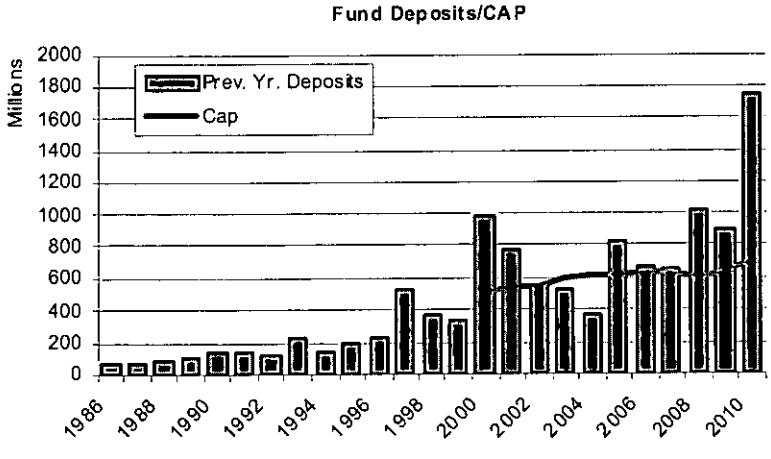
- Of the amount remaining, after the above allocations:
  - Five percent for discretionary grants administered by the Office for Victims of Crime for demonstration projects, training and technical assistance and services to victims of Federal crimes.
  - 47.5% of funds remaining under the cap are available for state crime victim compensation grants with each state receiving a grant based upon 60% of its state-funded compensation benefits.
  - 47.5% of funds remaining under the cap plus any amount not used for state crime victim compensation grants are allocated for formula grants to states to support direct assistance services to victims of crime (each state receives a base amount plus an amount apportioned on population).

Under this formula, the amount available for state assistance grants is, in effect, whatever remain after all the other VOCA programs are funded. For that reason, unless the cap is high enough, increases in the other VOCA programs or funding new programs under the VOCA cap reduce the amount otherwise available for state victim assistance grants.

In addition, according to the VOCA statute, up to five percent of amounts remaining in the Fund after the above annual allocations ("above the cap") may be used to replenish the Antiterrorism Emergency Reserve (AER) which is available to assist victims of international and domestic terrorism or mass violence and compensation to international terrorism victims.

Fiscal Year	Previous Year Deposits	Cap on Obligations
2000	985,185,354	$500,000,000
2001	776,954,858	537,500,000
2002	544,437,015	550,000,000
2003	519,466,480	600,000,000
2004	361,341,967	621,312,498*
2005	833,695,013	620,000,000*
2006	668,268,054	625,000,000
2007	649,631,046	625,000,000
2008	1,017,977,475	590,000,000
2009	896,316,825	635,000,000
2010	1,745,677,602	705,000,000

* Includes rescissions and carryovers



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2011 Administration Budget Proposal

The Administration's 2011 budget proposal would:

- Increase the annual cap on obligations from the Crime Victims Fund to $800 million—an increase of $95 million (13.5 percent).

- Create a new earmark from the Crime Victims Fund of $100 million in additional Office for Victims of Crime "discretionary grants for temporary shelter, transitional housing, and other assistance for victims of violence against women."

- Increase VOCA-funding for U.S. Attorney victim witness coordinators to $32.6 million to support 309 victim-witness services positions (including 139 new positions) and 240 FTE.

  The 2000 appropriations for U.S. Attorney victim witness coordinator positions was limited to 170 FTEs at $14.4 million a year, stating "the conferees expect that appropriate sums will be made available under this provision in succeeding fiscal years to continue this program at the current level." [Conf. Report 106-479] The 2011 request is an increase of 126 percent over the original appropriations.

- Increase VOCA-funding to $21.4 million to support 155 victim assistance specialist positions (including 33 new positions) and 155 FTE.

  VOCA funding for the FBI victim assistance positions was first provided in the 2001 appropriations and was limited to 112 FTEs at $7.4 million a year. [Conf. Report 106-1005]. The 2011 request is an increase of 189 percent over the original appropriations.

The Administration's 2011 budget proposal could reduce state VOCA victim assistance grants by as much as $20 million (5 percent).

A 2011 VOCA cap of $867 million will support state VOCA victim assistance grants with a 3.5 percent increase in real dollars over 2006 grants.

Stability of the Crime Victims Fund

There is more than enough money in the Crime Victims Fund to support state victim assistance grants without jeopardizing the Crime Victims Fund's long-term sustainability:

OMB estimates the opening 2010 balance in the Crime Victims Fund was $3.148 billion and that deposits will total $1.861 billion in 2010 and $999 million in 2011. Even with an $867 million VOCA cap, the Fund will continue to grow:

(in millions)	2010	2011
Balance, start of year	3,148	4,304
+ Deposits	1,861	999
Amount Available	5,009	5,303
- Obligations (cap)	705	867
Balance, end of year	4,304	4,436

[Source: http://www.whitehouse.gov/omb/budget/fy2011/assets/jus.pdf]

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VOCA Victim Assistance Programs

- **Formula grants to all States and territories are based largely on population.** Each jurisdiction receives a base amount and the remainder is proportional to population.

- ***States make subgrants to 4,400 public and nonprofit agencies . . .***

	Subgrant Awards*		Amounts (in millions)	
Agency Type	No.	%	Amount	%
Criminal Justice (Police, Prosecutors, Corrections, etc.)	1,506	28.8%	82.8	25.2%
Native American (On- and off-reservation programs)	45	0.9%	2.6	0.8%
Public, non-CJS (Hospitals, Mental Health, Social Services)	194	3.8%	12.8	3.9%
Private, Nonprofit (Domestic Violence Shelters, Rape Crisis, etc.)	3,423	66.2%	229.9	70.1%
TOTAL	**5,168**	**100.0%**	**328.1**	**100.0%**

* Some agencies receive multiple subgrant awards. Source: 2001 OVC Subgrant Award Reporting System

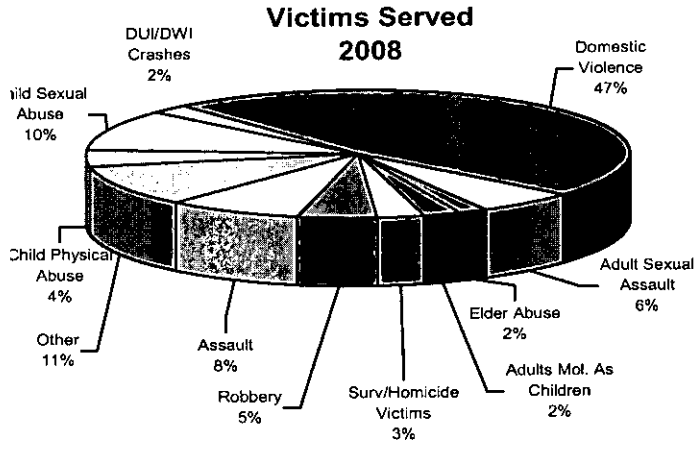
... that provide direct victim assistance services, such as:

- crisis intervention and counseling, support groups, therapy/treatment, information and referrals;
- emergency shelter, hotlines, legal advocacy, emergency financial assistance;
- support within the criminal justice system (case status/disposition information, restitution assistance); and
- personal advocacy and case management.

- **. . . to *millions of victims of all types of crimes* each year** (but because of funding cuts, *fewer* crime victims received services):

Type of Crime	2007	2008
Child Physical Abuse	182,298	160,484
Child Sexual Abuse	406,820	390,225
DUI/DWI Crashes	85,326	82,143
Domestic Violence	1,859,912	1,792,481
Adult Sexual Assault	237,047	224,374
Elder Abuse	69,782	57,644
Adults Molested As Children	92,946	89,188
Survivors of Homicide Victims	115,813	106,276
Robbery	179,216	176,446
Assault	313,847	300,667
Other	573,641	400,140
TOTAL	**4,116,648**	**3,780,068**

Source: FY 2007 and 2008 OVC National Performance Reports



VOCA funds more than 13,500 full-time equivalent paid jobs for victim advocates, counselors and others who provide direct victim assistance services. (Average salary for non-profit advocates is $25,000-30,000).

In addition, more than 36,000 volunteers (full time equivalent) donate their time and effort annually to provide direct services to crime victims through VOCA-funded projects.

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IMPACT OF VOCA ASSISTANCE GRANT CUTS

Because of inadequate caps, state VOCA victim assistance grants experienced severe cutbacks from 2006 to 2008 which had a devastating impact on programs providing direct services to crime victims. The following is indicative of the impact of these cuts:

- 336,580 ***fewer*** crime victims received VOCA-funded assistance services in 2008 compared to 2007. This included 67,431 fewer victims of domestic violence, 12,673 adult victims of sexual assault and 38,409 child victims of physical and sexual abuse.

> *"We are a bare-bones operation.... VOCA funding for staff and services is the only way most of our poor and homeless clients ever get assistance."*
> –Nonprofit service provider (TX)

- The National Network to End Domestic Violence (NNEDV) 2008 census found that 60,799 crime victims were served a single day but **8,927** requests for services went **unmet** that day due to inadequate funding and resources.
- According to a survey of 1,000 providers conducted by the National Center for Victims of Crime (NCVC):
  - Nearly all respondents said that VOCA funding was **"very important."** This ranged from 91.5 percent for prosecutor-based programs to 99.5 percent for domestic violence programs.
  - Fifty-eight percent said they will have to serve fewer crime victims; 55 percent will reduce outreach to victim and 46 percent will provide fewer services.
  - Rural areas will be especially hard hit; many will have to close satellite offices and clients will have to travel 3 or 4 hours to receive services.
  - Many programs said they would use restored VOCA funding for services to elderly victims, teen victims, tribal victims, victims with disabilities, human trafficking, and homicide victims.

> *"VOCA funding is the life-blood of an agency like ours dedicated solely to helping child victims of felony sexual and physical abuse crimes and their non-off ending family members."*
> –Nonprofit service provider (AL)

- State VOCA assistance administrators reported that multiple funding cutbacks had severe cumulative impact. Examples --
  - Anticipated annual reductions in victim assistance subgrants of 8 percent in Washington State; 26 percent in Kansas; 27 percent in Pennsylvania; 16 percent in Iowa; 11 percent in Oregon; and 17 percent in Wisconsin.
  - Continued cuts in Minnesota's VOCA assistance grants meant the loss of the equivalent of five programs, eliminating services in five counties.
  - Since FY 2005, the number of Iowa victim service programs has decreased from 88 to 74.
  - Wyoming was unable to fund programs, such as Sexual Assault Nurse Examiners, Sexual Assault Response Teams and Child Advocacy Centers, that provide specialized crime victim services.
  - Massachusetts expects an across-the-board cut of 27 percent, reducing the number of funded programs from 90 to 65.

> *"VOCA funding is vital in providing services to those who, through no fault of their own, have become victims of the most vicious of crimes. If this funding were not available, these victims would go without advocacy, medical, mental health, and/or legal services, which is crucial in a victim's healing process."*
> –Nonprofit service provider (WV)

  - All states fear the loss of dedicated, experienced, and well-trained victim advocates because of the inability to pay a decent wage. The average annual salary for a victim service professional in South Carolina is $18,000-$24,000.
  - Oregon cut the number of victim advocate positions funded under its competitive VOCA projects from 18 FTEs to 4 FTEs.
  - Because of funding cuts in Pennsylvania, 20 percent of programs have waiting lists; 16.5 percent have discontinued programs; 22 percent imposed hiring freezes; 31 percent have decreased or eliminated staff and 13.7 percent implemented layoffs.
  - An Arizona sexual assault counseling service reported a five months' waiting period.

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VA Grants	2006	2007	2008	ARRA	2009	2010 est.	2011 est.*
TOTAL	395,918,319	370,600,463	309,054,463	47,500,000	363,797,021	409,081,000	389,110,000
Alabama	6,108,000	5,694,000	4,769,000	808,000	5,588,807	6,273,000	5,971,000
Alaska	1,311,000	1,257,000	1,122,000	545,000	1,249,139	1,350,000	1,305,000
Arizona	7,610,000	7,298,000	6,224,000	930,000	7,595,425	8,550,000	8,129,000
Arkansas	3,907,398	3,670,000	3,109,000	689,000	3,616,869	4,036,000	3,851,000
California	44,933,000	41,785,000	34,342,000	2,931,000	40,622,608	46,019,000	43,639,000
Colorado	6,190,000	5,825,000	4,912,000	827,000	5,891,780	6,617,000	6,297,000
Connecticut	4,837,000	4,498,000	3,753,000	732,000	4,321,874	4,836,000	4,609,000
Delaware	1,528,000	1,461,000	1,292,000	558,000	1,453,044	1,581,000	1,525,000
Dist.Col.	1,185,000	1,165,000	1,040,000	539,000	1,146,029	1,233,000	1,195,000
Florida	22,036,000	20,790,000	17,292,000	1,712,000	20,506,733	23,198,000	22,011,000
Georgia	11,430,000	10,929,000	9,192,000	1,141,000	11,072,703	12,495,000	11,867,000
Hawaii	2,063,000	1,954,000	1,693,000	585,000	1,906,163	2,095,000	2,012,000
Idaho	2,225,000	2,132,000	1,861,000	601,000	2,163,357	2,387,000	2,288,000
Illinois	16,238,000	15,077,000	12,411,000	1,353,000	14,583,006	16,477,000	15,642,000
Indiana	8,221,385	7,655,000	6,361,000	922,000	7,460,738	8,397,000	7,984,000
Iowa	4,157,000	3,886,150	3,268,150	699,000	3,777,510	4,218,000	4,024,000
Kansas	3,886,000	3,638,000	3,066,000	685,000	3,558,736	3,970,000	3,789,000
Kentucky	5,632,000	5,265,000	4,404,000	782,000	5,160,195	5,787,000	5,511,000
Louisiana	6,090,000	5,647,000	4,480,000	792,000	5,314,709	5,962,000	5,677,000
Maine	2,131,000	2,005,000	1,727,000	587,000	1,937,009	2,130,000	2,045,000
Maryland	7,380,000	6,883,000	5,713,000	873,000	6,649,486	7,477,000	7,112,000
Mass.	8,443,000	7,846,154	6,475,154	930,000	7,593,010	8,547,000	8,126,000
Michigan	13,018,000	12,034,000	9,871,000	1,162,000	11,419,472	12,888,000	12,240,000
Minnesota	6,814,382	6,354,000	5,296,000	845,000	6,198,443	6,965,000	6,627,000
Mississippi	4,094,000	3,821,000	3,202,000	694,000	3,707,718	4,139,000	3,949,000
Missouri	7,624,000	7,121,000	5,924,000	891,000	6,952,952	7,821,000	7,438,000
Montana	1,647,000	1,567,000	1,377,000	564,000	1,556,032	1,698,000	1,635,000
Nebraska	2,663,000	2,508,000	2,141,000	618,000	2,446,747	2,709,000	2,593,000
Nevada	3,390,000	3,255,000	2,817,000	672,000	3,338,274	3,720,000	3,552,000
NewHamp.	2,109,000	1,992,000	1,721,000	587,000	1,936,302	2,129,000	2,044,000
NewJersey	11,268,000	10,438,000	8,599,000	1,074,000	9,977,764	11,252,000	10,690,000
NewMexico	2,856,000	2,699,000	2,314,000	631,000	2,666,071	2,957,000	2,829,000
NewYork	24,301,000	22,557,000	18,421,000	1,789,000	21,775,095	24,637,000	23,374,000
N.Carolina	11,073,000	10,403,000	8,721,000	1,110,000	10,566,944	11,921,000	11,324,000
N.Dakota	1,285,000	1,225,000	1,090,000	542,000	1,200,224	1,294,000	1,253,000
Ohio	14,685,000	13,599,000	11,155,000	1,260,000	13,037,717	14,724,000	13,980,000
Oklahoma	4,862,000	4,546,000	3,822,000	741,000	4,475,905	5,011,000	4,775,000
Oregon	4,950,000	4,655,000	3,935,000	751,000	4,637,130	5,194,000	4,948,000
Pennsylvania	15,858,000	14,666,000	12,048,000	1,323,000	14,088,213	15,916,000	15,110,000
RhodeIsland	1,838,000	1,726,000	1,491,000	569,000	1,647,013	1,801,000	1,733,000
S.Carolina	5,697,000	5,350,000	4,511,000	796,000	5,390,032	6,048,000	5,758,000
S.Dakota	1,454,000	1,385,000	1,226,000	553,000	1,377,837	1,496,000	1,444,000
Tennessee	7,805,000	7,301,000	6,106,000	911,000	7,284,008	8,196,000	7,794,000
Texas	28,340,000	26,683,000	22,321,000	2,109,000	27,054,684	30,626,000	29,051,000
Utah	3,457,000	3,344,000	2,867,000	681,000	3,487,008	3,889,000	3,712,000
Vermont	1,269,000	1,211,000	1,079,000	541,000	1,178,162	1,269,000	1,229,000
Virginia	9,734,408	9,138,000	7,595,000	1,014,000	8,980,533	10,121,000	9,618,000
Washington	8,180,000	7,685,000	6,437,000	933,000	7,648,960	8,610,000	8,186,000
WestVirginia	2,747,000	2,572,000	2,188,000	620,000	2,480,625	2,747,000	2,630,000
Wisconsin	7,320,000	6,812,000	5,658,000	872,000	6,643,341	7,470,000	7,105,000
Wyoming	1,127,000	1,081,000	978,000	535,000	1,081,446	1,160,000	1,125,000
PuertoRico	5,321,359	4,967,000	4,146,000	762,000	270,763	5,397,000	5,141,000
VirginIslands	634,387	624,000	601,000	507,000	392,107	636,000	629,000
Am.Samoa	271,000	265,159	254,159	204,000	294,548	280,000	276,000
Guam	392,000	377,000	359,000	212,000	4,816,123	418,000	407,000
N.Marianals.	286,000	279,000	277,000	206,000	619,898	307,000	302,000

*Estimate based on Administration's 2011 budget proposal.

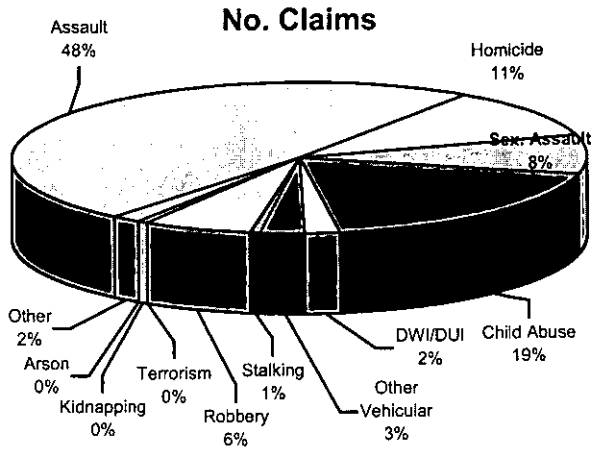
Crime Victim Compensation

- **Benefits to victims of violent crimes for unreimbursed, out-of –pocket expenses directly related to the crime.**
- **VOCA grants based upon 60% of benefits paid with state funds.**

Compensation Claims:

Type of Crime	Total No. Claims	Domestic Violence Claims*	Amount Paid (State and VOCA)
Assault	73,748	25,818	$251,257,361
Homicide	16,509	1,250	75,931,186
Sex. Assault	12,352	757	14,072,276
Child Abuse	28,785		27,213,552
DWI/DUI	2,909		16,331,425
Other Vehicular	4,003		18,787,499
Stalking	845	329	1,188,040
Robbery	8,941	107	19,327,733
Terrorism	253		921,978
Kidnapping	571	161	921,501
Arson	201	27	349,880
Other	2,526	1,235	5,602,154
TOTAL	**151,643**	**29,684**	**$431,904,585**

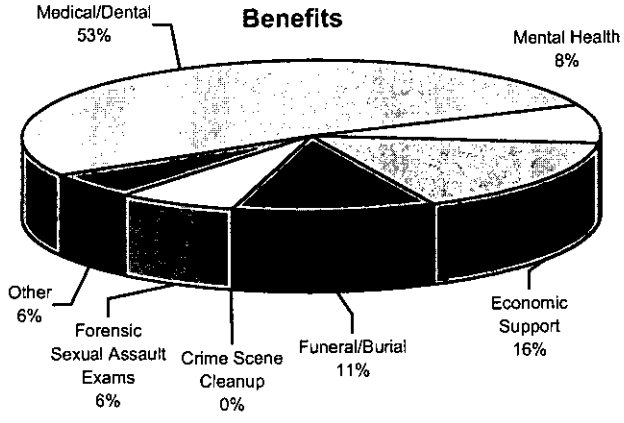
*Domestic Violence Claims included in Total No. Claims
Source:2008 VOCA National Performance Report



Compensation Benefits:

Expense:	Amount Paid
Medical/Dental	$239,211,319
Mental Health	38,504,140
Economic Support	74,164,870
Funeral/Burial	52,521,981
Crime Scene Cleanup	289,373
Forensic Sexual Assault Exams	29,812,559
Other	26,150,722
TOTAL	**$460,654,964**

Source:2008 VOCA National Performance Report



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Comp. Grants	2004	2005	2006	2007	2008	ARRA	2009	2010 est.
TOTAL	**186,149,000**	**169,653,000**	**143,418,000**	**165,716,000**	**171,349,000**	**47,500,000**	**181,963,000**	**200,462,000**
Alabama	2,792,000	1,129,000	376,000	1,448,000	1,529,000	847,343	3,246,000	1,297,000
Alaska	543,000	518,000	565,000	547,000	430,000	149,316	572,000	666,000
Arizona	1,258,000	1,304,000	1,185,000	1,197,000	1,193,000	293,150	1,123,000	1,249,000
Arkansas	1,187,000	1,474,000	1,204,000	1,239,000	1,378,000	276,705	1,060,000	1,326,000
California	64,796,000	25,689,000	15,682,000	32,140,000	31,043,000	8,110,055	31,068,000	38,693,000
Colorado	3,707,000	3,109,000	3,782,000	3,794,000	3,743,000	929,310	3,560,000	4,671,000
Connecticut	780,000	813,000	956,000	889,000	850,000	285,841	1,095,000	1,567,000
Delaware	859,000	2,766,000	933,000	720,000	865,000	130,521	500,000	843,000
Dist. Col.	2,313,000	657,000	2,838,000	3,081,000	2,795,000	770,857	2,953,000	3,432,000
Florida	8,822,000	6,998,000	2,937,000	4,866,000	6,897,000	3,050,799	11,687,000	13,192,000
Georgia	1,706,000	4,575,000	6,156,000	6,066,000	4,557,000	1,015,976	3,892,000	8,034,000
Hawaii	522,000	309,000	168,000	290,000	246,000	115,642	443,000	208,000
Idaho	821,000	758,000	907,000	567,000	899,000	343,009	1,314,000	1,356,000
Illinois	10,431,000	6,917,000	8,166,000	10,154,000	9,978,000	3,029,132	11,604,000	15,660,000
Indiana	638,000	1,460,000	1,755,000	1,421,000	581,000	592,566	2,270,000	2,707,000
Iowa	1,238,000	1,843,000	2,241,000	2,359,000	1,845,000	498,329	1,909,000	3,224,000
Kansas	1,222,000	1,264,000	860,000	1,220,000	1,720,000	346,403	1,327,000	1,488,000
Kentucky	339,000	462,000	911,000	747,000	389,000	89,537	343,000	650,000
Louisiana	771,000	773,000	689,000	683,000	757,000	233,894	896,000	863,000
Maine	175,000	186,000	201,000	183,000	159,000	42,289	162,000	180,000
Maryland	2,058,000	2,058,000	1,355,000	1,942,000	2,724,000	570,638	2,186,000	2,719,000
Mass.	1,520,000	1,312,000	1,141,000	1,474,000	1,203,000	271,484	1,040,000	1,504,000
Michigan	757,000	985,000	1,480,000	1,706,000	1,239,000	355,800	1,363,000	1,242,000
Minnesota	1,241,000	1,090,000	876,000	1,050,000	861,000	369,897	1,417,000	1,227,000
Mississippi	713,000	661,000	909,000	775,000	553,000	122,690	470,000	1,116,000
Missouri	2,279,000	4,199,000	3,102,000	3,457,000	2,763,000	951,498	3,645,000	3,426,000
Montana	356,000	270,000	145,000	353,000	271,000	90,582	347,000	266,000
Nebraska	127,000	42,000	39,000	30,000	24,000	15,663	60,000	36,000
Nevada	1,561,000	1,685,000	2,138,000	2,350,000	2,151,000	544,273	2,085,000	2,971,000
New Hamp.	211,000	159,000	210,000	80,000	197,000	60,301	231,000	188,000
New Jersey	4,842,000	6,655,000	5,620,000	6,124,000	4,176,000	1,410,671	5,404,000	4,176,000
New Mexico	734,000	525,000	769,000	650,000	748,000	201,524	772,000	861,000
New York	9,938,000	9,337,000	8,825,000	8,679,000	11,350,000	2,829,174	10,838,000	11,355,000
N. Carolina	3,830,000	1,357,000	4,002,000	3,949,000	1,991,000	647,906	2,482,000	2,361,000
N. Dakota	98,000	86,000	106,000	73,000	156,000	78,313	300,000	179,000
Ohio	6,777,000	6,111,000	3,454,000	4,513,000	7,299,000	2,000,627	7,664,000	6,666,000
Oklahoma	1,659,000	1,683,000	1,957,000	2,104,000	1,801,000	360,499	1,381,000	1,758,000
Oregon	1,046,000	1,215,000	1,161,000	1,586,000	1,067,000	356,583	1,366,000	1,717,000
Pennsylvania	2,071,000	3,817,000	4,491,000	5,083,000	6,752,000	1,536,233	5,885,000	4,448,000
Rhode Island	1,248,000	912,000	1,562,000	699,000	891,000	185,862	712,000	751,000
S. Carolina	4,116,000	4,736,000	3,543,000	4,088,000	3,247,000	1,153,023	4,417,000	4,364,000
S. Dakota	184,000	44,000	242,000	154,000	91,000	37,329	143,000	161,000
Tennessee	4,971,000	3,167,000	3,177,000	3,411,000	5,253,000	1,472,799	5,642,000	5,181,000
Texas	18,489,000	42,464,000	28,022,000	26,460,000	31,837,000	7,771,484	29,771,000	26,951,000
Utah	2,332,000	2,889,000	3,035,000	1,934,000	1,846,000	671,400	2,572,000	2,887,000
Vermont	212,000	200,000	230,000	264,000	318,000	57,951	222,000	208,000
Virginia	1,244,000	1,369,000	871,000	669,000	907,000	335,439	1,285,000	1,388,000
Washington	4,444,000	4,802,000	5,871,000	5,168,000	4,704,000	938,446	3,595,000	5,290,000
West Virginia	646,000	1,118,000	951,000	1,157,000	1,142,000	348,230	1,334,000	1,600,000
Wisconsin	841,000	1,072,000	1,004,000	1,143,000	977,000	264,175	1,012,000	934,000
Wyoming	442,000	348,000	337,000	460,000	486,000	168,894	647,000	889,000
Puerto Rico	139,000	227,000	193,000	307,000	260,000	145,139	556,000	199,000
Virgin Islands	103,000	54,000	88,000	213,000	210,000	24,799	95,000	137,000

Other Programs Currently Supported by the Crime Victims Fund

Children's Justice Act

- Up to $20 million in formula grants to states to improve the investigation/prosecution of child abuse cases.
- 85 percent awarded by HHS to States; 15 percent by OVC for Native American grants.

United States' Attorneys Office victim/witness coordinators

- VOCA funded since 2000.
- Congress specified VOCA funding for 170 FTE Federal victim/witness coordinators in United States Attorneys' Offices in each of 94 United States Attorneys Offices.
- Costs have increased from $14.4 million in 2000 to $21.4 million in 2009.
- **The Administration's 2011 budget would increase the number of VOCA-funded positions to 240 FTE at a cost of $32.6 million, a 126 percent increase over the original appropriation.**

F.B.I. victim assistance specialists

- VOCA funded since 2001 between $2 million - $14 million/year.
- Congress funded 112 victim assistance specialists in 56 F.B.I. field offices, 25 largest Resident Agencies and 31 across Indian Country.
- Annual costs have fluctuated greatly from a low of $1.9 million to $14.1 million.
- **The Administration's 2011 budget would increase the number of VOCA-funded positions to 155 FTE at a cost of $21.4 million, a 189 percent increase over the original appropriation.**

Federal Victim Notification System (VNS)

- VOCA funded since 2003 between $5 – $6.4 million/year.
- Automated notification to victims on case status and offender status used by USAO, FBI and Bureau of Prisons.

Office for Victims of Crime Discretionary Grants

- Five percent of annual allocations after CJA, federal earmarks.
- At least half used for national scope training and technical assistance, demonstration projects, program evaluations, and compliance efforts.
- No more than half used for services to victims of Federal crimes.

	2004	2005	2006	2007	2008	2009	2010 est.
CJA	20,000,000	20,000,000	20,000,000	19,898,701	19,019,518	20,000,000	20,000,000
USAO	20,613,963	14,767,825	21,954,880	22,249,500	22,408,796	21,400,000	22,408,000
FBI	1,871,656	7,945,845	8,747,300	11,907,238	9,202,825	14,143,000	14,457,290
VNS	5,141,843	4,960,000	5,492,000	5,000,000	6,405,774	5,000,000	6,400,000
OVC Disc.	31,541,891	29,866,728	29,618,720	28,227,182	18,386,173	28,724,212	32,081,236
Other/Adj				1,400,915	34,171,634*		

*Office of Justice Programs charges for management and administrative costs.

Replenishment of Antiterrorism Emergency Reserve (AER)

- Five percent of balance ("above the cap") in Crime Victims Fund available (after other programs are funded) to replenish $50 million reserve available for:
  - Supplemental grants to assist and compensate victims of domestic or international terrorism or mass violence.
  - OVC International Victims' of Terrorism Compensation Program.

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Organizations Supporting VOCA and the Crime Victims Fund

(in alphabetical order)

American Humane Association
American Probation and Parole Association (APPA)
American Society of Victimology
Arizona Voice for Crime Victims
Association of Prosecuting Attorneys
Association of VAWA Administrators
ATTIC Correctional Services, Inc.
Break the Cycle
CASA of New Jersey
Coalition of Pennsylvania Crime Victims Organizations
Colorado Organization for Victim Assistance
Family Violence Prevention Fund
International Community Corrections Association
International Organization for Victim Assistance (IOVA)
Jewish Women International
Justice for Children
Justice Solutions, Inc.
Maryland Crime Victims Resource Center, Inc.
Mothers Against Drunk Driving (MADD)
National Alliance to End Sexual Violence (NAESV)
National Association of Crime Victim Compensation Boards (NACVCB)
National Association of Victim Service Professionals in Corrections (NAVSPIC)
National Association of VOCA Assistance Administrators (NAVAA)
National Center for Victims of Crime (NCVC)
National Coalition Against Domestic Violence (NCADV)
National Coalition of Victims in Action (NCVIA)
National Council of Jewish Women
National Court Appointed Special Advocate (CASA) Association
National Crime Victim Law Institute (NCVLI)
National Crime Victim Research and Treatment Center
National Criminal Justice Association (NCJA)
National District Attorneys' Association (NDAA)
National Grange
National Judicial College
National Network to End Domestic Violence (NNEDV)
National Organization for Victim Assistance (NOVA)
National Organization of Parents of Murdered Children (POMC)
Pennsylvania Coalition Against Domestic Violence (PCADV)
Rape Abuse & Incest National Network (RAINN)
Renée Olubunmi Rondeau Peace Foundation, Inc.
SAFENOWPROJECT
Security on Campus, Inc.
Sheila Wellstone Institute
StopFamilyViolence.org
Texas CASA
Victims' Assistance Legal Organization (VALOR)
Wisconsin CASA
YWCA USA

For more information about VOCA and the Crime Victims Fund, please contact:
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National Association of VOCA Assistance Administrators (NAVAA)
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National Association
of Attorneys General

For Release: September 23, 2009

Contact: Marjorie Tharp
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mtharp@naag.org

STATE ATTORNEYS GENERAL SUPPORT MORE FEDERAL FUNDING FOR THE VICTIMS OF CRIME ACT GRANTS

Washington, DC---Attorneys General from 54 states and territories signed a letter sent to members of Congress expressing their support for the Crime Victims Fund Preservation Act of 2009 (S. 1340; HR 3402). The bill would increase the maximum amount of annual Victims of Crime Act (VOCA) grants to states over the next five years.

VOCA grants are allocated through the Crime Victims Fund, a special account dedicated to providing services to crime victims and made up entirely of fines and penalties paid by convicted federal offenders. The funds are crucial at the state level in educating victims, training for law enforcement, and administering programs providing compensation. The funds available to provide victims services have declined precipitously in recent years.

"Grants to state VOCA victim assistance programs fund services to more than four million victims of all types of crimes, including, domestic violence, sexual assault, child abuse, survivors of homicide victims, drunk driving crashes, stalking, identity theft, and elder abuse," the letter states.

The bill raises the cap on federal VOCA grants to $705 million for fiscal year 2010, and then increases the cap by 23 percent each year through 2014.

"...this reasonable and sustainable increase in federal support will help to ensure that we are able to continue to support victims at a high level and for years to come."

The standards and formula for allocating the funds will not change and the Crime Victims Fund is projected to maintain a sustainable balance of at least $800 million through 2014.

To view a copy of the letter, go to the National Association of Attorneys General (NAAG) Web site: http://www.naag.org/sign-on_archive.php

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The National Association of Attorneys General (NAAG), www.naag.org, was founded in 1907 to help Attorneys General fulfill the responsibilities of their office and to assist in the delivery of high quality legal services to the states and territorial jurisdictions.

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PATRICK C. LYNCH
Attorney General of Rhode Island

September 23, 2009

Via Facsimile

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate

The Honorable Jeff Sessions
Ranking Member, Senate Judiciary Committee
United States Senate

The Honorable John Conyers
Chairman, House Judiciary Committee
U.S. House of Representatives

The Honorable Lamar Smith
Ranking Member, House Judiciary Committee
U.S. House of Representatives

Dear Senators Leahy and Sessions and Representatives Conyers and Smith:

We, the undersigned Attorneys General, write to express support for, and ask for your help in passing, Senate Bill 1340 (companion, HR 3402). Also called the Crime Victims Fund Preservation Act of 2009, the bill was introduced by Senators Patrick Leahy and Mike Crapo, and will increase the maximum amount of annual VOCA (Victims Of Crime Act) grants to states over the next five years.

As you know, VOCA grants provide much-needed support to victims and victim service agencies throughout the nation. The grants are allocated through the Crime Victims Fund, a special account dedicated to providing services to crime victims and made up entirely of fines and penalties paid by convicted federal offenders. States receive these grants and administer programs providing compensation and education for victims, and training for law enforcement. Grants to state VOCA victim assistance programs fund services to more than 4 million victims of all types of crimes, including, domestic violence, sexual assault, child abuse, survivors of homicide victims, drunk driving crashes, stalking, identity theft, and elder abuse.

Because annual VOCA caps have not kept pace with the costs of providing victim services, states have been doing more with less. Likewise, because the caps have not kept pace with income to the Crime Victims Fund, the balance in the fund has risen to $2 billion over the past two years. The Crime Victims Fund Preservation Act of 2009 will raise the cap on federal VOCA grants to $705 million for fiscal year 2010, and then increase the cap by 23 percent each year through 2014. The standards and formula for allocating the funds will not change, and even with the increased caps, the Crime Victims Fund is projected to maintain a sustainable balance of at least $800 million through 2014.

The funds available to provide victims services such as these have declined precipitously in recent years. Efforts are underway in the offices of VOCA state funds administrators to staunch that decline and to operate the Crime Victims Assistance and Prevention programming more efficiently. VOCA grants make up a large portion of this funding, and this reasonable and sustainable increase in federal support will help to ensure that we are able to continue to support victims at a high level and for years to come.

We urge you to preserve the intent of the offender-generated revenues and the assistance it provides to innocent victims by passing the Crime Victims Fund Preservation Act of 2009.

Sincerely,

John W. Suthers
Attorney General of Colorado

Jim Hood
Attorney General of Mississippi

Jon Bruning
Attorney General of Nebraska

Richard Cordray
Attorney General of Ohio

Troy King
Attorney General of Alabama

Daniel S. Sullivan
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Fepulea'i Arthur Ripley Jr.
Attorney General of American Samoa

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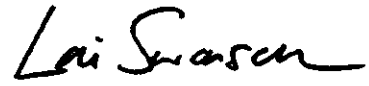

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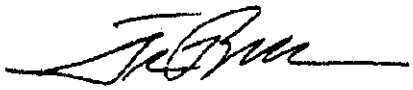

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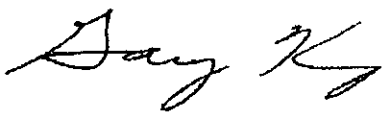
Anne Milgram
Attorney General of New Jersey



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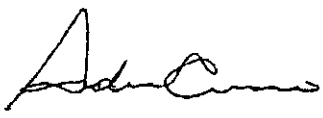

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Roy Cooper
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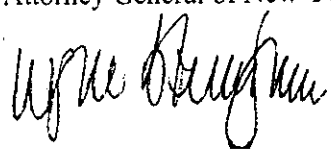

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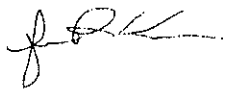

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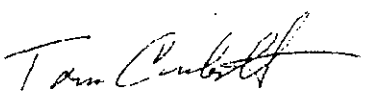

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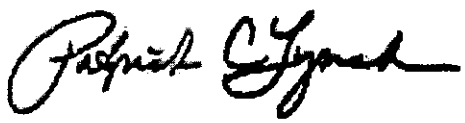

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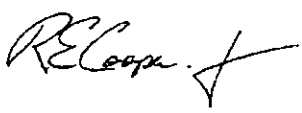

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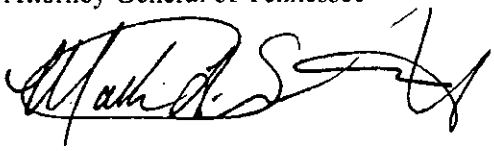

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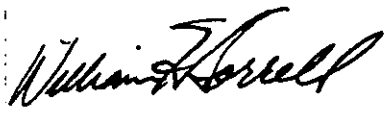

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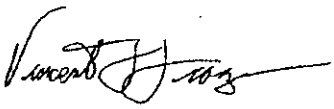

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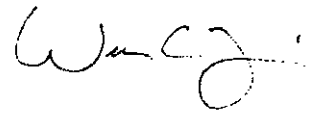

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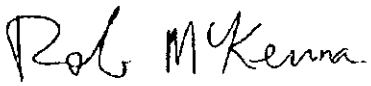

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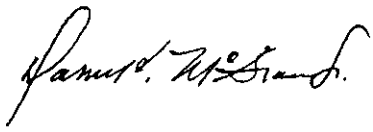

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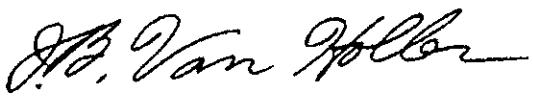

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April 3, 2009

The Honorable Alan Mollohan
Chairman
Subcommittee on Commerce,
Justice, and Science
House Appropriations Committee
2302 Rayburn House Office Building
Washington, DC 20515

The Honorable Frank Wolf
Ranking Member
Subcommittee on Commerce,
Justice, and Science
House Appropriations Committee
241 Canon House Office Building
Washington, DC 20515

Dear Chairman Mollohan and Ranking Member Wolf:

We are greatly appreciative of your subcommittee's efforts in the FY 2009 Omnibus Appropriations Act to take important and positive steps to repair the serious erosion of support for critical services for victims of crime, and especially for your improvements regarding funding for the Victims of Crime Act (VOCA) through the Crime Victims Fund.

As you know, the Fund supports a wide range of important services for victims of crime. Some 4,200 agencies provide these services to more than 4 million victims of all types of crime every year, largely through the formula state victim assistance grants. Because of increases in other VOCA-funded program areas and lowered cap, these state grants were cut by nearly $90 million between 2006 and 2008.

For FY 2009, your committee recommended a significant increase in the annual limit of Fund obligations and recognized the inappropriateness of using the Crime Victims Fund (and other Office of Justice Program grant programs) for OJP management costs. We commend the subcommittee for these two steps that restored two-thirds of the previous reductions in VOCA funding for state victim assistance grants.

As work begins on the FY 2010 appropriations bill, we urge the subcommittee to continue this progress by further reflecting the growing needs for the important services that are supported with VOCA funds. We believe that a FY 2010 cap on Fund obligations of $705 million would complete the restoration of state assistance grants to the amount received in FY 2006, including inflation, and be a down payment to meet the growing needs of crime victims.

A recent survey of state VOCA victim assistance administrators demonstrates that additional funding is essential. Indeed, according to that survey, a minimum of $106 million in additional VOCA state victim assistance grants would be necessary to fill the identified gap in funding between requested funding needs and VOCA funds available. Our request for a $705 million cap in FY 2010 would meet just one-quarter of those additional needs.

We are also aware of the need to ensure that the Crime Victims Fund be able to sustain adequate funding levels for future victim services. Last year, OMB projected that the FY 2009 opening Fund balance would be $1.9 billion. We also know that based on public announcements of negotiated agreements in a number of Federal criminal cases, deposits into the Fund will increase significantly over the next several years. Thus, the Fund will be assured of maintaining a balance that can ensure adequate, stable support for VOCA victim services.

The original drafters of the VOCA legislation designed the Crime Victims Fund to be a self-sufficient source of support for victim services. Appropriators have consistently explained the purpose of the annual caps on VOCA obligations as a means to ensure a stable source of funding. Our request is consistent with both of these goals.

We also need to note that the previous four Presidential budgets sought to rescind the entire balance in the Fund. Congress has properly and resoundingly turned down those requests. Although lacking in details, the FY 2010 budget announced last month suggests that another Fund rescission proposal may in the works. Should that happen, we trust that Congress will again protect the Fund to ensure its continued availability to support victim services.

Thank you for your consideration of this request.

Sincerely,

Rep. Ted Poe
Co-Chair, Victims' Rights Caucus

Rep. Jim Costa
Co-Chair, Victims' Rights Caucus

Rep. Neil Abercrombie

Rep. Jason Altmire

Rep. Tammy Baldwin

Rep. Judy Biggert

Rep. Stephen Lynch

Rep. Doris Matsui

Rep. Eleanor Holmes Norton

Rep. James L. Oberstar

Rep. Ron Paul

Rep. Chellie Pingree

Rep. Todd Russell Platts

Rep. Nick Rahall

Rep. David Reichert

Rep. Mike Ross

Rep. Loretta Sanchez

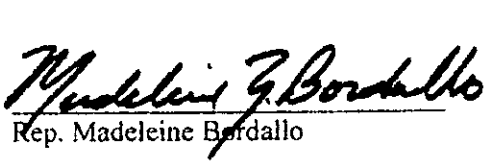
Rep. Allyson Schwartz

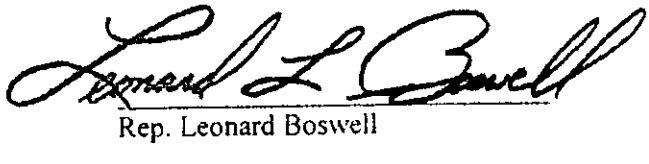
Rep. Bobby Scott

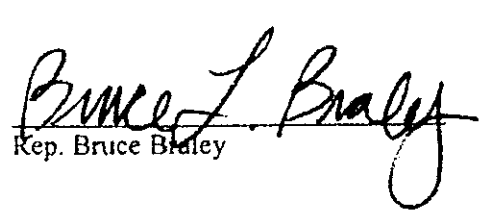
Rep. Chris Smith

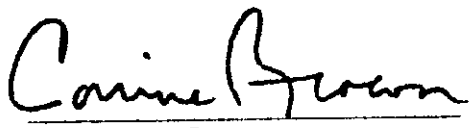
Rep. Ellen Tauscher

Rep. Dina Titus

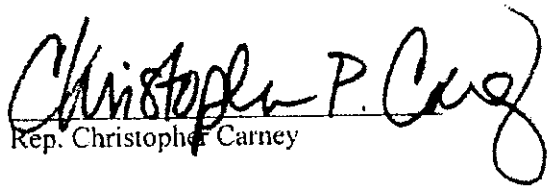

Rep. Madeleine Bordallo


Rep. Leonard Boswell

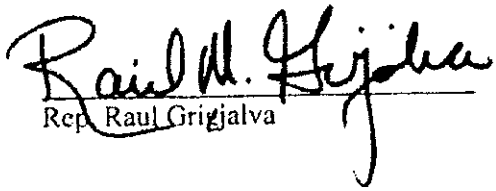

Rep. Bruce Braley

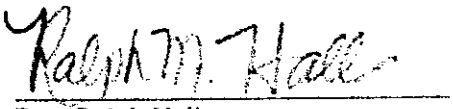

Rep. Corrine Brown

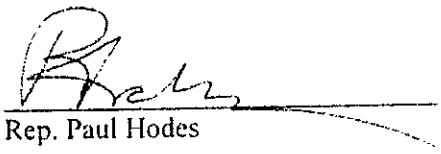
Rep. Shelley Moore Capito


Rep. Christopher Carney

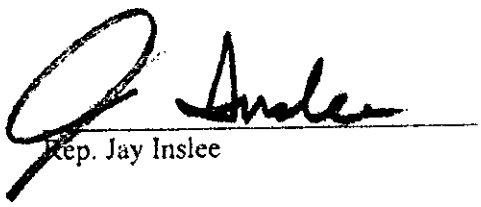
Rep. Parker Griffith

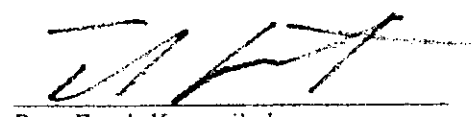

Rep. Raul Grijalva

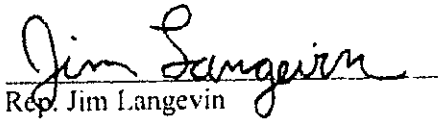

Rep. Ralph Hall


Rep. Paul Hodes

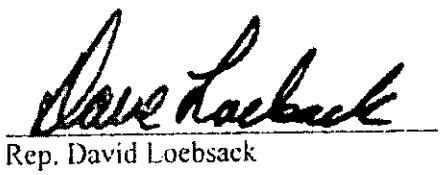
Rep. Tim Holden

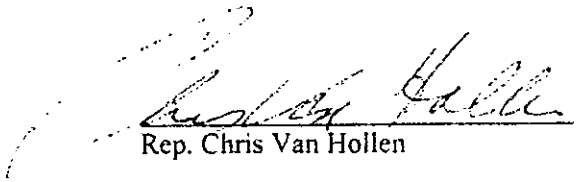

Rep. Jay Inslee


Rep. Frank Kratovil, Jr.


Rep. Jim Langevin

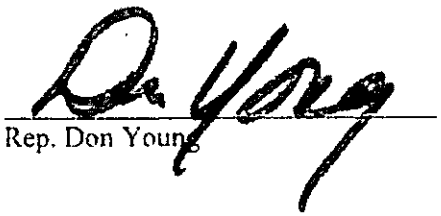
Rep. Frank LoBiondo


Rep. David Loebsack



Rep. Chris Van Hollen

Rep. David Wu



Rep. Don Young

POLICY RESOLUTION: Support of Passage of the "Crime Victims Fund Preservation Act"

COMMITTEE: Law and Criminal Justice

TYPE OF POLICY: Action

The National Conference of State Legislatures (NCSL) recommends to the Congress of the United States that an increasing minimum annual cap on obligations from the Crime Victims Fund be established as provided for in "The Crime Victims Fund Preservation Act of 2009."

WHEREAS, the Victims of Crime Act of 1984 (Public Law 98-473, 42 U.S.C. § 10601 et seq.) established the Crime Victims Fund, which is one of the main sources of money and support for crime victims and crime victims services all states, the District of Columbia, Puerto Rico, U.S. Virgin Islands and territories; and

WHEREAS, the Crime Victims Fund provides critical funding for formula grants to states for victim compensation and victim assistance and for Federal discretionary grants, in addition to earmarks for Federal victim assistance within the United States Attorneys' Offices, FBI and Victim Notification System and the Children's Justice Act; and

WHEREAS, state compensation programs pay directly for medical care, counseling, lost wages and funerals for victims of domestic violence, child abuse, rape and homicide; and

WHEREAS, state victim assistance programs provide critical, often life-saving services, including crisis intervention, counseling, emergency shelter, child care and emergency transportation; and

WHEREAS, discretionary grants awarded by the Office for Victims of Crime to organizations fund demonstration projects, training and technical assistance to expand and improve the delivery of services to crime victims as well as support for services to victims of Federal offenses; and

WHEREAS, all funds placed in the Crime Victims Fund are derived from criminal fines and other penalties paid by offenders of Federal crimes and does not rely on any tax-generated revenues; and

WHEREAS, states may utilize compensation grants and victim assistance grants over a four-year period, thus enabling them to plan and manage the distribution of funds over time; and

WHEREAS, since 2000, Congress began capping annual obligations from the Crime Victims Fund which has limited the amount of funding that would otherwise have been available to support victim assistance services; and

WHEREAS, in the past eleven years, a total of nearly $9 billion has been deposited into the Crime Victims Fund while only $6 billion has been obligated resulting in an accumulated balance of nearly $3 billion in the Fund as of the beginning of 2010; and

WHEREAS, Congress has repeatedly affirmed that the cap was imposed to ensure that a stable level of funding remains available for use to fund crime victim programs in future years; and

WHEREAS, victim service programs in all states and jurisdictions are facing severe budgetary shortfalls because of cutbacks in other victim funding programs and private donations while the need for services continue to increase; and

[Note: should be S. 1340]

WHEREAS, the Crime Victims Fund Preservation Act, S. 1304 introduced by Senators Patrick Leahy and Mike Crapo and H.R. 3402 introduced by Representatives Ted Poe and Jim Costa would establish increasing minimum caps on annual Crime Victims Fund obligations through the year 2014 which will significantly increase the amount available for state VOCA victim assistance grants and discretionary grants awarded by the Office for Victims of Crime without jeopardizing the long-term sustainability of the Fund; and

THEREFORE, BE IT RESOLVED That the National Conference of State Legislatures fully supports purposes of the Crime Victims Fund Preservation Act (S. 1304/H.R. 3402); and the purposes recommend that Congress enact the Crime Victims Fund Preservation Act; and

BE IT FINALLY RESOLVED that a copy of this resolution shall be sent to state legislative leaders, Congressional sponsors of S. 1304 and H.R. 3402, and members of the Senate Committee on the Judiciary, Senate Committee on Appropriations, House Committee on the Judiciary, and the House Committee on Appropriations.

Representative Beth Kerttula

House Minority Leader

DATE: March 29, 2010

TO: Senator Hollis French
Chair, Senate Judiciary Committee

Thanks!!
Beth

FROM: Representative Beth Kerttula

RE: House Joint Resolution 48 CRIME VICTIMS FUND PRESERVATION ACT

I respectfully request that the Senate Judiciary Committee schedule House Joint Resolution 48 Crime Victims Fund Preservation Act for a hearing.

Please find attached:

- House Joint Resolution 48
- Sponsor statement
- Letter of Support
- Information on the federal legislation

Thank you for your consideration. If you have any questions, please do not hesitate to call me or my aide, Hannah McCarty (x4767).

Alaska State Legislature ✧ District 3 ✧ Juneau
State Capitol ✧ Juneau, Alaska 99801-1182 ✧ (907) 465-4766 ✧ Fax (907) 465-4748
E-mail: Rep.Beth.Kerttula@legis.state.ak.us ✧ www.kerttula.net